

2016

Town of Durham Maine Ordinances

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TOWN OF DURHAM ADDRESSING ORDINANCE

(Amended April 6, 2012 Annual Town Meeting -Renumbers sections 5-10 and creates a new section 5)

(Amended April 6, 2013 Annual Town Meeting –Section 5 Street Signs)

(Amended Oct, 28th, 2014 Special Town Meeting –Section 3 Administration)

Section 1. Purpose

The purpose of this ordinance is to enhance the easy and rapid location of properties by law enforcement, fire, rescue, and emergency medical services personnel in the Town of Durham.

Section 2. Authority

This ordinance is adopted pursuant to and consistent with the Municipal home Rule Powers as provided for in Article VIII, Part 2, Section 1 of the Constitution of the State of Maine and Title 30-A M.R.S.A. Section 3001.

Section 3. Administration

This ordinance shall be administered by the addressing authority. The “addressing authority” is the Codes Official (Code Enforcement Officer) of the Town of Durham. The addressing authority is authorized to and shall assign road names in consultation with the Selectmen and assign numbers to all properties, both on existing and proposed roads, in accordance with the criteria in Sections 4 and 5. The addressing authority shall also be responsible for maintaining the following official records of this ordinance:

- a. Maps of the Town of Durham for official use showing road names and numbers.
- b. An alphabetical list of all property owners as identified by current assessment records, by last name, showing the assigned numbers.
- c. An alphabetical list of all roads with property owners listed in order of their assigned numbers.

Section 4. Naming System

All roads that serve two or more properties shall be named regardless of whether the ownership is public or private. A “road” refers to any highway, road, street, avenue, lane, private way, or similar paved, gravel, or dirt thoroughfare. “Property” refers to any property on which a more or less permanent structure has been erected or could be placed. A road name assigned by the Town of Durham shall not constitute or imply acceptance of the road as a public way.

The following criteria shall govern the naming system:

- a. No two roads shall be given the same name (e.g. no Pine Road and Pine Lane).
- b. No two roads should have similar-sounding names (e.g. Beech Street and Peach Street).
- c. Each road shall have the same name throughout its entire length.

Section 5. Street Signs

- a. Town Street Signs:
 1. Street signs that name a town road that have been approved by the E-911 Officer shall be purchased and installed by the Road Commissioner or his designee.
 2. Replacement signs shall be purchased and installed by the Town.
 3. All signs shall be uniform in color and lettering and conform to the latest version of the State of Maine: Department of Transportation: Manual on Uniform Traffic Control Devices. All road signs shall be reflective so as to be visible at night.
- b. Private Road Signs:
 1. Street signs that name private roads and ways that have been approved by the E-911 Officer shall be purchased and installed by the Road Commissioner or his designee and billed to the owner, developer, or road association.
 2. Private road signs shall be installed within the right of way of the private road outside of the traveled way. The Road Commissioner or his designee shall obtain written permission from the property owner before installing signs on private property.
 3. Signs for private roads shall be uniform in color and lettering and conform to the latest version of the State of Maine: Department of Transportation: Manual on Uniform Traffic Control Devices. All private road signs shall be reflective so as to be visible at night.
- c. Inventory:

An inventory of all road signs shall be made by the Town in October of each year. One copy of the inventory shall be kept on file by the Road Commissioner and another in the Town Office. Section 5. Developers of new subdivisions shall be responsible for the cost of installing all necessary signage for the development as

part of the approval process. Such signs shall be erected and maintained in accordance with the E-911 Ordinance.

Section 6. Numbering System

Numbers shall be assigned every fifty (50) feet along both sides of the road, with even numbers appearing on the left side of the road and odd numbers appearing on the right side of the road, determined by number origin.

The following criteria shall govern the numbering system:

- a. All number origins shall be from the designated center of Durham or that end of the road closest to the designated center. For dead end roads, numbering shall originate at the intersection of the adjacent road and terminate at the dead end.
- b. The number assigned to each structure shall be that of the numbered interval falling closest to the primary driveway entrance of the property.
- c. Every structure with more than one principle use or occupancy shall have a separate number for each used or occupancy. (i.e. duplexes will have two separate numbers; apartments will have one road number with an apartment letter, such as 235 Maple Street, Apt. B).

Section 7. Compliance

All owners of structures shall, by the date stipulated in Section 8, display and maintain in a conspicuous place on said structure, the assigned numbers in the following manner:

- a. Number on the Structure or Residence. Where the residence or structure is within fifty (50) feet of the edge of the road right of way, and is readily visible, the assigned number shall be displayed on the front of the residence or structure near the front door or entry.
- b. Number at the Street Edge. Where the residence or structure is over fifty (50) feet or more from the edge of the road right of way or is within fifty (50) feet and is not readily visible, the assigned number shall be displayed on a post, fence, wall, the mail box, or on some structure at the edge of the road right of way next to the walk or access drive to the residence or structure. When a number is displayed on a post, fence, wall, or mailbox that is perpendicular to the road, the number shall be made visible from both directions of the road.

- c. Size and Color of Number. Numbers shall be displayed in a color and size approved for use by the addressing authority and shall be located to be visible from the road. Numbers shall be in Arabic numerals and shall not be displayed in a word format. Numbers shall be a minimum four (4) inches in height and shall be of a contrasting color to their background and reflective.
- d. Every person whose duty is to display the assigned number shall remove any different number that might be mistaken for, or confused with, the number assigned in conformance with this ordinance.
- e. Interior location. All residents and other occupants are requested to post the assigned number and road name next to their telephone for emergency reference.

Section 8. New Construction and Subdivisions

All new construction and subdivisions shall be named and numbered in accordance with the provisions of this ordinance and as follows:

- a. New Construction. Whenever any residence or other structure is constructed or developed, it shall be the duty of the new owner to obtain an assigned number from the addressing authority. This shall be done prior to the issuance of a certificate of occupancy by the building inspector.
- b. New Subdivisions. Any prospective subdivider shall show a proposed road name on the pre-application submission to the Planning Board. Approval by the Planning Board, after consultation with the addressing authority, shall constitute the assignment of road names. On the final plan showing proposed roads, the applicant shall mark on the plan, dots, in the center of the streets every fifty (50) feet to aid in the assignment of numbers to structures falling within the subdivision, adjacent to the subdivision road, or to structures subsequently constructed.

Section 9. Effective Date

This ordinance shall become effective as of July 1, 1997. It shall be the duty of the addressing authority to notify by mail each property owner and the Post Office of a new address within seven (7) days of its assignment. It shall be the duty of each property owner to comply with this ordinance, including the posting of new property numbers within sixty (60) days following notification. On new structures, numbering will be installed before the structure is first used or occupied.

Section 10. Enforcement

Any person or persons, firm or corporation, being the owner or having control of any building or part thereof, which violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof, shall be subject to a fine of not less than five dollars (\$5.00) or more than twenty-five dollars (\$25.00). Each and every day that the aforesaid violation continues shall be a separate offense and punishable as such.

Whenever the addressing authority, code enforcement officer, or building inspector is satisfied that any provision hereof has been violated, and the civil proceedings will lie, he shall apply to the municipal officers for the purpose of instituting such civil proceeding. Any such proceeding shall be brought in the name of the Town of Durham and may include therein application for injunctive relief.

Section 11. Validity and Application

Should any provision or section of this ordinance be declared by the courts to be invalid, such declaration shall have no effect on the remaining portions or sections of this ordinance, said remaining portions or sections shall remain in full force and effect.

*****END OF ORDINANCE*****

Durham Lock Box Ordinance 2012
(Adopted April 6, 2012 Annual Town Meeting)

WHEREAS, the Selectmen have determined that the health, safety, and welfare of the citizens of the Town of Durham are promoted by requiring certain structures to have a key lock box installed on the exterior of the structure to aid the Durham Fire & Rescue in gaining access to the structure when responding to calls for emergency service; and

WHEREAS, the key lock box system is being adopted nationally and will operate on a master key basis that will expedite entry into a structure during an emergency; and

WHEREAS, the key lock box system will eliminate forced entries into structures thereby avoiding costly and time-consuming efforts in gaining access to locked structures during an emergency, the following ordinance is hereby adopted:

SECTION 1. Key Lock Box System.

- (a) The following structures shall be equipped with a key lock box at or near the main entrance or such other location required by the fire chief:
 - (1) residential, assembly, commercial, or industrial structures protected by an automatic alarm system or automatic suppression system;
 - (2) multi-family residential structures that have restricted access through locked doors and have a common corridor for access to the living units;
 - (3) governmental structures and nursing care facilities.
- (b) All newly constructed structures subject to this section shall have the key lock box installed and operational prior to the issuance of an occupancy permit. All structures in existence on the effective date of this section and subject to this section shall upon substantial changes to the occupancy type or building have a key lock box installed and operational.
- (c) The fire chief shall designate the type of key lock box system to be implemented within the town and shall have the authority to require all structures to use the designated system.
- (d) The owner or operator of a structure required to have a key lock box shall, at all times, keep a key in the lock box that will allow for access to the structure.
- (e) The fire chief shall be authorized to implement rules and regulations for the use of the lock box system.

SECTION 2: Enforcement

- (a) This Ordinance shall take effect immediately upon passage.
- (b) Any person who owns or manages a structure shall be subject to the requirements of this ordinance. Each day on which a violation exists shall be deemed to be a separate and distinct offense.
- (c) Any person who violates this ordinance shall be guilty of a civil violation. Civil penalties shall be payable to the Town of Durham. Any person found guilty of violating this ordinance shall be required to reimburse the Town of Durham for the costs of enforcement including its reasonable attorneys' fees.

*****END OF ORDINANCE*****

FLOODPLAIN MANAGEMENT ORDINANCE

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60.3 (d) Rev. 6/02

FLOODPLAIN MANAGEMENT ORDINANCE 4-2-2005

ARTICLE I - PURPOSE AND ESTABLISHMENT

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

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

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

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

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

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

ARTICLE II - PERMIT REQUIRED

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

ARTICLE III - APPLICATION FOR PERMIT

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

- A. The name, address and phone number of the applicant, owner, and contractor;
- B. An address and a map indicating the location of the construction site;
- C. A site plan showing location of existing and/or proposed development, including but not limited to structures, sewage disposal facilities, water supply facilities, areas to be cut and filled, and lot dimensions;

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- D. A statement of the intended use of the structure and/or development;
 - E. A statement of the cost of the development including all materials and labor;
 - F. A statement as to the type of sewage system proposed;
 - G. Specification of dimensions of the proposed structure and/or development;
- [Items H-K.2 apply only to new construction and substantial improvements.]
- H. The elevation in relation to the National Geodetic Vertical Datum (NGVD), or to a locally established datum in Zone A only, of the:
 - 1. base flood at the proposed site of all new or substantially improved structures, which is determined:
 - a. in Zone AE from data contained in the "Flood Insurance Study - Town of Durham, Maine," as described in Article I; or,
 - b. in Zone A:
 - (1) from any base flood elevation data from federal, state, or other technical sources (such as FEMA's Quick-2 model, FEMA 265/July 1995), including information obtained pursuant to Article VI.K. and VIII.D.;
 - (2) from the contour elevation extrapolated from a best fit analysis of the floodplain boundary when overlaid onto a USGS Quadrangle Map or other topographic map prepared by a Professional Land Surveyor or registered professional engineer, if the floodplain boundary has a significant correlation to the elevation contour line(s); or, in the absence of all other data,
 - (3) to be the elevation of the ground at the intersection of the floodplain boundary and a line perpendicular to the shoreline which passes along the ground through the site of the proposed building.
 - 2. highest and lowest grades at the site adjacent to the walls of the proposed building;
 - 3. lowest floor, including basement; and whether or not such structures contain a basement; and,
 - 4. level, in the case of non-residential structures only, to which the structure will be floodproofed;
 - I. A description of an elevation reference point established on the site of all developments for which elevation standards apply as required in Article VI;
 - J. A written certification by a Professional Land Surveyor, registered professional engineer or architect, that the base flood elevation and grade elevations shown on the application are accurate;

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- K. The following certifications as required in Article VI by a registered professional engineer or architect:
 - 1. a Floodproofing Certificate (FEMA Form 81-65, 08/99, as amended), to verify that the floodproofing methods for any non-residential structures will meet the floodproofing criteria of Article III.H.4.; Article VI.G.; and other applicable standards in Article VI;
 - 2. a Hydraulic Openings Certificate to verify that engineered hydraulic openings in foundation walls will meet the standards of Article VI.L.2.a.;
 - 3. a certified statement that bridges will meet the standards of Article VI.M.;
 - 4. a certified statement that containment walls will meet the standards of Article VI.N.;
- L. A description of the extent to which any water course will be altered or relocated as a result of the proposed development; and,
- M. A statement of construction plans describing in detail how each applicable development standard in Article VI will be met.

ARTICLE IV - APPLICATION FEE AND EXPERT'S FEE

A non-refundable application fee of \$50.00 shall be paid to the Town Treasurer and a copy of a receipt for the same shall accompany the application.

An additional fee may be charged if the Code Enforcement Officer and/or Board of Appeals needs the assistance of a professional engineer or other expert. The expert's fee shall be paid in full by the applicant within 10 days after the town submits a bill to the applicant. Failure to pay the bill shall constitute a violation of the ordinance and be grounds for the issuance of a stop work order. An expert shall not be hired by the municipality at the expense of an applicant until the applicant has either consented to such hiring in writing or been given an opportunity to be heard on the subject. An applicant who is dissatisfied with a decision to hire expert assistance may appeal that decision to the Board of Appeals.

ARTICLE V - REVIEW STANDARDS FOR FLOOD HAZARD DEVELOPMENT PERMIT APPLICATIONS

The Code Enforcement Officer shall:

- A. Review all applications for the Flood Hazard Development Permit to assure that proposed developments are reasonably safe from flooding and to determine that all pertinent requirements of Article VI (Development Standards) have been, or will be met;
- B. Utilize, in the review of all Flood Hazard Development Permit applications:
 - 1. the base flood data contained in the "Flood Insurance Study - Town of Durham, Maine," as described in Article I;
 - 2. in special flood hazard areas where base flood elevation data are not provided, the Code Enforcement Officer shall obtain, review and reasonably utilize any base flood elevation and

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floodway data from federal, state, or other technical sources, including information obtained pursuant to Article III.H.1.b.; Article VI.K.; and Article VIII.D., in order to administer Article VI of this Ordinance; and,

3. when the community establishes a base flood elevation in a Zone A by methods outlined in Article III.H.1.b., the community shall submit that data to the Maine Floodplain Management Program in the State Planning Office.
- C. Make interpretations of the location of boundaries of special flood hazard areas shown on the maps described in Article I of this Ordinance;
 - D. In the review of Flood Hazard Development Permit applications, determine that all necessary permits have been obtained from those federal, state, and local government agencies from which prior approval is required by federal or state law, including but not limited to Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1344;
 - E. Notify adjacent municipalities, the Department of Environmental Protection, and the Maine Floodplain Management Program in the State Planning Office prior to any alteration or relocation of a water course and submit copies of such notifications to the Federal Emergency Management Agency;
 - F. If the application satisfies the requirements of this Ordinance, approve the issuance of one of the following Flood Hazard Development Permits based on the type of development:
 1. A two part Flood Hazard Development Permit for elevated structures. Part I shall authorize the applicant to build a structure to and including the first horizontal floor only above the base flood level. At that time the applicant shall provide the Code Enforcement Officer with an Elevation Certificate completed by a Professional Land Surveyor, registered professional engineer or architect based on the Part I permit construction, "as built", for verifying compliance with the elevation requirements of Article VI, paragraphs F, G, or H. Following review of the Elevation Certificate data, which shall take place within 72 hours of receipt of the application, the Code Enforcement Officer shall issue Part II of the Flood Hazard Development Permit. Part II shall authorize the applicant to complete the construction project; or,
 2. A Flood Hazard Development Permit for Floodproofing of Non-Residential Structures that are new construction or substantially improved non-residential structures that are not being elevated but that meet the floodproofing standards of Article VI.G.1.a., b., and c. The application for this permit shall include a Floodproofing Certificate signed by a registered professional engineer or architect; or,
 3. A Flood Hazard Development Permit for Minor Development for all development that is not new construction or a substantial improvement, such as repairs, maintenance, renovations, or additions, whose value is less than 50% of the market value of the structure. Minor development also includes, but is not limited to: accessory structures as provided for in Article VI.J., mining, dredging, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities that do not involve structures; and non-structural projects such as bridges, dams, towers, fencing, pipelines, wharves and piers.

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- G. Maintain, as a permanent record, copies of all Flood Hazard Development Permit Applications, corresponding Permits issued, and data relevant thereto, including reports of the Board of Appeals on variances granted under the provisions of Article IX of this Ordinance, and copies of Elevation Certificates, Floodproofing Certificates, Certificates of Compliance and certifications of design standards required under the provisions of Articles III, VI, and VII of this Ordinance.

ARTICLE VI - DEVELOPMENT STANDARDS

All developments in areas of special flood hazard shall meet the following applicable standards:

A. **All Development** - All development shall:

1. be designed or modified and adequately anchored to prevent flotation (excluding piers and docks), collapse or lateral movement of the development resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
2. use construction materials that are resistant to flood damage;
3. use construction methods and practices that will minimize flood damage; and,
4. use electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during flooding conditions.

B. **Water Supply** - All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems.

C. **Sanitary Sewage Systems** - All new and replacement sanitary sewage systems shall be designed and located to minimize or eliminate infiltration of flood waters into the system and discharges from the system into flood waters.

D. **On Site Waste Disposal Systems** - On site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during floods.

E. **Watercourse Carrying Capacity** - All development associated with altered or relocated portions of a watercourse shall be constructed and maintained in such a manner that no reduction occurs in the flood carrying capacity of the watercourse.

F. **Residential** - New construction or substantial improvement of any residential structure located within:

1. Zone AE shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation.
2. Zone A shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation utilizing information obtained pursuant to Article III.H.1.b.; Article V.B; or Article VIII.D.

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G. **Non Residential** - New construction or substantial improvement of any non-residential structure located within:

1. Zone AE shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation, or together with attendant utility and sanitary facilities shall:
 - a. be floodproofed to at least one foot above the base flood elevation so that below that elevation the structure is watertight with walls substantially impermeable to the passage of water;
 - b. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and,
 - c. be certified by a registered professional engineer or architect that the floodproofing design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a Flood Hazard Development Permit, as required by Article III.K. and shall include a record of the elevation above mean sea level to which the structure is floodproofed.
2. Zone A shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation utilizing information obtained pursuant to Article III.H.1.b.; Article V.B; or Article VIII.D., or
 - a. together with attendant utility and sanitary facilities meet the floodproofing standards of Article VI.G.1.

H. **Manufactured Homes** - New or substantially improved manufactured homes located within:

1. Zone AE shall:
 - a. be elevated such that the lowest floor (including basement) of the manufactured home is at least one foot above the base flood elevation;
 - b. be on a permanent foundation, which may be poured masonry slab or foundation walls, with hydraulic openings, or may be reinforced piers or block supports, any of which support the manufactured home so that no weight is supported by its wheels and axles; and,
 - c. be securely anchored to an adequately anchored foundation system to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to:
 - (1) over-the-top ties anchored to the ground at the four corners of the manufactured home, plus two additional ties per side at intermediate points (manufactured homes less than 50 feet long require one additional tie per side); or by,

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- (2) frame ties at each corner of the home, plus five additional ties along each side at intermediate points (manufactured homes less than 50 feet long require four additional ties per side).
- (3) all components of the anchoring system described in Article VI.H.1.c.(1)&(2) shall be capable of carrying a force of 4800 pounds.

2. Zone A shall:

- a. be elevated on a permanent foundation, as described in Article VI.H.1.b., such that the lowest floor (including basement) of the manufactured home is at least one foot above the base flood elevation utilizing information obtained pursuant to Article III.H.1.b.; Article V.B; or Article VIII.D.; and
- b. meet the anchoring requirements of Article VI.H.1.c.

I. **Recreational Vehicles** - Recreational Vehicles located within:

1. Zone AE shall either:

- a. be on the site for fewer than 180 consecutive days,
- b. be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or,
- c. be permitted in accordance with the elevation and anchoring requirements for "manufactured homes" in Article VI.H.1.

J. **Accessory Structures** - Accessory Structures, as defined in Article XIII, located within Zones AE and A, shall be exempt from the elevation criteria required in Article VI.F. & G. above, if all other requirements of Article VI and all the following requirements are met. Accessory Structures shall:

- 1. be 500 square feet or less and have a value less than \$3000;
- 2. have unfinished interiors and not be used for human habitation;
- 3. have hydraulic openings, as specified in Article VI.L.2., in at least two different walls of the accessory structure;
- 4. be located outside the floodway;
- 5. when possible be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters and be placed further from the source of flooding than is the primary structure; and,

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6. have only ground fault interrupt electrical outlets. The electric service disconnect shall be located above the base flood elevation and when possible outside the Special Flood Hazard Area.

K. Floodways -

1. In Zone AE riverine areas, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted within a regulatory floodway which is designated on the community's Flood Insurance Rate Map, unless a technical evaluation certified by a registered professional engineer is provided demonstrating that such encroachments will not result in any increase in flood levels within the community during the occurrence of the base flood discharge.
2. In Zones AE, and A riverine areas for which no regulatory floodway is designated, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted in the floodway as determined in Article VI.K.3. unless a technical evaluation certified by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing development and anticipated development:
 - a. will not increase the water surface elevation of the base flood more than one foot at any point within the community; and,
 - b. is consistent with the technical criteria contained in Chapter 5 entitled "Hydraulic Analyses," *Flood Insurance Study - Guidelines and Specifications for Study Contractors*, (FEMA 37/ January 1995, as amended).
3. In Zones AE and A riverine areas for which no regulatory floodway is designated, the regulatory floodway is determined to be the channel of the river or other water course and the adjacent land areas to a distance of one-half the width of the floodplain as measured from the normal high water mark to the upland limit of the floodplain.

L. Enclosed Areas Below the Lowest Floor - New construction or substantial improvement of any structure in Zones AE and A that meets the development standards of Article VI, including the elevation requirements of Article VI, paragraphs F, G, or H and is elevated on posts, columns, piers, piles, "stilts," or crawlspaces may be enclosed below the base flood elevation requirements provided all the following criteria are met or exceeded:

1. Enclosed areas are not "basements" as defined in Article XIII;
2. Enclosed areas shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood water. Designs for meeting this requirement must either:
 - a. be engineered and certified by a registered professional engineer or architect; or,
 - b. meet or exceed the following minimum criteria:

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- (1) a minimum of two openings having a total net area of not less than one square inch for every square foot of the enclosed area;
- (2) the bottom of all openings shall be below the base flood elevation and no higher than one foot above the lowest grade; and,
- (3) openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the entry and exit of flood waters automatically without any external influence or control such as human intervention, including the use of electrical and other non-automatic mechanical means;

3. The enclosed area shall not be used for human habitation; and,

4. The enclosed areas are usable solely for building access, parking of vehicles, or storage.

M. **Bridges** - New construction or substantial improvement of any bridge in Zones AE and A shall be designed such that:

1. when possible, the lowest horizontal member (excluding the pilings, or columns) is elevated to at least one foot above the base flood elevation; and
2. a registered professional engineer shall certify that:
 - a. the structural design and methods of construction shall meet the elevation requirements of this section and the floodway standards of Article VI.K.; and
 - b. the foundation and superstructure attached thereto are designed to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all structural components. Water loading values used shall be those associated with the base flood.

N. **Containment Walls** - New construction or substantial improvement of any containment wall located within:

1. Zones AE and A shall:
 - a. have the containment wall elevated to at least one foot above the base flood elevation;
 - b. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and,
 - c. be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a Flood Hazard Development Permit, as required by Article III.K.

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- O. **Wharves, Piers and Docks** - New construction or substantial improvement of wharves, piers, and docks are permitted in Zones AE and A, in and over water and seaward of the mean high tide if the following requirements are met:
1. wharves, piers, and docks shall comply with all applicable local, state, and federal regulations; and
 2. for commercial wharves, piers, and docks, a registered professional engineer shall develop or review the structural design, specifications, and plans for the construction.

ARTICLE VII - CERTIFICATE OF COMPLIANCE

No land in a special flood hazard area shall be occupied or used and no structure which is constructed or substantially improved shall be occupied until a Certificate of Compliance is issued by the Code Enforcement Officer subject to the following provisions:

- A. For New Construction or Substantial Improvement of any elevated structure the applicant shall submit to the Code Enforcement Officer, an Elevation Certificate completed by a Professional Land Surveyor, registered professional engineer, or architect, for compliance with Article VI, paragraphs F, G, or H.
- B. The applicant shall submit written notification to the Code Enforcement Officer that the development is complete and complies with the provisions of this ordinance.
- C. Within 10 working days, the Code Enforcement Officer shall:
 1. review the Elevation Certificate and the applicant's written notification; and,
 2. upon determination that the development conforms with the provisions of this ordinance, shall issue a Certificate of Compliance.

ARTICLE VIII - REVIEW OF SUBDIVISION AND DEVELOPMENT PROPOSALS

The Planning Board shall, when reviewing subdivisions and other proposed developments that require review under other federal law, state law or local ordinances or regulations and all projects on 5 or more disturbed acres, or in the case of manufactured home parks divided into two or more lots, assure that:

- A. All such proposals are consistent with the need to minimize flood damage.
- B. All public utilities and facilities, such as sewer, gas, electrical and water systems are located and constructed to minimize or eliminate flood damages.
- C. Adequate drainage is provided so as to reduce exposure to flood hazards.
- D. All proposals include base flood elevations, flood boundaries, and, in a riverine floodplain, floodway data. These determinations shall be based on engineering practices recognized by the Federal Emergency Management Agency.

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E. Any proposed development plan must include a condition of plan approval requiring that structures on any lot in the development having any portion of its land within a Special Flood Hazard Area, are to be constructed in accordance with Article VI of this ordinance. Such requirement will be included in any deed, lease, purchase and sale agreement, or document transferring or expressing an intent to transfer any interest in real estate or structure, including but not limited to a time-share interest. The condition shall clearly articulate that the municipality may enforce any violation of the construction requirement and that fact shall also be included in the deed or any other document previously described. The construction requirement shall also be clearly stated on any map, plat, or plan to be signed by the Planning Board or local reviewing authority as part of the approval process.

ARTICLE IX - APPEALS AND VARIANCES

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

The Board of Appeals may grant a variance from the requirements of this Ordinance consistent with state law and the following criteria:

- A. Variances shall not be granted within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
- B. Variances shall be granted only upon:
 - 1. a showing of good and sufficient cause; and,
 - 2. a determination that should a flood comparable to the base flood occur, the granting of a variance will not result in increased flood heights, additional threats to public safety, public expense, or create nuisances, cause fraud or victimization of the public or conflict with existing local laws or ordinances; and,
 - 3. a showing that the issuance of the variance will not conflict with other state, federal or local laws or ordinances; and,
 - 4. a determination that failure to grant the variance would result in "undue hardship," which in this sub-section means:
 - a. that the land in question cannot yield a reasonable return unless a variance is granted; and,
 - b. that the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; and,
 - c. that the granting of a variance will not alter the essential character of the locality; and,
 - d. that the hardship is not the result of action taken by the applicant or a prior owner.

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- C. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief, and the Board of Appeals may impose such conditions to a variance as it deems necessary.
- D. Variances may be issued for new construction, substantial improvements, or other development for the conduct of a functionally dependent use provided that:
 - 1. other criteria of Article IX and Article VI.K. are met; and,
 - 2. the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.
- E. Variances may be issued for the repair, reconstruction, rehabilitation, or restoration of Historic Structures upon the determination that:
 - 1. the development meets the criteria of Article IX, paragraphs A. through D. above; and,
 - 2. the proposed repair, reconstruction, rehabilitation, or restoration will not preclude the structure's continued designation as a Historic Structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- F. Any applicant who meets the criteria of Article IX, paragraphs A. through E. shall be notified by the Board of Appeals in writing over the signature of the Chairman of the Board of Appeals that:
 - 1. the issuance of a variance to construct a structure below the base flood level will result in greatly increased premium rates for flood insurance up to amounts as high as \$25 per \$100 of insurance coverage;
 - 2. such construction below the base flood level increases risks to life and property; and,
 - 3. the applicant agrees in writing that the applicant is fully aware of all the risks inherent in the use of land subject to flooding, assumes those risks and agrees to indemnify and defend the municipality against any claims filed against it that are related to the applicant's decision to use land located in a floodplain and that the applicant individually releases the municipality from any claims the applicant may have against the municipality that are related to the use of land located in a floodplain.
- G. Appeal Procedure for Administrative and Variance Appeals
 - 1. An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party within thirty days after receipt of a written decision of the Code Enforcement Officer or Planning Board.
 - 2. Upon being notified of an appeal, the Code Enforcement Officer or Planning Board, as appropriate, shall transmit to the Board of Appeals all of the papers constituting the record of the decision appealed from.

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3. The Board of Appeals shall hold a public hearing on the appeal within thirty-five days of its receipt of an appeal request.
4. The person filing the appeal shall have the burden of proof.
5. The Board of Appeals shall decide all appeals within thirty-five days after the close of the hearing, and shall issue a written decision on all appeals.
6. The Board of Appeals shall submit to the Code Enforcement Officer a report of all variance actions, including justification for the granting of the variance and an authorization for the Code Enforcement Officer to issue a Flood Hazard Development Permit, which includes any conditions to be attached to said permit.
7. Any aggrieved party who participated as a party during the proceedings before the Board of Appeals may take an appeal to Superior Court in accordance with State laws within forty-five days from the date of any decision of the Board of Appeals.

ARTICLE X - ENFORCEMENT AND PENALTIES

- A. It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance pursuant to Title 30-A MRSA § 4452.
- B. The penalties contained in Title 30-A MRSA § 4452 shall apply to any violation of this Ordinance.
- C. In addition to any other actions, the Code Enforcement Officer, upon determination that a violation exists, shall submit a declaration to the Administrator of the Federal Insurance Administration requesting a denial of flood insurance. The valid declaration shall consist of;
 1. the name of the property owner and address or legal description of the property sufficient to confirm its identity or location;
 2. a clear and unequivocal declaration that the property is in violation of a cited State or local law, regulation, or ordinance;
 3. a clear statement that the public body making the declaration has authority to do so and a citation to that authority;
 4. evidence that the property owner has been provided notice of the violation and the prospective denial of insurance; and,
 5. a clear statement that the declaration is being submitted pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.

ARTICLE XI - VALIDITY AND SEVERABILITY

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

FLOODPLAIN MANAGEMENT ORDINANCE 4-2-2005
ARTICLE XII - CONFLICT WITH OTHER ORDINANCES

This Ordinance shall not in any way impair or remove the necessity of compliance with any other applicable rule, ordinance, regulation, bylaw, permit, or provision of law. Where this Ordinance imposes a greater restriction upon the use of land, buildings, or structures, the provisions of this Ordinance shall control.

ARTICLE XIII - DEFINITIONS

Unless specifically defined below, words and phrases used in this Ordinance shall have the same meaning as they have at common law and to give this Ordinance its most reasonable application. Words used in the present tense include the future, the singular number includes the plural, and the plural number includes the singular. The word "may" is permissive; "shall" is mandatory and not discretionary.

Accessory Structure - means a small detached structure that is incidental and subordinate to the principal structure.

Adjacent Grade - means the natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Area of Special Flood Hazard - means the land in the floodplain having a one percent or greater chance of flooding in any given year, as specifically identified in the Flood Insurance Study cited in Article I of this Ordinance.

Base Flood - means the flood having a one percent chance of being equaled or exceeded in any given year, commonly called the 100-year flood.

Basement - means any area of the building having its floor subgrade (below ground level) on all sides.

Building - see **Structure**.

Certificate of Compliance - A document signed by the Code Enforcement Officer stating that a structure is in compliance with all of the provisions of this Ordinance.

Code Enforcement Officer - any person or board responsible for performing the inspection, licensing, and enforcement duties required by a particular statute or ordinance.

Development - means any change caused by individuals or entities to improved or unimproved real estate, including but not limited to the construction of buildings or other structures; the construction of additions or substantial improvements to buildings or other structures; mining, dredging, filling, grading, paving, excavation, drilling operations or storage of equipment or materials; and the storage, deposition, or extraction of materials, public or private sewage disposal systems or water supply facilities.

Elevated Building - means a non-basement building

- a. built, in the case of a building in Zones AE or A, to have the top of the elevated floor elevated above the ground level by means of pilings, columns, post, piers, or "stilts;" and

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- b. adequately anchored so as not to impair the structural integrity of the building during a flood of up to one foot above the magnitude of the base flood.

In the case of Zones AE or A, **Elevated Building** also includes a building elevated by means of fill or solid foundation perimeter walls with hydraulic openings sufficient to facilitate the unimpeded movement of flood waters, as required in Article VI.L..

Elevation Certificate - An official form (FEMA Form 81-31, 07/00, as amended) that:

- a. is used to verify compliance with the floodplain management regulations of the National Flood Insurance Program; and,
- b. is required for purchasing flood insurance.

Flood or Flooding - means:

- a. A general and temporary condition of partial or complete inundation of normally dry land areas from:
 - 1. The overflow of inland or tidal waters.
 - 2. The unusual and rapid accumulation or runoff of surface waters from any source.
- b. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph a.1. of this definition.

Flood Elevation Study - means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations.

Flood Insurance Rate Map (FIRM) - means an official map of a community, on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community.

Flood Insurance Study - see **Flood Elevation Study**.

Floodplain or Flood-prone Area - means any land area susceptible to being inundated by water from any source (see flooding).

Floodplain Management - means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and floodplain management regulations.

Floodplain Management Regulations - means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance, and erosion control ordinance) and other applications of police power. The term describes such state or

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local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

Floodproofing - means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and contents.

Floodway - see **Regulatory Floodway**.

Floodway Encroachment Lines - mean the lines marking the limits of floodways on federal, state, and local floodplain maps.

Freeboard - means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. Freeboard tends to compensate for the many unknown factors, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed, that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions.

Functionally Dependent Use - means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

Historic Structure - means any structure that is:

- a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district;
- c. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 1. By an approved state program as determined by the Secretary of the Interior, or
 2. Directly by the Secretary of the Interior in states without approved programs.

Locally Established Datum - means, for purposes of this ordinance, an elevation established for a specific site to which all other elevations at the site are referenced. This elevation is generally not referenced to the National Geodetic Vertical Datum (NGVD) or any other established datum and is used in areas where Mean Sea Level data is too far from a specific site to be practically used.

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Lowest Floor - means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements described in Article VI.L. of this ordinance.

Manufactured Home - means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term manufactured home also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days.

Manufactured Home Park or Subdivision - means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Mean Sea Level - means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

Minor Development - means all development that is not new construction or a substantial improvement, such as repairs, maintenance, renovations, or additions, whose value is less than 50% of the market value of the structure. It also includes, but is not limited to: accessory structures as provided for in Article VI.J., mining, dredging, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities that do not involve structures; and non-structural projects such as bridges, dams, towers, fencing, pipelines, wharves, and piers.

National Geodetic Vertical Datum (NGVD) - means the national vertical datum, whose standard was established in 1929, which is used by the National Flood Insurance Program (NFIP). NGVD was based upon mean sea level in 1929 and also has been called "1929 Mean Sea Level (MSL)".

New Construction - means structures for which the "start of construction" commenced on or after the effective date of the initial floodplain management regulations adopted by a community and includes any subsequent improvements to such structures.

100-year flood - see **Base Flood**.

Recreational Vehicle - means a vehicle which is:

- a. built on a single chassis;
- b. 400 square feet or less when measured at the largest horizontal projection, not including slideouts;
- c. designed to be self-propelled or permanently towable by a motor vehicle; and
- d. designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Regulatory Floodway -

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- a. means the channel of a river or other water course and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot, and
- b. when not designated on the community's Flood Insurance Rate Map, it is considered to be the channel of a river or other water course and the adjacent land areas to a distance of one-half the width of the floodplain, as measured from the normal high water mark to the upland limit of the floodplain.

Riverine - means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

Special Flood Hazard Area - see **Area of Special Flood Hazard**.

Start of Construction - means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, substantial improvement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, or modification of any construction element, whether or not that alteration affects the external dimensions of the building.

Structure - means, for floodplain management purposes, a walled and roofed building. A gas or liquid storage tank that is principally above ground is also a structure.

Substantial Damage - means, damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damage condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial Improvement - means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

- a. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
- b. Any alteration of a Historic Structure, provided that the alteration will not preclude the structure's continued designation as a historic structure, and a variance is obtained from the community's Board of Appeals.

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Variance - means a grant of relief by a community from the terms of a floodplain management regulation.

Violation - means the failure of a structure or development to comply with a community's floodplain management regulations.

ARTICLE XIV - ABROGATION

This ordinance repeals and replaces any municipal ordinance previously enacted to comply with the National Flood Insurance Act of 1968 (P.L. 90-488, as amended).

60.3 (d)

Growth Management and Establishment of Districts Ordinance of the Town of Durham, Maine

Article I. Title

This Ordinance shall be known as the “Growth Management and Establishment of Districts Ordinance of the Town of Durham, Maine” and will be referred to herein as the Ordinance.

Article II. Purpose

- 1) The purpose of the Ordinance is to set forth standards managing the growth of the Town of Durham, Maine in a manner consistent with the State of Maine Comprehensive Planning and Land Use Regulation Act (30-A MRSA 4312 et seq.), and the Town of Durham Comprehensive Plan adopted by vote of the inhabitants of the Town Of Durham, Maine on March 2, 2002.
- 2) To prevent unreasonable burden on, and failure or shortage of, public facilities that is likely to result from unlimited growth.
- 3) To maintain the predominantly rural character of the town.
- 4) To provide for the local housing needs of Durham’s existing residents, while accommodating Durham’s “fair Share” of population growth in Androscoggin county and immediate sub-region.
- 5) To ensure fairness in the allocation of building permits.

Article III. Definitions

Unless otherwise indicated, all terms used in this Ordinance will be construed to have the same meanings as defined in the Town Land Use Ordinance, or if not defined will be construed to have their plain and ordinary meaning.

