

Town of Windham

Planning Department
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Windham, ME 04062

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MEMO

DATE: September 1, 2017

TO: Windham Town Council
THROUGH: Tony Plante, Town Manager
FROM: Ben Smith, Director of Planning *BWS*
Cc: Amanda Lessard, Planner
Planning Board

RE: Planning Board Recommendation - Land Use Ordinance Amendment – Private Roads and Private Ways both as part of subdivision approval and outside subdivision approval, Sections 300, 500, 900

At the Planning Board's meeting on August 28, 2017, a public hearing was held on the proposed ordinance changes to the Land Use Ordinance, Chapter 140, Section 300, Definitions, Section 500 Performance Standards, and Section 900, Subdivision Review.

The highlights of the proposed changes are to

-) Require the upgrade of all Private Roads or Private Ways used to access an approved subdivision when an extension of an existing Private Road or Private Way is required or when a new Private Road is created off of an existing Private Road or Private Way,
-) Require the upgrade of all Private Roads or Private Ways used to access any new lot created outside of subdivision review, when an extension of an existing Private Road or Private Way is required or when a new Private Road is created off of an existing Private Road or Private Way,
-) Prohibit new roads built to a Private Road Standard that have direct access to an existing Public Street.
-) Change in the definition of Driveway to provide access to only two lots and to clarify that it does not provide Frontage.
-) Removal of Backlot Standards, so that building on a Backlot will now require Frontage.

Details of all changes are included in this packet, including the redlined ordinance copy.

Members of the public spoke for and against the proposed amendments at this lengthy public hearing. Most speakers in opposition to these proposed changes objected to the fact that smaller property owners counting on land sales for retirement income and families that wish to create lots for their children were getting caught up in regulations designed to address issues caused by

larger scale developments. Comments were also made on the road standards themselves, saying that upgrading to larger paved roads would change the desirable rural character of small neighborhoods, especially those in the more rural parts of the community (Farm zoning district). Speakers in favor of the proposed changes spoke about public safety and orderly growth as well as the burden placed on people who live on existing private roads when new development occurs without any improvements to the existing roads.

During Planning Board discussion members of the Board asked for more information from staff about potential approaches to the issue of private road development and raised some of the same questions and suggestions that had been discussed by the Town Council through their work on this topic over the last two years. They felt like they could have made more informed recommendations if they had been party to some of the Town Council work with staff and the Town Attorneys.

Following discussion of the proposed changes, the Board made the following motions:

To schedule a workshop in September with the Town Council, Planning Board, town staff and the town attorney to discuss private road issues and potential ordinance changes.

Motion: Bill Walker
2nd: Keith Elder

Vote: 4-0

To recommend approval of the amendments to Section 300, 500, and 900 of the Land Use Ordinance relative to standards for Private Roads and Private Ways.

Motion: Nick Kalogerakis
2nd: Keith Elder

Vote: 2-2

Based on discussion surrounding the motion and voting, the votes against recommending the changes as written seemed to be based on a desire for more discussion about how to make the changes applicable to only that development that is defined as the problem by the Council.

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MEMO

DATE: August 21, 2017

TO: Windham Planning Board
FROM: Amanda Lessard, Planner *AL*
Cc: Ben Smith, Director of Planning

RE: Ordinance Amendment: Sections 300, 500, and 900 relative to standards for private roads and private ways, both in subdivisions and outside of subdivisions
Planning Board Meeting & Public Hearing - August 28, 2017

The attached draft ordinance language specifies that when any development results in the extension of an existing Private Way or Private Road or the creation of a new Private Road that is accessed by a Private Way or Road, all Private Roads and Ways between that development and the closest Public Street must meet a Town Private Road standard. Additionally, the draft language makes changes to driveway definitions and standards and backlot standards and states that new roads with direct access to a Public Street must be designed to a Local Street standard and offered for public acceptance.

Please note that the Section 900 changes have already been reviewed by the Planning Board (March 13, 2017) and returned to the Town Council earlier this year with a recommendation to approve.

During Planning Board discussion of the proposed amendment at the meeting on August 14, 2017 the Board asked for additional information on history of road standards and code interpretation of how the amendments would impact existing properties if adopted. Staff will provide additional information at the meeting.

A public hearing is scheduled for the Planning Board meeting on August 28, 2017. After the public hearing and discussion by the Board, the Planning Board may vote on a recommendation to the Town Council similar to the following:

MOTION: To (**recommend/recommend with comments/not recommend**) approval of the proposed amendment to Sections 300, 500, 900 of the Land Use Ordinance relative to standards for private road and private ways.

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MEMO

DATE: August 1, 2017

TO: Windham Planning Board

FROM: Amanda Lessard, Planner *AL*

Cc: Ben Smith, Director of Planning

RE: Ordinance Amendment: Sections 300, 500, and 900 relative to standards for private roads and private ways, both in subdivisions and outside of subdivisions
Planning Board Meeting - August 14, 2017

At their meeting on July 25, 2017, the Town Council voted to forward the enclosed proposed ordinance changes to the Board. The attached draft ordinance language specifies that when any development results in the extension of an existing Private Way or Private Road or the creation of a new Private Road that is accessed by a Private Way or Road, all Private Roads and Ways between that development and the closest Public Street must meet a Town Private Road standard. Additionally, the draft language states that new roads with direct access to a Public Street must be designed to a Local Street standard and offered for public acceptance.

Please note that the Section 900 changes have already been reviewed by the Planning Board (March 13, 2017) and returned to the Town Council earlier this year with a recommendation to approve.

Zoning Amendment Process

The Planning Board must hold a public hearing prior to making a recommendation on this item to the Town Council. A public hearing has been scheduled for the Board meeting on August 28, 2017. The Town Council will need to vote on the proposed changes to the Land Use Ordinance for the changes to be officially approved.