- 1) Town shall mean the Town of Durham, in the County of Androscoggin in the State of Maine.
- 2) State shall mean the State of Maine.
- 3) Annually shall mean the period between January 1st and December 31st of any given year.
- 4) For the purposes of this Ordinance, the term “applicant” shall mean the person or entity in whose name an application for a building permit for new residential construction is submitted to the Code Enforcement Officer (the “named applicant”);
 - a. If the named applicant is a natural person,
All persons related to the named applicant;
All entities in which the named applicant or any person related to the named applicant who owns or controls a 10% interest or greater.
 - b. If the named applicant is other than a natural person,
All natural persons or entities with any ownership interest in the named applicant (stakeholders);

All persons related to stakeholders of the named applicant
All entities in which a stakeholder or any person related to a stakeholder owns or controls a 10% or greater interest.

- c. Any other person or entity when, in the discretion of the Code Enforcement Officer, the failure to deem the person or entity to be an applicant would circumvent the purposes of this ordinance.
- 5) For the purposes of this Ordinance, the term “persons related to” shall mean: spouse, parent, brother, sister, or child related by blood, marriage or adoption.
- 6) Dwelling Unit: shall mean a room or group of rooms, used primarily as living quarters for one family, including provisions for living, sleeping, cooking, and eating. The term shall not include hotel or motel rooms or suites, rooming house rooms, or similar accommodations.
- 7) Accessory apartment shall mean a dwelling unit designed to provide a diversity of housing for town residents while protecting the single family character of residential neighborhoods. There shall be only one accessory apartment per lot; the accessory apartment shall contain no more than 50% of the floor area of the main dwelling unit, while the main dwelling unit shall have at least 1500 square feet, not including unfinished attic, basement or cellar spaces, nor public hallways or other common areas.

Article IV. Establishment of Districts

The Town shall be divided into three Zoning Districts as shown on the Official Zoning Map and further described in the Durham Land Use Ordinance:

Southwest Bend/Growth District
Resource Protection/Rural District
Rural Residential/Transitional District

There are also two other recognized districts, which are imposed over the above three zoning districts, these are:

Southwest Bend Historic Overlay District
Aquifer Overlay District

1. There shall be established a **Growth District** in the Town. This Growth District shall be identified as follows:

1. Southwest Bend/Growth District shall consist of the area identified as follows: (Refer to tax maps dated April 1, 2003.)

The Southwest Bend/Growth District shall include that area bounded and described as follows: Beginning at the intersection of Newell Brook Road and Plummer Mill Road as shown on Tax Map 6; thence running southwesterly along the westerly side of Plummer Mill Road to its intersection with the Old Brunswick Road; thence continuing southwesterly across the Old Brunswick Road along the westerly side of Emerson Road as shown on Tax Map 7; thence proceeding westerly to the intersection of Emerson Road with Royalsborough Road (Rt. 136); thence proceeding due west across Royalsborough Road to the westerly sideline of Royalsborough Road; thence turning and running southerly along the westerly boundary of Royalsborough Road until it's intersection with the southerly boundary line of Lot 74 as shown on Tax Map 7; thence turning and running westerly and southwesterly along the said boundary of Lot 74 to its intersection with the northeast corner of Lot 78 as shown on Tax Map 7; thence turning and running along the northerly boundary of the said Lot 78 to its intersection with the western boundary of lot 52D as shown on Tax Map 7; thence turning and running northerly along the westerly boundary line of Lot 52D to the northeasterly corner of Lot 52D and the southeasterly corner of 49 as shown on Tax Map 7; thence turning and running northwesterly along the northerly boundaries of the said Lot 52D and Lot 50 as shown on Tax Map 7 to the westerly side of Hallowell Road; thence turning and running southwesterly along the western boundary line of Hallowell Road to the southwesterly boundary of Lot 26 as shown on Tax Map 7; thence turning and running northwesterly along the southwesterly boundary line of the said Lot 26 to its intersection with the easterly boundary of Lot 16 as shown on Tax Map 7; thence continuing along the same southwesterly bearing as the southwesterly boundary of lot 26 to the eastern boundary of the Davis Road; thence turning and running northeasterly along the eastern boundary of the Davis Road to it's intersection with the southerly boundary of Royalsborough Road (Rt. 136); thence turning and running southeasterly along the southern boundary of Royalsborough Road and then across said road until the boundary intersects with the southern boundary of Newell Brook Road; thence turning and running first northerly and then easterly along the southern boundary of Newell Brook Road to the point of beginning, but excluding therefrom any part of such area as bounded above which is in the Resource Protection/Rural District.

2. *Rural Residential/Transitional is defined as that area not in either the Southwest Bend/Growth District or in the Resource Protection/Rural District as shown on the Official Zoning Map.*
3. *The Resource Protection/Rural District boundaries shall be those defined on the Official Zoning Map of the Town for Resource Protection.* This is a change of name only. With all ordinances and codes ascribing to the former **Resource Protection District** ascribing unabated and unchanged to the newly named **Resource Protection/Rural District**.

Article V. Limitation on the Awarding of Building Permits

Building Permits for new residential construction shall be limited to 45 dwelling units annually for the entire Town. (Refer to Housing Section-Comprehensive Plan for the Town of Durham, adopted March 2002 for details on how this number was derived.) Building Permits are to be awarded on a “first come, first served” basis. Building permits shall be valid only for the lot specified on the application and are not transferable.

Southwest Bend/Growth District

No applicant shall be awarded more than 5 Building Permits for new dwelling units in the Southwest Bend/Growth District in any one year. This limit may only be exceeded if by the last day of the year the forty-five (45) town wide building permits have not been issued.

Rural Residential/Transitional District

In the Rural Residential/Transitional District, no more than 3 Building Permits for new dwelling units will be awarded annually to any applicant. This limit may only be exceeded if by the last business day of the year the forty five (45) town wide building permits have not been issued.

Subdivisions in the Rural Residential/Transitional District are limited to five (5) lots.

The Code Enforcement Officer will maintain a list located at the Town Hall on a first-come “first-served” basis of completed applications for building permits which would have been issued but for the limitations as to the number of permits permitted per applicant. Each application will be marked by the Code

Enforcement Officer with the date and time the completed application was received.

On the last day of each year, to the extent that the number of Residential Building Permits allowed have not been used, the remaining Residential Building Permits on said list will be granted in the order received until total number of permits allowed have been issued without regard to District. Permits not issued during any year will not be carried over to the next year.

Article VI. Applicability

1. This Ordinance shall apply to all new dwelling units, excluding Accessory Apartments and including manufactured homes moved into the Town of Durham for the first time, and the construction of an additional dwelling unit or units within an existing structure. No new dwelling unit that fails to meet the requirements of this Ordinance shall be constructed or placed within the Town of Durham.
2. This Ordinance shall not apply to the replacement of an existing dwelling unit or units with a new dwelling unit or units of the same number.

Article VII. Administration

A maximum of forty-five (45) Building Permits for new residential dwelling units shall be issued by the Code Enforcement Officer during a twelve (12) month period January 1st to December 31st of any given year that this Ordinance remains in force.

Article VII. Conflict With Other Ordinances

This Ordinance shall not repeal, annul, or otherwise impair or remove the necessity of compliance with any federal, state or other local laws or ordinances. Where this Ordinance imposes a greater restriction upon the use of land, buildings, or structures, the provisions of this Ordinance shall prevail.

Article IX. Separability

Should any section or provision of this Ordinance be found by the courts to be invalid, illegal, or unenforceable, such decision shall not effect any other section or provision of this Ordinance either singly or collectively.

Article X. Effective Date

This effective date of this Ordinance shall be March 6, 2004.

Article XI. Amendments

This Ordinance shall be amended in accordance with procedures specified in the Durham Land Use Ordinance.

Article XII. Violations

A violation of this Ordinance shall be deemed to exist when any person, firm or a corporate entity engages in any construction activity directly related to the erection or placement of a Dwelling Unit upon any land within the Town without first having obtained a Building Permit from the Code Enforcement Officer.

Article XIII. Penalties

Any person who violates any provision of this Ordinance shall be guilty of a civil violation and subject to the penalties provided in Title M.R.S.A. 30-A Section 4452 including injunctive relief and payment of reasonable attorneys' fees.

Article XIV. Appeals

1. Administrative Appeals

The Board of Appeals, may, upon written application of an aggrieved party and after public notice, hear appeals from determinations of the Code Enforcement Officer in the administration of this Ordinance. Such hearings shall be held in accordance with the Durham Land Use Ordinance.

HISTORIC DISTRICT ORDINANCE

As adopted at Town Meeting

April 2, 2016

Article I

General Provisions

1. Purpose.
2. Definitions.

Article II

Historic District Commission

3. Establishment; membership; terms; bylaws; expenditures.
4. Duties.

Article III

Establishment of Districts

5. Qualifications.
6. Effect on other regulations; applicability.
7. Designation of districts, sites or landmarks; expansion of districts.

Article IV

Certificates of Appropriateness

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Article I
General Provisions

1. Purpose.

This ordinance is adopted in accordance with the Comprehensive Plan of the Town of Durham adopted at Town meeting March 2002 and pursuant to the legislative authority vested in the Town by virtue of 30-A M.R.S.A. Sections 3001 through 3007, 4301, and 4351 through 4359, and the acts amendatory thereto, for the purpose of preserving, protecting, and enhancing buildings and places or areas within the Town which possess particular historical or cultural attributes and for the economic welfare of the residents and visitors to the town. To achieve these purposes, it is intended that Historic Districts and related regulations shall be used:

- A. To prevent inappropriate alterations of buildings of historic or architectural value.
- B. To prevent the demolition or removal of designated sites or landmarks and significant historic structures within designated districts whenever a reasonable alternative exists or can be identified.
- C. To preserve the essential character of designated districts by protecting relationships of groups of buildings and structures.
- D. To assure that new Construction in Historic Districts is compatible with the historic character of the district so as to protect property and tax valuations.

2. Definitions.

All words not defined herein shall carry their customary and usual dictionary meanings. Words used in the present tense shall include the future. Words used in the singular shall include the plural. The word "shall" is used to indicate the mandatory and the word "may" is used to indicate the permissive. ***Obvious typographical errors may be disregarded in interpretation of this ordinance.***

As used in this ordinance, the following words and terms shall have the following meanings:

ABUTTING PROPERTY: Any lot which is physically contiguous with the lot in question even if only at a point, and any lot which is located directly across a public or private street or way from the lot in question. "Directly across" shall mean at least touched by a straight extension of the side property lines across said street or way.

ALTERED - Includes the words "rebuilt", "reconstructed", "rehabilitated", "restored", and "demolished" or any other change to the exterior facade of a structure.

BUILDING - A combination of materials forming a shelter that may be used for persons, animals, or property. Each portion of a structure, separated from other portions by a fire wall, shall be considered a separate building.

CODE ENFORCEMENT OFFICER A person appointed by the Town Selectman to administer and enforce this ordinance and to carry out other duties set forth herein, by State statute and other ordinances.

CONTRIBUTING RESOURCE- a building, site, structure or object adding to the historic significance of a property

COMMISSION - The Commission acting as the Historic District Commission established in Section -3.

CONFLICT OF INTEREST - Direct or indirect pecuniary benefit to any person or member of the person's immediate family (i.e., grandfather, grandmother, father, mother, husband, wife, son, daughter, grandson, granddaughter, or person in the same relationships by marriage-i.e. mother-in law or father in law) or to his employer or the employer of any member of the person's immediate family, or interest sufficient to tempt the member to serve his own personal interest to the prejudice of the interests of those for whom the law authorizes and requires him to act. "Conflict of interest" shall also be defined in accordance to 30-A M.R.S.A. Section 2605, as amended

CONSTRUCTED or CONSTRUCTION - Includes the words "built", "erected", "enlarged", "installed", "moved", "reconstructed", "rehabilitated", "restored", and "altered".

DEMOLITION - The razing of any structure or building or any exterior architectural feature thereof.

DISTRICT - See "Historic District"

ERECTED - Sec "constructed".

EXTERIOR ARCHITECTURAL FEATURE - The architectural style and general arrangement of the exterior of a building or structure, including but not limited to the kind, color and texture of the building materials; the type and style of all roofs, windows, doors, lights, dormers, gable cornices, porches, decorative trim, etc.; and the location and treatment of any vehicular access or parking space.

HISTORIC (adjective) - Important in or contributes to history.

HISTORIC DISTRICT - A geographically definable area possessing a significant concentration, linkage or continuity of sites, buildings, structures or objectives united by past events or aesthetically by plan or physical development and designated in the Town Land Use Ordinance. The Southwest Bend Historical Overlay District as established in the Town Land Use Ordinance is a Historic District.

HISTORY (noun) - A record of events, as of the life or development of a people, country, institution, etc.

IMPROVEMENT - Any place, structure, building, fixture, object, landscape, or topographical feature, which in whole or part constitutes an exterior betterment, adornment or enhancement or any real property.

MATERIAL - A substance or substances out of which a building or structure is constructed.

NON-CONTRIBUTING RESOURCE- a building, site, structure or object that does not add to the historic significance of a property

PERSON - Includes an individual, a corporate or unincorporated organization or association,

partnership, limited liability company or any other artificial person recognized by state law, and the Town.

STRUCTURE - A combination of materials other than a building, including but not limited to walls, fences, walks, parking lots or driveways.

TOWN- The Town of Durham, Maine.

Article II Historic District Commission

3. Establishment; membership; terms; bylaws; expenditures.

- A. An Historic District Commission, whose members shall be appointed by the Town Selectmen, is hereby established.
- B. The Commission shall consist of five (5) members and two (2) alternate members, who shall be residents of the Town. Appointments shall be made on the basis of demonstrated interest, ability, experience and desire to promote historic preservation in the Town, State or Nation, within the meaning of Section -1 of this ordinance. As far as possible, the membership should include professionals in the disciplines of architecture, history, architectural history, planning ,archaeology, urban design or other related fields; a builder and at least two (2) owners of property within the Historic District.
- C. Three (3) members of the Commission shall be initially appointed to serve terms of three (3) years; two (2) shall initially be appointed to serve two (2) years; All appointments thereafter made shall be for terms of three (3) years, except in those instances in which the appointment is made to fill a vacancy in an unexpired term, in which case the appointment shall be for the remainder of the unexpired term.
- D. Advisory members. The Town Selectmen may appoint persons to serve in an advisory or consulting capacity on a temporary basis at the Board of Selectmen's pleasure.
- E. The Commission shall elect a Chairman, Vice Chairman, and Secretary annually from among it's membership.
- F. The Commission shall adopt bylaws or additional operating procedures consistent with the intent of this ordinance and of the state enabling legislation and the Ordinances of the Town . Said bylaws shall be submitted to the Town Selectmen for review and comment but do not require their approval. In the case of any conflict between such by laws and this Ordinance this Ordinance shall prevail.
- G. The Commission may expend funds for the purposes of historic preservation in the Town , in accordance with the annual town budget. Such expenditures may include salaries or other compensation for clerical and technical assistance or consultants if approved in the town budget. The Commission may, with the approval of the Town Selectmen, accept grants, donations or gifts of services and may hold or expend the same as approved by the Selectmen.

4. Duties.

The Commission shall have the following duties which shall be exercised in accordance with this Ordinance and applicable provisions of the Maine Revised Statutes Annotated.

A. Make recommendations to the Selectmen for establishing Historic Districts according to procedures listed in Sections -6 and -7 of this ordinance. All such Districts must be approved by the annual Town meeting.

B. Review all proposed additions, reconstruction, alteration, construction or demolition of any Contributing Resource located within a designated Historic District and issue a certificate of appropriateness in accordance with the procedures outlined in Sections -8 and -9.

C. Review all proposed National Register nominations for properties within the town's borders.

D. Serve in an advisory role to Town government officials regarding local historical and cultural resources and act as a liaison between local government and those persons and organizations concerned with historic preservation.

E. Conduct or initiate a continuing survey of local historic and cultural resources, in accordance with Maine Historic Preservation Commission guidelines.

F. Work to provide continuing education on historic preservation issues to local citizens.

G. Accept, administer and enforce any easements or restrictive covenants granted to the Town to protect Historic interests in the Town.

Article III

Establishment of Districts

5 Qualifications

To be eligible for designation as an Historic District an area shall possess one (1) or more of the following characteristics:

A. Buildings, structures, or sites importantly associated with significant historic personages and/or historic events.

B. Buildings, structures, structural remains and sites which illustrate examples of historical architectural styles valuable for study of a period or method of construction or a single notable structure representing the work of a master builder, designer or architect.

C. Structures, buildings and sites which contribute to the visual continuity of the Historic District.

D. Those sites, buildings, structures or areas on or eligible for inclusion on the National Register of Historic Places.

6. Effect on other regulations; applicability.

A. Uses permitted; no changes required. This ordinance does not alter the existing land use regulations in the Town Land Use or Subdivision or other applicable Ordinances, which continue to apply to the land and buildings located within any Historic District. However, exterior alterations to the buildings and structures, including walls, fences, steps of any Contributing Resource within the district shall require a certificate of appropriateness as described in Section -9.

B. Passage of this ordinance shall not require any existing or future owner or renter of property to make any exterior changes to his building(s). The provisions of this ordinance shall apply only to new exterior alterations proposed by the owner or renter of property with the exception for basic maintenance. The basic maintenance requirement as stated in Section -12 of this ordinance shall apply to owners of structures within any Historic District.

7 Designation of districts; expansion of districts.

Designation of Historic Districts may be accomplished by amending the designation of Districts section of the Land Use Ordinance.

A. The following are designated as Historic Districts

- (1) Southwest Bend Historical Overlay District. The location and boundaries of the Southwest Bend Historical Overlay District are shown on an Official Zoning Map of the Town, dated ____, attached to this ordinance as Appendix A and further identified as follows: beginning at the southeast corner of lot 21 as shown on Town of Durham Tax Map 6 and on the westerly right-of-way line of said Route 9. Said point of beginning also being the northeasterly corner of lot 20 on said Map. Thence northerly and northeasterly along said right-of-way line to the most easterly corner of lot 47 on said Map. Thence northwesterly along the northeasterly property line of said lot 47 to the southeasterly line of lot 42 on said Map. Thence northwesterly across said lot 42 on an extension of said northeasterly property line of said lot 47 to the Androscoggin River. Thence southwesterly and westerly along said river and along lots 42, 41, 40, 34, and 31 all of the above referenced Tax Map to a line represented by the northeasterly extension of the northwesterly property line of lot 27 on said map. Thence southwesterly across said lot 31 and state Route 136 on said extension of the northwesterly property line of lot 27 to the most northerly corner of said lot 27. Thence southwesterly along the northwesterly property line of lot 27 to the most westerly corner of said lot 27. Thence southeasterly along the southwesterly property line of lot 27 to the northwesterly property line of lot 26 on said Map. Thence southeasterly across said lot 26 on an extension of the southwesterly property line of lot 27 to the northwesterly property line of lot 25 on said Map. Thence easterly across said lot 25 to the most westerly corner of lot 24 on said Map. Thence southeasterly along the southwesterly property line of lot 24 to the northwesterly property line of said lot 21. Thence southeasterly across said lot 21 on an extension of the southwesterly property line of lot 24 to the southeasterly property line of lot 21. Thence northeasterly, southeasterly, and northeasterly along lot 20 on said Map back to the point of beginning. Meaning and intending to describe an area in the Town of Durham that includes lots 22, 23, 24, 27, 32, 33, 34, 35, 36, 38, 39, 40, 41, 43, 44, 45, 46, 47, and portions of lots 21, 25, 26, 31, and 42 on said Tax Map 6.

B. Designation of additional Historic Districts may be initiated as follows: By certification of the Commission to the Selectmen that the proposed Historic District qualifies for such nomination, and by vote of a majority of at least 10% of the registered voters in the town at the annual (but not special) town meeting.

C. Consent. A new or expanded Historic District may be designated only with written consent of the majority of the property owners within the proposed district or expansion as the case may be.

D. Recommendation. The Historic District Commission will formulate recommendations after researching proposed historic districts to determine if the district meets the criteria in this ordinance and if consent has been obtained in accordance with Subsection C. The Commission shall make written recommendations regarding designation to the Selectmen. The Selectmen shall also seek written recommendations from the Planning Board.

E. Application. To initiate the designation of an Historic District a written application containing the information required by these following Subsections shall be completed and directed to the chair of the Commission. A copy shall also be filed with the Town Clerk.

(1) Designation of districts. Applications for the designation of Historic Districts shall include the following:

- (a) A concise statement of the remaining physical elements which make this area qualify as an Historic District and a description of building types and architectural styles;
- (b) A concise statement of how the district meets the review criteria of Section -5;
- (c) A justification of the boundaries of the proposed district;
- (d) A definition of the types of structures that do not contribute to the significance of the district and an estimate of the percentage of noncontributing structures; and,
- (e) A map showing all structures in the district with the identification of contributing structures.

(2) Expansion of an existing district. Applications for the expansion of existing Historic Districts shall include the following:

- (a) A concise statement of the physical elements that justify expansion of an existing district, an explanation detailing how the expansion is consistent with the character of the district and a description of building types and architectural styles and periods represented;
- (b) A concise statement of how the expansion of an existing district meets the review criteria of Section -5;
- (c) A justification of the expanded boundaries of the district;

- (d) A definition of the types of structures, buildings, and sites that do not contribute to the significance of the district and an estimate of the percentage of noncontributing ones in the Historic District's. proposed expansion area, and
- (e) A map showing all structures in the proposed expansion area with the identification of contributing structures.

Article IV

Certificates of Appropriateness

8. When required; majority vote; building permit.

A. A certificate of appropriateness issued by the Commission shall be required for any of the following:

- (1) Any change in exterior appearance of any building or structure in the Historic District by construction, addition, reconstruction, alteration or demolition. This shall include any change, except maintenance as addressed in Section 12 hereof, in siding materials, roofing materials, door and window sash and integral decorative elements, such as, but not limited to, cornices, brackets, window architraves, doorway pediments, railing, balusters, columns, cupolas and cresting and roof decorations.

- (2) Removal of any building in the Historic District.

B. An affirmative vote of at least three (3) regular members of the Commission shall be required to issue a certificate of appropriateness.

C. In the Historic District, the Code Enforcement Officer shall not issue a building permit for any Contributing Resource for the purpose of construction, alteration or demolition until a certificate of appropriateness has been issued by the Commission.

D. Any property which meets the definition of Non-Contributing Resource may be exempt from a Certificate of Appropriateness if:

- 1. They are not associated with events that have made a significant contribution to the broad pattern of our history; or
- 2. They are not associated with the lives of significant persons in our past; or
- 3. They do not embody the distinctive characteristics of a type, period, or method of construction, or that do not represent the work of a master or that does not possess high artistic values or that does not represent a significant and distinguished entity whose components may lack individual distinction; or
- 4. They have not yielded or may not be likely to yield information important in history or pre-history,

It shall be the duty of the Code Enforcement Officer to determine if an applicant has satisfied the four criteria in article IV section 8D and meets the definition of Non-Contributing Resource.

9. Application procedure.

A. Applications for a certificate of appropriateness may be obtained from the Code Enforcement Officer. Completed applications shall be submitted to the Code Enforcement Officer, who shall promptly transmit them to the Commission for consideration. When the Commission acts on the application, it shall be returned to the Code Enforcement Officer.

B. The application shall state the location, use and the nature of the matter for which such certificate is sought and shall contain at least the following information or documentation unless any items are waived by the Commission..

- (1) The applicant's name, address and interest in the property, such as owner or lessor. The application and all exhibits shall be dated at the time of submission to the Code Enforcement Office
- (2) The owner's name and address, if different from the applicant's
- (3) The address or location of the property.
- (4) The present use and zoning classification of the property.
- (5) A brief description of the construction, reconstruction, remodeling, alteration, maintenance, demolition or moving, requiring the issuance of a certificate of appropriateness.
- (6) A drawing or drawings indicating the design, texture, color (example: shingles) and the location of any proposed alteration or new construction for which the certificate is required. As used herein, "drawings" shall mean plans and exterior elevations drawn to scale, with sufficient detail to show, as far as they relate to exterior appearances, the architectural design of the buildings, including materials and textures, including samples of any brick, shingles or siding proposed to be used. Drawings shall be clear and drawn to scale.
- (7) Photographs (snapshots) of the buildings involved and of immediately adjacent buildings.
- (8) A site plan indicating any proposed changes involving walls, walks, access to buildings, signs and outdoor light fixtures, including all exterior equipment and appurtenances located on the roof, in the walls and on the ground.
- (9) A description of the project which shall include a statement as to why the structure or building to be demolished does not contribute to the district, site or landmark.

10. Administrative procedure.

A. Notice to owner. Within fifteen (15) days after the filing of an application for a certificate of appropriateness, the Commission shall inform the following persons by mail of the application and meeting date: the applicant, owners of abutting property, the Durham Historical Society and the Commission's consultants and professional advisors, if any. For purposes of this notice, the owners of property shall be considered to be those against whom taxes were assessed on the prior April 1. Failure of any person to receive notices shall not necessitate another bearing or invalidate any action by the Commission.

B. The Code Enforcement Officer will promptly advise the Historic District Commission of all activities which he/she is or becomes aware of that come within the areas of responsibility assigned to the Commission by the ordinance.

C. Hearing. At the request of the applicant or any other person receiving notice under Section 10A above or where the Commission deems it necessary, a public hearing or hearings on the application shall be conducted by the Commission. Written comments from interested persons shall be accepted in the event that a hearing is not held

D. Action. The Commission shall determine whether the proposed construction, reconstruction, alteration, moving or demolition is appropriate or inappropriate within thirty (30) days of the public hearing or within forty-five (45) days of the receipt of the completed application, whichever comes first. If the Commission determines the proposal is appropriate, it shall immediately approve a certificate of appropriateness and return it to the Code Enforcement Officer for issuing of the necessary permits. If the Commission determines that a certificate of appropriateness should not be issued, it shall advise the applicant, in writing, through the Code Enforcement Officer, of any changes which would secure the approval of the Commission and withhold denial for thirty (30) days, in order that the applicant may adopt such proposed changes. The Code Enforcement officer shall notify the applicant of the decision and furnish him a copy of the reasons and the recommendations, if any, as appearing in the records of the Commission.

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

F. Amendment. An amendment to this ordinance may be adopted by:

(1) An annual town meeting in the manner normally required for changes in ordinances.

(2) the Town Selectmen shall hold a public hearing on the proposed amendment as required for any proposed ordinance to be placed on the Town Meeting Warrant. The Planning Board and the Historic District Commission shall report it's recommendation regarding the proposed amendment at the public hearing.

11. Standards of evaluation.

The standards and requirements contained in this section, and the Secretary of the Interior's Standards for Rehabilitation (1990 Edition) shall be used in review of applications for certificates of appropriateness. Exterior design considerations and structural factors related to maintaining historic structures in good condition shall be the Commission's primary areas of focus.

A. Construction, Reconstruction, alterations and maintenance. The exterior of a ~~building or structure~~ Contributing Resource located in an Historic District, or any part thereof, or any appurtenance related to such structures, including but not limited to walls, fences, light fixtures, steps, paving and signs, shall not be reconstructed, altered or maintained, and no certificate of appropriateness shall be issued for such actions, unless they will preserve or enhance its historical and architectural character_

B. Construction of new buildings and structures in Historic District. The construction of a new building

or structure within an Historic District shall be generally of such design, form, proportion, mass, configuration, building material, texture, color and location on a lot as will be compatible with other buildings in the Historic District and with streets and open spaces to which it is visually related and in keeping with the area.

C. Visual compatibility factors for any Contributing Resource including but not limited to new construction, repair, rehabilitation and additions within Historic Districts. All construction shall be visually related generally in terms of the following factors:

- (1) Height. The height of proposed buildings shall be compatible with adjacent buildings.
- (2) Proportion of building's front facade. The relationship of the width of the building to the height of the front elevation shall be visually compatible with buildings, structures and open spaces where it is visually related.
- (3) Proportion of openings within the facade. The relationship of the width of the windows to the height of windows and doors in a building shall be visually compatible with that of windows and doors of buildings to which the building is visually related. The window proportions (height versus width) shall be visually compatible with those of other windows in the same building and in other adjacent historic buildings of the same period. In the case of large plate glass display windows on a ground floor, the large surface of glass can be divided into a number of smaller panes consistent with shop front windows of the historical period which the building represents or, in the case of new buildings, compatible with the window size of adjacent historic buildings, where appropriate. Also, the ratio of window area to solid wall shall be similar to those on surrounding facades. Rhythms which carry throughout the block should be incorporated into new facades. Window pane sizes and proportions should be contemporary with the building
- (4) Rhythm of solids to voids in front facades. The relationship of solids to voids in the front facade of a building shall be visually compatible with that of the buildings to which it is visually related.
- (5) Rhythm of spacing of buildings on streets. The relationship of the building to the open space between it and adjoining buildings shall be visually compatible with that prevailing in the area to which it is visually related.
- (6) Rhythm of entrance and/or porch projection. The relationship of entrances and porch projections to sidewalks of a building shall be visually compatible with that of buildings to which it is visually related.
- (7) Relationship of materials and textures. The relationship of the materials and textures of the facade of a building shall be visually compatible with that of the predominant materials used in the buildings to which it is visually related. New construction shall utilize materials and textures which are visually compatible with adjacent facades. If there is a predominant material in the immediate area, it shall be used. Many different materials on a single structure or closely related group of structures can lead to visual confusion and a chaotic appearance. Alterations and new buildings should not stand out against the others, if the harmony of a traditional New England village streetscape is to be maintained. Alterations to an existing building shall simulate as closely as possible the color and texture of that building. This is especially important in brickwork. Mortar color and thickness of joint shall match those of the original building.
- (8) Roof shapes. The roof shape of a building shall be visually compatible with that of the buildings to which it is visually related. The roof pitch employed on new buildings shall be similar to those found on adjacent buildings. If a gable-type roof, its orientation to the street shall be the same as in neighboring buildings. Roofing materials shall be consistent with that of adjacent structures in color, type,

material or a compatible substitute which is historically accurate.

(9) Scale of building. The size of the building, the building mass of a building in relation to open spaces, the windows, door openings, porches and balconies shall be visually compatible with those characteristics of buildings and spaces to which it is visually related.

(10) Directional expression of front elevation. A building shall be visually compatible with the building, squares and places to which it is visually related in its directional character, whether this shall be vertical character, horizontal character or non-directional character.

(11) Details. All existing architectural details shall be maintained to the fullest extent practicable. When removal is unavoidable, replacement with similar features shall be encouraged. Although exact replication is often not possible or economically feasible, a simpler feature made of traditional materials can be appropriate. Poor or cheap imitations made of synthetic material shall be avoided, especially when not in scale or in the same architectural tradition. Details may include cornices; frames and moldings around windows, doors and building corners; lintels; arches; wrought iron work; chimneys, etc.

(12) Signs. All new or replacement signs located within the Historic District shall be made from wood or metal, and all new sign illumination shall be from shielded external sources directed onto the sign to avoid glare. Signs which are attached to or parallel with the facade shall be located only between the top of the ground floor windows and the bottom of the second floor windows to maintain an orderly appearance, adding strength to the appearance of the district as a whole.

D. Standards for construction, renovations, alterations and repairs of Contributing Resource appurtenances thereof.

In addition to the criteria set forth in Section C above, the Commission shall also use the standards listed below in the evaluation of an application for a certificate of appropriateness for all construction, renovations, alterations and repairs of -Contributing Resource appurtenances thereof:

- (a) Every reasonable effort shall be made to provide a compatible use which will require minimum alteration to the structure and its environment.
- (b) Rehabilitation work shall not destroy the distinguishing qualities nor character of the structure and its environment. The removal or alteration of any historic material or architectural features should be held to a minimum.
- (c) Deteriorated architectural features which are deemed to be historically appropriate should be repaired rather than replaced, wherever possible_ In the event that replacement is necessary, the new material should match the material being replaced in composition, design, texture and other visual qualities. Repair or replacement of missing architectural features should be based on physical or pictorial evidence rather than on conjectural designs or the availability of different architectural features from other buildings.
- (d) Distinctive stylistic features or examples of skilled craftsmanship which characterize historic structures and often predate the mass production of building materials shall be treated with sensitivity.

- (e) Changes which may have taken place in the course of time are evidence of the history and development of the structure and its environment, and these changes shall be recognized and respected.
- (f) All structures shall be recognized as products of their own time. Alterations to create an earlier appearance shall be discouraged.
- (g) Contemporary design for additions to existing structures shall be encouraged if such design is compatible with the size, scale, material and character of the neighborhood, structures or its environment.
- (h) Wherever possible, new additions or alterations to structures shall be done in such a manner that if they were to be removed in the future the essential form and integrity of the original structure would be unimpaired.

E. Exceptional circumstances.

- (1) The Commission may issue a certificate of appropriateness where the standards otherwise set forth in this section are not met but where the Commission determines that failure to issue the certificate would result in undue hardship to the owner of the property. Before the Commission may issue a certificate under this subsection, the records must show the following,
 - (a) The property cannot yield a reasonable economic return or the owner cannot make any reasonable use of the property;
 - (b) The plight of the owner is due to exceptional or unique circumstances and not to the general applicability of this chapter; and
 - (c) The conditions or circumstances which constitute the hardship were not caused or created by the enactment of any Historic District by which the property became subject to this ordinance.
- (2) For purposes of Subsection E(1), "reasonable economic return" shall not be construed to mean a maximum reasonable use" shall not be construed to mean the highest and best use

F. Demolition approval criteria. Any property owner wishing to demolish or move any building within the Historic District shall first apply to the Commission for a determination of whether the building is historic or contributes in some way to the integrity of the Historic District. If the Commission determines the building is not Historic or does not so contribute no certificate of appropriateness will be required for such action.

- (1) Any building or structure in an Historic District, or any appurtenance thereto, shall not be demolished or moved and a certificate of appropriateness shall not be approved until either:
 - (a) such building or structure has been identified by the Commission as incompatible with the Historic District in which it is located; or
 - (b) The property owner can demonstrate that it is incapable of earning an economic return on its value in its present location as appraised by a qualified real estate appraiser.
- (2) If such a demonstration can be made, issuance of a certificate for movement or demolition shall be delayed for a period of 60 days. Such time period shall commence when an application for certificate and the statement of sale, as outlined below, have been filed with the Commission.

- (3) Prominent Notices, with the words “To be Demolished or Moved” legible from a passing automobile, shall be posted on the premises of the building or structure proposed for demolition in a location clearly visible from the street indicating that the building is proposed to be demolished or moved and referring to this ordinance. In addition, notice shall be published in a newspaper of general local circulation at least three times prior to demolition, the final notice of which shall be not less than 15 days prior to the date of the permit, and the first notice of which shall be published no more than 15 days after the application for a permit to demolish or move is filed. Prior to the issuance of such certificate for removal, the owners shall stipulate that the proper notices as required have been posted, that the property was properly offered for sale as provided in (4) below, that there have been no bona fide offers made and that no contract for sale has been executed with interested parties.
- (4) The owner shall, for the period of time set forth and at a price reasonably related to its fair market value, make a bona fide offer to sell such building or structure and the land pertaining thereto to any person, firm, corporation, government or agency thereof or political subdivision or agency thereof which gives reasonable assurance that it is willing to preserve and restore the building or structure and the land pertaining thereto. Prior to making such offer to sell, an owner shall first file a statement with the Commission identifying the property, the offering price and the date the offer to sell shall begin. The time period set forth in this Subsection shall not commence until such statement has been filed.
- (5) The purpose of this Subsection is to further the purposes of this chapter by preserving historic buildings which are important to the education, culture, traditions and the economic value of the Town and to afford the Town, interested persons, historical societies or organizations the opportunity to acquire or to arrange for the preservation of such buildings.

During the sixty day period set forth in (2) above the Commission shall hold a public hearing to determine if there are alternatives to demolition such as moving the building within or without the Historic District or buying out the owner.

The Commission shall make a photographic survey of the building(s) to be demolished or removed and to examine alternative ways to meet the owner's needs, (such as by replacing interior walls and floors or demolishing everything except the street-front façade). The owner or applicant for a demolition proposal shall be required to meet with the Commission to discuss any such alterations.

12 Maintenance.

A. Ordinary maintenance permitted.

- (1) Nothing in this ordinance shall be interpreted to prevent the ordinary maintenance or repair of any exterior feature of any building or structure in the Historic District which does not involve a change in the design, material or appearance.
- (2) Safety. Nothing in this chapter shall prevent the construction, reconstruction, alteration, restoration or demolition of any feature which the Code Enforcement Officer shall certify is required by the public safety because of an unsafe or dangerous condition, but any such action shall be taken to the maximum extent possible with the requirements of this Ordinance.

B. Essential maintenance required. Owners of buildings within the Historic District considered a Contributing resource shall not permit their properties to fall into a state of disrepair which may result in deterioration of any exterior architectural feature so as to produce, in the judgment of the Commission, a detrimental effect upon the character of the Historic District or the structure in question or which could lead to a claim that demolition is necessary for public safety. This basic maintenance requirement applies to

exterior walls and other vertical supports, roof and other horizontal members, exterior chimneys and waterproofing of exterior walls, roofs and foundations, including broken windows and doors. The Commission shall work with public and private parties to assist any owner in finding the resources necessary to prevent such state of disrepair.

ARTICLE V Administration

13 Conflict with other provisions; interpretation; severability

Interpretation of what may not be clear in this Ordinance shall be according to the intent of the Ordinance and the Comprehensive Plan.

This ordinance shall not repeal, annul or in any way impair or remove the necessity of compliance with any other ordinance, law, regulation or bylaw. Where this ordinance imposes a higher and/or stricter standard, the provisions of this ordinance shall prevail.

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions.

14. Violations and penalties; enforcement.

A. Violations. Penalties for violations of this chapter shall be imposed in accordance with 30-A M.R.S.A. § 4452. A person violating any provision of this ordinance shall be guilty of a civil violation and shall be punished by a fine of not less than one hundred dollars (\$100) but not to exceed the statutory maximum for such violation. Each day that a violation continues shall be deemed a separate offense. All penalties collected hereto shall inure to the Town and shall be used for the purposes of this Ordinance after paying any costs of enforcement.