Town of Windham

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MEMO

DATE: July 6, 2017

TO: Windham Town Council

THROUGH: Tony Plante, Town Manager

FROM: Ben Smith, Planning Director *BUS*

Cc: Amanda Lessard, Planner

Jon Earle, P.E., Town Engineer

Steve LeBrun, Code Officer

Chuck Daigle, Code Officer

Stephen Langsdorf, Preti Flaherty

Kevin Haskins, Preti Flaherty

RE: Proposed standards for Private Roads, both in subdivisions as well as outside of subdivisions

In May, the Town Council directed staff to amend sections of the ordinance to clarify when improvements to existing private roads are required related to new development that uses those roads. The policy direction provided goes back to the concept of what it means to have an existing “grandfathered” private road, and the idea that grandfathered should not mean that a private road is forever exempt from improvement requirements, but that it should be considered exempt from requirements as long as existing conditions do not change. In other words, when new development is proposed over existing roads that do not meet a standard, improvements to those existing roads should be required.

Attached is draft ordinance language that specifies that when any development results in the extension of an existing Private Way or Private Road or the creation of a new Private Road that is accessed by a Private Way or Road, all Private Roads and Ways between that development and the closest Public Street must meet a Town Private Road standard. Please note that the Section 900 changes have already been reviewed by the Planning Board and returned to the Town Council earlier this year with a recommendation to approve.

Additionally, the draft language states that new roads with direct access to a Public Street must be designed to a Local Street standard and offered for public acceptance.

Proposed Ordinance Change Summary

Section 300

-) Clarify that Driveways are for no more than two lots, and can't provide Frontage.
-) Delete Lot, Backlot definition. In my mind, the policy guidance would eliminate the creation of new Backlots.
-) Delete Lot, Frontage definition. There is already a definition for Frontage in the ordinance.
-) Delete Lot Width definition. The Town does not have any requirements for Lot Width in Section 400 anymore and we can remove that definition.
-) Street Classifications. Definitions have been updated to reflect the current street typologies in Appendix B.

Section 500

-) Delete Driveway performance standards. Not necessary to have standards with a clarified definition of Driveway that indicates Driveways do not providing Frontage.
-) Delete Lot, Backlot performance standards. Same reason as above – the policy guidance would eliminate the creation of new Backlots.
-) Streets. Added new wording at the start of Section 550, with some minor changes throughout to add capitalization on defined terms and references to Town Engineer. The new wording states that
 - o No new Private Roads or extensions of existing Private Ways or Roads will be permitted unless all portions of the Private Roads or Private Ways that connect the new or extended Private Road with the nearest Public Street are upgraded to the Applicable Private Road standards.
 - o No new Private Roads will be permitted to directly access a Public Street. New Streets with direct access to a Public Street must be built to the applicable Local Street Standard and offered to the Town of acceptance as a Public Street.
-) New wording also clarifies that permitted Accessory Apartments do not count toward dwelling unit totals when a Private Road is classified as Major or Minor, or when determining the number of connections to existing Local Streets.

Section 900

-) Change Section 911.M.2.c, to clarify the existing wording that states that existing and proposed roads that are expected to carry traffic generated by the subdivision need to be “suitably improved.” The proposed clarification is to make it clear that all of the existing and proposed private roads providing access to the subdivision lots need to be improved to the applicable Private Road standards.
-) Change Section 911.M.5.a.5., to clarify the existing wording that states all properties served by the a private road shall have “adequate access.” Again, the proposed clarification is to make it clear that adequate access can only be met when all of the existing and proposed private roads that provide access to the subdivision meet the applicable Private Road standards.

Appendix B – Street Design and Construction Standards

-) Change to Table 3, to change Major Private Road shoulder type from Gravel to Paved, to match cross-section detail. Gravel shoulder cannot be used with curbing.
-) Change to Table 3, note 4, to correct spelling mistake.
-) Change to cross-section detail of Minor Local Street, so that travel way width matches the 18-foot width in Table 3.

limited to, plumbing, painting, building, well drilling, carpentry, masonry, or electrical installation.

Controlled Access Street. See definition of, "Street Classification: Controlled Access Street"

Convention Center. A building, or portion thereof, designed to accommodate 300 or more people in assembly. For the purposes of this Chapter, this definition does not include "Places of Worship."

Corner Lot. See definition of, "Lot, Corner."

Correctional Facility, Public. A publicly operated facility housing persons awaiting trial or persons serving a sentence after being found guilty of a criminal offense.

Curb Cut. The connection to a street, or opening along the curb line, at which point vehicles may enter or leave the roadway. (*See Sec. 500 Performance Standards*)

Daytime Hours. Those hours between 7:00 a.m. and 7:00 p.m.

Dead-End Street. See definition of, "Street Classification: Dead-End Street"

Demolition. The removal of part, or all, of a building or structure.

Developable Land. Parcels, lots or sites that meet the requirements of "Developable Land" in Section 500 Performance Standards.

Development. Any change of land use including but not limited to the construction of buildings, parking lots, streets or utilities or the filling or cutting of land areas, or the cutting of trees which is done as part of the site preparation. "Development" does not, however, include normal agricultural operations, e.g., cultivation of soil, the raising of livestock, or the erection of fences, nor does it include for the purpose of subdivision or site plan review, the erection of barns and other accessory farm buildings.

Distribution Center. An establishment in which a building is used for the receipt, storage, and distribution of goods, products, cargo, and materials, including transshipment by boat, rail, air, or motor vehicle. Included in this definition are the breakdown and/or consolidation of orders for shipment. However, the retail sale, assembly, or processing of goods, products, cargo, or materials are not considered part of the distribution process.

Drive-through Facility. Any portion of a structure from which business is transacted, or is capable of being transacted, directly with customers located in a motor vehicle during such business transactions. (*See Sec. 500 Performance Standards*)

Driveway. A route that provides access to ~~a lot(s)~~ no more than two (2) lots from either a public or private right-of-way. A Driveway shall not be used to provide Frontage. (*See Sec. ~~500 Performance Standards~~300, Frontage*).

products, but excluding basic industrial processing. (*See definition of “Manufacturing”*) (*See Sec. 500 Performance Standards*)

Junkyard. A yard, field or other outside area used to store, dismantle or otherwise handle:

-) Discarded, worn-out or junked plumbing, heating supplies, electronic or industrial equipment, household appliances or furniture;
-) Discarded, scrap and junked lumber; and
-) Old or scrap copper, brass, rope, rags, batteries, paper trash, rubber debris, waste and all scrap iron, steel and other scrap ferrous or nonferrous material.