B. Additional remedies. It shall be the duty of the Code Enforcement Officer to enforce the provisions of this ordinance. If the Code Enforcement Officer finds that any provision of this ordinance is being violated, he shall notify, in writing, the person responsible for such violations, and shall send a copy of such notice to the Chairman of the Commission, indicating the nature of the violation and ordering the action necessary to correct it. He shall take any action authorized by this ordinance or statute to ensure compliance with or to prevent violation of its provisions.

Town of Durham

Land Use Ordinance

As Adopted at Town Meeting
April 2, 2016

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Article 1: General

A) Title

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

B) Purpose

This Ordinance is designed to encourage the most appropriate use of land throughout the Town; to promote the Town’s Comprehensive Plan; to protect existing residential areas from incompatible uses and retain the rural character of the Town; to provide for healthy business, recreation, and agricultural-related areas; to promote traffic safety and efficient traffic circulation; to provide for safety from fire; to provide for adequate light and air; to prevent overcrowding of real estate; to promote a wholesome home environment; to conserve natural resources, wildlife habitat, and scenic beauty; protect the quality and quantity of groundwater resources; to protect historic sites and areas; to protect visual and physical access to recreational water; and to provide for adequate public services, and for the future.

C) Title Ordinance Supersedes Prior Ordinances

This Ordinance supersedes, repeals, and replaces the following Ordinances:

1. 2005 Land Use Ordinance, amended by Town Meetings in 2006, 2007, 2008, 2009, and 2014.
2. Back Lot Development Ordinance, enacted in 6/88, amended by Town Meeting in 2014.
3. 2005 Subdivision Ordinance, amended by Town Meetings in 2006 and 2008.
4. Groundwater Protection Ordinance enacted in 3788.

Article 2: Definitions

All words not defined herein shall carry their customary and usual dictionary meanings. Words used in the present tense shall include the future. Words used in the singular shall include the plural. The word "shall" is used to indicate the mandatory and the word "may" is used to indicate the permissive. The words "occupied" or "used" shall be considered as though followed by the words "or intended, arranged, or designed to be used or occupied." Obvious typographical errors may be disregarded in interpretation of this Ordinance.

ABUTTING PROPERTY: Any lot that is physically contiguous with the lot in question even if only at a point, and any lot that is located directly across a public or private street or way from the lot in question. "Directly across" shall mean at least touched by a straight extension of the side property lines across said street or way.

ACCESSORY APARTMENT: A separate, secondary dwelling unit located on a property with a single-family dwelling.

ACCESSORY BUILDING OR STRUCTURE: A building or structure customarily incidental and subordinate to a principal building allowed in the district in which it is located, and located on the same lot with such principal building.

ACCESSORY USES: Uses customarily incidental and subordinate to a principal use allowed in the district in which it is located, and located on the same lot with such principal use.

ADMINISTRATIVE APPEAL: An appeal to the Board of Appeals from a determination made by the Code Enforcement Officer, Road Commissioner, or Planning Board in their administration of this Ordinance or any other ordinance or code over which they have jurisdiction.

AGGRIEVED PARTY: Any person who can demonstrate that he or she will suffer a particularized injury by issuance or non-issuance of the license/permit approval in question. A particularized injury is one that directly operates against a party's property, pecuniary or personal rights. An injury suffered by all of the citizens of the Town in an equal and proportionate manner is not a particularized injury.

AGRICULTURE: The cultivation of the soil, production of crops, including crops in commercial greenhouses, and the raising of livestock, including animal husbandry.

AGRICULTURAL LAND MANAGEMENT PRACTICES: Procedures utilized in the cultivation of land in order to further crop and livestock production and conservation of related soil and water resources.

AGRICULTURAL USES: The production, keeping or maintenance for sale or lease, of plants, and/or animals, including but not limited to forages and sod crops, dairy animals and dairy products, poultry and poultry products, livestock, and livestock products, fruits and vegetables and ornamental and greenhouse products. Agriculture does not include forest management, timber harvesting activities and food processing operations.

APPLICANT: The person applying for a permit or approval under this Ordinance.

AQUIFER: A geologic formation composed of rock or sand and gravel that stores and transmits significant quantities of recoverable water.

AQUIFER RECHARGE AREA: A primary or secondary recharge area composed of porous material or rock sufficiently fractured.

ARCHEOLOGICAL SITE: A parcel of land where physical remains of past human life and activities exist. To qualify, the site must relate to historic or prehistoric activities which predate 1780 A.D.

ARCHITECTURAL ELEVATIONS: An architectural drawing of the flat view of one side of a building.

AUTHORIZED AGENT: An individual or a firm having written authorization to act on behalf of an applicant or aggrieved party. The authorization shall be signed by the property owner(s).

AUTOMOBILE GRAVEYARD: As defined in 30-A M.R.S. § 3752.

AUTOMOBILE RECYCLING BUSINESS: As defined in 30-A M.R.S. § 3752.

BACK LOT: A lot does not have frontage on a private or public road.

BED AND BREAKFAST ESTABLISHMENT: A commercial building that accommodates, for a fee, travelers and other transient guests who are staying for a limited duration and having sleeping rooms. A bed and breakfast establishment may include the serving of breakfast to house guests but shall not serve other meals or have dining facilities open to the public. For purposes of this Ordinance, bed and breakfast establishments shall be considered as home occupations if they provide no more than four units for rent, and as hotels or motels if they provide more than six units for rent. Bed and breakfast establishments that provide five or six units for rent may be considered as home occupations if, based upon the evidence submitted by the applicant, the Planning Board finds that:

- a. the sewage disposal system for the property complies with the current requirements of the Maine State Plumbing Code and is sized to accommodate the proposed intensity of use; and
- b. the water supply for the property will not adversely affect the quality or quantity of groundwater supplies of abutting property owners,

and shall otherwise be considered as hotels or motels.

BUFFER STRIP: An area of land that is covered by vegetation capable of regeneration and succession, whether retained as undisturbed vegetation or re-established following disturbance of the site. A buffer strip runs long the border between the development activity and the adjacent piece of land or body of water and serves to protect that area from new or adverse effects or preserves some existing quality or use in the area of development.

BUILDING ENVELOPE: The minimum contiguous area on which all structures and development (such as homes, garages, driveways and disposal system) shall be located. The Building Envelope shall not include any area in the Resource Protection/Rural District, wetlands, or any area with slope greater than 20%.

BUILDING: Any structure having a roof supported by columns or walls and intended for shelter, housing, or enclosure of persons, animals, or chattel. Each portion of a structure, separated from other portions by a fire wall, shall be considered a separate Building.

BUSINESS SERVICE: A service exemplified by the types of services listed under U. S. Standard Industrial Classification Code 50 through 69, including but not limited to: advertising, credit reporting and collection, mailing and reproduction services, services to building, personnel supply services, computer data processing services, management and public relations, and the business offices of corporations or firms.

CAMPGROUND: Any area or tract of land that is used for temporary overnight accommodation with or without shelter, by two or more parties, for which a fee is charged. 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."

CHANGE OF USE: A change in the type of occupancy/use of a building, structure, or a portion thereof, and/or the land, such that the basic type of use or scope is changed.

CODE ENFORCEMENT OFFICER: The official responsible for enforcing this Ordinance and for performing other duties set forth herein, by State statute, and by other ordinances. Reference to the Code Enforcement Officer may be construed to include Building Inspector, Plumbing Inspector, and the like where applicable.

COMMERCIAL USE: Connected with the buying or selling of goods or services or provision of facilities for a fee.

COMPLETE APPLICATION: An application shall be considered complete upon submission of the required fee and all information required by this Ordinance as determined by: the Code Enforcement Officer, a vote of the Planning Board, or by a vote of the Planning Board to waive the submission of required information.

COMPREHENSIVE PLAN: The Comprehensive Plan of the Town of Durham.

CONDITIONAL USE: A use that generally would be appropriate in the zoning district for which it is proposed after review and with certain restrictions and controls to meet the intentions and purposes of this Ordinance. Conditional uses are permitted only after review and approval by the Planning Board.

CULTURAL FACILITIES: Not-for-profit facilities dedicated to a public or philanthropic purpose and intellectual endeavor, such as a library, museum, auditorium, or performing of visual arts center.

DAY CARE, HOME: Anyone who provides, on a regular basis and for consideration, care and protection for three to twelve unrelated persons for any part of a day out of their primary residence, and is required to be licensed by the State. Any facility, the chief purpose of which is to provide education, shall not be considered to be Home Day Care. A Home Day Care shall be considered a Home Based Business.

DAY CARE CENTER: Anyone who provides, on a regular basis and for consideration, care and protection for thirteen or more unrelated persons for any part of the day, and is required to be licensed by the State. Any facility, the chief purpose of which is to provide education, shall not be considered to be a Day Care Center.

DISPOSAL: "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any waste into or on any land or water so that the waste or any constituent thereof may enter the environment or to be emitted into the air, or discharged into any waters, including ground waters.

DRIVEWAY: A vehicular access way serving no more than two Dwelling Units on a single Lot. All other vehicular access ways to shall be considered roads.

DWELLING: Any building or structure or any portion thereof designed or used for residential purposes.

- a. Single Family Dwelling: A Structure containing only one Dwelling Unit for occupation by not more than one family. The terms shall include modular homes and mobile homes as defined herein.
- b. Two-Family Dwelling: A single Structure containing two Dwelling Units on one parcel of land, such building being designed for residential use and occupancy two families living independently of each other.
- c. Multi-Family Dwelling: A single Structure containing three to six Dwelling Units, where each Dwelling Unit is designed for residential house and occupancy by a family living independently of families in the other Dwelling Units.

DWELLING UNIT: A room or group of rooms, used primarily as living quarters for one Family, and that includes provisions for living, sleeping, cooking, and eating. The term shall not include hotel or motel rooms or suites, rooming house rooms, or similar accommodations.

FAMILY: One or more persons occupying a Dwelling Unit and living as a single housekeeping unit, as distinguished from a group occupying a boarding house, lodging house, hotel, or other transient visitor quarters. A Family shall not exceed five persons not related by blood or marriage.

FINANCIAL SERVICE: A service exemplified by the types of services listed under the U.S. Standard Industrial Classification Code 61, including banking, other credit agencies, security and commodity brokers and services and insurance, real estate, and investment offices.

FLOOR AREA: The sum of the horizontal areas of the floor(s) of a structure enclosed by exterior walls.

FOOTPRINT: Exterior outline of the buildings. All dimensions shall be measured between exterior faces of walls, plus the horizontal area of any unenclosed portions of a structure such as porches and decks.

FRESHWATER WETLANDS: Freshwater swamps, marshes, bogs, and similar areas that are:

- a. Of 10 or more contiguous acres, or less than 10 contiguous acres and adjacent to a surface water body, excluding any river stream, or brook, such that, in a natural state, the combined surface area is in excess of 10 acres; and
- b. Inundated or saturated by surface or groundwater at a frequency and for duration sufficient to support, and which under normal circumstances do support, a prevalence wetland vegetation typically adapted for life in saturated soils.

Freshwater wetlands may contain small stream channels or inclusions of land that do not conform to the criteria of this subsection.

ROAD FRONTAGE The linear distance between the sidelines of a lot, measured along the Lot that borders upon whatever right-of-way serves as legal access to the Lot. For the purposes of this Ordinance, the following ways shall constitute legal access to a Lot along which frontage may be measured.

- a. A way accepted by, or established as belonging to, the Town of Durham, Androscoggin County, or the State of Maine, provided access is not specifically prohibited thereon;
- b. An existing private way over which the owner of the Lot has an established right of way.
- c. A right-of-way that complies with Article 4(E) of this Ordinance.

In the case of a lot situated on a curve of a way or on a corner of two ways, the measurement of frontage may include the entire length of the property line along such a way or ways.

GREAT POND: Any inland body of water that, in a natural state, has a surface area in excess of 10 acres and any inland body of water artificially formed or increased that has a surface area in excess of 30 acres except, for the purposes of this Ordinance, where the artificially formed or increased inland body of water is completely surrounded by land held in the name of a single owner.

GROUND FLOOR ELEVATIONS: The elevation of a building's ground floor above sea level.

GROUNDWATER EXTRACTION: The process of extracting 2,000 gallons per day or more of water from any groundwater source, either temporarily or permanently, regardless of whether the water is used for irrigation, industry, recreation, flood control or treatment to produce drinking water.

HAZARDOUS MATERIAL OR WASTE: Any waste or combination of wastes of a solid, liquid, contained gaseous, or semi-solid form that, because of its quantity, concentration, or physical chemical or infectious characteristics, may:

- a. Cause or significantly contribute to an increase in mortality or an increase in serious, irreversible, or incapacitation illness, or
- b. Pose a substantial present or future hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

These wastes include, but are not limited to, those that are toxic, corrosive, ignitable, or reactive. Characterization of these categories is follows:

- a. **TOXICITY:** Toxicity includes several factors, including unnatural genetic activity (including cogenic, mutagenic and teratogenic activity), potential for bioaccumulation in tissue, or acute chronic toxicity to various organisms, including humans.
- b. **CORROSIVITY:** Corrosive waste is considered hazardous if it is aqueous and has a pH less than or equal to 3 or greater than or equal to 12, or if it corrodes steel (SAE 1020) at a rate greater than 0.250" per year at a temperature of 130 degrees Fahrenheit.
- c. **IGNITABILITY:** An ignitable waste is considered hazardous if it is liquid and has a flash point less than 60 degrees centigrade (140 degrees Fahrenheit); is not a liquid and is liable to cause fires through friction, absorption of moisture, spontaneous chemical changes, or retained heat from manufacturing processes; when ignited, burns so vigorously and persistently so as to create a hazard during management; or is an ignitable compressed gas.
- d. **REACTIVITY:** A reactive waste is considered hazardous if it is normally unstable and readily undergoes violent chemical change without denoting; reacts violently with water, forms potential explosive mixtures with water or generates toxic gases, vapors or fumes when mixed with water; or is a cyanide or sulfide-bearing waste that can generate toxic gases, vapors, or fumes when exposed to mild acidic or basic conditions.

In determining whether a material constitutes a Hazardous Waste, the Board will be guided by any finding or regulation made by the United States Department of Environmental Protection or Maine Department of Environmental Protection that such material is hazardous. The burden will then be upon the party claiming the material not to be hazardous to show that the material fails to meet the above definition.

HEIGHT OF BUILDING: Vertical measurement from the highest point of the finished grade on the foundation to the highest point of the Building or Structure, excluding incidental protrusions such as chimneys and antennae.

HIGH INTENSITY SOIL SURVEY: A map prepared by a Certified Soil Scientist, identifying the soil types down to 1/8 acre or less at a scale equivalent to the subdivision plan submitted. The map shall show the location of all test pits used to identify the soils, and shall be accompanied by a log of each sample point identifying the textural classification and the depth to a limiting factor such as seasonal high water table or bedrock at that location. Single soil test pits and their evaluation for suitability for subsurface waste water disposal systems shall not be considered to constitute high intensity soil surveys.

HISTORIC OR ARCHAEOLOGICAL RESOURCES: Areas identified by a governmental agency, such as the Maine Historic Preservation Commission, as having significant value as an historic or archaeological resource, and any areas identified in the municipality's comprehensive plan.

HISTORIC STRUCTURE: Any Structure that is:

- 1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- 2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district;
- 3) Individually listed on a state inventory of historic places in states with the Maine Historic Preservation Commission; or
- 4) Individually identified by the Town's Comprehensive Plan

HOME-BASED BUSINESS: A Commercial Use performed or conducted within a Dwelling or Accessory Structure by the residents thereof, that:

- 1) Is accessory to the residential use, and;
- 2) Does not change the character of the Dwelling.

HOTEL OR MOTEL: A commercial building or group of buildings built primarily to accommodate, for a fee, travelers and other transient guests, who are staying for a limited duration, with sleeping and associated rooms. A hotel or motel may include suites or rooms, cooking and similar facilities within the rooms to accommodate guests, restaurant facilities where food is prepared and meals served to its guests and other customers and associated facilities for the convenience and servicing of guests. A hotel or motel room or suite of rooms, as distinguished from a dwelling unit, shall contain less than a total of 600 square feet of living area, provided that the area may be larger if, based on the evidence presented, the Planning board finds that the facilities will function or is functioning as a hotel or motel and not as a residential dwelling unit.

IMPERVIOUS SURFACE: Includes buildings, concrete, asphalt, and all other similar surfaces that shed water so as to prevent absorption into the ground at the point where the water first hits the ground.

INDUSTRIAL USE: Connected with the assembling, fabrication, finishing, manufacturing, packaging or processing of goods or the extraction of minerals.

JUNKYARD: As defined in 30-A M.R.S. § 3752.

LEACHABLE MATERIAL: Liquid or solid materials which are capable of releasing harmful chemicals to groundwater. This does not include sanitary wastewater.

LIGHT INDUSTRIAL USES: Industrial activity involving the manufacturing, packaging, assembly or distribution of finished products from previously prepared material, including by way of example only

and not limited to, the following: Bakeries, bottling, printing and publishing, pharmacies, machine shops, precision instruments, watchmakers, musical instruments, toys and sporting goods, pottery and ceramics using only previously pulverized clay, wood products, jewelry, assembly of electrical components, canteen surfaces, tool and die shops, and the packaging of foods. Light industrial uses do not include the processing of raw materials or salvaging operations.

LOT: A contiguous parcel of land in a single or joint ownership described on a deed, plot plan, or similar legal document. This term shall also include a “parcel” or “plot.”

LOT WIDTH: The width of any lot shall be measured wholly within the lot, at the required setback depth, along a line parallel to the front lot line. Lots located on a curved road shall be measured wholly within the lot at the required setback depth, along a line parallel to a straight line connecting the intersections of the front line with the side lot lines.

MINERAL EXTRACTION: Any extraction of mineral deposits, including gravel, other than mineral exploration solely to determine location, extent, and the composition of deposits.

MOBILE HOMES: Factory-fabricated structures which are built on permanent chassis and are used as dwelling units when connected to the required utilities. For the purposes of this Ordinance, mobile homes are considered to be single-family dwellings if they are occupied by one family only. Mobile homes must conform to this Ordinance and to the Mobile Home Ordinance of Durham.

MODULAR HOMES: Factory-built dwellings which are constructed with floor joists and not upon a permanent chassis. For the purposes of this Ordinance, multi-sectional modular homes and single-wide modular homes are considered to be single-family dwellings if they are occupied by only one family.

MULTI-FAMILY DWELLING: See Dwellings.

NON-CONFORMING LOT: A single lot of record, which, at the effective date of this Ordinance, does not meet the minimum lot area, minimum lot area per dwelling unit, or minimum frontage requirements of the district in which it is located. It is allowed solely because it was in lawful existence at the time this Ordinance or subsequent amendment took effect.

NON-CONFORMING STRUCTURE: A structure that does not meet the minimum setback, maximum lot coverage, or maximum height standards of the district in which it is located. It is allowed solely because it was in lawful existence at the time this Ordinance or subsequent amendment took effect.

NON-CONFORMING USE: A use of premises that is not permitted in the district which it is located, but which is allowed to remain solely because it was in lawful existence at the time this Ordinance or subsequent amendment took affect.

NON-INTENSIVE RECREATION: Outdoor recreational uses that involve minimal structural development or alteration of the terrain but which, if properly designed, neither cause nor subject to serious damage from flooding or soil erosion. Example of non-intensive recreational uses include, but are not limited to, tennis courts, playing fields, pools, outdoor ice skating rinks, and boat docks. Such uses do not include the use of any mechanized vehicle.

NORMAL HIGH WATER MARX: That line on the shores and banks of streams and ponds which is discernible because of the different character of the soil or the vegetation due to the influence of surface water. Relative to vegetation, it is that line where the vegetation changes from predominantly aquatic to predominantly terrestrial. Aquatic vegetation includes but is not limited to the following plants and plant groups: water lily, pickerelweed, cattail, wide rice, rushes, marsh grasses. Terrestrial vegetation includes but is not limited to the following plants and plant groups: upland grasses, aster, lady slipper, wintergreen, partridge berry, cedars, sarsaparilla, pines, oaks, ashes, elms, spruces, birches, beeches, larches, and maples. In places where the shore or bank is of such character that the normal high water mark cannot be easily determined (as in the case of rock slides, ledges, rapidly eroding or slumping banks), the normal high water mark shall be estimated from places where it can be determined by the above method.

NURSING OR CONVALESCENT HOME: A facility in which nursing care and medical services are performed under the general direction of persons licensed to practice medicine in the State of Maine for the accommodation of convalescent or other persons who are not in need of hospital care, but who do require on a 24-hour basis, nursing care and related medical services.

OPEN SPACE USE: A use not involving a structure, earth-moving activity, or the removal or destruction of vegetation over, spawning grounds, or fish, aquatic life, bird and other wildlife habitat, or the operation of motor vehicles on land so to create marks upon the earth such as by all-terrain vehicles.

PERSONAL SERVICES: A service exemplified by the types of services listed under the U.S. Standard Industrial Classification Code 62, including but not limited to the following: laundry and cleaning services, photograph studios, shoe repair shops, and funeral homes.

PETROLEUM STORAGE TANK: Any vessel which is used to store in excess of 55 gallons of petroleum product shall, for the purposes of this Ordinance, be considered permanent; those used to store less than or equal to 55 gallons of petroleum product shall be considered portable. Tanks used to store liquid propane fuel are excluded from this definition.

PREMISES: One or more parcels of land which are in the same ownership and are contiguous.

PRIMITIVE RECREATION: Recreational uses that do not require buildings or structures or significant alteration of the terrain, such as hunting, fishing, hiking, primitive camping, snowmobiling, cross-country ski trails, and parks of primarily underdeveloped, natural character. Such used do not include use of all-terrain vehicles (either 3 or 4 wheel), motorize bikes or other motorized vehicles on wheels.

PRINCIPAL STRUCTURE: "Principal structure" means any building or structure in which the main use of the premises takes place.

RECREATIONAL VEHICLE: Any of the following:

- a. TRAVEL R.V.: A vehicular, portable structure built on a chassis, designed to be used as a temporary dwelling for travel, recreational and vocational uses, permanently identified travel R. V. by the manufacturer of the R. V.
- b. PICK UP COACH: A structure designed to be mounted on a truck chassis for the use as a temporary dwelling for travel, recreation, and vacation.
- c. MOTOR HOME: A portable, temporary dwelling to be used for travel, recreation and vacation, constructed as an integral part of a self-propelled vehicle.
- d. CAMPING TRAILER: A canvas, folding structure, mounted on wheels and designed for travel, recreation and vacation use.
- e. DEPENDENT R.V.: An R.V. which is dependent upon a service building for toilet and lavatory facilities.
- f. SELF-CONTAINED R.V.: An R.V. which can operate independent of connections to sewer, water, and electric systems. It may contain water-flushed toilet, lavatory, shower, and kitchen sink, all of which are connected to water storage and gray water and sewage holding tanks located within the R.V.

In order to be considered as a Recreational Vehicle and not as a structure subject to this Ordinance, the building code and federal manufactured housing standard, the unit must:

- a. Remain with its tires on the ground
- b. Possess a current registration sticker or papers from any State Division of Motor Vehicles.
- c. Be used for human habitation for not more than six months in any 12-month period.

RIVER: A free-flowing body of water including its associated flood plain wetlands from the point at which it provides drainage for a watershed of 25 square miles to its mouth.

SETBACK, REAR: The distance between the rear line of the lot, extending the full width of the lot, and the nearest part of any principal or accessory structure.

SETBACK, FRONT: The distance between the street right-of-way or easement line, extending the width of the frontage and the nearest part of any principal or accessory structure.

SETBACK, NORMAL HIGH WATER MARK: The distance from the normal high water mark of any perennial stream, river or pond to the nearest part of a structure.

SETBACK, SIDE: The distance between the side property line and the nearest part of any principal or accessory structure. Any lot line not a back lot line or a front line shall be deemed a side lot line.

SHORE FRONTAGE: The length of a lot's shore line as measured in a straight line between the points of intersection of the side lot lines with the shore line at normal high water elevation.

SINGLE FAMILY DWELLING: See Dwellings.

SIGN: Structure, device, letter, banner, symbol, or other representation which is used as, or is in the nature of, an advertisement, announcement, or direction; which is erected, assembled, affixed, or painted out of doors and which is visible from a public way. For purposes of this Ordinance, "visible from a public way" means capable of being seen without visual aid by a person of normal acuity, from a way designated for vehicular use and maintained with public funds.

SLUDGE: "Sludge" means any solid, semi-solid or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or wet process air pollution control facility or any other such waste having similar characteristics and effect, but does not include industrial discharges that are point sources, subject to permits under Section 402 of the Federal Water Pollution Act, as amended.

SOLID WASTE: "Solid Waste" means useless, unwanted, or discolored solid material with insufficient liquid content to be free-flowing, including by way of example and not by limitation to rubbish, garbage, scrap materials, junk, refuse, inert fill material and landscape refuse, but shall not include septic tank sludge or agricultural waste.

SPECIAL WASTE: "Special Waste" means any non-hazardous waste generated by sources other than domestic and typical commercial establishments that exists in such an unusual quantity or in such a chemical or physical state, or any combination thereof, which may disrupt or impair effective waste management or threaten the public health, human safety, or the environment and requires special handling, transportation, and disposal procedures. Special waste includes, but is not limited to:

1. Oil, wood, coal, and multi-fuel boiler and incinerator ash;
2. Industrial and industrial-process waste;
3. Debris and residual from non-hazardous chemical spills and clean-up of those spills;
4. Contaminated soils and dredge spoils;
5. Asbestos and asbestos-containing waste;
6. Sandblast grit and non-liquid paint waste;
7. Medical and other biological waste not identified under title 38 MRSA ss 1319-0, ss 1, A, ss (4);
8. High and low pH waste;
9. Spent filter media and residue; and other waste designated by the Board of Environmental Protection of the State of Maine, by rule.

STREAM: Means a channel between defined banks. A channel is created by the action of surface water and has 2 or more of the following characteristics.

1. It is depicted as a solid or broken blue line on the most recent edition of the U.S. Geological Survey 7.5-minute series topographic map.
2. It contains or is known to contain flowing water continuously for a period of at least 6 months of the year in most years.
3. The channel bed is primarily composed of mineral material such as sand and gravel, parent material or bedrock that has been deposited or scoured by water.

4. The channel contains aquatic animals such as fish, aquatic insects or mollusks in the water or, if no surface water is present, within the stream bed.

The channel contains aquatic vegetation and is essentially devoid of upland vegetation.

Stream or brook does not mean a ditch or other drainage way constructed, or constructed and maintained, solely for the purpose of draining storm water or a grassy swale.

STREET: Any vehicular right-of-way that is (1) an existing Town, state or county road; (2) shown upon a subdivision plat approved by the Planning Board; (3) accepted or laid out and taken through action of the Town; (4) a private right-of-way approved by the Town; (5) a street shown on a subdivision plan in which the Town has reserved rights under the provisions of 23 M.R.S.A. § 3032; or (6) a privately owned road, that is not intended to be dedicated as a public street

STREET CLASSIFICATION:

- a. **Arterial Street:** A major thoroughfare, which serves as a major traffic way for travel through the municipality and between municipalities.
- b. **Collector Street:** A street with average daily traffic of 1,500 vehicles per day or greater, or streets which serve as feeders to arterial streets, and collectors of traffic from minor streets.
- c. **Cul-de-sac or Dead Head:** A street with only one outlet and having the other end for the reversal of traffic movement
- d. **Industrial or Commercial Street:** Streets servicing industrial or commercial uses.
- e. **Minor Residential Street:** A street servicing only residential properties and which has an average daily traffic of less than 1,500 vehicles per day.
- f. **Private Right-of-Way:** A privately owned street, that is not intended to be dedicated as a public street.

STRUCTURE: Anything constructed or erected with a fixed location on or in the ground, or attached to something having a fixed location on or in the ground, excluding driveways, walkways, patios, and other paved surfaces, and fences, and stone or brick walls used for area separation and not as part of a building.

STRUCTURES ACCESSORY OR ESSENTIAL TO ALLOWED RECREATIONAL USES: Structures incidental to, and/or necessary for, the operation of an allowed primitive or non-intensive recreational use.

SUBDIVIDER: An individual, firm, association, syndicate, partnership, corporation, trust, or any other legal entity, or agent thereof, that undertakes the activities governed by this Ordinance. The term "subdivider" is intended to include the term "developer" and "builder".

SUBDIVISION: The division of a tract or parcel of land into 3 or more lots within any 5-year period that begins on or after September 23, 1971. This definition applies whether the division is accomplished by sale, lease, development, buildings or otherwise. The term "subdivision" also includes the division of a new structure or structures on a tract or parcel of land into 3 or more dwelling units within a 5-year period, the construction or placement of 3 or more dwelling units on a single tract or parcel of land and the division of an existing structure or structures previously used for commercial or industrial use into 3 or more dwelling units within a 5-year period.

1. In determining whether a tract or parcel of land is divided into 3 or more lots, the first dividing of the tract or parcel is considered to create the first 2 lots and the next dividing of either of these first 2 lots, by whomever accomplished, is considered to create a 3rd lot, unless:
 - a) Both dividings are accomplished by a subdivider who has retained one of the lots for the subdivider's own use as a single-family residence that has been the subdivider's principal residence for a period of at least 5 years immediately preceding the 2nd division; or
 - b) The division of the tract or parcel is otherwise exempt under this Ordinance.
2. The dividing of a tract or parcel of land and the lot or lots so made, which dividing or lots when made are not subject to this Ordinance, do not become subject to this Ordinance by the subsequent dividing of that tract or parcel of land or any portion of that tract or parcel. The municipal reviewing authority shall consider the existence of the previously created lot or lots in reviewing a proposed subdivision created by a subsequent dividing.
3. A lot of 40 or more acres shall not be counted as a lot.
4. The following divisions do not result in lots that must be counted:
 - a) A division accomplished by devise does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this Ordinance.
 - b) A division accomplished by condemnation does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this Ordinance.
 - c) A division accomplished by order of court does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this Ordinance.
 - d) A division accomplished by gift to a person related to the donor of an interest in property held by the donor for a continuous period of 5 years prior to the division by gift does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this Ordinance. If the real estate exempt under this paragraph is transferred within 5 years to another person not related to the donor of the exempt real estate as provided in this paragraph, then the previously exempt division creates a lot or lots for the purposes of this subsection. "Person related to the donor" means a spouse, parent, grandparent, brother, sister, child or grandchild related by blood, marriage or adoption. A gift under this paragraph cannot be given for consideration that is more than 1/2 the assessed value of the real estate.
 - e) A division accomplished by a gift to a municipality if that municipality accepts the gift does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this Ordinance.
 - f) A division accomplished by the transfer of any interest in land to the owners of land abutting that land that does not create a separate lot does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this Ordinance. If the real estate exempt under this paragraph is transferred within 5 years to another person without all of the merged land, then the previously exempt division creates a lot or lots for the purposes of this subsection.
5. The division of a tract or parcel of land into 3 or more lots and upon each of which lots permanent dwelling structures legally existed before September 23, 1971 is not a subdivision.
6. In determining the number of dwelling units in a structure, the provisions of this Ordinance regarding the determination of the number of lots apply, including exemptions from the definition of a subdivision of land.

7. Notwithstanding the provisions of this Ordinance, leased dwelling units are not subject to subdivision review if the municipal reviewing authority has determined that the units are otherwise subject to municipal review at least as stringent as that required under this subchapter.
8. The grant of a bona fide security interest in an entire lot that has been exempted from the definition of subdivision under paragraphs 4.a – 4.f above, or subsequent transfer of that entire lot by the original holder of the security interest or that person's successor in interest, does not create a lot for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this Ordinance.

TIMBER HARVESTING: The cutting and removal of trees from their growing site, and the attendant operation of mobile or portable chipping mills and of cutting and skidding machinery, including the creation and use of skid trails, skid road, and winter haul roads, but not including the construction or creation of land management roads or non-commercial cutting for cord wood.

TOWN. “Town” shall mean the municipality of Durham, Maine.

TRACT OR PARCEL OF LAND: “Tract or parcel of land” means all contiguous land in the same ownership, provided that lands located on opposite sides of a public or private road are considered each a separate tract or parcel of land unless the road was established by the owner of land on both sides of the road.

TRADEMAN'S SHOP: The shop of a self-employed craftsman or person in a skilled trade where goods are crafted and offered for sale, or services are rendered.

TRANSMISSIVITY: The product of saturated thickness and hydraulic conductivity of an aquifer, the hydraulic conductivity of an aquifer being defined as the quotient of the groundwater Darcy velocity divided by the hydraulic gradient.

TRIBUTARY STREAM: a free-flowing body of water from the outlet of a great pond or the confluence of two (2) perennial streams as depicted on the most recent edition of a United States Geological Survey 7.5 minute series topographic map, or if not available, a 15-minute series topographic map, to the point where the body of water becomes a river or flows to another water body or wetland within the shoreland area.

UTILITY STRUCTURES: Buildings which house or service utility services, including structures such as radio towers, transmitting stations, and satellite dishes serving more than a residential use on a single lot. Satellite dishes servicing a residential use on a single lot shall be considered accessory to such use.

VARIANCE: A grant or permission by the Board of Appeals to relax the space and bulk standards of this Ordinance. Any such grant shall strictly comply with the standards and procedures of Article IX of this Ordinance. A variance is not authorized for establishment or expansion of a use otherwise prohibited.

VIOLATION: Means the failure of a structure or development to comply with a community's floodplain management regulations.

WAIVER: A relaxation of the review procedures, the submission requirements, and/or performance standards by the Planning Board.

WASTE: "Waste" includes solid waste, hazardous waste, and special waste.

WETLAND: See FRESHWATER WETLAND

YARD: A vegetated area adjacent to a property line which is not occupied by buildings, structures, parking lots, storage, or similar uses. Access roads or drives and sidewalks may be located to allow vehicular pedestrian traffic to cross yard areas.

Article 3: Non-Conformance

A) Purpose

The purpose of this Article is to regulate nonconforming lots, uses, and structures as defined in this Ordinance such that they can be developed, maintained, or changed to other less non-conforming or to conforming uses.

B) General

- 1) Transfer of Ownership. Non-conforming structures, lots, and uses may be transferred, and the new owner may continue the non-conforming use or continue to use the non-conforming structure or lot, subject to the provisions of this Ordinance.
- 2) Repair and Maintenance. This Ordinance allows, without a permit, the normal upkeep and maintenance of non-conforming uses and structures including repairs or renovations that do not involve expansion of the non-conforming use or structure, and such other changes in a non-conforming use or structure as federal, state, or local building and safety codes may require.

C) Nonconforming Lots

- 1) Non-conforming Lots: A non-conforming lot of record as of the effective date of this Ordinance or amendment thereto may be built upon, without the need for a variance, provided that such lot is in separate ownership and not contiguous with any other lot in the same ownership, and that all provisions of this Ordinance except lot area, lot frontage and shore frontage can be met. Variances relating to setback or other requirements not involving lot area, lot width or shore frontage shall be obtained by action of the Board of Appeals.
- 2) Contiguous Built Lots: If two or more contiguous lots or parcels are in a single or joint ownership of record at the time of adoption of this Ordinance, if all or part of the lots do not meet the dimensional requirements of this Ordinance, and if a principal use or structure exists on each lot, the non-conforming lots may be conveyed separately or together, provided that the State Minimum Lot Size Law (12 M.R.S.A. sections 4807-A through 4807-D) and the State of Maine Subsurface Wastewater Disposal Rules are complied with.
 - a) If two or more principal uses or structures existed on a single lot of record on the effective date of this Ordinance, each may be sold on a separate lot provided that the above referenced law and rules are complied with. When such lots are divided each lot thus created must be as conforming as possible to the dimensional requirements of this Ordinance.
- 3) Contiguous Lots - Vacant or Partially Built: If two or more contiguous lots or parcels are in single or joint ownership of record at the time of or since adoption or amendment of this Ordinance, if any of these lots do not individually meet the dimensional requirements of this Ordinance or subsequent amendments, and if one or more of the lots are vacant or contain no principal structure the lots shall be combined to the extent necessary to meet the dimensional requirements.

D) **Nonconforming** Uses

- 1) Non-Residential Expansions. Expansions of non-residential, non-conforming uses are prohibited.
- 2) Residential Expansions. A residential non-conforming use may be expanded by up to 30 percent of the area which it occupied at the time it became non-conforming, upon issuance of a Conditional Use Permit. The Board of Appeals may approve an expansion of a non-conforming use of more than 30 percent of the area which it occupied at the time it became non-conforming, if:
 - a) The use will conform to all other requirements of this Ordinance.
 - b) The expansion will not have an adverse impact on the groundwater. The Board shall consider any of the following as evidence that this condition is met:
 - (i) Written evidence that the sewage disposal system for the property complies with the current requirement of the Maine State Plumbing Code and is sized to accommodate the proposed expansion, or
 - (ii) Written evidence from a licensed soils evaluator that a subsurface sewage disposal system meeting the requirements the Maine State Plumbing Code and sized to meet the expanded use can be installed on the parcel, and
 - (iii) Written documentation from a groundwater hydrologist demonstrating that the proposed sewage disposal and water supply system will not affect the quality of quantity of groundwater supplies of abutting property owners.
- 3) Resumption Prohibited. A lot, building or structure in or on which a non-conforming use is discontinued for a period exceeding one year, or which is superseded by a conforming use, may not again be devoted to a non-conforming use except that the Planning Board may, for good cause shown by the applicant, grant up to a one year extension to that time period.
- 4) Change of Use. Subject to approval by the Board of Appeals, a lawful nonconforming use may be changed to another nonconforming use that is deemed less objectionable and detrimental than the existing lawful nonconforming use.
 - a) A change in use is one that results in an activity that is different in nature and purpose from the original use; results in a difference in the quality, character, degree, and kind of activity; and is different in kind in its effect on the neighborhood.
 - b) Less objectionable and detrimental means that the new proposed nonconforming use will have a lesser effect on the neighborhood and on the property on which the use occurs, is less noticeable than the current use, is closer in nature to the uses allowed in the zoning district, or represents a decline in the volume and intensity of the use.
 - c) The Board of Appeals will review any application for change in nonconforming use in accordance with the following standards:
 - (i) The hours of operation are decreased or not increased.
 - (ii) Undesirable effects such as noise, glare, vibration, smoke, dust, odor, or fire hazard are decreased or not increased.
 - (iii) Hazardous traffic conditions are minimized or not increased and the amount of traffic is decreased or not increased.
 - (iv) The appearance of the property from public ways and abutting properties is improved and the value of adjacent properties will not be adversely affected.