Kennel, Major. An establishment in which five (5) or more dogs, cats, or domesticated animals are boarded for a fee or compensation. (*See Sec. 500 Performance Standards*)

Kennel, Minor. An establishment in which four (4) or fewer dogs, cats, or domesticated animals are boarded for a fee or compensation. (*See Sec. 500 Performance Standards*)

Landscaped Buffer Strip. See definition of, “Buffer Strip, Landscaped.”

Landscaped Green Area. An area of land which is landscaped with a ground cover of bark mulch, grass or other natural green plant material and which is then covered with trees or shrubs for all or part of its area. For the purposes of this ordinance, the definition of a landscaped green area do not include materials such as concrete, asphalt, or hardscapes that have been painted green.

Legislative Body. The Town Council of Windham, Maine.

Level of Service. The operational or service level of transportation infrastructure as determined by the most current edition of the, “Highway Capacity Manual” published by the Transportation Research Board.

Loading Bay. An off-street space or berth used for the loading or unloading of cargo, products, or materials from vehicles.

Local Street. See definition of, “Street Classification: Local Street”

Lot. A designated parcel, tract, or area of land established by plat, subdivision, or as otherwise permitted by law, to be separately owned, used, developed, or built upon.

~~Lot, Backlot. A lot that meets the standards of Section 529 Lot, Backlot. (*See Sec. 500 Performance Standards*)~~

Lot, Corner. A lot abutting on and at the intersection of two or more streets. (*See Sec. 500 Performance Standards*)

Lot, Developable. (See definition of “Developable Land”)

~~Lot, Frontage. The length of the front lot line measured at the street right-of-way line. (See “Developable Land” in Section 500 Performance Standards)~~

Lot, Interior. A lot other than a corner lot.

Lot, Through. A lot that fronts on two parallel streets or that fronts on two streets that do not intersect at the boundaries of the lot.

Lot Line. The boundary line of a lot.

Lot Line, Front. The lot line separating a lot from a street right-of-way or the portion of a lot that abuts a street right-of-way.

Lot Line, Rear. The lot line opposite and most distant from the front lot line. In the case of triangular or otherwise irregularly shaped lots, a line 10 feet in length entirely within the lot, parallel to and at a maximum distance from the front lot line.

Lot Line, Side. Any lot line other than a front or rear lot line.

~~Lot Width. The horizontal distance between side lot lines, measured at (1) the front lot line, and (2) the required front setback line of the applicable zoning district.~~

Lumber Yard. An area and structures used for the storage, distribution, and sale of finished or rough-cut lumber and lumber products. Lumber yards shall be classified as “Retail Sales.” (See definition of “Retail Sales”)

Manufactured Housing. Manufactured housing shall be defined according to 30-A, M.R.S.A. § 4358, as amended from time to time. (See Sec. 500 Performance Standards)

Manufacturing. Establishments engaged in the mechanical or chemical transformation of materials or substances into new products, including the assembling of component parts, the creation of products, and the blending of materials, such as oils, plastics, resins, or liquors.

Manufacturing, Hazardous. A building or structure or any portion thereof that is used for the storage, manufacture, or processing of the following:

-) Highly combustible or explosive products or materials that are likely to burn with extreme rapidity or that may produce poisonous fumes or explosions;
-) Highly corrosive, toxic, or noxious alkalis, acids, or other liquids or chemicals producing flame, fume, or poisonous, irritant, or corrosive gases;

Story, Mezzanine. An intermediate level or levels between the floor and ceiling of any story with an aggregate floor area of not more than one-third of the area of the room in which the level or levels are located.

Story, Second. The story directly above the first story of a structure.

Street. Public or private roads or ways such as alleys, avenues, boulevards, highways, roads, and other rights-of-way, as well as areas on subdivision plans designated as rights-of-way for vehicular access other than driveways. (See Sec. 500 Performance Standards)

Street Classification:

Arterial Street. A major thoroughfare which serves as a major traffic way for travel between and through the Town. For the purpose of this Ordinance, only the following roadways shall be classified as ~~a~~Arterial ~~s~~Streets: Route 302, Route 202, Route 115, Route 35, River Road, and Falmouth Road.

~~Collector Street. A street with average daily traffic of between 200 and 3,000 vehicles per day or greater, or streets which serve as feeders to arterial streets, and collectors of traffic from local streets.~~

Controlled Access Street. A street which serves primarily as a major traffic way for travel within the Town between two arterial streets. For the purpose of this Ordinance, only the following roadway shall be classified as a Controlled Access Street: Manchester Drive. (See Commercial I and Commercial II District Standards) ~~-(See “Controlled Access Street” in Sec. 500 Performance Standards.)~~

Dead-End Street. A street with a single common ingress and egress.

Industrial or Commercial Street. Streets servicing industrial or commercial uses.

Local Street, Major. A street ~~servicing only residential properties and designed for public acceptance~~ which complies in width and construction with the specifications in Section 911.M.5, Traffic Conditions and Streets, and has an estimated average daily traffic ~~of less than~~count of more than 2400 vehicles per day.

Local Street, Minor. A street designed for public acceptance which complies in width and construction with the specifications in Section 911.M.5, Traffic Conditions and Streets, and has an estimated average daily traffic count of 400 or fewer vehicles per day.

Private Road, Major. A street constructed on or after October 22, 2009 that complies in width and construction with the specifications for private roads in Section 911.M.5, “Traffic Conditions and Streets,” and serves more than ten (10) lots. ~~that has not been, or intended to be, accepted by the Town of Windham.~~

Private Road, Minor. A street constructed on or after October 22, 2009, that complies in width and construction with the specifications for private roads in Section 911.M.5, Traffic Conditions and Streets, and serves ten (10) or fewer lots.