- (v) Unsanitary conditions as a result of sewage disposal, air emissions, or other aspects of its design or operation will not be created.

E) Nonconforming Structures

- 1) Expansions. A non-conforming building may be added to or expanded after obtaining a permit from the same permitting authority as that for a new structure, if such addition or expansion does not create an increase the linear nonconformity of a structure and is in accordance with subparagraphs (a) and (b) below.
 - a) A non-conforming building shall not be added to or enlarged unless such addition or enlargement does not increase the linear extent of the nonconformance of the building or a variance is obtained from the Board of Appeals.
 - b) Whenever a new, enlarged or replacement foundation is constructed under a non-conforming building, the building and new foundation must be placed such that the setback requirements are met to the greatest practical extent as determined by the Planning Board or its designee, basing its decision on the criteria specified in Section E.2- Relocation, below. The construction or enlargement of a foundation under an existing dwelling shall not be considered an expansion provided that:
 - (i) The completed foundation does not extend beyond the exterior dimensions of the structure.
 - (ii) The completed foundation does not cause the structure to be elevated by more than three (3) additional feet, as measured from the original ground level to the bottom of the first floor sill.
 - (iii) The addition of an open patio with no structure elevated more than three inches above ground level shall not constitute the expansion of a non-conforming structure. The addition of steps or the enclosure of an existing porch shall not constitute the expansion of a non-conforming structure. But the addition of a deck does constitute the expansion of a non-conforming structure and the deck shall meet all the dimensional requirements of this Ordinance.
- 2) Relocation. A non-conforming building may be relocated within the boundaries of the parcel on which the building is located provided that the site of relocation conforms to all setback requirements to the greatest practical extent as determined by the Planning Board or its designee, and provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of State law and the State of Maine Subsurface Wastewater Disposal Rules (Rules), or that a new system can be installed in compliance with the law and said Rules. In no case shall a building be relocated in a manner that causes the building to be more non-conforming.
 - a) In determining whether the building relocation meets the setback to the greatest practical extent, the Planning Board or its designee shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic system and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation.
- 3) Reconstruction or Replacement. Any nonconforming building, or a building containing a nonconforming use, which is hereafter damaged or destroyed by fire, flood, lightning, wind, structural failure or other accidental cause, may be restored or reconstructed in conformity with its original dimensions and used as before, within three (3) years of the date of such damage or destruction;

provided, however, that such reconstruction and use shall not be more nonconforming than the prior nonconforming building or use. Nothing in this section shall prevent that demolition of the remains of any building so damage destroyed.

Article 4: Performance Standards

A) Access Management

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

1) Sight Distance Criteria:

- a) All entrances shall be so located such that vehicles approaching or using the entrance will be able to obtain adequate sight distance in both directions along the public way or to maneuver safely and without interference with traffic.
- b) Measurements to determine sight distance shall be made in the proposed entrance at a point ten (10') feet from the edge of shoulder line with the height of eye three and one-half (3.5') feet above the pavement. The sight distance shall be computed from this point measuring along the roadway to a point where an approaching height of object four and one quarter (4.25') feet is first seen.
- c) Driveway placement shall be such that an exiting vehicle has an unobstructed sight distance according to the following schedule:

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

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

2) Geometry:

- a) The entrance shall be designed such that the grade within the right-of-way does not exceed 10%.
- b) For uncurbed public ways the entrance shall in general slope away from the road surface at a rate of not less than one quarter inch (1/4") per foot nor more than one inch (1") per foot for a distance of not less than the prevailing width of the existing shoulder, but in no case less than four (4) feet from the edge of pavement.

- c) The driveway entrance should intersect the road at a horizontal angle of ninety degrees, but shall in no case be less than seventy-five degrees without approval of the Road Commissioner as set forth in the permit.
 - d) Radii for the edge of the driveway for ninety-degree intersections shall be at least twenty-five feet. Radii for less than ninety degrees intersections shall be at least thirty feet. The entrance shall not be located close to an intersection and should be back at least fifty (50) feet.
- 3) Drainage:
- a) The applicant must provide at his/her expense suitable and approved drainage structures at all entrances.
 - b) Existing roadside drainage in gutter or ditch lines shall not be impeded by the applicant. The applicant shall be responsible for fixing any damage to existing roadside drainage in gutter or ditch lines.
 - c) Driveway entrances shall be constructed so as not to block the flow of surface water from the highway or to cause surface water to pool or create puddles on or along the highway. Surface drainage shall be provided so that all surface water on the areas adjacent to the road shall be carried away from the roadway.
 - d) Property Owners are responsible for the costs associated with the initial culvert placement in their driveway entrance. If a driveway culvert in the Town right of way is installed to the following specifications the Town will accept all future maintenance and replacement responsibilities:
 - (i) The culvert size shall be no less than 15 inches diameter and 24 feet long unless otherwise approved by the Road Commissioner.
 - (ii) The culvert may either be polyethylene smooth-walled pipe (ADS N-12 or approved equal) or made of aluminum, but in all cases must be approved by the Road Commissioner.
 - (iii) The culvert must have a clay check dam located at the inlet and outlet ends to prevent water from piping through the stone and washing out the culvert.
 - (iv) The driveway entrance width shall not exceed 60 feet and in all cases must be approved by the Road Commissioner
- 4) Construction:
- a) The applicant is responsible for the restoration of disturbed areas in the vicinity of the driveway entrance, which are located within the limits of the right of way for a newly constructed or reconstructed driveway or entrance way.
 - b) Any portion of the driveway entrance, which is located within the limits of the right of way, shall be constructed with at least 15 inches of gravel, which meet M.D.O.T. Type D specifications (revision of December, 2002, or latest revision).
 - c) If the entrance grade within the limits of the right of way exceed five (5) percent, then the entrance shall have a paved surface.
 - d) The maximum grade of a driveway newly constructed after the effective date of this Ordinance shall not exceed twelve percent.
 - e) Driveways shall be "box cut" to remove organic material and constructed of a minimum of 15" of gravel that meets MOOT type "D" specifications. Revision of December 2002.. If the driveway is to be gravel surfaced it shall be crowned to a cross slope of one half (1/2) inch per foot (4%). If the driveway is to be asphalt surfaced it shall be crowned to a cross slope of one quarter (1/4) inch per foot (2%). Provisions shall be made for convenient and safe emergency vehicle access to all buildings and structures at all times. Driveway width shall be a minimum of twelve (12) feet and clearing on each side of the driveway shall allow for

- snow removal from the driveway. Driveways of eight hundred (800) feet or more shall have at least one turnout to allow for two-way traffic near the mid-point.
- f) Curves. Minimum centerline radii on curves shall be one hundred and twenty-five (125) feet. Minimum tangent length between reverse curves shall be fifty (50) feet.
 - g) In Slopes, Back Slopes. Driveway in slopes and back slopes shall not be steeper than a slope of two (2) horizontal to one (1) vertical: 2:1.
 - h) The top or bottom of a cut or fill shall not be closer than ten feet to a property line unless otherwise mutually agreed to by the affected landowner and applicable Town Board or official granting the permit in question but in no instance shall said cut or fill exceed a 3 to 1 slope. This section does not relieve a gravel pit operator from compliance with the Town Excavation Ordinance.
 - i) The driveway shall have an unobstructed vertical clearance of 13ft 6in and horizontal clearance of 20ft, as required for emergency response vehicles.
- 5) Curb and Sidewalk:
- a) When sidewalk or curb exists at the proposed entrance the applicant shall remove and replace such materials at the applicant's expense. Any granite curb to be removed by the applicant will remain the property of the Town.
 - b) Where curb exists, curb tip-downs shall be provided at each side of a new entrance.
 - c) Where sidewalk is removed to accommodate a new entrance a new walk surface of equal type construction is to be provided. The sidewalk area at all entrances is to meet handicap accessibility requirements and conform to the American with Disabilities Act guidelines. In general sidewalks shall meet the following:
 - (i) The maximum sidewalk longitudinal transition slope is not to exceed one (1) vertical to twelve (12) horizontal.
 - (ii) The maximum sidewalk cross-slope is not to exceed two percent (2%).
 - (iii) No abrupt changes in grade are permitted.
- 6) Soil Erosion Control - Erosion of soil, and sedimentation of any watercourse and water bodies shall be minimized by the following erosion control management practices:
- a) The stripping of vegetation, removal of soil, regrading or other development of the site shall be accompanied by limiting the duration of exposure and area of the site to be disturbed. Dust control methods shall be employed during dry conditions.
 - b) Temporary vegetation, mulching, and/or siltation fabrics shall be used to protect critical areas during the development. Critical areas shall include all watercourses, water bodies, wetlands, and any areas of fragile vegetation, which is listed on any federal or state endangered species list, and areas within 250 feet thereof. Sedimentation of run-off waters shall be trapped by debris basins, silt traps, sediment basins or other methods certified as acceptable by a registered soil scientist or registered professional engineer.
 - c) Permanent vegetation and/or other erosion control measures should be installed prior to completion of the construction, but no later than six months after completion of the construction.

B) Agriculture -

- 1) All storage, spreading or disposal of manure should be accompanied in conformance with the "Maine Guidelines for Manure and Manure Sludge Disposal on Land," published by the University of Maine and Maine Soil & Water Conservation Commission in July 1972.

- 2) Where soil is tilled, an untilled filter strip of natural vegetation shall be retained between the tilled ground and the normal high water elevation of all adjacent waterbodies and watercourses. The width of this strip shall vary according to the average slope of the land as follows:

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

- 3) Agricultural practices, including the creation of fire ponds, shall be conducted to minimize soil erosion, sedimentation, contamination, and nutrient enrichment of ground and surface waters. There shall be no direct discharge of field or pasture run-off into any watercourse or pond. Measures should include, where appropriate:
- a) Diversions above cropland fields to reduce run-off water entering such fields.
 - b) Terracing and/or strip-cropping on moderate or steep slopes over 8%).
 - c) Crop rotation and cover crops to prevent soil erosion.
 - d) Careful application of fertilizers and pesticides in accordance with application rates recommended by the County Extension Service and pursuant to regulations of the Maine Pesticide Control Board.

C) Air Emissions

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

D) Animal Husbandry

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

E) 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:

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

- a) The right-of-way must be deeded to the owner of the back lot and be a minimum of 50 feet in width.
 - b) Creation of the 50-foot right-of-way to serve the back lot shall not create a nonconforming front lot by reducing such lot's road frontage below the minimum for that district, or, if the front lot is already nonconforming, reduce its road frontage at all. Where the right-of-way is given by easement or irrevocable license, or some grant less than a fee interest, the land over which such servitude is placed may not be counted toward meeting road frontage requirements for the front lot.
 - c) 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 350 feet of Town road frontage, and the road entrances to such Town road are at least 600 feet apart.
 - d) The dimension of the back lot which borders upon the right-of-way shall be at least 300 feet in length and the depth of the lot perpendicular to said frontage shall be at least 200 feet for at least 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.
 - e) At the time of conveyance of the right-of-way, the owner shall convey to the Town an easement described by metes and bounds, for sewer purposes over the entire right-of-way and shall record the easement in the Androscoggin County Registry of Deeds and should also be so noted on the plot plan.
 - f) The driveway shall be required to be 20 feet wide with 12 inches of aggregate sub base, 6 inches of aggregate base, and drainage as shown in Article 7.G.7. Figure 3 of this Ordinance, however no shoulders or pavement is required.
- 2) A legally enforceable right-of-way, it may be used for more than one backlot or single-family dwelling if the following conditions are met:
- a) 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.
 - (i) 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 Code Enforcement Officer or Planning Board, as determined by the Code Enforcement Officer. Nothing contained in this paragraph shall prevent a privately owned road from becoming a Town way pursuant to the state and local laws.
 - b) A maintenance agreement as described in the subsection P 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.
 - c) 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.
- 3) The right-of-way must be brought up to subdivision road standards as found in Article 7.G.7 of this Ordinance, with the exception of the paving requirement before further

dwellings may be constructed off the right-of-way serving the backlot(s); for all roads in the Rural Residential – Transitional District refer to Figure 3, and for all roads in the Southwest Bend/Growth District refer to Figure 1.

F) Cemeteries -

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

G) Construction & Plumbing Standards

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

- 1) National Electrical Code – (as required by State law at the time of construction)
- 2) Code for Safety to Life in Buildings and Structures – (as required by State law at the time of construction).
- 3) The Maine Uniform Building and Energy Code (MUBEQ) – (as required by State law at the time of construction)
- 4) The Maine State Plumbing Code (as required by State law at the time of construction.)

H) Erosion Control

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

- 1) The stripping of vegetation, removal of soil, regrading or other development of the site shall be accompanied by limiting the duration of exposure and area of the site to be disturbed. Dust control methods shall be employed during dry conditions.
- 2) Temporary vegetation, mulching, and/or siltation fabrics shall be used to protect critical areas during the development. Critical areas shall include all watercourses, waterbodies, wetlands, and any areas of fragile vegetation which is listed on any federal or state endangered species list, and areas within 250 feet thereof. Sedimentation of run-off waters shall be trapped by debris basins, silt traps, sediment basins or other methods certified as acceptable by a registered soil scientist or registered professional engineer.
- 3) Permanent vegetation and/or other erosion control measures should be installed prior to completion of the construction, but no later than six months after completion of the construction.
- 4) The top or bottom of a cut or fill shall not be closer than ten feet to a property line unless otherwise mutually agreed to by the affected landowner and applicable Town Board or official granting the permit in question but in no instance shall said cut or fill exceed a 3 to 1 slope. This section does not relieve a gravel pit operator from compliance with the Town Excavation Ordinance.

I) Explosive Materials -

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

J) Historic Resources

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

- 1) any structure, site or archaeological site or other property listed on, or deemed eligible by the Maine Historic Preservation Commission for listing on, the National Register of Historic Places, or
- 2) which has been identified by the Maine Historic Preservation Commission as
 - a) a structure, site, archaeological site, or property of national, statewide or local historic significance, or
 - b) a structure, site, archaeological site , or property whose exterior appearance is worthy of protection from incompatible uses due to its historically aesthetic qualities (such properties meeting the criteria in sections 1. and 2. will be on file at the Town Office for review) shall be compatible with such historic properties, in terms of mass, scale, design, building material, and height. Appropriate Buffer Strips of 25 feet shall be maintained at all lot lines of property abutting such historic properties.

K) Home-Based Business-

- 1) A home-based business shall be allowed if it meets the definitional requirements for such occupations found in this Ordinance and complies with all of the requirements of this section and will if it so complies, not require a conditional use permit. If the home-based

business does not meet all of said requirement, than a conditional use permit shall be required.

- 2) The use of a dwelling unit for a home occupation shall clearly be incidental and subordinate to its use for residential purposes.
- 3) A home occupation may not alter the residential character of the structure or change the character of the lot from its principal use as a residence.
- 4) The home occupation shall be carried on wholly within the principal structure. The outside storage or display of materials or products shall be screened from view from the abutting properties and street.
- 5) The sale of products shall be limited to those which are crafted, assembled, or substantially altered on the premises, to catalog items ordered off the premises by customers, and to items which are accessory and incidental to a service which is provided on the premises.
- 6) No traffic shall be generated which would in the aggregate add 20 trips to and from the lot per day by those engaged in the home based business, or those coming to do business there.
- 7) Adequate off-street parking shall be provided, which shall consist of a space for the vehicles of each worker and a space for the vehicles of the maximum number of users the home-based business may attract during peak operating hours.
- 8) The home based business shall not utilize more than 30% of the total floor area of the dwelling unit.
- 9) Not more than one full-time employee or equivalent, outside the family, shall work on the premises.

L) Landscaping

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

M) Lighting

- 1) No lights shall be placed in view of any public roadway or street so that its beams or rays are directed at any portion of the roadway when such light is of such brilliance and so positioned as to impair the vision of the driver of any motor vehicle upon said roadway.
- 2) Lighting with a lumen output equal to or greater than a 200-watt mercury light shall not be directed toward the sky or adjacent properties.

N) Manufactured Housing and Mobile Homes-

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

- 1) the Maine State Plumbing Code.

- 2) all manufactured housing shall be at least 14 feet in width, shall have a pitched roof with a minimum pitch of 3 inches in height for every 12 inches of horizontal movement.
- 3) shall have exterior siding which is residential in appearance and
- 4) shall be placed on a permanent foundation in compliance with the Building Code of the Town of Durham.
- 5) Notwithstanding the requirements in the immediately preceding sentence, and manufactured housing or mobile home which was legally sited within the Town as of January 1, 1989 may be replaced to any lot within said Town even though it may not meet the foregoing design criteria.
- 6) Any such relocated manufactured housing or mobile home must still comply with the State of Maine Plumbing Code as well as any requirements applicable to other types of single family dwellings.

O) Recreational Facility

All recreational facilities shall meet the provisions below:

- 1) There shall be provided adequate off-street parking for the anticipated maximum attendance at any event.
- 2) Containers and facilities for rubbish collection and removal shall be provided.
- 3) Adequate screening, buffer area, or landscape provisions shall be built, planted, or maintained, to protect adjacent residences from adverse noise, light, dust, smoke and visual impact. The standards of this Ordinance found in Section 7 and in this Article governing such impacts will be used to judge the compliance of a facility with such standard.

P) Roads

- 1) The Town shall not accept as a Town Road any private road or way which is located in the Rural Residential/Transitional District. or any road in any District that is not built to Public Road standards After March 6, 2004 any person or persons, prior to:
 - a) 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
 - b) 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
 - c) putting to use for the first time an existing private road or way to serve two or more Dwelling Units or a structure intended for Commercial, Industrial or Light Industrial Uses,shall be required to submit for the approval of the Planning Board a maintenance agreement or escrow agreement executed by the owners of the lots containing the Dwelling Units or Structures which shall be using the private road or way, in registry recordable form, which agreement provides for the obligations of each owner of the lots on which such Dwelling Units or Structures are located with respect to the maintenance,

repair and snow plowing of such road or way. The applicant shall prepare and submit for Approval of the Planning Board a Maintenance Agreement which shall specify the rights and responsibilities of the owners of the lots on the road or way in question among themselves with respect to responsibility for the costs of construction, maintenance, repair and plowing.

- 2) The Maintenance Agreement shall also include:
 - a) 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.).
 - b) 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.
 - c) 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.
 - d) A statement that the duties and obligations imposed by the Maintenance Agreement run with the land and shall be transferred to donees, purchasers or other transferees of any portion of the real estate subject to the Maintenance Agreement and that, upon such transfer, the Planning Board shall be notified in writing and provided with a copy of any changes or amendments to the Maintenance Agreement.
 - e) A requirement that the Maintenance Agreement be referenced in all deeds to any lots served by the private way.
 - f) If the private way subject to the Maintenance Agreement is an extension of an existing private way which served lots created prior to March 6, 2004, a statement that the applicant for private way approval has contacted the owners of such lots, has offered them the opportunity to make their properties subject to the Maintenance Agreement and that they have either accepted or declined that offer; and that the Declarant has submitted to the Planning Department a notarized affidavit confirming the Declarant's compliance with this paragraph.
 - g) 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.
 - h) Upon approval of the agreement the person or persons submitting the agreement shall record it in the Androscoggin County Registry of Deeds so that the obligations therein shall be covenants that run with the land upon which the Dwelling Units or Structures are located. No building permit or other approval required by this Ordinance for the Dwelling Units or Structure to be served by such road or way, shall be issued or approved unless this provision has been complied with.

Q) Signage

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

- 2) No sign advertising goods or services shall be located off the site of the lot on which the related services or goods are to be sold or located, except as provided for in this Ordinance.
- 3) Signs containing name of business, or person residing on the site or advertising goods, or services to be sold on the site or events to be held on the site, shall not exceed twenty-four (24) square feet in total area. This area may be divided between up to two signs.
- 4) The square footage of only one side of a double sided sign shall be counted, provided that the two sides say the same thing.
- 5) The top of no sign shall extend higher than fifteen (15) feet above the ground.
- 6) In addition, up to two Official Business Directional Signs are permitted.
- 7) Signs may be erected and maintained under the Maine Traveler Informational Services Act-23 M.R.S.A.ss.1901-1925, to identify and point the way to public accommodations and facilities, commercial services for the traveling public, and points of scenic, historical, cultural, recreational, educational, and religious interest. The second line of the legend may be used to indicate additional directional information such as the street name.
- 8) The following are exempt of the signage standard:
 - a) Flags and insignia of any government.
 - b) Legal notices, identification, information, or directional signs erected or required by governmental bodies.
 - c) Signs directing and guiding traffic and parking on private property, but bearing no advertising matter or commercial identification.
 - d) Yard and garage sale signs posted for less than seven (7) days.

R) Soils

No activity shall be permitted in any area where the soil is rated severe or very severe for the proposed activity, according to the County Soil Survey of the U.S.D.A. Soil Conservation Service, unless evidence is presented to the Code Enforcement Officer or Planning Board as the case may be, within the application for a permit, that construction methods will overcome any pertinent soil inadequacies.

S) Storage of Materials -

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

T) Storage of Hazardous Materials

- 1) Outdoor Storage Facilities - All outdoor storage facilities for fuel, chemicals, and chemical or industrial waste shall be located on impervious pavement, and be contained within a dike which shall be high enough to contain the total volume of materials kept within the storage area, plus the rain falling into this storage area during a 100-year

storm, so that the stored materials or rain water shall not be able to spill onto or seep into the ground surrounding the paved storage area. All chemicals and wastes shall be stored in closed 55 gallon containers and be properly identified on the outside of such container. Above ground storage tanks for heating oil and diesel fuel, not exceeding 275 gallons, may be exempted from this requirement by the Code Enforcement Officer in situations where neither rapidly permeable soils or high seasonal water table (within 18" of the surface) are involved.

2) **Underground Petroleum Storage**

- a) **New Tank Approval**-Prior to the issuance of a building permit, the placement of new underground petroleum tanks shall be approved by the Planning Board pursuant to the rules and procedures set forth in the Conditional Use provision of this Ordinance. Underground fuel tanks shall not be installed within three (3) feet vertical of the 100-year flood plain, or below the maximum high seasonal water table elevation.
- b) **Installation of New or Replacement Tank**-All new or replacement of underground petroleum tanks shall conform to all applicable state and federal regulations.
- c) **Leak Reporting**-Any person who is aware of a spill or abnormal loss of any flammable fluids shall report such spill or loss immediately to the Maine Department of Environmental Protection and the Code Enforcement Officer.

U) Temporary Activity

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

- 1) The proposed activity or use will not continue beyond a maximum time period of one (1) week. If, in the judgment of the Code Enforcement Officer additional time is required by circumstances, and a permit beyond one week is requested, the Code Enforcement Officer must obtain the concurrence of the Planning Board before such an extension is granted. Upon expiration of the Special Permit, the activity must be immediately discontinued or brought into conformance with the minimum performance standards or it will be in violation of this Ordinance.
- 2) The proposed activity will not create, cause or increase any health, safety or public nuisance problems.
- 3) The proposed activity will not cause immediate or future damage to adjacent properties.
- 4) Reasonable provision is made to prevent or minimize harmful environmental impacts of the proposed activity.
- 5) This section is not intended to permit uses which do not conform to the use requirements of this Ordinance.

V) Temporary Structures

Temporary structures intended for human occupation and used in conjunction with construction work shall be permitted only during the period that construction work is in progress. Permits for temporary structures shall be issued for a six (6) month period and may

be renewed by the Building Inspector for additional six (6) month periods up to three (3) years. A valid Plumbing Permit shall be required.

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

W) Vibrations -

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

<u>Frequency/Cycle per Second</u>	<u>Vibration Steady State</u>	<u>Displacement (in.) Impact</u>
Under 10	.0005	.0010
10-19	.0004	.0008
20-29	.0003	.0006
30-39	.0002	.0004
40 AND OVER	.0001	.0002

X) Water Quality Impacts -

- 1) No activity shall locate, store, discharge, or permit the discharge of any treated, untreated or inadequately treated liquid, gaseous, or solid materials of such nature, quality, obnoxiousness, toxicity, or temperature that run-off may seep, percolate, or wash into surface or groundwaters so as to contaminate, pollute, or harm such waters or cause nuisances, such as objectionable shore deposits, floating or submerged debris, oil or scum, color, odor, taste, or unsightliness, or be harmful to human, animal, plant, or aquatic life.
- 2) A holding tank application for wastewater disposal shall comply with the State Plumbing Code. An alarm system shall be installed indoors to warn the owner that the tank must be pumped. A notarized statement must be submitted to the Plumbing Inspector from all abutters indicating their consent to placement of and easement to place a holding tank or subsurface disposal system on their property before issuance of a plumbing permit.

Article 5: Land Use Districts

A) Zoning Map

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

B) Land Use Districts

- 1) The Town shall be divided into three primary Districts as shown on the Official Zoning Map and shall also have two overlay Districts that shall exist within the primary districts as set forth below. The three primary Districts shall be known as the:
 - a) Southwest Bend/Growth District.
 - b) Rural Residential/Transitional District.
 - c) Resource Protection District.
- 2) There are also two other so called overlay districts, which are imposed over certain sections of the above primary Districts as shown on the Official Zoning Map. These are:
 - a) Southwest Bend Historic Overlay District.
 - b) Aquifer Protection Overlay District.
 - (i) The Purpose of the Aquifer Protection Overlay District is to protect the quality and quantity of groundwater resources within the Town of Durham by regulating activities and land use practices, and thereby preserve groundwater resources for present and future use by the Town and its residents. In particular, the Town wishes to:
 - (A) Encourage conservation of land as open space, or for recreational use over Sand and Gravel Aquifers as highly compatible with the preservation of groundwater quality and quantity.
 - (B) Encourage single family residential development, with evenly distributed, small subsurface waste disposal systems, rather than multifamily development, with large subsurface waste disposal systems, as the impact of larger systems may be more far reaching than that of small systems.
 - (C) Prohibit the handling of hazardous or leachable materials over Sand and Gravel Aquifers, because these materials may readily degrade water quality as the result of improper handling or accident.
 - (D) Minimize the maintenance and refueling of heavy equipment over Sand and Gravel Aquifers, because the fluids used in such maintenance may degrade groundwater quality, if dumped or spilled.
 - (E) Prevent land uses which disturb soil leading to increased erosion during periods of high groundwater, as loss of topsoil increases an aquifer's susceptibility to contamination.

C) District Boundaries

- 1) Uncertainty of Boundaries - Where uncertainty exists with respect to the boundaries of the various districts as shown on the Official Zoning Map, the following rules shall apply:
 - a) Boundaries indicated as approximately following the center lines of streets, highways, or right-of-way shall be construed to follow such center lines;
 - b) Boundaries indicated as approximately following well-established lot lines shall be construed as following such lot lines;
 - c) Boundaries indicated as approximately following municipal limits shall be construed as following municipal limits;
 - d) Boundaries indicated as following shorelines shall be construed to follow the normal high water line, and in the event of natural change in the shoreline shall be construed as moving with the actual shoreline;
 - e) Boundaries indicated as being parallel to or extensions of features indicated in Paragraphs (1) through (4) above shall be so construed. Distances not specifically indicated on the Official Zoning Map shall be determined by the scale of the map. Any conflict between the Official Zoning Map and a description by metes and bounds in a deed shall be resolved in favor of the description by metes and bounds.
 - f) Where physical or cultural features existing on the ground are at variance with those shown on the Official Zoning Map, or in circumstances where the items covered by Paragraphs (1) through (5) above are not clear, the Board of Appeals shall interpret the district boundaries.
- 2) Division of Lots by District Boundaries - Where a zoning district boundary line divides a lot or parcel of land in the same ownership of record at the time such line is established by adoption or amendment of this Ordinance, the regulations applicable to the less restricted portion of the lot may be extended into the more restricted portion of the lot by not more than twenty (20) feet, provided that the more restricted portion is not a Resource Protection District, and provided further, that minimum side setback and yard and rear setbacks and yard requirements for a non-residential use abutting a residential use shall be observed.
- 3) Southwest Bend/Growth District shall consist of the area identified as follows. The Southwest Bend/Growth District shall include that area bounded and described as follows: Beginning at the intersection of Newell Brook Road and Plummer Mill Road as shown on Tax Map 6; thence running southwesterly along the westerly side of Plummer Mill Road to its intersection with the Old Brunswick Road; thence continuing southwesterly across the Old Brunswick Road along the westerly side of Emerson Road as shown on Tax Map 7; thence proceeding westerly to the intersection of Emerson Road with Royalsborough Road (Rt. 136); thence proceeding due west across Royalsborough Road to the westerly sideline of Royalsborough Road; thence turning and running southerly along the westerly boundary of Royalsborough Road until it's intersection with the southerly boundary line of Lot 74 as shown on Tax Map 7; thence turning and running westerly and southwesterly along the said boundary of Lot 74 to its intersection with the northeast corner of Lot 78 as shown on Tax Map 7; thence turning and running along the northerly boundary of the said Lot 78 to its intersection with the western boundary of lot 52D as shown on Tax Map 7; thence turning and running northerly along the westerly boundary line of Lot 52D to the northeasterly corner of Lot 52D and the southeasterly corner of 49 as shown on Tax Map 7; thence turning and running northwesterly along the northerly boundaries of the said Lot 52D and Lot 50 as shown on Tax Map 7 to the westerly side of Hallowed Road; thence turning and running southwesterly along the western boundary line of Hallowed Road to the

southwesterly boundary of Lot 26 as shown on Tax Map 7; thence turning and running northwesterly along the southwesterly boundary line of the said Lot 26 to its intersection with the easterly boundary of Lot 16 as shown on Tax Map 7; thence continuing along the same southwesterly bearing as the southwesterly boundary of lot 26 to the eastern boundary of the Davis Road; thence turning and running northeasterly along the eastern boundary of the Davis Road to it's intersection with the southerly boundary of Royalsborough Road (Rt. 136); thence turning and running southeasterly along the southern boundary of Royalsborough Road and then across said road until the boundary intersects with the southern boundary of Newell Brook Road; thence turning and running first northerly and then easterly along the southern boundary of Newell Brook Road to the point of beginning, but excluding therefrom any part of such area as bounded above which is in the Resource Protection/Rural District. (Refer to tax maps dated April 1, 2003.)

- 4) Rural Residential/Transitional is defined as that area not in the Southwest Bend/Growth.
- 5) Resource Protection District boundaries shall be those defined on the Official Zoning Map of the Town for Resource Protection.
- 6) Southwest Bend Historical Overlay District is defined as beginning at the southeast corner of lot 21 as shown on Town of Durham Tax Map 6 and on the westerly right-of-way line of said Route 9. Said point of beginning also being the northeasterly corner of lot 20 on said Map. Thence northerly and northeasterly along said right-of-way line to the most easterly corner of lot 47 on said Map. Thence northwesterly along the northeasterly property line of said lot 47 to the southeasterly line of lot 42 on said Map. Thence northwesterly across said lot 42 on an extension of said northeasterly property line of said lot 47 to the Androscoggin River. Thence southwesterly and westerly along said river and along lots 42, 41, 40, 34, and 31 all of the above referenced Tax Map to a line represented by the northeasterly extension of the northwesterly property line of lot 27 on said map. Thence southwesterly across said lot 31 and state Route 136 on said extension of the northwesterly property line of lot 27 to the most northerly corner of said lot 27. Thence southwesterly along the northwesterly property line of lot 27 to the most westerly corner of said lot 27. Thence southeasterly along the southwesterly property line of lot 27 to the northwesterly property line of lot 26 on said Map. Thence southeasterly across said lot 26 on an extension of the southwesterly property line of lot 27 to the northwesterly property line of lot 25 on said Map. Thence easterly across said lot 25 to the most westerly corner of lot 24 on said Map. Thence southeasterly along the southwesterly property line of lot 24 to the northwesterly property line of said lot 21. Thence southeasterly across said lot 21 on an extension of the southwesterly property line of lot 24 to the southeasterly property line of lot 21. Thence northeasterly, southeasterly, and northeasterly along lot 20 on said Map back to the point of beginning. Meaning and intending to describe an area in the Town of Durham that includes lots 22, 23, 24, 27, 32, 33, 34, 35, 36, 38, 39, 40, 41, 43, 44, 45, 46, 47, and portions of lots 21, 25, 26, 31, and 42 on said Tax Map 6.
- 7) The Aquifer Protection Overlay District boundaries shall be defined by the map entitled "Hydrologic Data for Significant Sand and Gravel Aquifers, Map 11," published by the Maine Geological Survey, Open File Report No. 85-82c, dated 1982. This map is made an integral part of this Ordinance and the Land Use Regulations of the Town of Durham, as an overlay district. As such, the boundaries have been placed upon a set of Durham tax Maps on file with the Town Clerk.
 - a) In order to be excluded from the Groundwater Protection District, evidence must be presented to the Planning Board which shows that a saturated geologic strata of

transmissivity greater than or equal to 100 ft. squared/day does not exist in that site bordering the mapped Sand and Gravel Aquifer (*Map 1 ft Section 2.0*).

D) District Requirements

1) Southwest Bend/Growth District

- a) Minimum Lot Size per Dwelling – 90,000sq ft
 - (i) Minimum Lot Size for lots within a subdivision may be reduced to 45,000sq ft, if at least 45,000sq ft of contiguous land is permanently dedicated by a deed as open space which may never be built upon.
- b) Minimum Road Frontage – 250 ft
- c) Minimum Setbacks
 - (i) Front Lot Line –
 - (A) Residential¹ – 50ft
 - (B) Commercial/Industrial – 100ft²
 - (ii) Side Lot Line
 - (A) Residential³ – 20ft
 - (B) Commercial/Industrial – 100ft⁴
 - (iii) Rear Lot Line
 - (A) Residential⁵ – 20ft
 - (B) Commercial/Industrial – 100ft⁶
- d) Maximum Structure Height⁷ – 35ft
 - (i) For Schools and Municipal Structures – 50ft
- e) Minimum Density per Dwelling Unit – 1 per 2 acres
 - (i) Houses in existence at the time of the passage of the original land use ordinance will be allowed to convert to a two-family unit at 45,000 sq. ft. for the second unit and 90,000 sq. ft. for the first, where:
 - (A) such conversion does not add more than 50% living space for the second unit.
 - (B) the septic system is in conformance with the Maine State Plumbing Code and adequate under such code for the second dwelling and

¹ Home-Based Businesses and Home Daycares shall be considered a residential use for the purposes of these dimensional requirements.

² The Planning Board may require a greater setback to buffer the noise, vibration, dust or other fugitive emissions the proposed use may create.

³ Home-Based Businesses and Home Daycares shall be considered a residential use for the purposes of these dimensional requirements.

⁴ The Planning Board may require a greater setback to buffer the noise, vibration, dust or other fugitive emissions the proposed use may create.

⁵ Home-Based Businesses and Home Daycares shall be considered a residential use for the purposes of these dimensional requirements.

⁶ The Planning Board may require a greater setback to buffer the noise, vibration, dust or other fugitive emissions the proposed use may create.

⁷ Features of structures such as chimneys, towers, spires and structures for electric power transmission and distribution lines may exceed the maximum structure height requirement.

(C) the lot size was not reduced since March 5, 1988. Additionally, Accessory Apartments shall be allowed as conditional uses in the Rural Residential/Transitional and Southwest Bend/Growth District.

- f) Maximum Lot Coverage for all structures – 25%
 - (i) For Municipal Structures – 20%
- g) Maximum Coverage for impervious surfaces – 25%
- h) Multiple Family Housing Density - 90,000 sq. ft plus 20,000 sq. ft. for each additional unit beyond the first unit (which shall meet the requirements for Single Family density), and 25 feet of additional road frontage for each additional unit.
- i) Minimum Building Envelope – N/A

2) Rural Residential/Transitional District

- a) Minimum Lot Size per Dwelling – 90,000sq ft
 - (i) Minimum Lot Size for lots within a subdivision – 90,000sq ft that must contain a contiguous 40,000 aq ft building envelope which does not contain areas in Resource Protection Distric, wetlands, or slopes greater than 20%.
- b) Minimum Road Frontage – 300 ft
- c) Minimum Setbacks
 - (i) Front Lot Line –
 - (A) Residential⁸ – 50ft
 - (B) Commercial/Industrial – 100ft⁹
 - (ii) Side Lot Line
 - (A) Residential¹⁰ – 20ft
 - (B) Commercial/Industrial – 100ft¹¹
 - (iii)Rear Lot Line
 - (A) Residential¹² – 20ft
 - (B) Commercial/Industrial – 100ft¹³
- d) Maximum Structure Height¹⁴ – 35ft
 - (i) For Schools and Municipal Structures – 50ft
- e) Minimum Density per Dwelling Unit – 90,000sq ft
 - (i) Houses in existence at the time of the passage of the original land use ordinance will be allowed to convert to a two-family unit at 45,000 sq. ft. for the second unit and 90,000 sq. ft. for the first, where:

⁸ Home-Based Businesses and Home Daycares shall be considered a residential use for the proposes of these dimensional requirements.

⁹ The Planning Board may require a greater setback to buffer the noise, vibration, dust or other fugitive emissions the proposed use may create.

¹⁰ Home-Based Businesses and Home Daycares shall be considered a residential use for the proposes of these dimensional requirements.

¹¹ The Planning Board may require a greater setback to buffer the noise, vibration, dust or other fugitive emissions the proposed use may create.

¹² Home-Based Businesses and Home Daycares shall be considered a residential use for the proposes of these dimensional requirements.

¹³ The Planning Board may require a greater setback to buffer the noise, vibration, dust or other fugitive emissions the proposed use may create.

¹⁴ 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) such conversion does not add more than 50% living space for the second unit.
- (B) the septic system is in conformance with the Maine State Plumbing Code and adequate under such code for the second dwelling and
- (C) the lot size was not reduced since March 5, 1988. Additionally, Accessory Apartments shall be allowed as conditional uses in the Rural Residential/Transitional and Southwest Bend/Growth District.
- f) Maximum Lot Coverage for all structures – 25%
- g) Maximum Coverage for impervious surfaces – 25%
- h) Multiple Family Housing Density – 110,000sq ft for duplex
- i) Minimum Building Envelope – 40,000 sq ft

3) Resource Protection District

- a) Minimum Lot Size– 90,000sq ft
- b) Minimum Road Frontage – 300 ft
- c) Minimum Setbacks
 - (i) Front Lot Line – 100ft
 - (ii) Side Lot Line – 100ft
 - (iii)Rear Lot Line – 100ft
- d) Maximum Structure Height¹⁵ – 20ft
- e) Maximum Lot Coverage for all structures – 5%
- f) Maximum Coverage for impervious surfaces – 5%
- g) Minimum Building Envelope – N/A
- h) Performance Standards:
 - (i) Road Construction Within 250 ft. of Runaround Pond, the East Branch of the Royal River, Chandler River, Gerrish Brook, Newell Brook, Meadow Brook, Dyer Brook, or the Androscoggin River -

- (A) All cut or fill banks and areas of exposed mineral soil outside the roadbed within 75 feet of flowing streams or standing bodies of water shall be revegetated or otherwise stabilized so as to reasonably prevent erosion and sedimentation of water mark.
- (B) Road banks shall have a slope no greater than 2 horizontal to 1 vertical, extending back 75 feet from the normal high water mark.
- (C) Drainage ditches shall be provided so as to effectively control water entering and leaving the road area within 75 feet of the normal high water mark. Such drainage ditches will be properly stabilized so that the potential for unreasonable erosion does not exist.
- (D) To prevent road surface drainage from directly entering water bodies, roads and their associated drainage ditches shall be located, constructed, and maintained to provide an unsatisfied filter strip, of at least the width indicated below, between the exposed mineral soil of the road and the normal high water mark of a surface water body.

¹⁵ Features of structures such as chimneys, towers, spires and structures for electric power transmission and distribution lines may exceed the maximum structure height requirement.

Average Slope of Land Between Exposed Mineral Soil & Normal High Water Mark (percent)	Width of Strip Between Exposed Mineral Soil & Normal High Water Mark (Ft along surface of the ground)
1	25
10	45
20	65
30	85
40	105
50	125
60	145
70	165

This requirement shall not apply to road approaches to water crossings.

- (E) Bridges and culverts shall be installed and maintained to provide an opening sufficient in size and structure to accommodate 10-year frequency water flows or with a cross sectional area at least 2-1/2 times the cross sectional area of the stream channel and not interfere with recreational navigation.
 - (F) Culverts used in water crossings shall be installed at or below stream bed elevation, be seated on firm ground, have soil compacted at least halfway up the side of the culvert, be covered by soil to a minimum depth of one foot or according to the culvert manufacturer's specifications, whichever is greater, and have a headwall at the inlet end which is adequately stabilized by riprap or other suitable means to reasonably avoid erosion of material around the culvert.
- (ii) Timber Harvesting Within 250 ft. of Runaround Pond, the East Branch of the Royal River, Chandler River, Gerrish Brook, Newell Brook, Meadow Brook, Dyer Brook, or the Androscoggin River -
- (A) No accumulation of slash shall be left within fifty (50) feet of the normal high water mark of any part of Runaround Pond, or the Androscoggin River, or any water body listed above. At distances greater than fifty (50) feet from normal high water mark of such waters and extending 250 feet, all slash shall be disposed of in such a manner that it lies on the ground and no part thereof extends more than four feet above the ground.
 - (B) Skid trails, log yards, and other sites where the operation of logging machinery results in the exposure of substantial areas of mineral soil shall be located such that an unsatisfied filter strip is retained between the exposed mineral soil and

the normal high water mark of any pond, river, or water body as defined. The width of this strip shall vary according to the average slope of the land as follows:

Average Slope of Land Between Exposed Mineral Soil & Normal High Water Mark (percent)	Width of Strip Between Exposed Mineral Soil & Normal High Water Mark (feet along surface of the ground)
0	24
10	45
20	65
30	85
40	105
50	125
60	145
70	165

- (C) Harvesting operations shall be conducted in such a manner and at such a time that minimal soil disturbance results. Adequate provision shall be made to prevent soil erosion and sedimentation of surface waters.
- (D) Harvesting operations shall be conducted in such a manner that a well-distributed stand of trees is retained.
- (E) Harvesting activities shall not create single openings greater than 7,500 sq. ft. in the forest canopy.
- (F) In any stand, harvesting shall remove not more than forty (40) percent of the volume of trees, four (4) inches or more in diameter, measured 4 1/2 feet above the ground level, in any ten (10) year period.

4) Southwest Bend Historic Overlay District – Please refer to the Town of Durham’s Historic District Ordinance.

5) Aquifer Protection Overlay District

- a) Minimum Lot Size:¹⁶ The minimum lot size for all land uses which utilize on-site wastewater disposal within the Aquifer Protection Zone, except mobile homes in a mobile home park, shall be 3 acres. This is the acreage at which subsurface waste disposal systems are unlikely to degrade groundwater quality to within 50 of the Maine Maximum Contaminant Level (10-144A CMR 231 Rev. 8/83) for nitrate. This Maximum contaminant Level is 10 milligrams per liter (mg/L).

¹⁶ Lots which exist at the time of passage of this ordinance shall not be made nonconforming by this ordinance.

- (i) Single family residences which are larger than 3 bedrooms must be located on a lot whose size is determined by:

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

- (ii) Mobile Homes in a Mobile Home Park: Mobile homes in mobile home park may be located on lots smaller than 3 acres only when the lot size proposed by the applicant does not pose an unreasonable threat to quality of the under laying aquifer, as determined by the Planning Board. In determining whether or not a proposed mobile home lot poses an unreasonable threat to the quality of the aquifer, the Planning Board shall require the applicant to provide a thorough hydrogeological assessment of the proposed site and the contiguous area including any classified surface waters, significant sand and gravel aquifers and fractured bedrock aquifers which could be affected by the proposed development under normal circumstances or in the event of unforeseen circumstances including the failure of the subsurface water disposal system. The assessment shall include a description of the ground water flow rates, directions of ground water flow in both horizontal and vertical directions, and the degree of dilution or attenuation of any contaminants that may be released by the proposed development and may flow toward surface water or aquifer.
- b) Lot coverage: Nor more than 50% of that portion of the lot within the Groundwater Protection District shall be striped of existing vegetation without replacement with similar vegetation, and no more than 10% of the total lot area shall be rendered impervious, except that for municipal lots. no more than 20% of the total lot area shall be rendered impervious.
- c) Performance Standards:
- (i) Petroleum Storage: In the Groundwater Protection Overlay District, petroleum storage tanks shall comply with NFPA Std. #30. All pennanent petroleum storage tanks (*greater than 55 gallon capacity*) shall be above ground or indoor and shall have secondary containment system of an impermeable diked area which is large enough to contain the contents of the tank plus 15%. A tank located in a basement with impervious floors and walls used to store fuel to heat the building shall be considered to be in conformance.
- (A) Portable (less than or equal to 55 gallon capacity) tanks shall be placed on an impermeable surface which measures no less than 5 feet by 5 feet. Portable tanks must also be isolated from vehicular traffic by warning posts or barriers, to prevent the tanks from being ruptured by motor vehicle traffic. No more than two portable tanks are permitted on a single 5 by 5 pad.
- (ii) Auriculture:
- (A) Use of "limited or restricted" pesticides, as defined by the Maine Pesticides Control Board (1987) is prohibited.
- (B) Spray irrigation of wastewater is prohibited. Spreading of sludge is limited to that quantity removed from the on-site septic tank, and must be conducted in compliance with the Maine Guidelines for Manure and Manure Sludge Disposal on Land (Maine Soil and Water Conservation Commission, 1972).

- (C) The weight of manure spread must not exceed that recommended for appropriate soil type under the Maine Guidelines for Manure and Manure Sludge Disposal on Land (Maine Soil and Water Conservation Commission, 1972).
 - (D) All manure piles stored for more than a nine month period must be located on an impermeable surface and covered to prevent leachate from the pile from degrading groundwater quality.
 - (E) Application rate of commercial, inorganic nitrogen fertilizers must not exceed the available nitrogen loading specified in the Maine Guidelines for Manure and Manure Sludge Disposal on Land (Maine Soil and water Conservation Commission, 1972) for the soil type on a particular lot.
 - (F) Maintenance and emergency repair of farm machinery must be conducted so as to prevent drainage or disposal of oil, fuel or solvents onto the ground.
 - (G) Areas such as feeds troughs, where livestock congregate, and manure is likely to accumulate, must be located on an impervious surface or manure must be cleared at least quarterly, except when the ground is frozen.
- (iii) Timber Harvesting:
- (A) Use of skidders and other heavy equipment is prohibited March 15 to April 30 (mud season) each year, as this is typically the period when the ground is saturated.
 - (B) Regular maintenance of vehicles and heavy equipment is not permitted at the harvest site within the Groundwater Protection District. However, emergency maintenance and emergency repair may be conducted at the harvest site if conducted so as to prevent drainage or disposal of oil, fuel solvents onto the ground.
- (iv) Existing Sand and Gravel Extraction:
- (A) Extraction of sand and gravel within two feet of the seasonal high water table is prohibited. Groundwater may not be artificially lowered to allow for ore extraction.
 - (B) Refueling or maintenance of mobile equipment, including vehicles, and heavy equipment is not permitted within the pit in the Groundwater Protection District. Gravel sorting equipment which must be set up within the pit on a long term basis may be maintained in place, provided that maintenance and refueling are conducted so as to prevent drainage or disposal of oil, fuel or solvents onto the ground. Emergency repair of mobile equipment within the pit must be conducted so as to prevent drainage or disposal of oil, fuel or solvents onto the ground.
 - (C) The pit shall not be used to dump or store any substance other than sand and gravel.

TABLE 5.1 – LAND USES PERMITTED IN ZONING DISTRICTS

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

KEY

District-

R/A– Residential/Agricultural District

Reviewing Authority

Yes – No land use ordinance permit required.

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

Cond – Conditional Use Permit required by Planning Board

SB – License from Select Board Required

PB - Planning Board approval required

RC– Permitted with permit from Road Commissioner

No – Prohibited

N/A – Not Applicable

See Footnotes at end of Table. All uses are subject to the general performance standards of Article 4.

Land Use	Southwest Bend/Growth	Rural Residential Transitional	Resource Protection	Aquifer Protection
Access onto Town Road	RC	RC	RC	RC
Accessory Apartment	Cond.	Cond.	No	Cond.
Agricultural	Yes ¹	Yes ¹	Yes	Yes ^{1,2}
Automotive Graveyards & Junkyards	No	Cond. & SB	No	No
Back Lot	CER	CER	No	CER
Bed & Breakfast	Yes	Yes	No	Cond.
Campgrounds	No	Cond.	No	No
Cemeteries	Cond.	Cond	No	Cond.
Clubs, Lodges & Other Community Buildings	Cond.	Cond.	No	Cond.

Land Use	Southwest Bend/Growth	Rural Residential Transitional	Resource Protection	Aquifer Protection
Day Care Center	Cond.	Cond.	No	Cond.
Extractive Industry & Gravel Pits	Cond.	Cond.	No	Cond.
Filling or other earth moving activities not covered by other permit				
Between 1 & 24 cu. yds.	Yes	Yes	CER	CER
Between 25 & 250 cu. yds.	Yes	Yes	Cond	Cond
Between 251 & 500 cu. yds.	CER	CER	Cond	Cond
More than 500 cu. yds.	Cond	Cond	Cond	Cond
Gasoline Station and/or Repair Garage	Cond	Cond	No	No
Groundwater Extraction	Cond	Cond	No	Cond ³
Home Based Business	Yes ⁴	Yes ⁴	No	Yes ⁴
Institutional or Cultural Facilities	Cond	Cond.	No	Cond.
Manufacturing- Light Industrial & all other industrial uses not otherwise listed	Cond	Cond	No	No
Mobile Home	Yes	Yes	No	Yes
Motels, Hotels & Inns	Cond	Cond	No	No
Multi-Family Dwelling	Yes	Yes – Duplex Only	No	Yes–Duplex only
Non-intensive Recreation	Yes	Yes	Yes	Cond
Nursing or Convalescent Homes	Cond	Cond	No	Cond
Open Spaces Uses	Yes	Yes	Yes	Yes

Land Use	Southwest Bend/Growth	Rural Residential Transitional	Resource Protection	Aquifer Protection
Personal Service, retail or wholesale business service, financial service establishment all other commercial uses not otherwise listed	Cond	Cond	No	Limited to Attorney's Offices, Accounting Services, Limited Medical Practices
Piers, Docks & Marinas	Cond	Cond	No	Cond
Primitive Recreation	Yes	Yes	Yes	Yes
Public buildings such as schools, libraries, & museums	Cond	No	No	Cond
Churches	Cond.	Cond.	No	Cond
Public & private parks & recreational areas involving minimal structural development	Cond	Cond.	Cond	Cond
Research facilities	Cond	Cond.	No	No
Road (Private)	RC ⁵	RC ⁵	RC ⁵	RC ⁵
Sand & gravel extraction	No	Cond.	No	No
Single-family dwelling	Yes	Yes	No	Yes
Timber Harvesting	Yes	Yes	Yes	Yes ²
Sludge spreading	Cond	Cond	Cond	Cond

¹ Agriculture is allowed, however it shall meet the standards in section Article 4.B.

² Land Uses shall meet the standards in section Article 5.D.4.c.

³ Not allowed, except for existing.

⁴ A Home-Based Business is allowed if it meets the performance standards of Article 4.K. If the Home-Based Business does not meet the standards, then a Conditional Use Permit is required.

⁵ The Road Commissioner with the Road Advisory Committee.

Article 6: Conditional Use

A) Purpose

This section shall apply to all uses of land which are identified as conditional uses under this Ordinance. It is the intent of this Ordinance to allow such uses only so long as they meet the requirements of this Article. Unless all conditions specified herein are met, such uses will be deemed incompatible with allowed uses, and will not be permitted.

B) Administrative Procedures

- 1) The Planning Board is authorized to review and act on all applications for Conditional Uses. In considering Conditional Uses under this section, the Planning Board may act to approve, disapprove, or approve the project with conditions as are authorized by these provisions.
- 2) Fees.
 - a) Application Fee. An application for subdivision must be accompanied by an application fee. The fee shall be non-refundable. This application fee shall be paid to the municipality. The application fees shall be as follows:
 - (i) Dwellings & Homes-\$800. for the first three (3) dwelling units and \$100.00 for each additional unit.
 - (ii) Commercial Development - \$0.30 for each square foot of ground or floor area of structure. This includes both new and converted structures.
 - (iii) Home Based Business - \$50
 - (iv) 2nd and additional Backlots \$200
 - (v) Other/Not Defined in A or B - \$100
 - (vi) Reinspections of roads- By road commissioner or CEO \$25 or \$100 for the full road committee
 - b) Technical Review Fee. In addition to the application fee, the applicant shall be responsible to pay for a technical review fee. The initial deposit towards the technical review fee shall be by the Planning Board to cover the Town's legal and technical costs for hiring independent consulting services to review engineering and other technical submissions associated with the application, and to ensure compliance with regulations.
 - (i) The Board may reduce the amount of the technical review fee or eliminate the fee if it determines that the scale or nature of the project will require little or no outside review.
 - (ii) This fee must be paid to the Town and shall be deposited into a special escrow account, which shall be separate and distinct from all other municipal accounts.
 - (iii) The application will be considered incomplete until evidence of payment of this fee is submitted to the Town.
 - (iv) If the balance in this special account is drawn down by 75%, the applicant shall be notified, and the applicant shall bring the balance back up to the original deposit

amount. The Board shall continue to notify the applicant and require a deposit as necessary whenever the balance of the escrow account is drawn down by 75% of the original deposit.

- (v) The Town shall provide the applicant with an accounting of his or her account, upon written request.
- (vi) The Town shall refund all of the remaining monies, including accrued interest, in the account after the payment by the Town of all costs and services related to the review. Such refund shall be accompanied by a final accounting of expenditures from the fund. The monies in such fund shall not be used by the Town for any enforcement purposes.

C) Review Procedures

- 1) Not earlier than thirty (30) days nor less than ten (10) days before the date of the Planning Board meeting where the application will be discussed, the applicant must either mail a notice of intent to file the application to all abutters of the site of the proposed conditional use, or hand deliver and receive a signature from the abutter on such notice of intent. If the notice is to be mailed, then the notice shall be mailed certified, return receipt requested. The notice shall briefly describe the proposed conditional use and the anticipated date of filing the application. The domestic return receipt of the certified mailing shall be attached as part of the original conditional use application.
- 2) The completed conditional use application shall be submitted to the Town Office, and a receipt shall be issued to the applicant by the Town Office, at least nine (9) days before the Planning Board's next meeting date to be included on the Board's agenda.
- 3) When the Code Enforcement Officer, determines that nine (9) copies of all material apparently required to constitute the application have been submitted, he shall promptly notify the applicant of the time and place for such meeting, and he shall transmit to each Planning Board member a copy of the application material.
- 4) Within sixty (60) days after the date on which the Conditional Use application is complete and it first appears on the Planning Board agenda, the Board shall act to approve, approve with conditions, or disapprove the conditional use application submitted, or as amended. The time limit for review may be extended by mutual agreement between the Planning Board and the applicant. During this sixty (60) day period, the Board may schedule an on-site visit.
- 5) No application for Conditional Use development shall be considered complete or may be acted upon by the Planning Board until all variances which may be required for the proposed development first have been obtained from the Board of Appeals.
- 6) Within ten (10) working days of reaching its decision, the Planning Board shall send to the applicant notice in writing of its action and the reason for taking such action.
- 7) If an applicant wishes to make any changes to his/her previously approved Conditional Use Permit, then the applicant must meet all the requirements for a Conditional Use Permit for that changed part of the application, i.e., the applicant will go through the entire Conditional Use Permit process only for the section of the permit they want changed.

D) Application Submission Requirements

- 1) The Planning Board may waive any of the submission requirements upon a written request of the applicant. A waiver of any submission requirement may be granted only if that information is not required to determine compliance with the approval criteria. In all instances, the burden of proof shall be upon the applicant to present adequate information to indicate the statutory criteria for approval and performance standards have been or will be met.
- 2) Every applicant applying for conditional use approval shall submit to the attention of the Planning Board at the Town Office, nine (9) copies of a complete application, including a plan of the proposed development, which shall be prepared in accordance with this Article, accompanied by the application fees as may be set by the Town. When the owner of the property or his authorized agent makes formal application for conditional use approval, his application shall contain at least the following exhibits and information:
- 3) A fully executed and signed copy of the application for conditional use approval.
- 4) A site plan (with date, scale, and north point) drawn at a scale sufficient to allow review of the items listed under the approval criteria, but at not more than 100 feet to the inch scale for that portion of the total tract of land being proposed for development. When practical, a standard sized sheet 24" X 36" shall be used for all plans. The plan and application shall show and contain the following:
 - a) Owners name and address, the name of the engineer(s) or surveyor(s) or both preparing the plan.
 - b) Names and addresses of all abutting property owners. The applicant shall also include a copy of the abutters signed return receipt notices, or shall submit a signed acknowledgement of receipt by the abutter(s).
 - c) Sketch map showing general location of the site within the Town as required in (1) above.
 - d) Boundaries of all contiguous property under the control of the owner or applicant regardless of whether all or part is being developed at this time.
 - e) Zoning classification(s) of the property and the location of zoning district boundaries if the property is located in two or more zoning districts or abuts a different zone, and of any aquifer protection district or resource protection/rural district boundaries.
 - f) The bearings and distances of all property lines of the property to be developed and the source of this information. The Board may require a formal boundary survey when sufficient information is not available to establish, on the ground, all property boundaries or zoning classifications ~~as set forth in Section 5 above~~.
 - g) The location of all building setbacks required by this Ordinance.
 - h) The location, dimensions, and ground floor elevations of all existing and proposed buildings on the site.
 - i) The location and dimensions of driveways, parking and loading areas, and walkways, existing and proposed.
 - j) Location of intersecting roads or driveways within 450 feet of the site.
 - k) Except for dwelling units not using a common subsurface disposal system the location and dimensions of all provisions for water supply and wastewater disposal, including a soil test taken pursuant to the requirements of the Maine State Plumbing Code, and

- complete description of soil conditions, type of subsurface or other wastewater disposal system, and draft plumbing permit application. For dwelling units using their own individual subsurface disposal system, a preliminary soil test under the Maine State Plumbing Code must be provided. All applicants shall include evidence of distance of water supply to wastewater disposal system, and evidence of volume of water available to satisfy the needs of the proposed use, including for fire protection.
- l) The location of open drainage courses, wetlands, stands of trees, and other natural features, with a description of such features to be retained and of any new landscaping planned. Any buffer areas required by this Ordinance will also be shown on such plan.
 - m) The direction of drainage across the site, both existing and proposed.
 - n) Location and dimensions of existing and proposed signs.
 - o) Location and dimensions of any existing easements and copies of existing covenants or added restrictions.
 - p) Location and type of exterior lighting.
 - q) The quantity, location, storage, and containment of any hazardous materials or petroleum products in excess of fifty (50) gallons, intended to be stores or used on the site.
 - r) A utility plan showing, in addition to provisions for water supply and wastewater disposal, the location and nature of electrical, telephone, and any other utility services to be installed on the site.
 - s) A planting schedule keyed to the site plan and indicating the general varieties and sizes of trees, shrubs and other plants to be planted on the site.
- 5) Copies of applicable State approvals and permits including but not limited to any applicable State Highway entrance permit; provided, however, that the Board may approve conditional uses subject to the issuance of specific State approvals and permits where it determines that it is not feasible for the applicant to obtain them at the time of conditional use review.
 - 6) A schedule of construction, including anticipated beginning and completion dates.
 - 7) Accurate and complete cost estimates of the development, a time schedule for construction, and sufficient financial information to determine the applicant's financial capacity to meet air and water pollution control standards and other standards and criteria contained herein. The following submissions indicate adequate financial capacity:
 - a) a letter of commitment from a financial institution or funding agency for a specified amount of funds in the amount necessary to finance the development in conformance herewith and their use, or
 - b) the most recent corporate annual report and supporting documents indicating sufficient funds to finance the development in conformance herewith, or
 - c) copies of bank statements or other evidence indicating availability of the unencumbered funds, sufficient to finance the development in conformance herewith when the developer will personally finance the project.
 - 8) A detailed description of the proposed conditional use, how it will operate, and any facts the applicant wishes to bring to the attention of the Planning Board including information on financial capacity, neighboring water supplies, design of the project, and other information needed to demonstrate compliance with approval criteria guidelines, and standards set forth below. The description will indicate how the proposed use will meet each of the general applicable performance standards of this Land Use Ordinance.

addition to the application material required, the Planning Board may require the applicant or others to undertake studies where deemed necessary or desirable to protect the public convenience, safety, health and welfare when considering the application.

- 9) The following supplemental information shall be provided as part of the application for projects involving either: six or more dwelling units; 7,000 sq. ft. or more of gross floor area of a nonresidential use; or a common water supply or sewage disposal system with a capacity of 1,500 gallons per day or more.
 - a) Existing and proposed topography of the site at two-foot contour intervals.
 - b) A storm water drainage and erosion control plan showing:
 - (i) The existing and proposed method of handling storm water run-off.
 - (ii) The direction of flow of the run-off through the use of arrows.
 - (iii) The location, elevation, and size of all catch basins, dry wells, drainage ditches, swales, retention basins, and storm sewers.
 - (iv) Engineering calculations used to determine drainage requirements based upon the 25-year, 2-hour storm frequency estimation of peak discharge and volume must be completed using Urban Hydrology for Small Waterbeds, TR-55 Soil Conservation Service as revised, if the project will significantly alter the existing drainage pattern due to such factors as the amount of new impervious surfaces (such as paving and building area) proposed.
 - (v) Methods of controlling erosion and sedimentation during and after construction.
 - c) A groundwater impact analysis prepared by the groundwater hydrologist for projects involving common water supply or sewerage facilities with a capacity of 1,500 gallons per day or greater.

E) Approval Criteria

The following criteria are to be used by the Planning Board in judging applications for conditional use approval and shall serve as minimum requirements for approval of the conditional use. The conditional use shall not be approved if in the judgment of the Planning Board the applicant is not able to reasonably meet one or more of these standards. In all instances, the burden of proof shall be on the applicant and such burden of proof shall include the production of evidence necessary to complete the application and persuade the Board. All conditional uses must be shown by the applicant to satisfy the following criteria:

- 1) Will not result in undue water or air pollution.
- 2) Has sufficient water available for the reasonably foreseeable needs of the proposed use, including fire protection. Will not cause an unreasonable burden on an existing water supply, if one is to be utilized. This criteria shall include use of an aquifer and the applicant must show that its use will not harm the wells of those currently relying upon said aquifer.
- 3) Will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result.
- 4) Will not cause highway or public road congestion or unsafe conditions with respect to use of the highway or public road existing or proposed.

- 5) Will provide for adequate sewage disposal in conformity with the State Plumbing Code and all other applicable regulations.
- 6) The proposed development will have adequate fire protection..
- 7) Will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas, any deer wintering areas identified by the Maine Department of Fish and Wildlife or other agency or any public rights for physical or visual access to water bodies.
- 8) Is in conformance with the Town's Comprehensive Plan, and all other applicable Town ordinances.
- 9) The applicant has adequate financial and technical capacity to meet the standards required by this Ordinance.
- 10) Whenever situated in whole or in part, within 250 feet of any pond, lake, stream or river waters, will not adversely affect the quality of such body of water or unreasonably affect the shoreline of such body of water.
- 11) Will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water.
- 12) The applicant will determine, based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, whether the site of the proposed use is in a flood-prone area. If the site of proposed use, or any part of it, is in such an area the applicant will determine the 100-year flood elevation and flood hazard boundaries within the site. The proposed use shall include a condition of plot approval requiring that principal structures on any lots where the proposed use is to be conducted shall be constructed with their lowest floor including the basement, at least three (3) feet above the 100-year flood elevation and will only be constructed if permitted under the Town's Flood Hazard Ordinance.
- 13) Will not have an adverse impact on spawning grounds, fish, aquatic life, bird and other wildlife habitat.
- 14) Will not cause noise, odor, glare, or vibration to disturb the peaceful enjoyment of adjacent property
- 15) Will not place an excessive burden on the ability of the Town to provide municipal, governmental or educational services.

F) Conditional Use Performance Standards

The performance standards in this article are intended to clarify and expand upon the approval criteria. Compliance with the performance standards of this section shall be considered to be evidence of meeting the appropriate approval criteria. The Planning Board may waive any of the general performance standards based upon a written request of the applicant. A waiver of any general performance standard may be granted only if the Board finds that the standard is not required for the proposed project to be in compliance with the approval criteria.

Compliance with the design standards of this section shall be considered to be evidence of meeting the appropriate performance standards. Proposed development not in compliance with the design standards may be considered, but the applicant shall provide clear and convincing evidence that the proposed design will meet the performance standards.

In all instances, the burden of proof shall be upon the applicant to present adequate information to indicate the statutory criteria for approval and performance standards have been or will be met.

1) Air Pollution.

- a) Approval of the conditional use and any building permit issued for development within the scope of this Article shall expire if the work involved has not commenced within nine months from the date on which the permit is granted, and if such work has not been substantially completed within 36 months of the date on which the permit was granted.
- b) That emissions of any particulate matter or gaseous material will not cause soiling of any material beyond the lot line.
- c) That emissions will not have any detectable odor (as determined under the standard listed below for odor).
- d) That emissions will not cause any health effects in normal persons residing within a radius of 1000 feet from the lot lines. Health effects include but are not limited to headaches, nausea, lung or other forms of cancer, skin lesions, eye irritations, and other clinically diagnosed disorders traceable to air pollution.

2) Water Pollution.

- a) The Applicant will meet all applicable water quality control standards of the Maine Department of Environmental Protection.
- b) The Applicant will not degrade any surface or subsurface water supplies below the State's primary drinking water standard, or if such water is already below such standard. Will not lower the quality of the water below the State's secondary drinking water standard.
- c) The Applicant will not by reason of any activity, alter the quality of any surface or subsurface water in such a way as to adversely affect any fish, plants, or animals which might live in, around, or drink from such water.

3) Water Supply.

In determining whether the applicant has met this criteria, the Board must find that the water supply will meet the maximum anticipated demand of all persons residing in, or using the supply, and also the demand of any equipment to be installed which will use such water under conditions equivalent to the water levels in existence during the driest year in the preceding ten (10) years within Androscoggin County, and will not, in satisfying such demand, diminish the quality of water available to any wells located on the same aquifer as the water supply in question. The Board must also find that the water supply will sustain fire suppression requirements recommended for the proposed development consistent with the recommendations of the National Fire Protection

Association for the fire loading level of the proposed development under NFPA 1142, Water Supplies for Suburban and Rural Fire Fighting, 1999.

4) Soils

No activity shall be permitted in any area where the soil is rated severe or very severe for the proposed activity, according to the County Soil Survey of the U.S.D.A. Soil Conservation Service, unless evidence is presented to the Planning Board as the case may be, within the application for a permit, that construction methods will overcome any pertinent soil inadequacies.

5) Soil Erosion

In determining whether this standard has been met, the Board must find that the following practices will be followed:

- a) Preserve the Landscape- The landscape shall be preserved in its natural state insofar as practical by minimizing tree removal, disturbance of soil, and by retaining existing vegetation insofar as practical during construction.
- b) Erosion Control-Filling, excavation, and earth moving activities shall be carried out in a way that keeps erosion and sedimentation to a minimum, including:
 - (i) preservation and protection of natural vegetation where possible.
 - (ii) keeping duration of exposure of disturbed soils to as short a period as possible and stabilizing the disturbed soils as quickly as practicable.
 - (iii) use of temporary vegetation or mulching to protect exposed critical areas during development.
 - (iv) where appropriate or necessary, use of debris basin, sediment basins, silt traps or other acceptable methods to trap the sediment from storm water run-off.
 - (v) no storage of fill materials within fifty (50) feet of the banks of any stream, intermittent or perennial, or water body.
 - (vi) topsoil shall not be removed from the site, except for surplus topsoil removed from areas to be occupied by buildings, paving, or other surfaces that will not be revegetated.
 - (vii) adequate provision shall be made for surface drainage so that removal of storm waters will not have an unreasonable adverse effect on neighboring properties, downstream water quality, soil erosion or the public storm drain system. Whenever possible, on-site absorption of run-off shall be used to minimize discharges from the site. Drainage facilities shall be designed for a 25-year, 24-hour storm frequency.

6) Vehicular Access & Circulation

In determining whether the application has met this criteria the Board must find that:

- a) Road right-of-way shall be a minimum of fifty (50) feet wide. Road dimensions, geometry, and materials shall conform with the requirements shown in Figures 1 and

II. for roads in the Growth District, or Figures III and IV for roads in the Rural Residential-Transitional District.

- b) All streets and private streets in the development shall be paved to following standards.
- (i) AGGREGATE BASE - Base materials shall be screened or crushed gavel of hard durable particle, free from vegetable matter, lumps or balls of clay and other deleterious. The gradation of the part that passes a (2) two-inch square mesh sieve shall meet the following grading requirements.

<u>Sieve Designation</u>	<u>% By Weight Passing Square Mesh Sieves</u>
2 Inch	100%
1/2 inch	45-70%
1/4 inch	30-55%
No. 40	0-30%
No. 200	0-7%

*Aggregate for the base shall contain no particles of rock exceeding 4 inches in any dimension.

- (ii) AGGREGATE SUBBASE- Aggregate subbase shall be sand or gravel of hard durable particles free from vegetable matter, lumps or balls of clay or other deleterious matter. The gradation of the part that passes a (6) six-inch square mesh sieve shall meet the following grading requirements.

<u>Sieve Designation</u>	<u>% By Weight Passing Square Mesh Sieves</u>
6 inch	100%
1/4 inch	70%
No. 40	30-70%
No. 200	0-7%

*Aggregate subbase shall not contain no particles of rock exceeding (6) six inches in any dimension.

- (iii) SURFACE LEVELING MATERIAL-if required shall conform to the gradation requirements of Aggregate Base above but shall not contain particles of rock which will not pass the 3/4" sieve.
- (iv) BITUMINOUS PAVEMENT-Pavement shall be constructed of two courses of bituminous concrete. Pavement shall be MDOT "Superpave" as specified in Section 401 conforming to the latest revisions of the Maine Department of Transportation "Standard Specifications for Highways and Bridges"

- (A) Compacted Binder Course 19.5mm Superpave
 - (B) Compacted Surface Course – 12.5mm or 9.5mm Superpave
 - (C) Pavement width shall be a minimum of twenty-two (22) feet for roads in the Growth District for which Town Acceptance of such road is to be sought, and twenty (20) feet for all roads in the Rural Residential – Transitional District.
 - (D) Bituminous mix shall be obtained from batch plants whose mix designs have been tested and approved by Maine Department of Transportation inspectors for the grading specified. Asphalt content of the mix provided shall in no case be less than that recommended by the MDOT inspector's test report.
- (v) CULVERTS- Culverts shall be new zinc coated corrugated metal pipe. or of smooth bore plastic and shall be sized and located as determined by drainage calculation, but in no case shall be smaller than twelve (12) inches in diameter.
 - (vi) SIGNS- Signs required by the Board such as "Speed Limit", "Stop", "Curve", etc., shall be constructed and located so as to conform with the "Manual on Uniform Traffic Control Devices for Streets and Highways", published by the United States Department of Transportation, most recent revision.
 - (vii) SIDEWALKS- Sidewalks if proposed shall be a minimum of five (5) feet in width and shall be constructed of two 1" thick courses of MDOT grading "D" bituminous pavement over a minimum 8" thick gravel base. Base shall conform to the requirement listed for roadway aggregate base stated in paragraph 2.1. above.
 - (viii) CURBS- Curbs, if proposed, shall at a minimum be designed in accordance with Maine Department of Transportation standard details for bituminous curb and shall be constructed as outlined in Maine Department of Transportation Standard Specification, Section 609.04
- c) Construction Requirements-Surface leveling material, gravel base and sub-base shall be compacted over the full width and length of road bed including shoulders to a minimum of 95% of modified proctor density in accordance with American Society for Testing Materials standard ASTM D1556 and D1557. Bituminous pavement shall be compacted to a minimum of 92% of the theoretical maximum density as established in accordance with AASHTO Test T209, ASTM D2950 and ASTM D2726.
 - (i) No bituminous paving shall be placed between November 15 and April 15 or when the temperature is below thirty-five (35) degrees Fahrenheit or when the gravel base is frozen. Bituminous placed after September 15th shall also be rolled with a pneumatic tire roller in addition to steel rollers.
 - (ii) The finished surface of the pavement shall be smooth and tightly compacted with no loose or poorly embedded stone evident. A sixteen (16) foot straight edge or string line when placed parallel to the centerline of the pavement and a ten (10) foot straight edge or string line when placed transverse to the center line shall not show a variation exceeding 1/4" inch.
 - d) Parking- At least one on-site parking space shall be provided for each employee or other person anticipated to be at the site of the proposed use at any one time (i.e. 6 employees and an average of 3 customers per hour would equal 9 required spaces.) Parking lots of over 10 spaces shall be completely screened from view of public streets

or other public land by a vegetative buffer consistent with the general performance standards of the Land Use Ordinance.

- e) Vehicular Access-Provision shall be made for vehicular access to the development and circulation upon the lot in such a manner as to safeguard against hazards to traffic congestion on any street and to provide safe and convenient circulation on public streets and within the development. More specifically, access and circulation shall also conform to the following standards and the design criteria below:
 - (i) the street giving access to the lot and neighboring streets which can be expected to carry traffic to and from the development shall have traffic carrying capacity and be suitable improved to accommodate the amount and types of traffic generated by the proposed use.
 - (ii) where necessary to safeguard against hazards to traffic and pedestrians and/or to avoid traffic congestion, provision shall be made for turning lanes, traffic directional islands, frontage roads, driveways and traffic controls within public streets.
 - (iii) access ways shall be of a design and have sufficient capacity to avoid queuing of entering vehicles on any street.
- f) Sight Distances- Driveways shall be designed in profile and grading and located to provide the required sight distance measured in each direction. Sight distances shall be measured from the driver's seat of a vehicle standing on that portion of the exit driveway with the front of the vehicle a minimum of 10 feet behind the curbline or edge of shoulder, with the height of the eye 3 1/2 feet, to the top of an object 4 1/2 feet above the pavement. The required sight distances are listed below for various posted speed limits.

Table 1 – Sight Distance

Posted Speed (MPH)	Sight Distance (Feet)
20	155
25	200
30	250
35	305
40	360
45	425

The minimum allowable sight distances listed above for all accesses, may require up to 50% greater sight distances when at least 30% of the traffic using the driveway will be larger vehicles

- (i) All commercial entrances regardless of traffic volume may be required by the Planning Board to be paved with bituminous concrete pavement within 30 feet of the street right-of-way if anticipated traffic volume requires an assured smooth surface to facilitate exit and entry without risk of sudden stop due to rutting.

- (ii) All commercial driveways regardless of driveway volume may be required by the Planning Board to be paved with bituminous concrete pavement within 30 feet of the street right-of-way if anticipated traffic volume requires and assured smooth surface to facilitate exit and entry without risk of sudden stop due to rutting.
- (iii) No development shall increase the volume capacity ratio of any street above 0.8 nor reduce the street's Level of Service to "D" or below as determined by using the capacity analysis procedures set forth in the 1985 Highway Capacity Manual, Special Report 290 as published by the Transportation Research Board.

9) Solid Waste

In determining whether this standard has been met, when other facilities are to be used, the Board must find that a contract exists with a licensed facility, which is in substantial compliance with State Law, and which has sufficient capacity for 5 years of disposal by the proposed use.