Private Way. A street that was constructed prior to October 22, 2009, that does not meet the specifications for private roads in Section 911.M.5 "Traffic Conditions and Streets," and that has not been accepted by the Town of Windham. Private ways do not include access ways typically referred to as tote roads or woods roads.

Public Street. Any street that complies in width and construction with the standards for public streets in Section 900 Subdivision Review, or a street meeting lesser standards that the Town of Windham agrees to accept. (*See Sec. 900 Subdivision Review*)

Structure. A combination of materials that form a construction for use, occupancy, or ornamentation whether installed on, above, or below the surface of land or water. For the purpose of this chapter, antennas shall be considered "structures"; however, fences, doghouses, tree houses designed for children's use, and bus shelters shall not be considered "structures."

Subdivision. A subdivision is a division of a tract or parcel of land as defined in 30-A, M.R.S.A. § 4401, as amended from time to time; provided, however, that the Town of Windham does hereby elect to count lots of 40 or more acres as lots for purposes of subdivision review.

Subdivision, Amended. The division of an existing subdivision or any change of to an approved subdivision that requires Planning Board approval.

Substantial Improvement. Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure either before the improvement or repair is started or, if the structure has been damaged and is being restored, before the damage occurred. For purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or structural part of the building commences, whether or not that alteration effects the external dimensions of the structure. The term does not, however, include any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications which are solely necessary to assure safe living conditions or for any alteration of a structure listed on the National Register of Historic Places or a State or Local Inventory of Historical Places.

Theater. A building, or part of a building, used to show motion pictures or for drama, dance, musical, or other live performances.

Truck Terminal. An area and building where trucks load and unload cargo and freight and where the cargo and freight may be broken down or aggregated into smaller or larger loads for transfer to other vehicles or modes of transportation.

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- (a) The maximum sidewalk longitudinal transition slope is not to exceed 1 vertical to 12 horizontal.
 - (b) The maximum sidewalk cross-slope is not to exceed 2%.
 - (c) No abrupt changes in grade are permitted and the maximum curb reveal crossing a walkway is 0.5 inch or less.
4. The sidewalk area at all entrances shall meet the standards of the Americans with Disabilities Act.

519 Developable Land

A. Land proposed for development shall meet the following standards:

1. A parcel of land that meets the standards of the zoning district in which it is located, or

~~2. A parcel of land that meets one of the following conditions:~~

~~(a) An approved backlot (See Section 529 "Lot, Backlot")~~

32. If located in an approved subdivision, a parcel of land that meets the standards for "Net Residential Area or Acreage" in section 500 Performance Standards.

520 Drive-through Facility

A. A drive-through facility shall only be allowed as part of a principle use that is allowed as either a permitted use or conditional use in the applicable zoning district. (See Sec. 400 Zoning Districts)

~~521 Driveway~~

~~A. A driveway created after October 22, 2009 shall not be used to provide the minimum frontage required by the zoning district in which a lot is located, except for driveways constructed to provide lot frontage prior to October 22, 2009 that meet the following standards:~~

- ~~1. The driveway must be located within a defined right-of-way or easement.~~
- ~~2. The driveway shall not be used to obtain the required minimum frontage for more than four (4) lots.~~
 - ~~(a) A driveway may only be used to provide the required lot frontage for five (5) or more lots, if the entire length of the driveway is improved to applicable private way or public street standards.~~
- ~~3. Where a lot is created on an existing driveway after October 22, 2009 the minimum frontage required by the zoning district in which the proposed lot is located must be provided on the driveway.~~

9. If renting or leasing, the tenant must demonstrate the property owner's approval.

- G. Conditions. The Board of Appeals may place conditions on the home occupation to minimize impacts on area properties. The conditions must be related to the Board of Appeal's findings on the standards listed in Subsection 524.F.

525 Hotel

- A. Rental for more than 30 cumulative days in a calendar year to the same guest, or guests, is prohibited.

526 Industry, Light

- A. All manufacturing processes must be wholly contained within a building,
- B. The manufacturing, stockpiling or distribution of hazardous materials shall not be permitted; however
1. The storage and use of hazardous materials as part of a production process shall be permitted.

527 Kennel, Major

- A. The kennel, including all uses accessory to the kennel, must be set back a minimum of two hundred (200) feet from an abutting residential structure, or
- B. A minimum of one hundred (100) feet from the lot line where there is no abutting residential structure.

528 Kennel, Minor

- A. The kennel, including all uses accessory to the kennel, must be set back a minimum of two hundred (200) feet from an abutting residential structure, or
- B. A minimum of one hundred (100) feet from the lot line where there is no abutting residential structure.

~~529 Lot, Backlot~~

~~A. Zoning Districts. Backlots shall be permitted in the following zoning districts:~~

~~1. Farm~~

~~2. Farm Residential~~

- ~~J—Light Density Residential~~
- ~~J—Medium Density Residential~~

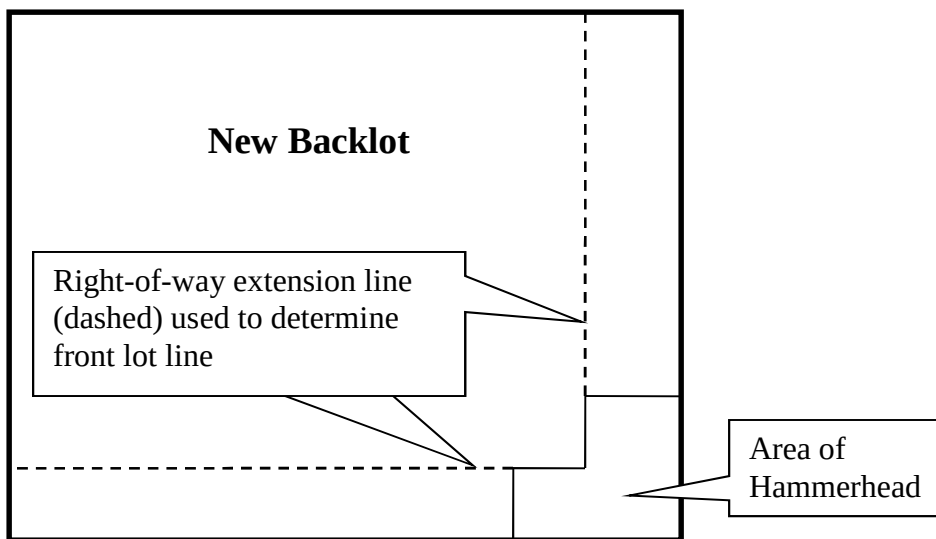
- ~~B.—Standards. The following standards shall apply to the creation of backlots, or the extension of existing backlot right-of-ways, in accordance with the applicable effective dates:~~
- ~~1.—General Standards. The following general standards apply to backlots that are created after March 14, 2012 that are accessed via rights-of-way that are created after March 14, 2012:~~
- ~~(a)—Rights-of-Way.~~
- ~~(1)—Backlots must be accessed by a right-of-way having a minimum width of fifty (50) feet. The required minimum width must be continued for the entire length of the right-of-way.~~
- ~~(2)—Extension of a right-of-way to serve additional backlots shall meet the applicable street construction standards of Section 550.~~
- ~~a)—If the addition of lots on a right-of-way falls within a different street standard, the entire right-of-way shall be improved in accordance with the street standards in Section 550.~~
- ~~(3)—A hammerhead turnaround shall be provided in accordance with Section 550(B)(8)(f)(2).~~
- ~~(4)—Right-of-Way Extensions:~~
- ~~a)—The first hammerhead created after March 12, 2012 may be retained as part of the right-of-way and may continue to be used to meet the minimum frontage requirement of the zoning district. Hammerheads created prior to that date will not be required to be removed, even if this results in more than one hammerhead on a right-of-way.~~
- ~~b)—All subsequent hammerheads created after March 12, 2012 shall be removed if a road is extended beyond the location of said existing hammerhead turnaround(s). After the hammerhead turnaround is removed, all lots must continue to comply with the minimum frontage requirement of the zoning district.~~
- ~~(b)—Frontage. The backlot shall meet the minimum frontage requirement of the applicable zoning district along the right-of-way.~~
- ~~1)—All sides of a hammerhead turnaround right-of-way may be used in the calculation of frontage. If the hammerhead turnaround is removed to accommodate future right-of-way extensions, the original lot must still meet the minimum lot frontage requirement.~~
- ~~(c)—Minimum Setback Requirements~~
- ~~(1)—The required minimum front setback standard for structures constructed on a backlot shall be measured from the closest edge of the right-of-way.~~

- (2) ~~Minimum setbacks from a new right-of-way do not apply to structures on abutting properties that do not obtain their frontage from said right-of-way.~~
- (3) ~~Front Lot Line. For purposes of determining the front lot line, and the front setback, the right-of-way shall be deemed to run from one side of the lot to the other side of the lot if it ends prior to that point. (See Diagram A)~~
- (4) ~~Corner Lots. If a corner lot is created by the installation of a right-of-way, the minimum setbacks shall be met in accordance with the corner lot standards in Section 500. The installation of a hammerhead turnaround does not constitute the creation of a corner lot. Backlots that obtain their frontage from a hammerhead turnaround shall choose which side of the hammerhead turnaround will constitute the front lot line. The designated front lot line shall be stated on the building permit and shall not be changed after said designation. Note: If a choice of front lot lines is available, care should be taken to plan for the setback requirements necessary for future right-of-way extensions.~~

~~If the minimum setbacks for corner lots cannot be met, the applicant may apply for a dimensional variance in accordance with Section 1100 of this Ordinance.~~

- (5) ~~No dwelling unit shall be erected on a backlot that is closer than two hundred (200) feet from an existing public street or private way.~~

Diagram A
Front Lot Line



2. ~~Standards for backlots, rights-of-way, and the extension of rights-of-way in existence prior to March 14, 2012.~~

- (a) ~~Rights-of-way~~

- ~~(1) — A right-of-way serving one (1) or more backlots that is less than fifty (50) feet in width may continue to provide access to that existing lot or any lot divided from that lot which does not involve the extension of the right-of-way.~~
- ~~(2) — Extension of an existing right-of-way used to access a backlot(s) shall meet the following standards:~~
 - ~~a) — The width of the right-of-way extension shall be at least 50 feet in width.~~
 - ~~b) — A hammerhead turnaround shall be provided in accordance with Section 550(B)(8)(f)(2).~~
 - ~~(i) — The first hammerhead created after March 12, 2012 may be retained as part of the right-of-way and may continue to be used to meet the minimum frontage requirement of the zoning district. Hammerheads created prior to that date will not be required to be removed, even if this results in more than one hammerhead on a right-of-way.~~
 - ~~(ii) — All subsequent hammerheads created after March 12, 2012 shall be removed if a road is extended beyond the location of said existing hammerhead turnaround(s). After the hammerhead turnaround is removed, all lots must continue to comply with the minimum frontage requirement of the zoning district.~~
 - ~~c) — The aggregate sub-base and base courses of the road extension shall meet the standards of Table 4 of Appendix B.~~
 - ~~d) — The minimum travel way width of the road extension shall be 18 feet.~~
 - ~~e) — Existing hammerhead turnaround(s) must be removed if a road is extended beyond the location of said existing hammerhead turnaround(s). After the hammerhead turnaround is removed, all lots must continue to meet the minimum frontage requirement of the zoning district.~~
- ~~(b) — Frontage~~
 - ~~(1) — Division on Existing Right-of-way. New backlots, created on an existing right-of-way that serves an existing backlot, shall meet the minimum frontage requirement of the applicable zoning district.~~
 - ~~(2) — Extension of Existing Right-of-way. Backlots created on the extension of an existing right-of-way shall meet the minimum frontage requirement of the applicable zoning district.~~
 - ~~(3) — All sides of a hammerhead turnaround right-of-way may be used in the calculation of frontage.~~
- ~~(c) — Minimum Setback Requirement.~~
 - ~~(1) — The required minimum front setback for existing or new structures located on an existing backlot or existing right-of-way shall be measured from the property line rather than from the closest edge of the right-of-way after a right-of-way is placed on the property.~~
 - ~~(2) — Existing or new structures located on the extension of an existing right-of-way shall meet the required minimum front setback from the closest edge of the right-of-way after a right-of-way is placed on the property. If the minimum~~