10) Landscaping & Buffering

- a) The landscape shall be preserved in its natural state insofar as possible when constructing buildings and accessory structures, parking lots, and drives or roadways, by minimizing tree removal and grade changes.
 - (i) All parking lots shall be landscaped along the property boundaries with shrubbery, trees, and other landscape materials.
- b) Landscaping shall be designed and planted to define, soften, or screen the appearance of off-street parking areas from the public right-of-way and abutting properties and/or structures and to minimize the encroachment of the proposed use on neighboring land uses.
 - (i) Landscaping will be completed within six months of completion of any structure.
 - (ii) All buffer vegetation shall remain alive for a least one year from the date of planting and shall as a condition for approval, guarantee replacement of any material which may have died before the expiration of said year period, with equivalent vegetation which will likewise be guaranteed for at least one year from the date of planting.
- c) The proposed use will not restrict or block any view from a public road or other public land of any water body, hill in excess of 450 feet above sea level, open field of over 100 acres in size, or unusual natural feature such as glacial boulder concentration or rock outcropping. View shall be defined for these purposes as the field of vision of an arc of 15 degrees at any elevation from horizontal. Restrict or block shall mean to interrupt or obscure such view for a period of 5 seconds when traveling at a speed of 10 miles per hour.
- d) No industrial or commercial buildings or uses shall be established in, or about (defined as any closer than 1000 feet), a residential use unless a landscaped Buffer Strip is provided to visually screen the building or uses.
- e) Screening shall be defined as eliminating any view to humans standing at ground level of the residential use, or from the windows of a two story building within such location. Where no natural vegetation can be maintained or due to varying site conditions natural

vegetation cannot provide screening, the landscaped buffer may consist of fences, walls, tree planting, hedges or combinations thereof.

- f) The buffering shall be sufficient to minimize the impacts of any kind of potential use such as: 1) loading and unloading operations, 2) outdoor storage areas, 3) vehicle parking, 4) mineral extraction, 5) waste collection and disposal areas.
- g) Where a potential safety hazard to small children would exist were they to enter the area of commercial or industrial use, physical screening/barriers shall be used to deter entry to such premises. The buffer areas shall be maintained and vegetation replaced as necessary to insure continuous year round screening.

11) Historic & Archeological Resources

- a) No stone walls or granite posts, abutments or markers older than 100 years of age will be tom down unless relocated on the property, no cemetery or grave marker will be disturbed, no archeological site identified by the Maine Historic Preservation Commission will be disturbed, no structure listed on the National Register of Historic places will be tom down or its exterior facade altered except to restore it in accordance with the standards of the Secretary of the Interior, and no churches or school buildings older than 100 years of age will be tom down or altered except to restore them in accordance with their original design.
- b) There shall be no construction or excavation done within a twenty-five (25) feet zone around burial sites and from all boundaries of an established graveyard unless the construction or excavation is pursuant to a lawful order or permit for the relocation of bodies or when necessary for the construction of a public improvement, as approved by a vote of Town Meeting, or in the case of a state highway, by the Commissioner of Transportation. Graveyards shall be treated as if they were residential uses and Buffer Areas shall be required for them regardless of whether the burial site or graveyard is properly recorded in the deed to the property.
- c) The design of any remodeled existing structure, or of any new structure to be constructed in any District or any new use in any District which is to be located within 1500 feet of any lot line of, or which would be visible from any portion of a public way adjacent to:
 - (i) any structure, site or archaeological site or other property listed on, or deemed eligible by the Maine Historic Preservation Commission for listing on the National Register of Historic Places, or
 - (ii) which has been identified by the Maine Historic Preservation Commission as
 - (A) a structure, site, archaeological site, or property of national, statewide or local historic significance, or
 - (B) a structure, site, archaeological site, or property whose exterior appearance is worthy of protection from incompatible uses due to its historically aesthetic qualities (such properties meeting the criteria in sections a. and b. will be on file at the Town Office for review) is compatible with such historic properties, in terms of mass, scale, design, building material, and height. Appropriate Buffer Strips of 25 feet shall be maintained at all lot lines of property abutting such historic properties.

12) Natural Resources

- a) No plants listed on the Federal or State List of Endangered Species or other rare or exemplary plant feature will be affected adversely by the proposed use.
- b) No irreplaceable natural areas including those listed in the State Register of Critical Areas (5 M.R.S.A. ss.3314) will be adversely affected by the proposed use.
- c) The Board must find that no public rights to access to any water body will be diminished by the proposed use.

13) Financial & Technical Capacity

- a) In cases where funding is required but final commitment of all necessary money cannot be made until all approvals are received and other reasonable conditions are met, an applicant shall be deemed to have demonstrated sufficient financial capacity to gain conditional approval if it has:
 - (i) secured a cash equity commitment to the project sufficient to demonstrate the applicant's ability to go forward. The board will consider 20 percent equity of the total cost of a project as the normal equity commitment but reserves the right to lower or raise this amount if special circumstances of an individual project warrant it, and
 - (ii) submitted a financial plan for the remaining financing, and
 - (iii) received a letter from an appropriate financial institution expressing its intention to provide that financing subject to reasonable conditions of acceptance.The Planning Board may waive such evidence for projects costing \$20,000 or less upon a showing satisfactory to them that the Applicant has resources to undertake the project.
- b) In determining whether the Applicant has the technical capability to comply with this Ordinance, the Board must find that the Applicant possesses thorough training, experience, or retention of professionals with such training and experience, the knowledge and expertise necessary to assure compliance.

14) Noise

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

Sound Pressure Level Limits Using the Sound
Equivalent Level of One Minute (leg 1)
(Measured in dB(a) Scale)

7 a.m. - 7 p.m.
55

7 p.m. - 7 a.m.
45

- b) Noise shall be measured by a meter set on the A-weighted response scale, fast response. The meter shall meet the American National Standards Institute (ANSI SI 4-1961) "American Standard Specification for General Purpose Sound Level Meters."
- c) No person shall engage in construction activities, on a site abutting any residential use between the hours of 9 p.m. and 6:30 a.m. The following activities shall be exempt from these regulations:
 - (i) Sounds emanating from safety signals, warning devices, emergency pressure relief valves and other emergency activities.

15) Odor

- a) No person, wherever located, shall cause or allow the emission of odorous air contaminants from any source such as to result in detectable odors at the lot line of the source which are measured in excess of the following limits:
 - (i) For areas used for residential or commercial purposes within 500 feet of the lot line of the source, it is a violation if odors are detected after the odorous air has been diluted with seven (7) or more volumes of odor free air.
 - (ii) In all other land areas, it is a violation if odors are detected after the odorous air has been diluted with fifteen (15) or more volumes of odor free air.
- b) For the purposes of this Regulation, two odor measurements shall be made within a period of one hour, these measurements being separated by at least fifteen (15) minutes. These measurements shall be made outside the property line of the property from which the emission originates.
- c) The Bamebey-Cheney Scentometer, suitably calibrated, or any other instrument, device, or technique equivalent may be used in the determination of the intensity of an odor and may be used as a guide in the enforcement of the performance standard.

16) Lighting

- a) No lights shall be placed in view of any public roadway or street so that its beams or rays are directed at any portion of the roadway when such light is of such brilliance and so positioned as to impair the vision of the driver of any motor vehicle upon said roadway.
- b) Lighting with a lumen output equal to or greater than a 200-watt mercury light shall not be directed toward the sky or adjacent properties.
- c) No rotating or flashing lights or signals, except safety signaling devices as required by law, are permitted. This standard shall be waived as to Christmas lights.

17) Explosive Materials

No flammable, explosive or combustible liquids, solids or gases shall be stored in bulk (defined as greater than the liquid equivalent of 200 gallons) above ground unless they are located at least 75 feet from any lot line, or in bulk stored below ground unless they are located at least 40 feet from any lot line, and all such materials shall be stored in a manner and location which is in compliance with the rules and regulations of the Maine Department of Environmental Protection rules and regulations of the Maine Department of Public Safety, and any other applicable federal state and local regulations then in

effect. This provision shall not apply to storage tanks for heating fuel located in basement areas of residential structures.

18) Signage

- a) No sign shall be illuminated with flashing, moving or animated-type lights.
- b) No sign advertising goods or services shall be located off the site of the lot on which the related services or goods are to be sold or located, except as provided for in this Ordinance.
- c) Signs containing name of business, or person residing on the site or advertising goods, or services to be sold on the site or events to be held on the site, shall not exceed twenty-four (24) square feet in total area. This area may be divided between up to two signs.
- d) The square footage of only one side of a double sided sign shall be counted, provided that the two sides say the same thing.
- e) The top of no sign shall extend higher than fifteen (15) feet above the ground.
- f) In addition, up to two Official Business Directional Signs are permitted.
- g) Signs may be erected and maintained under the Maine Traveler Informational Services Act-23 M.R.S.A.ss.1901-1925, to identify and point the way to public accommodations and facilities, commercial services for the traveling public, and points of scenic, historical, cultural, recreational, educational, and religious interest. The second line of the legend may be used to indicate additional directional information such as the street name.
- h) The following are exempt of the signage standard:
 - (i) Flags and insignia of any government.
 - (ii) Legal notices, identification, information, or directional signs erected or required by governmental bodies.
 - (iii) Signs directing and guiding traffic and parking on private property, but bearing no advertising matter or commercial identification.
 - (iv) Yard and garage sale signs posted for less than seven (7) days.

19) Educational Services

The proposed use or development will not when Hilly occupied and used cause the population of the Durham Elementary School to increase by more than 10% in the first year of full occupancy or use. In making this finding the Board may use actual numbers of school age children to be living in the proposed development, or if not available, may assume that the development will house 1 child for each additional bedroom over one, in each dwelling unit.

A) Use Specific Performance Standards

1) Accessory Apartments

The purpose of the provisions concerning accessory apartments is to provide a diversity of housing for town residents while protecting the single-family character of residential neighborhoods. Accessory apartments may be utilized for rental purposes as well as in-law accommodations.

- 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) square feet of floor area and the accessory apartment shall not exceed fifty (50%) percent of the floor area of the main dwelling unit. Floor area measurements shall not include unfinished attic, basement or cellar spaces, nor public hallways or other common areas.
- c) Only one accessory apartment shall be permitted per lot. It shall be made part of the main residence, attached to the main residence by a fully enclosed breezeway not exceeding twenty (20) feet in length, or located in a separate building whose primary function is not as a dwelling unit, such as a garage or bam.
- 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.

2) Automobile Graveyard & Junkyard -

- a) No motor vehicles or material in an automobile graveyard (as regulated under 30 M.R.S.A. ss 2451 through 2460) shall be located on a sand and gravel aquifer, or on an aquifer recharge area, as mapped by the Maine Geological Survey.
- b) No motor vehicles or material in an automobile graveyard shall be located within the 100 year flood plain, as mapped by the Federal Insurance Administration, the Army Corps of Engineers, or the U.S. Department of Agriculture.
- c) A well constructed and properly maintained visual Buffer Strip at a minimum height of six (6) feet, shall screen from ordinary view from any public way or abutting property the area of the property upon which are located junked automobiles, or other materials which cause the property to qualify as a "junkyard" under 30 M.R.S.A. ss 3752(4). The visual buffer shall be so positioned on the property, and be of such height so as to achieve, in the opinion of the Municipal Officers, the most effective screening possible given the topography of the site of the junkyard or automobile graveyard.
- d) No motor vehicles or material shall be stored in an automobile graveyard or junkyard within 500 feet of any dwelling, school, public building, public playground, church, or cemetery, with the exception of a dwelling used as the home of the owner of the automobile graveyard or junkyard, and located on the same lot with it.
- e) No motor vehicles or materials shall be stored in an automobile graveyard or junkyard within 300 feet of any water body.
- f) Operational Considerations - Each automobile graveyard or junkyard shall upon receiving a motor vehicle, remove the battery, and engine coolant, placing the coolant in watertight, covered containers. No discharge of any fluids from any motor vehicle shall be permitted into or onto the ground.

3) Campgrounds -

- a) Campgrounds shall conform to the minimum requirements imposed under State licensing procedures and the following (in cases of possible conflict, the stricter shall apply:
- b) A campground must be constructed on at least 20 acres of land and all camping units or structures shall be located at least 100 feet from any property line and at least 400 feet from any residence (except residences belonging to the campground owners.)
- c) Campsites (i.e. sites where tents, or Recreational Vehicles (RV's) are placed) shall be laid out and screened in such a manner that none are within view from public roads, navigable rivers, existing residences (including from the second floor windows thereof) or approved subdivision lots. Any combination of evergreen planting, landscaped earthen berms, or solid fencing may be used to achieve this screening standard, when campsites would otherwise be visible from the locations described above.
- d) No overnight sleeping shall be allowed in vehicles except for Recreational Vehicles (and trailers).
- e) Tent sites and sites for recreational vehicles (RVs) shall be laid out so that the density of each developed acre of land does not exceed 11 campsites per acre.
- f) Campsites shall only be allowed on land defined as Moderate or Slight according to the County Soil Survey of the U.S.D.A. Soil Conservation Service.
- g) Campsites, roads and associated facilities shall not cover more than 20% of the land allocated to the campground.
- h) The area intended for placement of the recreational vehicle, tent, or shelter and utility service buildings, shall be set back a minimum of 250 feet from the normal high water mark of any pond, or river.
- i) Campsites intended for placement of a recreational vehicle, tent shelter or structure from human use will not be permitted in a Resource Protection Zone. Notwithstanding the provisions of Article 5, a campground may conduct Non-Intensive Recreation, Primitive Recreation, Open Space Uses in Resource Protection Zones, and may build Piers, Docks and Marinas as associated uses to the campground so long as those uses comply with the applicable requirements of this Ordinance.
- j) A campground shall provide water and sewerage systems, sanitary stations, and convenience facilities in accordance with the regulations of the State Plumbing Code and the State of Maine Department of Human Services. In no case shall fewer than one toilet, lavatory and shower be provided for each sex for every ten (10) camping and tent sites.
- k) A time limit is placed on the occupancy of any one camping space on a continuing basis as follows: Twelve (12) weeks for the period May 15 to September 15 of each year, and two (2) weeks for all other time. Only camping units such as defined herein (plus a towing vehicle), shall be permitted within any camper park, temporarily or otherwise.
- l) Clearing within 250 Feet of Runaround Pond, the East Branch of the Royal River, Chandler River, Gerrish Brook, Newell Brook, Meadow Brook, Dyer Brook, or the Androscoggin River - Clearing of trees and converting to other vegetation is

permitted for approved construction and landscaping. Where such clearing extends to the shoreline, a cleared opening or openings not greater than 30 feet in width for every 100 feet of shoreline (measured along the normal high water mark) may be created in the strip extending fifty (50) feet from the normal high water mark and paralleling the shoreline. Where natural vegetation that is equally effective in retarding erosion and preserving natural beauty. Adequate screening or Buffer Strips shall be built, planted, or maintained, to protect adjacent residences from adverse noise, light, dust, smoke and visual impact.

4) Groundwater Extraction -

- a) The quantity of water to be taken from groundwater sources will not substantially lower the groundwater table beyond the property lines, cause undesirable changes in groundwater flow patterns, or cause unacceptable ground subsidence, based on the conditions of a drought with a probability of occurrence of once in ten years.
- b) The proposed facility shall not cause water pollution or other diminution of the quality of the aquifer from which the water is to be extracted.
- c) The proposed facility is not within the defined aquifer recharge area of a public water supply, unless notice is given to the operator thereof and the Board has considered any information supplied by the operator and finds that no adverse effect on a public water supply will result.
- d) The operator shall make monthly operating records of the quantity of water extracted, stored and removed from the site available to the Code Enforcement Officer or a designee.
- e) Nothing in this procedure, and no decision by the Planning Board shall be deemed to create groundwater rights other than those rights which the applicant may have under Maine law.

5) Piers, Docks, Wharves, Breakwaters, Causeways, Marinas, Bridges over 20 feet in Length, and Uses Projecting into Ponds, Rivers, or Water Bodies –

In addition to federal or state permits which may be required for such structures and uses, they shall conform to the following:

- a) Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion.
- b) The location shall not interfere with developed beach areas.
- c) The facility shall be no longer in dimension than necessary to carry on the activity and be consistent with existing conditions, use, and character of the area.

6) Restaurants, Food Service, Take Out Stands -

- a) The application for a conditional use permit shall state the maximum seating capacity (if any) of the restaurant. Any expansion or enlargement over the stated capacity shall require a permit.
- b) All proposed subsurface disposal systems shall meet the Maine State Subsurface Wastewater Disposal rules.

- c) All parking and loading facilities shall be located to the side or rear of the building, and shall be screened from abutting residences or those within 200 feet. Screening shall be comprised of a continuous landscaped area not less than eight feet in width, containing evergreen shrubs, trees, fences, walls, berms, or any combination, forming a visual barrier not less than six feet in height.
- d) Restroom facilities for the patrons shall be provided on the premises (except for take-out stands).

B) General Provisions

- 1. Nothing in this Ordinance shall by itself require acceptance of any private streets as public ways. Any road acceptance by the Town shall comply with the following minimum requirements. Failure to properly notify the Road Commissioner and Code Enforcement Officer of the road Construction schedule may be grounds for non-acceptance of the road by the Town. Final acceptance of the road will be made by unanimous vote of the Road Commissioner, a member of the Board of Selectmen, and member of the Planning Board. Before final inspection and acceptance will be made, a letter shall be submitted to the selectmen from the developer stating that the road is complete and in full compliance with the Town road requirements. As evidence of the compliance, the letter shall include the following information:
 - a. Two copies of gradation test results for aggregate base and subbase in accordance with ASTM C 136. A minimum of one test each base and subbase for every 300 L.F. of road shall be taken at the site prior to paving. Sample location shall be noted on the test results. Should any one test fail, the applicant may demonstrate that two other randomly selected sites within the 300 feet of the failed test do pass. Two out of three pass results will be deemed acceptable.
 - b. Two copies of compaction density test results for aggregate base and subbase in accordance with ASTM D 1556. A minimum of one test each for every base and subbase for every 300 L.F. of road shall be performed just prior to paving. Test locations shall be randomly selected by the Road Commissioner or the Code Enforcement Officer. Should any one test fail, the applicant may demonstrate that two other randomly selected sites within the 300 feet of the failed test do pass. Two out of three pass results will be deemed acceptable.
 - c. Density test results for bituminous pavement in accordance with ASTM D2726 or ASTM 2950 provided sufficient cores taken verify unclear gage results. A minimum of one test for every 300 L.F. of road shall be performed. Locations shall be randomly selected by the Road Commissioner or the Code Enforcement Officer. Test locations shall be recorded on the test results and cores shall be retained for later inspection by Town officials. Should any one test fail, the applicant may demonstrate that four other randomly selected sites within the 300 feet of the failed test do pass. Four out of five pass results will be deemed acceptable.
 - d. Two copies of MDOT approved bituminous mix design for each MDOT grading used.
 - e. Dates when actual paving took place, the names of the subcontractors who were involved in building the road, and which portion of the work they performed.

- f. New roads will only be accepted for maintenance by the town in the Southwest Bend/Growth District.
 - g. Acknowledgment that all persons executing the Maintenance Agreement are aware that no lot served by the private way shall be sold and no building permit shall be issued for any lot served by the private way until the Maintenance Agreement is recorded in the Androscoggin County Registry of Deeds.
2. Approval of the conditional use and any building permit issued for development within the scope of this Article shall expire if the work involved has not commenced within 180 days of issuance of the permit, and if such work has not been substantially completed within 24 months of the date on which the permit was granted.

Article 7: Subdivision

A) Purpose

The purposes of this Ordinance are to promote the development of an economically stable and sound community; to provide safe and adequate streets, utilities and other services to new land development; to provide convenient and safe traffic circulation and access; to assure generally the development of areas in a manner consistent with any comprehensive plan for the Town; and to provide uniform procedures and standards for observance by the Planning Board and Subdividers.

B) Administrative Procedures

1) Review & Approval Authority.

The Planning Board is authorized to review and act on all applications for subdivisions. In considering subdivisions under this section, the Planning Board may act to approve, disapprove, or approve the project with conditions as are authorized by these provisions.

2) Fees.

- a) Application Fee. An application for subdivision must be accompanied by an application fee. The fee shall be non-refundable. This application fee shall be paid to the municipality. The application fees shall be as follows:
 - (i) Subdivision Plan - Eight hundred dollars for the first three units, plus one hundred dollars for each additional lot. For subdivisions involving attached single family dwellings, multi-family dwellings, or condominiums, the fee shall be applied to units rather than lots.
- b) Technical Review Fee. In addition to the application fee, the applicant shall be responsible to pay for a technical review fee. The initial deposit towards the technical review fee shall be determined by the Planning Board to cover the Town's legal and technical costs for hiring independent consulting services to review engineering and other technical submissions associated with the application, and to ensure compliance with regulations.
 - (i) The Board may reduce the amount of the technical review fee or eliminate the fee if it determines that the scale or nature of the project will require little or no outside review.
 - (ii) This fee must be paid to the Town and shall be deposited into a special escrow account, which shall be separate and distinct from all other municipal accounts.
 - (iii) The application will be considered incomplete until evidence of payment of this fee is submitted to the Town.
 - (iv) If the balance in this special account is drawn down by 75%, the applicant shall be notified, and the applicant shall bring the balance back up to the original deposit amount. The Board shall continue to notify the applicant and require a deposit as necessary whenever the balance of the escrow account is drawn down by 75% of the original deposit.

- (v) The Town shall provide the applicant with an accounting of his or her account, upon written request.
- (vi) The Town shall refund all of the remaining monies, including accrued interest, in the account after the payment by the Town of all costs and services related to the review. Such refund shall be accompanied by a final accounting of expenditures from the fund. The monies in such fund shall not be used by the Town for any enforcement purposes.

C) Application Review Procedures

- 1) Pre-Application Procedures
 - a) Staff Workshop - Prior to submitting a formal application, the applicant or his/her representative shall schedule a pre application conference with the Code Enforcement Officer. The pre application conference shall be informal and informational in nature. There shall be no fee for a pre application review, and such review shall not cause the plan or any related application to be a pending application or proceeding under Title 1 M.R.S.A., Section 302. No decisions on the substance of the plan shall be made at the pre application conference.
 - b) Information Required
 - (i) The proposed site, including its location, size, and general characteristics,
 - (ii) The nature of the proposed use and potential development,
 - (iii) Any issues or questions about existing municipal regulations and their applicability to project and
 - (iv) Any requests for waivers from the submission requirements.
- 2) Subdivision Plan.
 - a) Notices. Not earlier than thirty (30) days prior nor less than ten (10) days before the date of the Planning Board meeting where the application will be discussed, the applicant must either mail a notice of intent to file the application to all abutters of the proposed subdivision, or Hand deliver and receive a signature from the abutter on such notice of intent. If the notice is to be mailed, then the notice shall be mailed by certified mail, return receipt requested.
 - b) The notice shall briefly describe the proposed subdivision and the anticipated date of filing the application.
 - c) The completed subdivision application shall be submitted to the Town Office, and a receipt shall be issued to the applicant by the Town Office, at least nine (9) days before the Planning Board's next meeting date to be included on the Board's agenda.
 - d) The applicant or applicant's duly authorized representative, shall attend the meeting of the Board to present the subdivision plan. Failure to attend the meeting to present the plan shall result in a delay of the Board's consideration of the plan until the next meeting which the applicant or representative attends.
 - e) When an application for subdivision plan approval of a subdivision is submitted, the Code Enforcement Officer shall:
 - (i) Date stamp the application.
 - (ii) Notify the clerk and the review authority of the neighboring municipalities if any portion of the subdivision abuts or crosses the municipal boundary.

- (iii) Promptly advise the Planning Board and schedule consideration of the application for its next following meeting which in no event shall be later than thirty (30) days from the date of the receipt of the completed application.
- (iv) Notify the Town Administrator, Public Works Director, Road Commissioner and Fire Chief, and where appropriate, Harbormaster and Water District of the application.
- f) Within thirty days of the date of receipt of the application, the Planning Board review the application for completeness. The Planning Board will notify the Applicant in writing whether the application is or is not complete. If not complete, it shall inform the applicant in writing of the specific additional material needed to make a complete application.
- g) Upon a determination that a complete application has been submitted for review, the Board shall determine whether to hold a public hearing and site walk on the subdivision plan application.
 - (i) In the event that the Planning Board determines to hold a public hearing and/or site walk on an application for subdivision approval, it shall hold such hearing within thirty (30) days of receipt by it of a completed application, and shall cause notice of the date, time and place of such hearing to be given to the person making the application, and to be published in a newspaper of general circulation in Durham, at least two (2) times, the date of the first publication to be at least seven (7) days prior to the hearing.
- h) Prior to approving the subdivision application, the following approvals shall be obtained in writing, where applicable:
 - (i) Maine Department of Environmental Protection, under the Site Location of Development Act, Natural Resources Protection Act, or if a waste water discharge license is needed.
 - (ii) Maine Department of Human Services, if the applicant proposes to provide a common water system for the lots in the subdivision or if an engineered subsurface wastewater disposal system(s) is to be utilized.
 - (iii) U.S. Army Corps of Engineers, if a permit under Section 404 of the Clean Water Act is required.
- i) Before the Board grants approval of the subdivision plan, the applicant shall meet the performance guarantee requirements.
- j) Within sixty (60) days from the public hearing or within one-hundred twenty (120) days of determining that an application is complete, if no hearing is held, or within another time limit as may be otherwise mutually agreed to by the Board and the applicant, the Board shall make findings of fact, and conclusions relative to the criteria for approval contained in Title 30A M.R.S.A., §4404 and the standards of this Ordinance. If the Board finds that all the criteria of the statute and the standards of this Ordinance have been met, they shall approve the final plan. If the Board finds that any of the criteria of the statute or the standards of this Ordinance have not been met, the Board shall either deny the application or approve the application with conditions to ensure all of the standards will be met by the subdivision. The reasons for any conditions shall be stated in the records of the Board.

D) Application Submission Requirements

The Planning Board may waive any of the submission requirements upon a written request of the applicant. A waiver of any submission requirement may be granted only if that information is not required to determine compliance with the approval criteria. In all instances, the burden of proof shall be upon the applicant to present adequate information to indicate the statutory criteria for approval and performance standards have been or will be met.

- 1) The application for subdivision plan approval shall include nine (9) copies of all the required information.
- 2) A fully executed and signed copy of the application for subdivision approval.
- 3) A copy of the abutters' signed return receipt notices, or a signed acknowledgement of receipt by the abutter(s).
- 4) A site plan (with date, scale and north point) drawn at a scale sufficient to allow review of the items listed under the approval criteria, but at not more than 100 feet to the inch scale for that portion of the total tract of land being proposed for development. The plan and application shall show and contain the following:
 - a) Owner's name and address, the name of the engineer(s) or surveyor(s) or both preparing the plan.
 - b) Names and addresses of all the abutting property owners.
 - c) The date the plan was prepared, north point, and graphic map scale.
 - d) Sketch map showing general location of the site within the Town.
 - e) Boundaries of all contiguous property under the control of the owner or applicant regardless of whether all or part is being developed at this time.
 - f) Zoning classification(s) of the property and the location of zoning district boundaries if the property is located in two or more zoning districts or abuts a different zone.
 - g) A boundary survey of the parcel, giving complete descriptive data by bearings and distances, made and certified by a registered land surveyor.
 - h) The location of all building setbacks required by the Land Use Ordinance.
 - i) The location, dimensions, and ground floor elevations of all existing and proposed buildings on the site.
 - j) The location and dimensions of driveways, parking and loading areas, and walkways, existing and proposed.
 - k) Location of intersecting roads or driveways within 450 feet of the site.
 - l) Location of existing and proposed subsurface wastewater disposal system(s).
 - m) Soil test pit locations.
 - n) The location of open drainage courses, wetlands, stands of trees, and other natural features.
 - o) Location and type of proposed landscaping
 - p) Location of any public areas proposed.
 - q) The direction of drainage across the site, both existing and proposed.
 - r) Location of existing and proposed private wells on and within 100ft of the property.
 - s) Location, front view, and dimensions of existing and proposed signs.
 - t) Location and type of exterior lighting.

- u) A utility plan showing, in addition to provisions for water supply and wastewater disposal, the location and nature of electrical, telephone and any other utility services to be installed on the site.
- v) The quantity, location, storage and containment of any hazardous materials or petroleum products in excess of 50 gallons, intended to be stored or used on the site.
- w) The location of all rivers, streams, brooks, wetlands and vernal pools within or adjacent to the proposed subdivision.
- x) Contour lines at one or two foot intervals, specified by the Board, showing elevations in relation to mean sea level.
- y) The location and size of existing and proposed sewers, water mains, culverts, and drainage ways on or adjacent to the property to be subdivided.
- z) Location and type of any easements or restrictions.
- aa) The width and location of any streets, public improvements or open space shown upon the official map and the comprehensive plan, if any, within the subdivision.
- bb) If any portion of the subdivision is in a flood-prone area, the boundaries of any flood hazard areas and the 100-year flood elevation, as depicted on the municipality's Flood Insurance Rate Map, shall be delineated on the plan.
- cc) Areas within or adjacent to the proposed subdivision which have been identified as high or moderate value wildlife habitat by the Maine Department of Inland Fisheries and Wildlife or within the comprehensive plan.
- dd) Areas within or adjacent to the proposed subdivision which have been designated to have a critical natural area by the Maine Natural Areas Program or within the comprehensive plan.
- ee) Any area designated as a site of historic, prehistoric, or archeological importance by the Comprehensive Plan or the Maine Historic Preservation Commission together with information about the significance of the site.
- ff)) The Board may require additional information to be submitted, where it finds necessary in order to determine whether the criteria of Title 30-A M.R.S.A., §4404 are met.
- gg) Street plans showing a plan view, profile, and typical cross- section of the proposed streets and
 - (i) The plan view shall be at a scale of one-inch equals no more than fifty feet.
 - (ii) The vertical scale of the profile shall be one-inch equals no more than five feet.
 - (iii) The plans shall include the following information:
 - (A) Date, scale, and north point, indicating magnetic or true.
 - (B) Intersections of the proposed street with existing streets.
 - (C) Roadway and right-of-way limits including edge of pavement, edge of shoulder, sidewalks, and curbs.
 - (D) Kind, size, location, material, profile and cross-section of all existing and proposed drainage structures and their location with respect to the existing natural waterways and proposed drainage ways.
 - (E) Complete curve data shall be indicated for all horizontal and vertical curves.
 - (F) Turning radii at all intersections.
 - (G) Centerline gradients.
- hh) Conditions of Approval. The following notes shall appear on the recording plat of every plan, unless otherwise determined by the Planning Board:
 - (i) "The property shown on this plan may be developed and used only as depicted on this approved plan. All elements and features of the plan and all representations made by the

applicant concerning the development and use of the property which appear in the record of the Planning Board approval are conditions of approval. No change from the conditions of approval is permitted unless an amended plan is submitted and approved under the provisions of this Ordinance governing revisions to approved plans.”

- (ii) “No changes, erasures, modifications, or revisions shall be made in this final plan after approval has been given by the Board and endorsed in writing on the plan, unless the revised final plan is first submitted and the Board approves any modifications.”
- (iii) “Failure to complete a substantial start of construction of this subdivision within five years of the date of approval and signing of the plan shall render this plan null and void.”
- (iv) “The applicant/developer must provide the Town with a signed and sealed letter from a professional engineer, which states that the subdivision road has been constructed to the Town’s Street Design Standards and Street Construction Standards. The Code Enforcement Officer shall not issue a building permit for a lot within the subdivision until this requirement is met.”

5) Supporting Documents

- a) Verification of right, title, or interest in the property.
- b) A copy of the most recently recorded deed for the parcel. A copy of all deed restrictions, easements, rights-of-way, or other encumbrances currently affecting the property.
- c) Subsurface wastewater disposal systems test pit analyses, prepared by a Licensed Site Evaluator shall be provided.
- d) Evidence of volume of water available to satisfy the needs of the proposed use, including for fire protection.
- e) A high intensity soil survey, if required by the Board.
- f) When water is to be supplied by private wells, evidence of adequate ground water supply and quality shall be submitted by a well driller or a hydrogeologist familiar with the area.
 - (i) A groundwater impact analysis prepared by a groundwater hydrologist for projects involving common water supply or sewage facilities with a capacity of 1,500 gallons per day or greater.
- g) Proposed Homeowner and Association documents.
- h) A description of the proposed ownership, improvement and management of all facilities and improvements that will be privately owned and maintained including streets, open space, drainage facilities, and recreational areas or facilities including common docks together with drafts of community association documents if an association will be responsible for the ownership or management of any land or facilities, and a declaration of covenants, conditions, and restrictions.
- i) Written offers to convey title to the municipality of all public open spaces shown on the plan, and copies of agreements or other documents showing the manner in which open spaces to be retained by the applicant or lot owners are to be maintained shall be submitted. If open space or other land is to be offered to the Town, subject to Town Meeting approval, written evidence that the municipal officers are satisfied with the legal conditions and documentation shall be provided.
- j) Accurate and complete cost estimates of the development, a time schedule for construction, including anticipated beginning and completion dates, and sufficient financial capacity to meet air and water pollution control standards and the other standards and criteria contained herein.

- k) A storm water management plan, prepared by a licensed professional engineer in accordance with the Stormwater Management for Maine: Best Management Practices, published by the Maine Department of Environmental Protection (1995) or current edition. The Board may waive submission of the storm water management plan when the proposed subdivision will not involve grading which changes drainage patterns and the addition of impervious surfaces such as roofs and driveways is less than 5% of the area of the subdivision.
- l) An erosion and sedimentation control plan, prepared in accordance with the Maine Erosion and Sediment Control Handbook for Construction: Best Management Practices, dated March 2003.
- m) If any portion of the subdivision is located within an area identified as high or moderate value wildlife habitat by the Maine Department of Inland Fisheries and Wildlife the plan shall indicate appropriate measures for the preservation of the values which qualify the site for such designation.
- n) If any portion of the subdivision is located within an area designated as a critical natural area by the comprehensive plan or the Maine Natural Areas Program the plan shall indicate appropriate measures for the preservation of the values which qualify the site for such designation.
- o) An estimate of the amount and type of vehicular traffic to be generated on a daily basis and at peak hours. Trip generation rates used shall be taken from Trip Generation Manual, 1991 edition or current edition, published by the Institute of Transportation Engineers. Trip generation rates from other sources may be used if the applicant demonstrates that these sources better reflect local conditions. Planning Board may require a Traffic Impact Study if the proposed subdivision will generate over 100 trips per day.
- p) A list of infrastructure improvements with cost estimates prior to the sale of lots, that will be completed by a professional experienced in preparing such information, and evidence that the applicant has financial commitments or resources to cover these costs.
- q) Copies of applicable State approvals and permits.
- r) The Board may require additional information to be submitted, where it finds necessary in order to determine whether the criteria of Title 30-A M.R.S.A., §4404 are met.
- s) Performance Guarantees. The conditions and amount of the performance guarantee shall be determined by the Planning Board with the advice of the Consulting Engineer, Town Administrator, Municipal Officers, and/or Town Attorney.
- t) Any application for subdivision approval which constitutes a revision or amendment to a subdivision plan which has been previously approved shall indicate that fact on the application and shall identify the original subdivision plan being revised or amended.

E) Final Approval and Filing

- 1) Upon findings of fact and determination that all standards in Title 30-A M.R.S.A., §4404, and this Ordinance have been met, and upon voting to approve the subdivision, the Board shall sign the final plan. The Board shall specify in writing its findings of facts and reasons for any conditions or denial.
- 2) Recording plat. The Board shall sign one mylar and two paper originals of the final plan. One of the signed paper originals shall be retained by the Board as part of its permanent records. The applicant shall be responsible for recording the signed final plan in the Registry of Deeds. Any

subdivision plan not recorded in the Registry of Deeds within ninety days of the date upon which the plan is approved and signed by the Board shall become null and void. Once the final plan is recorded at the Registry of Deeds the applicant shall submit a paper copy of the recorded plan to the Town for the Town's permanent records.

- 3) At the time the Board grants final plan approval, it may permit the plan to be divided into two or more sections subject to any conditions the Board deems necessary in order to ensure the orderly development of the plan. If any municipal, quasi-municipal department head, or superintendent of schools notified of the proposed subdivision informs the Board that their department or district does not have adequate capital facilities to service the subdivision, the Board shall require the plan to be divided into two or more sections subject to any conditions the Board deems necessary in order to allow the orderly planning, financing and provision of public services to the subdivision. If the expansion, addition or purchase of the needed facilities is included in the Town's capital improvements program, the time period of the phasing shall be no longer than the time period contained in the capital improvements program for the expansion, addition or purchase.
- 4) No changes, erasures, modifications, or revisions shall be made in any final plan after approval has been given by the Board and endorsed in writing on the plan, unless the revised final plan is first submitted and the Board approves any modifications. The Board shall make findings that the revised plan meets the criteria of Title 30-A M.R.S.A., §4404, and the standards of these regulations and this Ordinance. In the event that a plan is recorded without complying with this requirement, it shall be considered null and void, and the Board shall institute proceedings to have the plan stricken from the records of the Registry of Deeds.
- 5) The approval by the Board of a subdivision plan shall not be deemed to constitute or be evidence of any acceptance by the Town of any street, easement, or other open space shown on such plan. When a park, playground, or other recreation area shall have been shown on the plan to be dedicated to the Town, approval of the plan shall not constitute an acceptance by the Town of such areas. The Board shall require the plan to contain appropriate notes to this effect. The Board may also require the filing of a written agreement between the applicant and the municipal officers covering future deed and title dedication, and provision for the cost of grading, development, equipment, and maintenance of any such dedicated area.
- 6) Failure to accomplish a substantial start of the subdivision within nine months or substantial completion within 36 months of the date of approval and signing of the plan shall render the plan null and void. Upon determining that a subdivision's approval has expired under this paragraph, the Board shall have a notice placed in the Registry of Deeds to that effect.
- 7) Performance Guarantee. In order to insure completion of all improvements required by the Town the subdivider shall furnish to the Town Treasurer at the time that the gravel base of all roads are in place (including any required culverts) a performance guarantee. Said performance guarantee may be in the form of cash, certified check payable to the Town of Durham, a performance bond, naming the Town of Durham as obligee, issued by a corporate surety licensed to do business within the State of Maine or a letter of credit acceptable to the Board. The amount of such performance guarantee shall be approved by the Board, and shall be in an amount at least equal to the total cost of furnishing, connecting and completing all of the street grading, paving, storm drainage and utilities or other improvements specified in the Plan and shall be conditioned on the completion of all such specified improvements within five years of the date of approval of the Final Plan.

- a) The Planning Board may grant an extension not to exceed 12 months, beyond the guaranteed performance period when the subdivider can demonstrate, to the satisfaction of the Board good cause for such extension; provided, however, that the performance guarantee shall remain in full force and effect during any such extension period.
- b) Before a subdivider may be released from any obligation required by his guarantee of performance, the Planning Board shall require certification from the various departments and agencies concerned to the effect that all improvements have been satisfactorily completed in accordance with all applicable standards, State and Local codes and ordinances.