~~setback requirements cannot be met, the applicant may apply for a dimensional variance in accordance with Section 1100 of this Ordinance.~~

- ~~(3) — Corner Lots. If a corner lot is created by the extension of a right-of-way, the minimum setbacks shall be met in accordance with the corner lot standards in Section 500. The installation of a hammerhead turnaround does not constitute the creation of a corner lot. Backlots that obtain their frontage from a hammerhead turnaround shall choose which side of the hammerhead turnaround will constitute the front lot line. The designated front lot line shall be stated on the building permit and shall not be changed after said designation. *Note: If a choice of front lot lines is available, care should be taken to plan for the setback requirements necessary for future right-of-way extensions.*~~

~~If the minimum setbacks for corner lots cannot be met, the applicant may apply for a dimensional variance in accordance with Section 1100 of this Ordinance.~~

- ~~(4) — Minimum setbacks from the extension of an existing right-of-way do not apply to structures on abutting properties that do not obtain their frontage from said right-of-way.~~
- ~~(5) — No dwelling unit shall be erected on a backlot that is closer than two hundred (200) feet from an existing public street or private way.~~

530 Lot, Corner

- A. Front Setbacks. The required front setback shall be required on both sides of the lot that front on a public or private right-of-way.
- B. The remaining two sides of the lot shall meet the side yard requirements of the applicable zoning district.
- C. Rear Setbacks. A rear setback is not required for corner lots.

531 Manufactured Housing

- A. Manufactured housing, as defined, shall be allowed in any district in which single-family detached dwellings are permitted.
- B. Manufactured housing shall meet all applicable standards of 30-A, M.R.S.A. § 4358.

532 Medical Marijuana

Notwithstanding the provisions of 1 M.R.S.A. § 302 or any other law to the contrary, these performance standards, when enacted, shall govern any proposed medical marijuana dispensary for which an application has not been submitted and acted on by the Review Authority identified in Section 516 prior to January 11, 2010.

The following standards apply to all medical marijuana dispensaries:

550 Streets

A. Public Streets. All ~~P~~ublic ~~s~~Streets, as defined in Section 300 - and ~~p~~Private ~~r~~Roads submitted as part of a subdivision application - constructed on or after October 22, 2009 shall meet the street design standards in Section 900 Subdivision Review.

1. Waivers of the street design standards may only be granted by the Planning Board as part of a site plan or subdivision application.

~~B.~~ New or extensions of Private Roads created off existing Private Roads or Private Ways. No new Private Roads or extensions of existing Private Roads or Private Ways will be permitted unless all portions of the Private Roads or Private Ways that connect the new or extended Private Road with the nearest public street are upgraded to the applicable Private Road standards.

~~C.~~ New Streets with direct connections to Public Streets. No new Private Roads will be permitted to directly access a Public Street. New Streets with direct access to a Public Street must be built to the applicable Local Street standard and offered to the Town for acceptance as a Public Street.

~~D.~~ Private Roads Not Part of a Subdivision Application.

1. Applicability. These standards apply to ~~p~~Private ~~r~~Roads used to obtain the required ~~lot width~~ Frontage in the applicable zoning district. (See “Developable Land” in Sec. 500 Performance Standards)
2. Submission Requirements. An application form and accurately scaled plan shall be prepared by a Maine Licensed Professional authorized by the State of Maine to design streets or roads. At a minimum, the plan shall include the location and width of the right-of-way, a plan view and profile view of the roadway, the location and size of culverts and proposed drainage features.
3. Review Authority. ~~For a~~ All ~~p~~Private ~~roads, the~~ Roads -application forms and plans shall be submitted to, and approved by, the Director of Code Enforcement. For ~~p~~Private ~~r~~Roads that provide frontage to four (4) or more lots, the plan must be reviewed by the Town’s Engineer or consulting engineer.
- ~~3~~4. Site Walk. The Director of Code Enforcement may require a site walk with the applicant, or his or her authorized representative.
5. Recording. Upon approval, a mylar copy of the private road plan shall be filed with the Town.
6. Construction Observation. The Code Enforcement Officer may require that observations by the Town Engineer or -s-consulting engineer be conducted during

construction. The property owner shall be responsible for the costs of all observations.

7. Final Approval. Prior to the issuance of any Certificates of Occupancy for the lots ~~fronting with Frontage~~ on said ~~p~~Private ~~r~~Road, the applicant shall provide the following:

- (a) Private Roads with three (3) or fewer lots. A statement, from the Maine Licensed Professional that prepared the plans, that the road was constructed in general conformance with the approved plans. The Director of Code Enforcement may observe the road to confirm that the road was constructed in general conformance with the approved plans.
- (b) Private Roads with four (4) or more lots. A statement from a Licensed Maine Professional Civil Engineer that the road was constructed in general conformance with the approved plans. If the Town's consulting engineer reviewed the design and observed the construction, the Town's consulting engineer may provide the required statement.

8. Standards

- (a) Design Standards. Private roads shall be designed to conform to the appropriate standards presented in Subsection 911.M.5.(b)(8) Street Construction Practices; and the standards for "Major or Minor Private Roads" in Table 3, Table 4, and the applicable cross sections in Appendix B Street Standards.
- (b) Street Lights. Street lights may be required at intersections with existing public streets. The use of additional street lights shall be discouraged to avoid excessive light pollution.
- (c) Drainage. The private road shall have adequate provisions for drainage and stormwater runoff.
- (d) Paved Apron. In addition to the standards in Section 518 Curb Cuts and Driveway Openings, a paved apron shall be constructed when a gravel private road connects to a paved public street or paved private road in accordance with the standards in Table 3 and Table 4 (*See Appendix C, Street Standards*).
- (e) Gravel Surface Limit. Notwithstanding other provisions of the Land Use Ordinance to the contrary, no gravel surfaced private road shall provide access to or serve in any way to provide compliance with the requirements of the Ordinance for more than the greater of ten (10) lots or ten (10) dwelling units; provided; however, nothing in this paragraph shall serve to limit the use of such private road for occasional use by and for agricultural purposes. Private ~~r~~Roads providing access to eleven (11) or more lots shall meet the standards for a "Major Private Road" contained in Table 3 and Table 4 of Appendix B Street Standards. When

determining the number of dwelling units, the Code Officer shall not include permitted Accessory Apartments.

- (f) Dead End Streets. The following standards shall apply to dead end private roads. (See Sec. 300 for definition of “Dead End Street”)

- (1) Maximum Length. Dead end private roads shall meet the following standards:

- (i) Private Roads Served by Public Water. There is no maximum length limit for private roads served by the Portland Water District that have fire hydrants and hammerhead turnarounds installed every 1,000 linear feet. However, the street connectivity standards of Subsection (g) below shall apply.
- (ii) Private Roads Not Served by Public Water. Dead end ~~P~~private ~~R~~oads not supplied with fire hydrants served by the Portland Water District shall have a maximum length of 1,000 linear feet unless all dwellings beyond 1,000 linear feet from the closest public street or private way, as defined, have a National Fire Protection Association (NFPA) 13D monitored sprinkler system installed and approved by the Windham Fire Chief and hammerhead turnarounds installed every 1,000 linear feet. The street connectivity standards of Subsection (g) below, shall apply.
 - 1. Existing Rights-of-Way. The maximum length of 1,000 linear feet shall commence at the terminus of any dead end rights-of-way existing on, or before, October 22, 2009.
 - 2. Any existing right-of-way which does not contain an improved private way existing on, or before, October 22, 2009 shall construct any future improvements in accordance with the standards for private roads contained in this Section 548 to the greatest extent practical.

- (2) Hammerhead Requirement: At a minimum, a hammerhead turnaround is required at the terminus of all dead end private roads.

- (i) All hammerhead turn around shall meet the following standards:
 - a) The right-of-way or easement area of the turnaround side branch shall be at least 50 feet by 50 feet.
 - b) The gravel or paved surface shall extend at least 50 feet from the centerline of the adjacent roadway.
 - c) The width of the gravel or paved surface shall be equal to the street width.
 - d) The hammerhead shall have a minimum 25 foot turning radius.
 - e) Larger dimensions may be required by the Director of Code Enforcement to accommodate larger design vehicles anticipated to use the turnaround.

- (g) Connection Requirements. The following standards determine the number of connections a ~~p~~Private ~~r~~Road must have with an existing ~~public~~Local ~~s~~Street. The cumulative number of lots or dwelling units created through the addition of lots or dwelling units to an existing subdivision shall be included in the minimum number of required street connections. When determining the number of dwelling units, the Code Officer shall not include permitted Accessory Apartments.

Number of Lots or Dwelling Units	Minimum Connections
Lots: 30 or less	1
Lots: 31 or more	2
Units: 30 or less	1
Units: 31 or more	2

- (1) Street Connection Separation Requirements. Private ~~r~~Roads with two (2) or more connections to an existing public street shall be separated according to the standards in Table 2 of Section 900 Subdivision Review.
- (h) Maintenance Agreement. The applicant shall provide evidence that the private road shall be maintained either by the applicant or by the lot owners or a homeowners association. Proof may consist of a declaration of covenants that will be recorded and become part of each deed and specify how the costs of maintenance will be apportioned among the lot owners, or appropriate homeowners association documents. In the event that a homeowners association is formed, each lot deed shall refer to the association and shall require the lot owner to be a member of the association. No private road will be maintained by the Town until the Town has accepted the road. No private road shall be offered to the Town for acceptance until it meets the design requirements for a public street contained in this Ordinance.

C. Sidewalks

- Where required by this Ordinance, or by the Planning Board as a condition of subdivision or site plan approval, sidewalks shall be constructed in accordance with the standards in Tables 3 and 4 or Appendix B of this Ordinance.
- Accessibility. Sidewalk construction shall meet all applicable American with Disabilities Act (ADA) Standards.

Section 500 Amendments

Order 10-075; Date 04-27-10	Changes to Central Sewer System; Child Care Facility; Net Residential Density; and Dead End Streets
Order 10-164; Date 09-14-10	Changes to Outdoor Sales
Order 10-230; Date 12-14-10	Addition of Restaurants in C1 zone
Order 11-206; Date 12-13-11	Addition of siting and regulation for Medical Marijuana Dispensaries
Order 12-014; Date 03-14-12	Changes to Backlot standards
Order 12-099; Date 08-14-12	Addition of Domesticated Chickens
Order 12-148; Date 10-23-12	Addition of Retirement Community and Care Facility Overlay District
Order 12-149; Date 10-23-12	Addition of Accessory Apartments

Order 13-001; Date 01-22-13	Change to waiver of Curb Cuts
Order 13-002; Date 01-22-13	Change to list of Controlled Access Streets.
Order 13-072; Date 05-14-13	Addition of Sidewalk Impact Fee
Order 14-164; Date 07-08-14	Changes to Automobile Repair Services, addition of Automobile Storage Lot
Order 14-223; Date 07-08-14	Change of Conditional Use Submission deadlines
Order 14-387; Date 10-14-14	Addition of Automobile Auction Facility

SECTION 900 – SUBDIVISION REVIEW

Sections

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904	Joint Application and Hearing	9- Error! Bookmark not defined. ⁶
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907	Review Procedures for Major Subdivisions	9- Error! Bookmark not defined. ¹¹
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915	Building Permit Limits for Subdivisions	9- Error! Bookmark not defined. ⁷³
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911 Performance and Design Standards