F) Approval Criteria

The Planning Board shall consider both these approval criteria and the criteria established by Title 30-A M.R.S.A §4404 in the review of a subdivision, and find that the proposal meets these criteria. The application shall be approved unless it is determined that the applicant has failed to meet one or more of these standards. In all instances, the burden of proof shall be on the applicant to produce evidence sufficient to warrant a finding that all applicable criteria have been met.

- 1) Pollution. The proposed subdivision will not result in undue water or air pollution. In making this determination the Planning Board shall at least consider:
 - a) the elevation of land above sea level and its relation to the flood plains,
 - b) the nature of soils and subsoils and their ability to adequately support waste disposal;
 - c) the slope of the land and its effect on effluent; the availability of streams for disposal of effluent; and
 - d) the applicable state and local health and water resources regulations;
- 2) Sufficient water. The proposed subdivision has sufficient water available for the reasonably foreseeable needs of the subdivisions including fire protection;
- 3) Water supply. The proposed subdivision will not cause an unreasonable burden on an existing water supply if one is to be utilized (this shall be deemed to include aquifers);
- 4) Erosion. The proposed subdivision will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result;
- 5) Traffic. The proposed subdivision will not cause unreasonable highway or public road congestion or unsafe conditions with respect to use of the highways or public roads, existing or proposed; and, if the proposed subdivision requires driveways or entrances onto a state or state aid highway located outside the urban compact area of an urban compact municipality as defined by Title 23, section 754, the Department of Transportation has provided documentation indicating that the driveways or entrances conform to Title 23, section 704 and any rules adopted under that section;
- 6) Sewage disposal. The proposed subdivision will provide for adequate sewage waste disposal in conformity with the State Plumbing Code and all applicable regulations; and will not cause any unreasonable burden on municipal services if they are utilized.
- 7) Municipal solid waste disposal. The proposed subdivision will not cause an unreasonable burden on the ability of a municipality to dispose of solid waste and/or sewage if municipal services are to be utilized.

- 8) Aesthetic, cultural and natural values. The proposed subdivision will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic and archaeological sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to water bodies;
- 9) Conformity with local ordinances and plans. The proposed subdivision conforms with this Ordinance, the Durham comprehensive plan, and land use ordinance. In making this determination, the municipal reviewing authority may interpret these ordinances and plans;
- 10) Financial and technical capacity. The subdivider has adequate financial and technical capacity to meet the standards required by this Ordinance;
- 11) Surface waters; outstanding river segments. Whenever situated entirely or partially within the watershed of any pond or lake or within 250 feet of any wetland, great pond or river as defined in Title 38, chapter 3, subchapter I, article 2-B, the proposed subdivision will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water.
 - a) When lots in a subdivision have frontage on an outstanding river segment, the proposed subdivision plan must require principal structures to have a combined lot shore frontage and setback from the normal high-water mark of 500 feet.
 - (i) To avoid circumventing the intent of this provision, whenever a proposed subdivision adjoins a shoreland strip narrower than 250 feet which is not lotted, the proposed subdivision shall be reviewed as if lot lines extended to the shore.
 - (ii) The frontage and set-back provisions of this paragraph do not apply either within areas zoned as general development or its equivalent under shoreland zoning, Title 38, chapter 3, subchapter I, article 2-B, or within areas designated by ordinance as densely developed. The determination of which areas are densely developed must be based on a finding that existing development met the definitional requirements of section 4401, subsection 1, on September 23, 1983.
- 12) Groundwater. The proposed subdivision will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water.
- 43) Flood areas. Based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant whether the subdivision is in a flood-prone area. If the site of proposed use, or any part of its, is in such an area the applicant will determine the 100-year flood elevation and flood hazard boundaries within the site, the proposed use shall include a condition of plot approval requiring that principal structures on any lots where the proposed use is to be conducted shall be constructed with their lowest floor, including the basement, at least three feet above the 100-year flood elevation.
- 14) Freshwater wetlands. All freshwater wetlands within the proposed subdivision have been identified on any maps submitted as part of the application, regardless of the size of these wetlands.
- 15) Farmland. All farmland within the proposed subdivision has been identified on maps submitted as part of the application. Any mapping of farmland may be done with the help of the local soil and water conservation district;
- 16) River, stream or brook. Any river, stream or brook within or abutting the proposed subdivision has been identified on any maps submitted as part of the application. For

purposes of this section, "river, stream or brook" has the same meaning as in Title 38, section 480-B, subsection 9;

- 17) Storm water. The proposed subdivision will provide for adequate storm water management;
- 18) Spauhetti-lots prohibited. If any lots in the proposed subdivision have shore frontage on a river, stream, brook, great pond or coastal wetland as these features are defined in Title 38, section 480-B, none of the lots created within the subdivision have a lot depth to shore frontage ratio greater than 5 to 1;
- 19) Impact on adjoining municipality. For any proposed subdivision that crosses municipal boundaries, the proposed subdivision will not cause unreasonable traffic congestion or unsafe conditions with respect to the use of existing public ways in an adjoining municipality in which part of the subdivision is located; and
- 20) Lake phosphorus concentration. The long-term cumulative effects of the proposed subdivision will not unreasonably increase a great pond's phosphorus concentration during the construction phase and life of the proposed subdivision;
- 21) Lands subject to liquidation harvesting. Timber on the parcel being subdivided has not been harvested in violation of rules adopted pursuant to Title 12, section 8869, subsection 14.
- 22) Wildlife. Will not have an adverse impact on spawning grounds, fish, aquatic life, bird and other wildlife habitat.
- 23) Noise, Odor, Glare, Vibration. Will not cause noise, odor, glare, or vibration to disturb the peaceful enjoyment of adjacent property.
- 24) Public Services. Will not place an excessive burden on the ability of the Town to provide municipal, governmental, or educational services.

G) Performance Standards & Design Standards

The performance standards in this article are intended to clarify and expand upon the approval criteria. Compliance with the performance standards of this section shall be considered to be evidence of meeting the appropriate approval criteria. The Planning Board may waive any of the general performance standards based upon a written request of the applicant. A waiver of any general performance standard may be granted only if the Board finds that the standard is not required for the proposed project to be in compliance with the approval criteria.

Compliance with the design standards of this section shall be considered to be evidence of meeting the appropriate performance standards. Proposed subdivisions not in compliance with the design standards may be considered, but the applicant shall provide clear and convincing evidence that the proposed design will meet the performance standards.

In all instances, the burden of proof shall be upon the applicant to present adequate information to indicate the statutory criteria for approval and performance standards have been or will be met.

- 1) Pollution. The proposed subdivision will not result in undue water or air pollution. In making this determination, it shall at least consider:
 - a) The elevation of the land above sea level and its relation to the flood plains;
 - b) The nature of soils and subsoils and their ability to adequately support waste disposal;

- c) The slope of the land and its effect on effluents;
 - d) The availability of streams for disposal of effluents; and
 - e) The applicable state and local health and water resource rules and regulations;
- 3) Air Quality:
- a) The Applicant will meet any applicable air pollution regulations of the Maine Department of Environmental Protection in effect at the time of enactment hereof.
 - fe) That emissions of any particulate matter or gaseous material will not cause soiling of any material beyond the lot line.
 - c) That emissions will not have any detectable odor (as determined under the standard listed below for odor).
 - d) That emissions will not cause any health effects in normal persons residing within a radius of 1000 feet from the lot lines. Health effects include but are not limited to head- aches, nausea, lung or other forms of cancer, skin lesions, eye irritations, and other clinically diagnosed disorders traceable to air pollution.
- 3) Water Quality:
- a) The applicant will meet all applicable water quality control standards of the Maine Department of Environmental Protection.
 - b) The applicant will not degrade any surface or subsurface water supplies below the State's primary drinking water standard or if such water is already below such standard, will not lower the quality of the water below the State's secondary drinking water standard.
 - c) The applicant will not by reason of any activity, alter the quality of any surface or subsurface water in such a way as to adversely affect any fish, plants, or animals which might live in, around or drink from such water.
- 4) Water Supply
- a) Sufficient water. The proposed subdivision has sufficient water available for the reasonably foreseeable needs of the subdivision;
 - b) Municipal water supply. The proposed subdivision will not cause an unreasonable burden on an existing water supply, if one is to be used;
 - c) In determining whether the applicant has met this criteria, the Board must find that the water supply will meet the maximum anticipated demand of all persons residing in, or using the supply, and also the demand of any equipment to be installed which will use such water under conditions equivalent to the water levels in existence during the driest year in the preceding ten years within Androscoggin County, and will not, in satisfying such demand, diminish the quality of water available to any wells located within 1500 feet of the water supply in question. The Board must also find that the water supply will sustain suppression requirements recommended for the proposed development consistent with the recommendations of the National Fire Protection Association for the fire loading level of the proposed development under the most recent version of NFPA 1142, Water Supply for fire protection must be installed and well flow test results presented to the Code Enforcement Officer prior to the issuance of the first building permit.
- 5) Erosion. The proposed subdivision will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results

- a) Preserve the Landscape. The landscape shall be preserved in its natural state insofar as practical by minimizing tree removal, disturbance of soil, and by retaining existing vegetation insofar as practical during construction.
 - b) Erosion Control. Filling, excavation, and earth moving activity shall be carried out in a way that keeps erosion and sedimentation to a minimum, including:
 - (i) preservation and protection of natural vegetation where possible.
 - (ii) keeping duration of exposure of disturbed soils to as short a period as possible and stabilizing the disturbed soils as quickly as practicable.
 - (iii) use of temporary vegetation or mulching to protect exposed critical areas during development.
 - (iv) where appropriate or necessary, use of debris basins, sediment basins, silt traps or other acceptable methods to trap the sediment from storm water run-off.
 - (v) no storage of fill materials within 50 feet of the banks of any stream, intermittent or perennial, or water body.
 - c) Topsoil shall not be removed from the site, except for surplus topsoil removed from areas to be occupied by buildings, paving, or other surfaces that will not be revegetated.
 - d) Adequate provision shall be made for surface drainage so that removal of storm waters will not have an unreasonable adverse effect on neighboring properties, downstream water quality, soil erosion or the public storm drain system. Whenever possible, on-site absorption of run-off waters shall be used to minimize discharges from the site. Drainage facilities shall be designed for a twenty-five year 2-hour storm frequency.
- 6) Traffic.
- a) The proposed subdivision will not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed, and, if the proposed subdivision requires driveways or entrances onto a state or state aid highway located in Durham, the Department of Transportation has provided documentation indicating that the driveways or entrances conform to MRSA Title 23, § 704 and any rules adopted under that section;
 - b) Impact on adjoining municipality. For any proposed subdivision that crosses municipal boundaries, the proposed subdivision will not cause unreasonable traffic congestion or unsafe conditions with respect to the use of existing public ways in an adjoining municipality in which part of the subdivision is located.
- 7) Road Construction
- a) Road right-of-way shall be a minimum of 50' wide. Road dimensions, geometry, and materials shall conform to the requirements shown in Figures I and II.
 - b) All public and private streets and roads in the subdivision shall be paved to Town standards. Pavement width shall be a minimum of twenty-two (22) feet for all public roads, and twenty (20) feet for all private roads. The road must be complete, less paving prior to the issuance of the first building permit in the subdivision.
 - c) Private streets serving no more than three (3) dwelling units may be left unpaved so long as they meet the base and subbase standards for gravel, and other applicable requirements listed below. These are as follows:
 - (i) AGGREGATE BASE. Base material shall be screened or crushed gravel of hard durable particle, free from vegetable matter, lumps or balls of clay and other

deleterious substances. The gradation of the part that passes a (2) two-inch square mesh sieve shall meet the following requirements.

% By Weight		
(A) Sieve Designation		Passing Square Mesh Sieves
(B) 2 inch	100%	
(C) ½ inch	45-70%	
(D) 1/4 inch		30-55%
(E) No. 40	0-30%	
(F) No. 200		0-7%

*Aggregate for the base shall contain no particles of rock exceeding 4 inches in any dimension.

- (ii) AGGREGATE SUBBASE. Aggregate subbase shall be sand or gravel of hard durable particles free from vegetable matter, lumps or balls of clay or other deleterious matter. The gradation of the part that passes a (6) six-inch square mesh sieve shall meet the following grading requirements.

% By Weight		
(A) Sieve Designation		Passing Square Mesh Sieves
(B) 6 inch	100%	
(C) 1/4 inch		25-70%
(D) No. 40	0-30%	
(E) No. 200		0-7

*Aggregate subbase shall contain no particles of rock exceeding (8) eight inches in any dimension.

- (iii) SURFACE LEVELING MATERIAL if required shall conform to the gradation requirements of Aggregate Base above but shall not contain particles of rock which will not pass the 3/4" sieve.
- (iv) BITUMINOUS PAVEMENT. Pavement shall be constructed of two courses of bituminous concrete. Pavement shall be MDOT "Superpave" as specified in Section 401 conforming to the latest revisions of the Maine Department of Transportation "Standard Specifications For Highways and Bridges",
- (A) Compacted Binder Course – 2" Grading 19.5mm Superpave
 - (B) Compacted Surface Course – 1 1/2" Grading 12.5mm or 9.5mm Superpave
 - (C) Pavement width shall be a minimum of 22 feet for public roads and 20 feet for private roads.
- d) CULVERTS. Culverts shall be zinc coated corrugated metal pipe, or other pipe approved by the Planning Board. Culverts shall be sized and located as determined by drainage calculation, but in no case shall be smaller than 12" in diameter.
- e) SIGNS. Signs required by the Board such as "SPEED LIMIT", "STOP", "CURVE", etc. shall be constructed and located so as to conform with the "Manual on Uniform

Traffic Control Devices for Street and Highways", published by the United States Department of Transportation, 2001 or most recent revision.

- f) SIDEWALKS. Sidewalks if proposed shall be a minimum of 5' in width and shall be constructed of two 1" thick courses of bituminous pavement over a minimum 8" thick gravel base. Base shall conform to the requirement listed for roadway aggregate base stated in paragraph 2.(a)(i) above.
- g) CURBS. Curbs, if proposed shall as a minimum be designed in accordance with Maine Department of Transportation standard details for bituminous curb and shall be constructed as outlined in Maine Department of Transportation Standard Specifications, Section 609.04.
- h) Construction requirements. Gravel base shall be compacted over the full width and length of road bed including shoulders to a minimum of 95% of proctor density in accordance with American Society for Testing Materials Standard, ASTM D1556 and D1557. Bituminous pavement shall be compacted to a minimum of 92% of the theoretical maximum density as established in accordance with AASHTO Test T209, ASTM D2950 and ASTM D2726. No bituminous paving shall be placed between November 15 and April 15 or when the temperature is below 35 degrees or when the gravel base is frozen. Bituminous placed after 15 September shall also be rolled with a pneumatic tire roller in addition to steel rollers. The Road Commissioner and the Code Enforcement Officer shall be notified when road construction is to begin, at the completion of the gravel base, and when paving is to begin. The finished surface of the pavement shall be smooth and tightly compacted with no loose or poorly embedded stone evident. A 16-foot straight-edge or string line when placed parallel to the centerline of the pavement and a 10 foot straightedge or string line when placed transverse to the centerline shall not show a variation exceeding 1/4 inch.
- i) Parking for commercial subdivisions: At least one on-site parking space shall be provided for each employee or other person anticipated to be at the site of the proposed use at any one time. (i.e. 6 (six) employees and an average of 3 (three) customers per hour, equal 9 (nine) required spaces). Parking lots of over 10 spaces shall be completely screened from view of public streets or other public land by a vegetative buffer consistent with the general performance standards of the Land Use Ordinance.
- j) Provisions shall be made for vehicular access to the development and circulation upon the lot in such a manner as to safeguard against hazards to traffic congestion on any street and to provide safe and convenient circulation on public streets and within the development. More specifically, access and circulation shall also conform to the following standards and the design criteria below:
 - (i) the street giving access to the lot and neighboring streets which can be expected to carry traffic to and from the development shall have traffic carrying capacity and be suitably improved to accommodate the amount and types of traffic generated by the proposed use.
 - (ii) where necessary to safeguard against hazards to traffic and pedestrians and/or avoid traffic congestion, provision shall be made for turning lanes, traffic directional islands, frontage roads, driveways and traffic controls within public streets.

(iii) access ways shall be of a design and have sufficient capacity to avoid queuing of entering vehicles on any street.

FIGURE 1

TYPICAL ROAD CROSS-SECTION WITH SPECIFICATIONS FOR A PUBLIC ROAD.

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

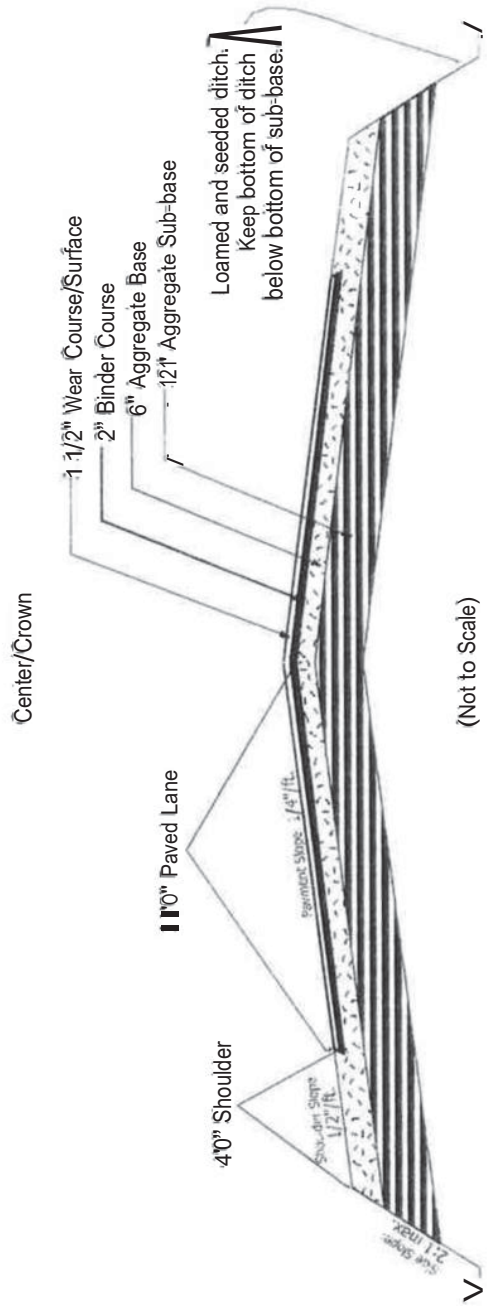


Figure 1
Typical Road Cross Section

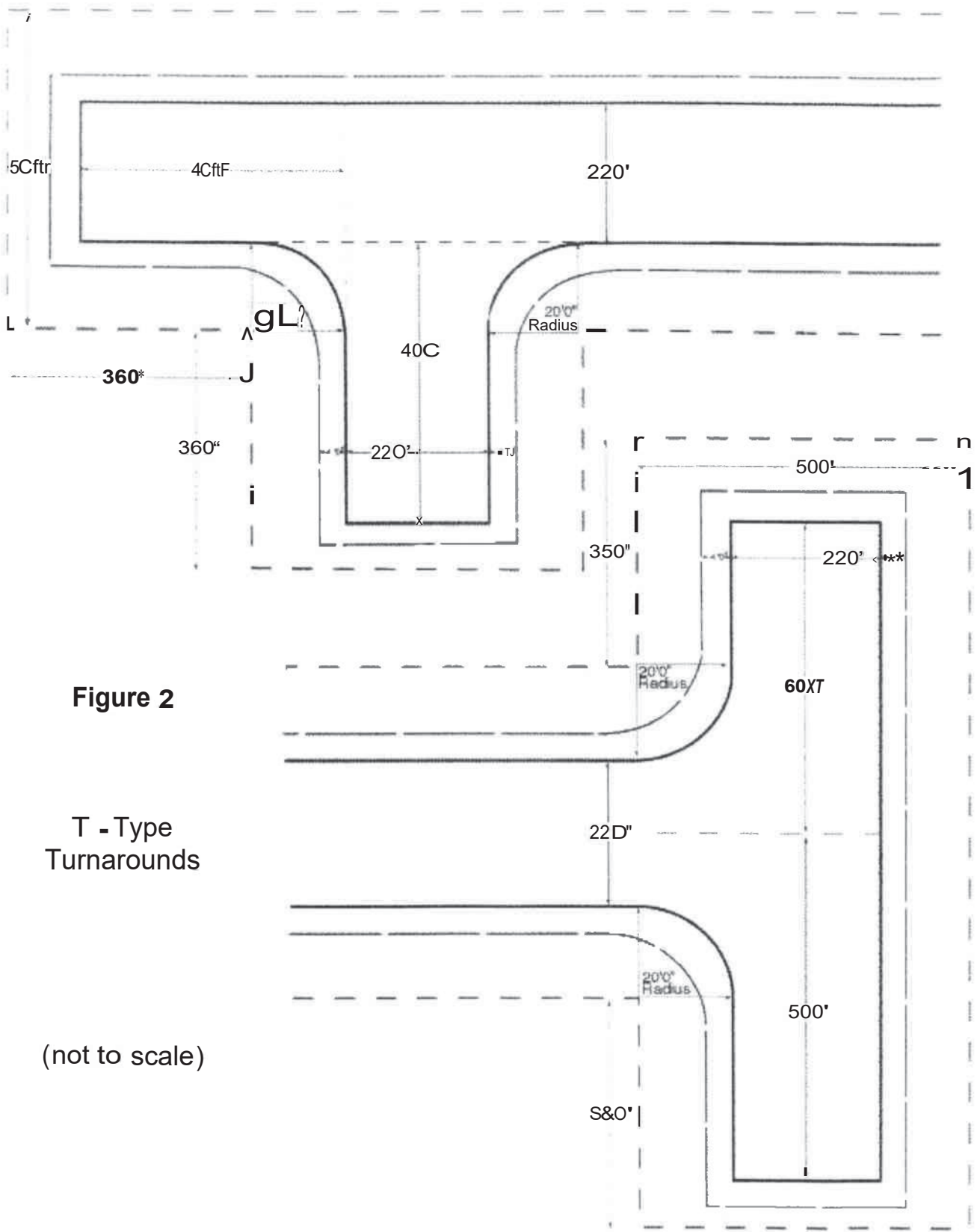


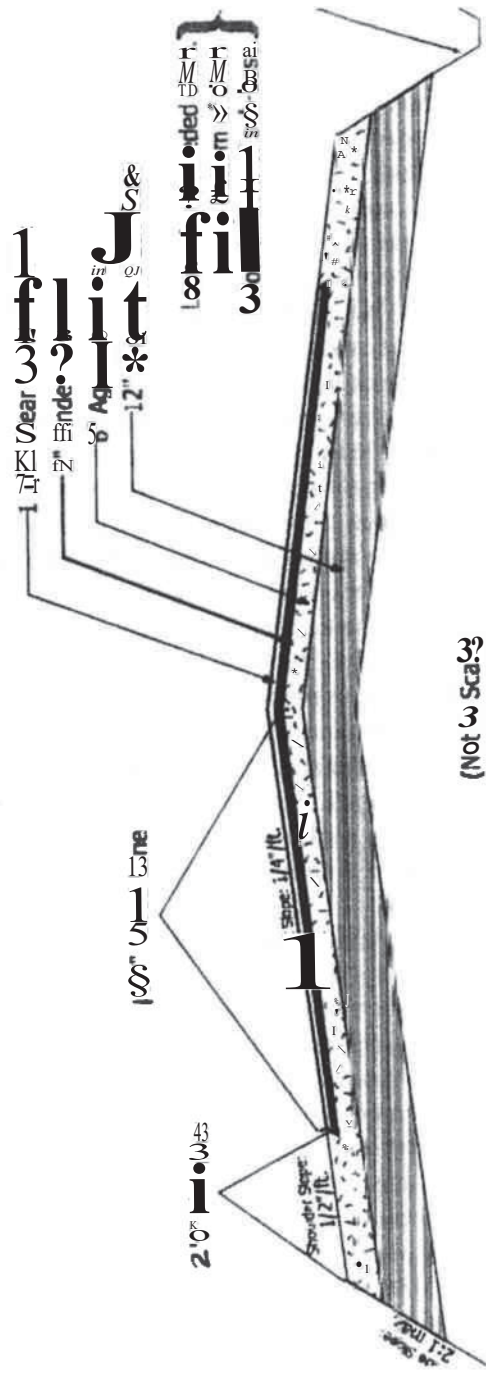
Figure 2

T - Type
Turnarounds

(not to scale)

FIGURE 3

TYPICAL ROAD CROSS SECTION FOR A PRIVATE ROAD. Road geometry requirements shall conform the recommendations outlined in ("GDHS") Figure 1 Typical Road Cross Section 1984 published by American Association of State Highway and Transportation Officials (1984) (AASHTO), excepted that in no case shall grades be greater than 8%, curve radii less than 100 feet, or vertical sight distance be less than 200 feet.



- 8) ROAD MAINTENANCE. In determining whether this standard has been met, the Board must find that the maintenance agreement for any private road meets the following criteria:
- a) The maintenance agreement or escrow agreement executed by the owners of the lots containing the Dwelling Units or Structures which shall be using the private road or way, in registry recordable form, which agreement provides for the obligations of each owner of the lots on which such Dwelling Units or Structures are located with respect to the maintenance, repair and snow plowing of such road or way. The applicant shall prepare and submit for Approval of the Planning Board a Maintenance Agreement which shall specify the rights and responsibilities of the owners of the lots on the road or way in question among themselves with respect to responsibility for the costs of construction, maintenance, repair and plowing.
 - b) The Maintenance Agreement shall also include and the Planning Board will consider in granting approval the following factors:
 - (i) 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.).
 - (ii) 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.
 - (iii) 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.
 - (iv) A statement that the duties and obligations imposed by the Maintenance Agreement run with the land and shall be transferred to donees, purchasers or other transferees of any portion of the real estate subject to the Maintenance Agreement and that, upon such transfer, the Planning Board shall be notified in writing and provided with a copy of any changes or amendments to the Maintenance Agreement.
 - (v) A requirement that the Maintenance Agreement be referenced in all deeds to any lots served by the private way.
 - (vi) If the private way subject to the Maintenance Agreement is an extension of an existing private way which served lots created prior to March 6, 2004, a statement that the applicant for private way approval has contacted the owners of such lots, has offered them the opportunity to make their properties subject to the Maintenance Agreement and that they have either accepted or declined that offer; and that the Declarant has submitted to the Planning Department a notarized affidavit confirming the Declarant's compliance with this paragraph.
 - (vii) 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.

- 9) GROUND WATER PROTECTION. In determining whether this standard has been met, the Board must find that the system is designed and will be installed in full conformance with the State of Maine's Subsurface Wastewater Disposal Rules.
- 10) SOLID WASTE. In determining whether this standard has been met, the Board must find that a contract exists with a licensed solid waste facility, which is in substantial compliance with State law, and which has sufficient capacity for 5 years of disposal by the proposed use.
- 11) AESTHETIC NATURAL AND CULTURAL VALUES. In determining whether this standard has been met, the Board must find:
- a) Preserve the Landscape: that the landscape shall be preserved in its natural state insofar as practical by minimizing tree removal, disturbance of soil, and by retaining existing vegetation insofar as practical during construction. After construction is completed, landscaping shall be designed and planted to define, soften or screen the appearance of off-street parking areas from the public right-of-way and abutting properties and/or structures and to minimize the encroachment of the proposed use on neighboring land uses. Landscaping shall be completed within six months of completion of structure. Applicant for any use requiring a permit pursuant to this Ordinance shall insure that all buffer vegetation shall remain alive for at least one year from the date of planting and shall as a condition for approval, guarantee replacement of any material which may have died before the expiration of said year period, with equivalent vegetation.
 - b) Preserve Natural Values: that the proposed use will not restrict or block any view from a public road or other public land of any water body, hill excess of 450 feet above sea level, open field of over 100 acres in size, or unusual natural feature such as glacial boulder concentration or rock outcropping. View shall be defined for the purposes as the field of vision of an arc of 15 degrees at any elevation from horizontal. Restrict or block shall mean to interrupt or obscure such view for a period of 5 seconds when traveling at a speed of 10 miles per hour.
 - c) Preserve Cultural and Historic Values: that no stone walls or granite posts, abutments or markers older than 100 years of age will be tom down unless relocated on the property, no cemetery or grave marker will be disturbed, that no archeological site will be disturbed, no structure listed on the National Register of Historic places will be tom down or its exterior facade altered except to restore it in accordance with the standards of the Secretary of the Interior, and no churches or school buildings older than 100 years of age will be tom down or altered except to restore them in accordance with their original design. The Board must find that design of any new structure is compatible in terms of mass, scale, and height, with the structures located within 1500 feet of all lot lines which are visible from any portion of a public way adjacent to the site of the proposed use.
 - d) that no plants listed on the Federal or State list of Endangered Species will be affected adversely by the proposed use.
 - e) that no irreplaceable natural areas, including those listed in the State Register of Critical Areas (5 M.R.S.A. §3314), will be adversely affected by the proposed use.

- f) the Board must find that no public rights to access to any water body will be diminished by the proposed use.

12) FINANCIAL AND TECHNICAL CAPACITY.

- a) The following submissions indicate adequate financial capacity:
 - (i) A letter of commitment from a financial institution or funding agency for a specified amount of funds in the amount necessary to finance the development in conformance herewith and their use, or
 - (ii) The most recent corporate annual report and supporting documents indicating sufficient funds to finance the development in conformance herewith, or
 - (iii) Copies of bank statements or other evidence indicating availability of the unencumbered funds, sufficient to finance the development in conformance herewith when the developer will personally finance the project.
 - (iv) These submissions when sufficient to fund the proposed construction and operation of the project and its pollution abatement program, are considered as clearly demonstrating sufficient financial capacity to receive approval.
- b) In cases where funding is required but a final commitment of all necessary money cannot be made until all approvals are received and other reasonable conditions are met, an applicant shall be deemed to have demonstrated sufficient financial capacity to gain conditional approval if it has:
 - (i) secured a cash equity commitment to the project sufficient to demonstrate the applicant's ability to go forward. The Board will consider 20 percent equity of the total cost of a project as the normal equity commitment but reserves the right to lower or raise this amount if special circumstances of an individual project warrant it, and
 - (ii) submitted a financial plan for the remaining financing, and
 - (iii) received a letter from an appropriate financial institution expressing its intention to provide that financing subject to reasonable conditions of acceptance.
- c) The Planning Board may waive such evidence for projects costing \$20,000 or less upon a showing satisfactory to them that the Applicant has resources to undertake the project.
- d) In determining whether the Applicant has the technical capability to comply with this Ordinance, the Board must find that the Applicant possesses thorough training or experience, or by retention of professionals with such training and experience, the knowledge and expertise necessary to assure compliance.

13) NOISE

- a) The maximum permissible sound pressure level of any continuous, regular, frequent, or intermittent source of sound produced by any activity shall be limited by the time period and land use which it abuts listed below. Sound levels shall be measured at least 4 feet above ground at the source. Sound Pressure Level Limits Using the Sound Equivalent Level of One Minute (leg 1) (Measured in dB(a) Scale)

	7 a.m. - 7 p.m.	7 p.m. - 7 a.m.
All Districts	55	45

- b) Noise shall be measured by a meter set on the A-weighted response scale, fast response. The meter shall meet the American National Standards Institute (ANSI SI 4-1961) "American Standard Specification for General Purpose Sound Level Meters."
 - c) No person shall engage in construction activities, on a site abutting any residential use between the hours of 9 p.m. and 6:30 a.m.. The following activities shall be exempt from these regulations:
 - (i) Sounds emanating from safety signals, warning devices, emergency pressure relief valves and other emergency activities.
- 14) ODOR. In determining whether the Applicant has met the odor criteria, the Board must find that the following standards will be met.
- a) No person, wherever located, shall cause or allow the emission of odorous air contaminants from any source such as to result in detectable odors at the lot line of the source which are measured in excess of the following limits:
 - (i) For areas used for residential or commercial purposes, within 500 feet of the lot line of the source, it is a violation if odors are detected after the odorous air has been diluted with seven (7) or more volumes of odor free air.
 - (ii) In all other land use areas, it is a violation if odors are detected after the odorous air has been diluted with fifteen (15) or more volumes of odor free air.
 - b) For the purposes of this Regulation, two odor measurements shall be made within a period of one hour, these measurements being separated by at least fifteen (15) minutes. These measurements shall be made outside the property line of the property from which the emission originates.
 - c) The Bamebey-Cheney Scentometer, suitably calibrated, or any other instrument, device, or technique equivalent may be used in the determination of the intensity of an odor and may be used as a guide in the enforcement of this performance standard.
- 15) GLARE AND VIBRATION In determining whether the Applicant has met the glare and vibration aspects of this criteria, the glare, and vibration standards in Article 4: General Performance Standards on this Ordinance.
- 16) SCFIOOLS In determining whether the Applicant has met these criteria, the Board must find that:
- a) The proposed use or development will not when fully occupied and used cause the population of the Durham Elementary School to increase by more than 10% in the first year of full occupancy or use. In making this finding the Board may assume that the proposed development will house 1 child for each additional bedroom over one, in each dwelling unit.
- 17) LANDS SUBJECT TO LIQUIDATION HARVESTING. Timber on the parcel being subdivided has not been harvested in violation of rules adopted pursuant to Title 12, section 8869, subsection 14.
- a) If a violation of rules adopted by the Maine Forest Service to substantially eliminate liquidation harvesting has occurred, the municipal reviewing authority must determine prior to granting approval for the subdivision that 5 years have elapsed

from the date the landowner under whose ownership the harvest occurred acquired the parcel.

- 18) Land designated for public use may not be subdivided for any other purpose. Any natural drainage ways and their easements shall be utilized so that no flooding will occur and all storm water can be managed properly.
- 19) The Planning Board may require that a proposed subdivision design conserve such features as trees, streams, topography, and other natural assets.
- 20) Street trees, esplanades and open spaces may be required at the discretion of the Planning Board. When such improvements are required, they shall be incorporated in the Final Plan.
- 21) FLOODPLAIN MANAGEMENT. If any portion of which is located within a special flood hazard area designated on the maps prepared in accordance with the National Flood Insurance Act of 1968:
 - a) All such proposals are consistent with the need to minimize flood damage;
 - b) All public utilities and facilities, such as sewer, gas, electrical and water systems are located, elevated, and constructed to minimize or eliminate flood damages;
 - c) Adequate drainage is provided so as to reduce exposure to flood hazards; and
 - d) The Board shall require base flood elevation data for all subdivisions greater than 10 lots or 5 acres or more in size.
 - e) The Town Flood Hazard Ordinance is complied with in full. The proposed subdivision plan must include a condition of plan approval requiring that principal structures in the subdivision will be constructed with their lowest floor, including the basement, at least three foot above the 100-year flood elevation.
 - f) Land susceptible to flooding, and land not suitable for development because of soils characteristics, or topography which may also be hazardous to life, health or property shall not be accepted as part of a proposed subdivision but may be used, after approval by the Board, for open space purposes, public or otherwise.
- 22) PLANNED UNIT DEVELOPMENTS.
 - a) All planned unit developments shall meet the use standards of the Districts in which they are located.
 - b) The minimum gross land area shall be twenty (20) acres in all districts in which PUD's are permitted.
 - c) The Planning Board may permit a reduction in the land area required for each dwelling unit by an amount of up to 25% in the Rural Residential/Transitional District or up to 50% in the Southwest Bend/Growth District where the amount of all such reductions is utilized to preserve open space, natural areas, or access to them, or to promote more efficient utilization of land. If individual lots are so reduced in size, the residual open space accumulated by modifying space requirements shall be permanently designated as open space in deed restrictions. Open space shall be configured to provide recreational opportunities, protect wildlife habitat, agricultural and forestry resources to the extent possible.

- d) A buffer strip of at least 50' shall be required along the existing road frontage. Access to lots bordering the existing road shall be limited to the interior road system unless the Planning Board grants a waiver under the Subdivision Ordinance regulations.
- e) Space Standards
 - (i) Shore frontage and shore setback requirements shall not be reduced below the minimum shore frontage or shore setback required in the zoning district.
 - (ii) Front, side and rear setbacks for the perimeter of a multi-family cluster development shall not be reduced below the minimum front, side and rear setbacks required in the zoning district. Frontage may be reduced no more than 25% in order to promote the purposes of Section C6 hereof.
 - (iii) Distances between residential structures in multi-family cluster developments shall be a minimum of the height of the tallest structure, or 30 feet, whichever is greater.
 - (iv) A setback of 100' on a street, as defined in this Ordinance is required for a multi-family cluster subdivision. If the 100' setback is required, it shall include the 50' buffer.
 - (v) The total area of open space within the development shall equal or exceed the sum of the areas by which the building lots in single-family subdivisions are reduced below the minimum lot area normally required in the zoning district.
 - (vi) Further subdivision of open space or its use for other than non-commercial recreation, agriculture, forestry or conservation, except for easements for underground utilities, shall be prohibited and shall be so stated by deed restrictions. Only structures and buildings accessory to non-commercial recreation use will be allowed on open space. Open space shall not be made available for use by private membership clubs open to persons who are not residents of property located within the development.
- f) Utilities
 - (i) All dwelling units in the development shall be connected to a common water supply and distribution system, either public or private, in accordance with Town water main extensions policy unless the developer shall clearly demonstrate to the Planning Board that such a system is not feasible and, in addition:
 - (A) that the costs of providing a common water supply and distribution system are prohibitive;
 - (B) that adequate ground water is available at all locations proposed for individual water systems; and
 - (C) that the ground water source(s) proposed for individual water systems is safe from both on-site and off-site contamination.
 - (ii) All structures with required plumbing in the development shall be connected to a public sanitary sewer system, if available, or to a private central collection and treatment system in accordance with minimum standards set forth in the State of Maine Plumbing Code, unless the developer shall clearly demonstrate to the Planning Board that a common sewer system is not feasible and, in addition:
 - (A) that the costs or connection to a public sanitary sewer system or of providing a central collection and treatment system are prohibitive;
 - (B) that adequate soils and land area are available at all locations proposed for individual septic systems;

- (C) that the proposed individual septic systems shall in no way endanger ground water supplies which are currently being utilized as a water source for any existing development; and
 - (D) that the proposed individual septic systems shall in no way endanger ground water supplies which will be utilized by any proposed common or individual water system in the planned unit development.
- g) Open Space.
- (i) Open space areas, except for the required buffer strip of 50' on existing roads, shall be contiguous unless permitted by the Planning Board to take maximum advantage of preservation of open space where particular natural features exist which merit protection..
 - (ii) Common open spaces shall be shown on the subdivision plan and with appropriate notation that it shall not be further subdivided for any other use.
 - (iii) When reviewing the location and type of open space designated in the subdivision, the Planning Board shall consider the following criteria:
 - (A) Individual lots, buildings, streets, and parking areas shall be designed and situated:
 - (1) to minimize alterations of the natural site;
 - (2) to avoid the adverse effects of shadows, noise and traffic on the residents of the site;
 - (3) to relate to surrounding properties, to improve the view from and of buildings.
 - (B) Diversity and originality in lot layout and individual buildings, street, parking and lot layout shall be encouraged.
 - (C) Open space shall include irreplaceable natural features located on the tract (such as, but not limited to, stream beds, stands of trees of a common species, or indicative of a climax forest, individual trees of a size indicative for that species of an age likely to be in excess of 50 years, wildlife habitat and rock outcroppings).
 - (D) Open space intended for recreation or public use shall be determined by the size, shape, topographic and location requirements of the site.
 - (iv) Ownership and Maintenance
 - (A) Ownership: Unless deeded to the Town of Durham and accepted by the Selectmen or deeded to a conservation trust or association, common open space shall be owned in common by the owners of the lots or units in the development.
 - (B) Maintenance: Unless deeded to the Town of Durham and accepted by the Selectmen or deeded to a conservation trust or association, Maintenance shall be the responsibility of all owners of lots and/or units. A homeowners' association shall be organized, one of whose purposes shall be the maintenance of common open space. Membership shall be compulsory and assessments, sufficient to provide for adequate maintenance, shall be levied. All relevant legal papers shall be submitted to the Planning Board for review and approval before the subdivision is approved. Until 51% of all lots and/or units have been sold, and a homeowner's association organized, the developers shall be responsible for maintenance of the common open space.

- (C) Owner(s) of multifamily rental developments are responsible for maintenance.
- h) Location of Buildings. Buildings shall be oriented with respect to scenic vistas, natural landscape features, topography, and natural drainage areas, in accordance with an overall plan for site development and shall be compatible in terms of physical size, visual impact, intensity of use, proximity to other structures, and density of development with other permitted uses within the District.

H) General Provisions

- 1) Nothing in this Ordinance shall by itself require acceptance of any private streets as public ways. Any road acceptance by the Town shall comply with the following minimum requirements. Failure to properly notify the Road Commissioner and Code Enforcement Officer of the road Construction schedule may be grounds for non-acceptance of the road by the Town. Final acceptance of the road will be made by unanimous vote of the Road Commissioner, a member of the Board of Selectmen, and member of the Planning Board. Before final inspection and acceptance will be made, a letter shall be submitted to the selectmen from the developer stating that the road is complete and in full compliance with the Town road requirements. As evidence of the compliance, the letter shall include the following information:
- a) Two copies of gradation test results for aggregate base and subbase in accordance with ASTM C 136. A minimum of one test each base and subbase for every 300 L.F. of road shall be taken at the site prior to paving. Sample location shall be noted on the test results. Should any one test fail, the applicant may demonstrate that two other randomly selected sites within the 300 feet of the failed test do pass. Two out of three pass results will be deemed acceptable.
 - b) Two copies of compaction density test results for aggregate base and subbase in accordance with ASTM D 1556. A minimum of one test each for every base and subbase for every 300 L.F. of road shall be performed just prior to paving. Test locations shall be randomly selected by the Road Commissioner or the Code Enforcement Officer. Should any one test fail, the applicant may demonstrate that two other randomly selected sites within the 300 feet of the failed test do pass. Two out of three pass results will be deemed acceptable.
 - c) Density test results for bituminous pavement in accordance with ASTM D2726 or ASTM 2950 provided sufficient cores taken verify unclear gage results. A minimum of one test for every 300 L.F. of road shall be performed. Locations shall be randomly selected by the Road Commissioner or the Code Enforcement Officer. Test locations shall be recorded on the test results and cores shall be retained for later inspection by Town officials. Should any one test fail, the applicant may demonstrate that four other randomly selected sites within the 300 feet of the failed test do pass. Four out of five pass results will be deemed acceptable.
 - d) Two copies of MDOT approved bituminous mix design for each MDOT grading used.
 - e) Dates when actual paving took place, the names of the subcontractors who were involved in building the road, and which portion of the work they performed.

- f) New roads will only be accepted for maintenance by the town in the Southwest Bend/Growth District.
 - g) Acknowledgment that all persons executing the Maintenance Agreement are aware that no lot served by the private way shall be sold and no building permit shall be issued for any lot served by the private way until the Maintenance Agreement is recorded in the Androscoggin County Registry of Deeds.
 - h) 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.
- 2) Prior to the sale of any lot, the subdivider shall provide the Board with a letter from Registered Land Surveyor, stating that all monumentation shown on the plan has been installed.
 - 3) Upon completion of street construction and prior to a vote by the municipal officers to submit a proposed public way to a town meeting, a written certification signed by a professional engineer shall be submitted to the municipal officers at the expense of the applicant, certifying that the proposed public way meets or exceeds the design and construction requirements of this Ordinance. If there are any underground utilities, the servicing utility shall certify in writing that they have been installed in a manner acceptable to the utility. "As built" plans shall be submitted to the municipal officers and to the utility.
 - 4) The subdivider shall be required to maintain all improvements and provide for snow removal on streets and sidewalks until or control is placed with a lot owners' association or until accepted by the Town.
 - a) The subdivider must submit an inspection report from a licensed engineer that confirms that the infrastructure has been constructed to the approved standard before control is placed with a lot owners' association or before it is offer to the Town.
 - 5) The subdivider may not sell a lot or dwelling unit within the subdivision until:
 - a) The infrastructure serving that dwelling has been constructed as approved. The subdivider must provide an inspection report that confirms the infrastructure has been constructed as approved. Infrastructure shall include but is not be limited to: roadway, power, cable, telephone, stormwater, fire protection.
- 2) Any applicable conditions of approval have been met.

Article 8: Administration, Enforcement, & Penalties

A) Administering Agencies

1) Code Enforcement Officer

Unless otherwise provided in this Ordinance, the Code Enforcement Officer (CEO) shall administer and enforce this Ordinance. No permit application shall be approved by the Code Enforcement Officer except in compliance with the provisions of this Ordinance. The Code Enforcement Officer shall have the following duties:

- a) Applications and fees. Review and act upon applications as set forth in this Ordinance. Collect any fees due. Refer/process all applications as required.
- b) CEO Permit approvals. Act upon permit applications that are under the jurisdiction of the CEO as set forth in this Ordinance.
- c) Board of Appeals applications. Refer requests for variances and appeals to the Board of Appeals.
- d) Inspections. Inspect sites where permit applications have been approved to ensure compliance with local ordinances.
- e) Complaints and violations. Investigate complaints and reported violations.
- f) Reports and records. Keep written inspection reports and thorough records.
- g) Process and review the applications, which are under the jurisdiction of the Planning Board, as set forth in this Ordinance.
- h) Process and review the applications, which are under the jurisdiction of the Board of Appeals, as set forth in this Ordinance.
- i) Violation notices. Issue violation notices.
- j) Enforcement. Carry out enforcement procedures as outlined in Section C below and as required by State Statute and State Rules.
- k) Consent agreements. Process or act on consent agreements involving violations of this Ordinance.
- l) Court. Appear and represent the Town in court when necessary.
- m) Permit revocations. Revoke any permit after notice if it was issued in error or if it was based on erroneous information.
- n) Interpretation. May request an advisory opinion from the Board of Appeals when there is a question concerning the interpretation of this Ordinance.

2) Local Plumbing Inspector

The Local Plumbing Inspector shall have the following duties:

- a) Applications and fees. Act upon all Subsurface Wastewater Disposal System Applications and Plumbing Applications. Collect any fees due.
- b) Inspections. Inspect sites where permit applications have been approved to ensure compliance with State Rules and Codes.
- c) Violation notices. Issue violation notices.

3) Planning Board

The Planning Board shall be responsible for reviewing and acting upon applications as set forth in this Ordinance.

4) Board of Appeals

The Board of Appeals shall have the authority and responsibilities as set forth in Article 9.

5) Road Commissioner

The Road Commissioner shall be responsible for reviewing and acting upon applications as set forth in this Ordinance.

6) Select Board

The Select Board shall be responsible for reviewing and acting upon State required licenses as set forth in this Ordinance.

B) Permits Required

- 1) No building or other structure shall be erected, moved, added to, or structurally altered without a permit issued by the Building Inspector. No change of use or resumption of a non-conforming use may occur without a permit issued by the Building Inspector. No other activity which may be referenced elsewhere in this Ordinance as requiring a permit shall commence without a permit issued by the Building Inspector. No permit shall be issued except in conformity with the provisions of this Ordinance and the provisions of other applicable state and local codes, and after the necessary approvals have been secured from local officials. No building, structure, land or water area shall be used for any purpose or in any manner except as permitted within the district in which such building, structure, land or water area is located.
- 2) Certificate of Compliance.
 - a) A certificate of compliance shall be required and obtained from the Code Enforcement Officer prior to the occupancy or use of any building, structure or any portion thereof for which a building permit was obtained.
 - b) Occupancy or use without the required certificate shall be deemed to be a violation of this Code and subject to enforcement action as provided in Article 8.E of this Ordinance.
 - c) The purpose of the certificate of compliance is to ensure compliance with this Ordinance and that the building, structure or any portion thereof was constructed as was permitted.
- 3) Installation of Public Utility Service. A public utility, water district, sanitary district or any utility company of any kind may not install services to any new structure located in the shoreland zone unless written authorization attesting to the validity and currency of all local permits required under this or any previous Ordinance has been issued by the appropriate municipal officials or other written arrangements have been made between the municipal officials and the utility.
- 4) No driveway, entrance or approach within the limits of the Right of Way for any Town of Durham public road or approved private road may be constructed, reconstructed except in accordance with a Driveway and Entrance Permit issued by the Town of Durham upon application.

C) Permit Application Review Procedure

- 1) Code Enforcement Officer. The procedure for administering a permit shall be as follows, unless specified elsewhere in this Ordinance:
 - a) Submission of Permit Application
 - (i) Determination of complete application. Within 10 days of the date of receiving a written application the Code Enforcement Officer shall review the application for completeness. If the application is incomplete the Code Enforcement Officer shall notify the applicant in writing and specify the additional material that is needed to make the application complete. Failure to submit the additional information within six months shall be deemed an abandonment of the application.
 - (ii) Action on complete application. Within ten (10) working days of the date of receipt of a complete application the Code Enforcement Officer shall:
 - (A) examine such application to determine whether or not the proposed building, structure or use would be in compliance with this Ordinance, and
 - (B) act to deny, to approve, or to approve the application with conditions as are deemed advisable to assure compliance with the ordinance.
 - b) Applicant Responsibility
 - (i) Burden of proof. The applicant shall have the burden of proving that the proposed project, development or land use activity is in conformity with the purposes and provisions of this Ordinance.
 - (ii) Posting. Within seven (7) working days of receiving the approval, the applicant shall conspicuously post any approval issued, on the lot where the activity will occur, at a location clearly visible from the public street or road.
 - (iii) Expiration of Approval. Unless otherwise permitted herein, the work authorized by a permit must be commenced within twelve (12) months of the date of issuance and must be completed within twenty-four (24) months after the date of commencement. Completed shall include finished foundation, installed exterior doors as specified below, finished exterior roofing, windows installed, and finish grading executed. A permit shall be renewed by the Code Enforcement Officer for an additional twenty-four (24) month increment if:
 - (A) The applicant intends to finish the activity within such period; and
 - (B) The applicant explains in detail why the activity was not completed within the original permit time limit.
 - c) Permit Approval
 - (i) An application for a permit shall not be approved prior to the applicant receiving their driveway/entrance permit, if one is required, from the Maine Department of Transportation for access onto a State roadway.
 - (ii) An application for a permit shall not be approved prior to the applicant receiving their Natural Resources Protection Act permit from Maine Department of Environmental Protection, if one is required.
 - (iii) An application for a permit shall not be approved prior to the applicant receiving their Conditional Use/Site Plan Review permit, if one is required.
 - (iv) An application for a permit shall not be approved if the property or the proposed project is not in compliance with the following State of Maine's Statutes:
 - (A) Junkyards & Automobile Graveyards Statute ,
 - (B) Dangerous Building Statute *

- 2) Local Plumbing Inspector. The procedure for administering a permit shall be as required per the Subsurface Wastewater Disposal Rules and the Maine State Internal Plumbing Code.
- 3) Road Commissioner. The procedure for administering a permit shall be as follows:
 - a) Submission of Permit Application
 - (i) Determination of complete application. Within 30 days of the date of receiving a written application the Road Commissioner or his/her designee shall review the application for completeness. If the application is incomplete the Road Commissioner or his/her designee shall notify the applicant in writing and specify the additional material that is needed to make the application complete. Failure to submit the additional information within six months shall be deemed an abandonment of the application.
 - (ii) Action on complete application. Within seven (7) working days of the date of receipt of a complete application the Road Commissioner or his/her designee shall:
 - (A) examine the application and complete a site inspection to determine whether or not the proposed entrance is compliance with this Ordinance.
 - (B) act to deny, to approve, or to approve the application with conditions as are deemed advisable to assure compliance with the ordinance.
 - b) Applicant Responsibility
 - (i) Burden of proof. The applicant shall have the burden of proving that the proposed project, development or land use activity is in conformity with the purposes and provisions of this Ordinance.
 - (ii) Posting. Within seven (7) working days of receiving the approval, the applicant shall conspicuously post any approval issued, on the lot where the activity will occur, at a location clearly visible from the public street or road.
 - c) Expiration of Approval. If construction is not completed within one (1) year from the date the approval is granted, the approval becomes invalid. The Road Commissioner or his/her designee shall renew the approval within 30 days after the expiration of the approval upon payment of a fee as specified in this Ordinance. Otherwise the permit becomes invalid and the application process must begin anew.
- 4) Planning Board. The procedure for administering a permit shall be as specified in Articles 6 and 7 of this Ordinance, according to the type of permit being requested. For Setback Determinations the following process shall be used:
 - a) The complete application form, evidence of payment of the required fees, and the required plans and related information must be submitted to the Town Planner at least twenty-one (21) days prior to the meeting at which it is to be considered.
 - b) Within seven (7) days of receipt of the application, the Town Planner shall review the material and make a preliminary determination on whether or not the submission is complete.
 - (i) If the application is determined to be incomplete, the applicant shall be notified in writing of this finding, which shall specify the additional materials required to make the application complete, the applicant shall be advised that the application will not be reviewed until the additional information is submitted, and all additional information must be submitted no later ten (10) days prior to the meeting at which it is to be considered. Failure to submit the additional information within six months shall be deemed an abandonment of the application.
 - (A) As soon as the application is determined to be preliminarily complete, the applicant shall be notified in writing of this finding, and

- (B) notice of the application shall be sent by first class mail to all abutting property owners.
- c) Once the application is placed on the agenda, the Planning Board shall review the material and determine whether or not the submission is complete. If the application is determined to be incomplete, the Board shall notify the applicant in writing of this finding, shall specify the additional materials required to make the application complete and shall advise the applicant that the application will not be considered by the Board until the additional information is submitted to the Board. These steps, except the notification requirements, shall be repeated until the application is found to be complete.
 - d) After the Planning Board has determined that a complete application has been filed, it shall begin its substantive review of the application within thirty (30) days of this finding.
 - e) The Planning Board may hold an on-site inspection of the site to review the existing conditions, field verify the information submitted and investigate the development proposal. The Board may schedule this visit either before or after the first meeting at which the application is considered. The Board may decide not to hold an on-site inspection when the site is snow covered.
 - (i) If a review is pending during a period when there is more than one foot of snow cover, the deadline by which the Planning Board shall take final action may be extended. This extension shall not exceed thirty (30) days after the site is clear of snow and Board is able to conduct an on-site inspection.
 - f) The Planning Board may hold a public hearing within 30 days of the filing of the completed application. The Planning Board shall give written notice of the date, time, and place of the public hearing at which the application will be considered, to the applicant, and all abutting property owners by first-class mail. The determination of the names and owners shall be based upon the records of the local Assessor's Office.
 - g) If a permit is either denied or approved with conditions, the reasons as well as conditions shall be stated in writing.
 - h) Failure of any property owner to receive notice under this section for any reason shall not necessitate a new hearing and shall not invalidate any action by the Planning Board.
 - i) All time limits provided for in this section may be extended by mutual agreement of the applicant and Planning Board.
 - j) Procedure for Public Hearing of an Application
 - (i) The purpose of the public hearing is to allow the applicant and affected property owners to provide information as part of the record that the Board will use in considering its action on the application. Testimony presented at the hearing should be related to factual information about the application and related submissions and the project's compliance with the review standards and other regulations and requirements of this Ordinance or other municipal ordinances.
 - (ii) The Chair shall provide the applicant or his/her representative with an opportunity to make any statement or presentations at the beginning of the hearing. The Chair shall then allow the members of the Board to ask questions of the applicant and for the applicant to answer those questions. Following Board questions, the Chair

shall open the public hearing to the public for statements, information submissions, or questions about the project. At the close of the public comment period, the Chair shall afford the applicant an opportunity to answer any questions raised by the public, rebut any statements or information submitted, and cross-examine anyone offering testimony on the application. The Chair may allow the applicant this opportunity after each member of the public testifies if that is deemed to be desirable. At the conclusion of the applicant's response, the hearing shall be closed.

- k) Submission Requirements
 - (i) Burden of proof. The applicant shall have the burden of proving that the proposed project, development or land use activity is in conformity with the purposes and provisions of this Ordinance and any applicable State laws and rules.
 - l) The applicant shall submit nine (9) copies of the application and all supporting documentation.
- 5) Board of Appeals. The procedure for administering a permit shall be as specified in Article 9 of this Ordinance.
- 6) Select Board. The procedure for administering a license shall be as follows:
 - a) Submission of Permit Application
 - (i) Determination of complete application. Within 30 days of the date of receiving a written application the Select Board or their designee shall review the application for completeness. If the application is incomplete the Select Board or his/her designee shall notify the applicant in writing and specify the additional material that is needed to make the application complete. Failure to submit the additional information within six months shall be deemed an abandonment of the application.
 - (ii) Action on complete application. Within forty-five (45) working days of the date of receipt of a complete application the Select Board or their designee shall act to deny, to approve, or to approve the application with conditions as are deemed advisable to assure compliance with the Ordinance.
 - b) Submission Requirements
 - (i) Burden of proof. The applicant shall have the burden of proving that the proposed project, development or land use activity is in conformity with the purposes and provisions of this Ordinance and any applicable State laws and rules.
 - (ii) The applicant shall submit seven (7) copies of the application and all supporting documentation.
 - (iii) Prior to issuance of the municipal license the applicant shall present either a permit from the Maine Department of Environmental Protection (DEP) or a letter from DEP stating that a permit is not required. (See attached pages for reference only.)

D) Permit Application Submission Requirements

Submission requirements may be waived if that information is not required to determine compliance with applicable standards. In all instances, the burden of proof shall be upon the applicant to present adequate information to indicate the statutory criteria for approval and performance standards have been or will be met.

- 1) Written application. Every applicant for a permit shall submit a written application on a form provided by the municipality. The following items, when appropriate, shall be included with the application.
 - a) A scaled site plan showing
 - (i) The shape, size and location of the lot to be built upon and structure(s) to be erected, altered or removed.
 - (ii) Any structure(s) already on the lot.
 - (iii) Depth of front yards of structure(s) and adjoining lots.
 - b) Statement of intended use.
 - c) Documentation that the applicant has right, title or interest in the property.
 - d) Any other information needed by the Code Enforcement Officer, Planning Board, or the Board of Appeals to determine compliance with the provisions of this Ordinance and/or any other information required by this Ordinance.
 - e) Signature. All applications shall be signed by the owner of the property or the owner's legal agent, certifying that the information on it is complete and accurate. If the person signing the application is not the owner or lessee of the property, then that person shall submit a letter of authorization from the owner or lessee.
 - f) Application to be dated. All applications shall be dated, and the date and time of its receipt shall be noted upon each application.
- 2) Fees.
 - a) No permit shall be issued until the application fee(s) are paid. Application fees shall not be nonrefundable, unless noted elsewhere in this Ordinance. Checks are to be made payable to the Town of Durham.
 - b) Code Enforcement Officer. Application fees for a permit from the Code Enforcement Officer shall be as follows:
 - (i) Residential structures - \$0.25 per square foot of floor area¹⁷, minimum fee \$100.00
 - (ii) Additions to residential structures - \$0.15 per square foot of floor area, minimum fee \$75.00
 - (iii) Temporary structures - \$25.00
 - (iv) Garages, bams, all other miscellaneous structures used in conjunction with residential uses, > 201 sq. ft of floor area - \$0.15 per square foot of floor area
 - (v) Garages, bams, all other miscellaneous structures used in conjunction with residential uses, < 200 sq. ft of floor area - no fee
 - (vi) Commercial, industrial structures and additions to commercial and industrial structures, <1,201 sq. ft. of floor area - \$0.15 per square foot of floor area, minimum fee \$100.00
 - (vii) Commercial, industrial structures and additions to commercial and industrial structures, between 1,201 sq. ft. and 2,400 sq.ft. of floor area - \$0.20 per square foot of floor area
 - (viii) Commercial, industrial structures and additions to commercial and industrial structures, >2,400 sq. ft. of floor area - \$0.30 per square foot of floor area
 - (ix) Structural alterations - \$50.00
 - (x) Outdoor pools with filtering systems - \$25.00
 - (xi) Satellite dish - \$5.00
 - (xii) Demolition of structures - no fee
 - (xiii) Municipal or public education structures - no fee
 - (xiv) Re-inspection due to failure - \$50.00

¹⁷ Including a garage built simultaneously at the same site.

- 2nd re-inspection due to failure - \$100.00
- c) Local Plumbing Inspector. Application fees for a permit from the Local Plumbing Inspector shall be as required by the State of Maine.
 - d) Planning Board. Application fees for a permit from the Planning Board shall be as specified in the Ordinance.
 - e) Board of Appeals. Application fees for a permit from the Board of Appeals shall be seventy (70) dollars, plus any and all advertising costs.
 - f) Select Board. License fees shall be as follows, plus any and all advertising costs:
 - (i) Graveyard or Junkyard License – sixty (\$60) dollars for each license.
 - (ii) Automobile Recycling Business –\$300 for a five year license.
 - g) After-the-fact permit – Double Permit Fee, Minimum \$100.00

E) Enforcement

- 1) Violations. If the Code Enforcement Officer finds that any provisions of this Ordinance has been violated, he shall notify by certified mail the property owner and such other person as may be responsible for the violation, indicating the nature of the violation and ordering the action necessary to correct. The Town Attorney or Code Enforcement Officer with approval from the Board of Selectmen, shall institute, in the name of the Town, any and all action, legal and equitable, that may be appropriate or necessary for the enforcement of the provisions of this Ordinance. Any person, firm or corporation owning or having control of any building or premises or part thereof who violates any provisions of this Ordinance, or fails to take the required corrective measures, shall be subject to the provisions of 30-A MRSA, Section 4452 as the same shall be amended from time to time. Each day such violation exists shall constitute a separate offense.
- 2) Consent agreements. The Board of Selectmen, or its authorized agent, may enter into a consent agreement to eliminate violations and to collect civil penalties. Only the Board of Selectmen may enter into a consent agreement that would allow an illegal structure or use to continue.
- 3) Appeals. Appeals from enforcement determinations of the Code Enforcement Office shall be taken to the Board of Appeals.

Article 9: Board of Appeals

A) Appointment and Composition

- 1) The municipal officers shall appoint members of the Board of Appeals in accordance with the requirements of Title 30-A MRSA Section 2691.
- 2) The Board shall consist of 5 members serving staggered terms of 5 years, appointed by the Board of Selectmen. The Board of Selectmen shall appoint two associate members to serve in the absence of regular members. The Chairman of the Board of Appeals shall designate which associate member shall serve in the stead of the absent member.
- 3) When there is a permanent vacancy of a full or associate member, the Secretary of the Board of Appeals shall immediately notify the Town Clerk. The municipal officers shall within 60 days appoint a person to fill the unexpired term.
- 4) The Board shall elect annually a chairman and secretary from its membership. In the absence of the Chairperson, the Board shall elect an Acting Chairperson as necessary.
- 5) The Chairperson shall perform all the duties required by law, this Ordinance, or rules adopted by the Board. The Chairperson shall preside at all meetings of the Board and rule on issues of evidence, order, and procedure, and shall take such other actions as are necessary for the efficient and orderly conduct of hearings, unless directed otherwise by a majority of the Board. The Chairperson shall appoint any committee found necessary to carry out the business of the Board.
- 6) The Secretary, subject to the direction of the Board and the Chairperson, shall keep minutes of all Board proceedings, showing the vote of each question. The Secretary shall also arrange proper and legal notice of hearings, attend to correspondence of the Board, and to other duties as are normally carried out by a Secretary. The Secretary shall keep a record of all resolutions, transactions, correspondence, findings and determination of the Board, and shall prepare a complete record of each hearing including: dates(s), time(s), place(s) of the hearing(s); subject of the hearing; identification of each participant; any agreements made between parties and the Board regarding procedures; the testimony presented; findings of fact and conclusion; the decisions of the Board; and the date of issuance of the decision. All records are public and may be inspected at reasonable times.
- 7) The Acting Chairperson shall serve in the absence of the Chairperson and shall have all the powers of the Chairperson during the Chairperson's absence, disability, or disqualification.

B) Conflict of Interest

- 1) Any question of whether a particular issue involves a "conflict of interest" sufficient to disqualify a member from voting thereon, shall be decided by a majority vote of the members, except the member whose potential conflict is under consideration.
- 2) The term "conflict of interest" shall be construed to mean direct or indirect pecuniary interest, which shall include pecuniary benefit to any member of the person's immediate

family (parents, spouse, grandparents, children, grandchildren, e.g.) or employer or the employer of any member of the person's immediate family.

C) Powers and Duties

The powers and duties of the Board of Appeals shall be as follows:

- 1) Appeals. To hear and decide appeals where it is alleged that there is an error in any requirement, decision, or determination made by, or failure to act by, the Code Enforcement Officer, Planning Board, Road Commissioner or Plumbing Inspector in the administration of this Ordinance; and where it is alleged that there is an error in any requirement, decision, or determination made by the Code Enforcement Officer in the enforcement of this Ordinance. The hearing on the appeal shall be considered a public hearing and subject to the public hearing notice requirements of Section G below.
 - a) Code Enforcement Officer. The Board of Appeals may hear and decide appeals by an aggrieved party where it has been alleged that there is an error in any interpretation, determination, requirement or decision made by the Code Enforcement Officer or in any other matter involving the Code Enforcement Officer in the administration or enforcement of this Ordinance. The burden of proof shall be on the Appellant to demonstrate that the Code Enforcement Officer erred. The Board shall not conduct a de novo review, but shall act in a purely appellate capacity and shall limit its review to the record evidence that was before the Code Enforcement Officer and the parties' arguments based on that record evidence. In acting on administrative appeals, the Board of Appeals may sustain, modify or reverse the action of the Code Enforcement Officer. The Board of Appeals may reverse the Code Enforcement Officer's action only upon a finding that said action was clearly contrary to applicable provisions of the Ordinance or that the record evidence compels a different conclusion.
 - b) Planning Board. The Board of Appeals may hear and decide appeals from any final decision of the Planning Board, by any aggrieved party. The Board of Appeals shall not conduct a de novo review, but shall act in a purely appellate capacity, and shall limit its review to the record developed before the Planning Board, and to the parties' arguments based on that record. The burden of proof shall be on the appellant to demonstrate that the Planning Board erred. The Board of Appeals shall have the power to affirm, reverse, or modify, with or without conditions, the decision of the Planning Board or , if the record is not sufficient or further information needs to be provided, to remand the matter back to the Planning Board for further proceedings. The Board of Appeals shall reverse the decision of the Planning Board only upon a finding that the decision was clearly contrary to the applicable provisions of the Ordinance or that the record evidence compels a contrary conclusion.
 - c) Road Commissioner. The Board of Appeals may hear and decide appeals where it has been alleged that there is an error in any interpretation, determination, requirement or decision made by the Road Commissioner in the administration of

this Ordinance. The burden of proof shall be on the Appellant to demonstrate that the Road Commissioner erred. The Board shall not conduct a de novo review, but shall act in a purely appellate capacity and shall limit its review to the record evidence that was before the Road Commissioner and the parties' arguments based on that record evidence. In acting on administrative appeals, the Board of Appeals may sustain, modify or reverse the action of the Road Commissioner. The Board of Appeals may reverse the Road Commissioner's action only upon a finding that said action was clearly contrary to applicable provisions of this Ordinance or that the record evidence compels a different conclusion.

- 2) Variances. To authorize variances, within the limitations set forth in this Ordinance.
 - a) Variances may be granted only from the lot area, lot coverage by structures, lot width, and setback standards of the district regulations.
 - (i) The Board of Appeals shall not grant a variance from dimensional requirements unless it finds that:
 - (A) The proposed structure or use would meet the performance standards of this Ordinance except for the specific provision which has created the non-conformity and from which relief is sought; and
 - (B) The strict application of the terms of this Ordinance to the petitioner and the petitioner's property would cause undue hardship. The term "undue hardship" as used in this subsection means:
 - (1) The land in question cannot yield a reasonable return unless a variance is granted; and
 - (2) The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; and
 - (3) The granting of a variance will not alter the essential character of the locality; and
 - (4) The hardship is not the result of action taken by the applicant or a prior owner.
 - (ii) Disability variance. A disability variance may be granted pursuant to the following:
 - (A) The Board may grant a variance to an owner of a dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The Board shall restrict any variance granted under this paragraph solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability.
 - (1) The Board may impose conditions on the variance granted pursuant to this paragraph, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. For the purposes of this paragraph, the term "structures necessary for access to or egress from the dwelling" is defined to include railing, wall or roof systems necessary for the safety or effectiveness of the structure.
 - (B) The board may grant a variance to an owner of a dwelling who resides in the dwelling and who is a person with a permanent disability for the construction of a place of storage and parking for a noncommercial

vehicle owned by that person and no other purpose. The width and length of the structure may not be larger than 2 times the width and length of the noncommercial vehicle. The owner shall submit proposed plans for the structure with the request for the variance pursuant to this paragraph to the board.

- (1) The person with the permanent disability shall prove by a preponderance of the evidence that the person's disability is permanent.
- (2) For purposes of this paragraph, "noncommercial vehicle" means a motor vehicle as defined in Title 29-A, section 101, subsection 42 with a gross vehicle weight of no more than 6,000 pounds, bearing a disability registration plate issued pursuant to Title 29-A, section 521 and owned by the person with the permanent disability.
- (3) The board may impose conditions on the variance granted pursuant to this subsection.

(C) For purposes of this subsection, "disability" has the same meaning as a physical or mental disability under Title 5, section 4553-A.

(iii) Variances shall not be granted for establishment of any uses otherwise prohibited by this Ordinance, except as provided for in Article 3, Section D- Non-conforming Uses and/or Article 7, Section E.4.C- Non-conforming Uses.

(iv) The Board of Appeals shall limit any variances granted as strictly as possible in order to ensure conformance with the purposes and provisions of this Ordinance to the greatest extent possible, and in doing so may impose such conditions on the variances as it deems necessary.

- 3) Ordinance Interpretation. The Board may interpret the provisions of any Town Ordinance which are called into question. An interpretation may be made as part of an appeal or may be at the request of the Board of Selectmen, Planning Board, Code Enforcement Officer, local Plumbing Inspector or Road Commissioner.
- 4) District Boundary Lines Interpretation. An interpretation of Zone boundaries may be made as part of an appeal hearing, or made at the request of the Board of Selectmen, Planning Board, or Code Enforcement Officer.
- 5) Limitations. The Board of Appeals may not hear appeals for requests for tax abatements or poverty abatements.

D) Meetings

- 1) The annual organization meeting of the Board of Appeals shall be the first regular meeting of each fiscal year.
- 2) The regular meeting of the Board shall be pursuant to a schedule adopted by the Board. The Chairperson shall call a meeting of the Board in response to a written request for an appeal or variance by any aggrieved party or property owner, or an interpretation request by a town official as provided for above. Such a meeting shall be held within thirty (30) days of receipt of a written application and the applicant and abutters and town officials shall have at least seven (7) days' notice of the meeting date.

- 3) Special meetings of the Board may be called by the Chairperson. At least forty eight (48) hours written notice of the time, place, and business of the meeting shall be given to each member of the Board of Appeals, Selectmen, Town Manager, Planning Board, and Code Enforcement Officer or Local Plumbing Inspector.
- 4) All meetings of the Board of Appeals shall be open to the public, except executive sessions. No votes may be taken by the Board except in public meeting. The Board shall not hold executive sessions except for consultation between the Boards and its legal counsel concerning litigation or other legal matters where premature general public knowledge would clearly place the Town or Board at a disadvantage.

E) Voting

- 1) A quorum shall consist of four (4) members of the Board. No hearing or meeting of the Board shall be held, nor any action taken, in the absence of a quorum; however, those members present shall be entitled to request the Chairperson to call a special meeting for a subsequent date. If a member has a conflict of interest, that member shall not be counted by the Board in establishing the quorum for such matter.
- 2) Decisions on any matter before the Board shall require the affirmative vote of a majority of the membership at the meeting or hearing but not less than four (4) affirmative votes.
- 3) If the Board has associate members, the Chairperson shall appoint an associate member to act for a regular member who is: disqualified from voting, unable to attend the hearing, or absent from any portion of the hearing due to late arrival. The associate member will act for the regular member until the case is decided.
- 4) No member shall vote on the determination of any matter requiring public hearing unless he or she has attended the public hearing thereon.

F) Application Procedure

- 1) Any person aggrieved by an action that comes under the jurisdiction of the Board must file such application for appeal, in writing on forms provided by the Town within thirty (30) days of the granting or denial of a permit or application. The applicant shall file this appeal with the Board Secretary at the Town Office, setting forth the ground for the appeal. Upon receiving the application for appeal, the Board Secretary shall notify the Chairperson of the Board.
- 2) Any person requesting a variance that comes under the jurisdiction of the Board of Appeals must file an application for a variance, in writing on forms provided by the Town. The application must be filed with the Board Secretary, who, upon receiving the application shall notify the Chairperson of the Board.
- 3) The burden of proof shall be on the applicant.
- 4) The applicant shall submit eight (8) copies of all application materials.

G) Hearings

- 1) The Board of Appeals shall schedule a public hearing on all appeals applications within thirty (30) days of the filing of a completed application for an administrative appeal or variance. The thirty (30) day requirement may be extended by mutual agreement between the Board and the applicant.
- 2) The Board of Appeals shall cause notice of the date, time, and place of such hearing, the location of the building or lot referenced in the appeal, and the general nature of the question involved, to be given to the applicant, and to be published in a newspaper of general circulation in the municipality at least seven (7) dates prior to the hearing. The Board shall also cause notice of the hearing to be given to the owners of abutting property, owners of the property referenced in the appeal (if no the applicants), the Selectmen, the Planning Board, the Code Enforcement Officer, and the Plumbing Inspector (if relevant) at least ten (10) days prior to the date of the hearing.
- 3) The Board of Appeals is authorized to adopt "Rules of Conduct and Procedures for Conducting Public Hearings."

H) Decisions

- 1) Decisions by the Board shall be made not later than thirty (30) days from the date of the final hearing on the appeal or request. If the Board fails to make a decision within 30 days, and the time is not extended by mutual written consent, the appeal or request is deemed denied.
- 2) The final decision on any matter before the Board shall be made by written order signed by the Chairperson. The transcript of testimony, if any, and exhibits, together with all papers and requests filed in the proceedings, shall constitute the record. All decisions shall become part of the record and shall include a statement of findings and conclusions, as well as the reasons or basis therefore, upon all the materials issues of fact, law or discretion presented and the appropriate order, relief or denial thereof.
- 3) Notice of any decision shall be sent by certified mail or had delivered to the applicant, his or her representative or agent, the Planning Board, and Code Enforcement Officer, the Selectmen within seven (7) days of the decision.
- 4) Decisions of the Board shall be filed in the office of the Town Clerk and shall be made a public record. The date of filing of each decision shall be entered in the official records and minutes of the Board.

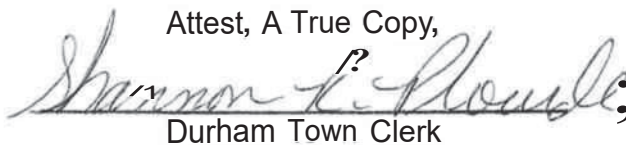
I) Reconsiderations

- 1) The Board may reconsider any decision made under this Article within 45 days of its prior decision, of its own accord, or upon the request of an aggrieved party. A request to the Board to reconsider must be files within 10 days of the decision to be reconsidered. A reconsideration vote and the action taken on that reconsideration must be completed within 45 days of the date of the vote on the original decision.
- 2) Reconsideration should be for one of the following reasons:
 - a) The record contains significant factual errors due to fraud or mistake, regarding facts upon which the decision was based; or

- b) The Board misinterpreted the Ordinance, followed improper procedures, or acted beyond its jurisdiction.
- 3) If the Board denies a variance application, a second application of a similar nature shall not be brought before the Board within one year from the date of denial by the Board of the first application, unless it is the opinion of a majority of the Board that an error, mistake or misunderstanding of facts has occurred.

J) Appeal to Superior Court

Any aggrieved party who participated as a party during the proceedings before the Board of Appeals may appeal to Superior Court in accordance with State laws within 45 days from the date of the vote on any decision of the Board of Appeals.

Attest, A True Copy,
; **aw**
Durham Town Clerk