M. Traffic Conditions and Streets

2. **General Access Standards.** All subdivision accesses connecting with external streets shall meet the following standards (*See” Curb Cuts, Driveway Openings” in Sec. 500 Performance Standards.*)
 - (a) Accesses connecting to any state or state-aid highway shall meet the minimum access permitting requirements of the Maine Department of Transportation “Highway Driveway and Entrance Rules”.
 - (b) Accesses that are expected to carry more than 100 passenger vehicle equivalent trips in the peak hour shall meet the minimum access permitting requirements of the Maine Department of Transportation “Rules and Regulations Pertaining to Traffic Movement Permits”.
 - (c) Existing and proposed streets and intersections that can be expected to carry traffic generated by the subdivision shall have the capacity or be suitably improved to accommodate that traffic and avoid unreasonable congestion. For the purposes of this section, suitably improved shall mean that all of the existing and proposed private roads in the road network back to the closest public street shall meet the applicable Private Road Standard.
 - (1) Signalized Intersection. The level of service (LOS) at a proposed signalized intersection shall be “D” or better. At an existing signalized intersection, the LOS shall not be reduced below “D” by the development. If an existing signalized intersection is operating below a LOS “D” pre-development, then the development shall not increase the delay at the intersection.
 - (2) Unsignalized Intersection. At an unsignalized intersection, if the LOS is forecasted to be less than a “D” post-development, then the installation of a traffic signal and/or additional turning lanes shall be investigated. If these improvements are found not to be warranted, then a LOS less than “D” may be acceptable.
 - (d) Accesses to non-residential subdivisions or to multifamily developments shall be designed to avoid queuing of entering vehicles on any street. Left lane storage capacity on the existing external street shall be provided to meet anticipated demand. A study or analysis to determine the need for a left-turn storage lane shall be done.

5. ***Specific Street Design and Construction Standards***

(a) General Requirements.

- (1) The Board shall not approve any subdivision plan unless the proposed streets are designed in accordance with the specifications contained in these regulations, including Table 3 and Table 4 in Appendix B. Approval of the final plan by the Board shall not be deemed to constitute or be evidence of acceptance by the municipality of any street, right-of-way or easement (*See Subsec. 911.M.6. for street acceptance procedures*).
- (2) Applicants shall submit to the Board, as part of the Preliminary Plan, detailed construction drawings showing a plan view, profile, and typical cross-section of the proposed streets. The plan view shall be at a scale of one inch equals no more than fifty feet. The vertical scale of the profile shall be one inch equals no more than five feet. The plans shall include the following information:
 - (i) Date, scale, and north point (as required in Section 910 Submission Requirements).
 - (ii) Intersections of the proposed street with existing streets.
 - (iii) Roadway and right-of-way limits including edge of pavement or aggregate base, edge of shoulder, clear zone, sidewalks, and curbs.
 - (iv) 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.
 - (v) Complete curve data shall be indicated for all horizontal and vertical curves.
 - (vi) Turning radii at all intersections.
 - (vii) Centerline gradients.
 - (viii) Size, type, vertical clearance and locations of all existing and proposed overhead and underground utilities, to include but not be limited to water, sewer, electricity, telephone, lighting, and cable television.
 - (ix) Locations and results of any test borings performed as part of the design process.
- (3) Upon receipt of plans for a proposed public street as part of a Final Plan application the Board shall forward one copy to the Town Council for informational purposes.
 - (i) Plans for streets which are not proposed to be accepted by the Town shall be sent to the Director of Public Works and the Town's consulting engineer for review and comment.
- (4) Where the applicant proposes improvements within existing public streets, the proposed design and construction details shall be approved in writing by the Director of Public Works or the Maine Department of Transportation, as appropriate.

(5) Private Roads.

The following standards, in addition to those in Table 3 and 4, apply to private roads used for the purpose of providing frontage for, and access to, individual lots of land (*See Tables 3 & 4 in Appendix B*). **Note:** *For additional standards for private roads that are not part of a subdivision application, see "Streets" in Section 500 Performance Standards*).

- (i) All private roads shall be designated as such and will be required to have adequate signage indicating the road is a private road and not publicly maintained.
- (ii) Each lot having access from an approved private road may be improved with no more than two (2) dwelling units.
- (iii) Except for sidewalk, bicycle provisions and minimum grade requirements stipulated in this Section, all private roads shall adhere to the road design standards of this Section.
- (iv) All properties served by the private road shall provide adequate access for emergency vehicles and shall conform to the approved local street numbering system. For the purposes of this section, adequate access shall mean that all existing and proposed private roads in the road network back to the closest public street shall meet the applicable Private Road Standard.
- (v) Where the subdivision streets are to remain private roads, the following words shall appear on the recorded plan: "All roads in this subdivision shall remain private roads to be maintained by the developer, lot owners or road association, and shall not be offered for acceptance, or maintained, by the Town of Windham until they meet all municipal street design and construction standards."
- (vi) The applicant shall provide evidence that the private road shall be maintained either by the applicant or by the lot owners or a homeowners association. Proof may consist of a declaration of covenants that will be recorded and become part of each deed and specify how the costs of maintenance will be apportioned among the lot owners, or appropriate homeowners association documents. In the event that a homeowners association is formed, each lot deed shall refer to the association and shall require the lot owner to be a member of the association. No private road will be maintained by the Town unless the Town has accepted the road. No private road shall be offered to the Town for acceptance until it meets the design requirements of this Ordinance.

- (vii) A paved apron shall be constructed when a gravel private road connects to a paved public street or paved private road in accordance with the standards in Table 3 and Table 4 (*See Appendix B Street Design and Construction Standards*).
- (viii) Private roads shall be designed to conform with the appropriate standards presented in Tables 1, 2, 3, 4, and the applicable cross sections in Appendix B.
- (ix) Notwithstanding other provisions of the Land Use Ordinance to the contrary, no gravel surfaced private road shall provide access to or serve in any way to provide compliance with the requirements of the Ordinance for more than the greater of ten (10) lots or ten (10) dwelling units. A private road providing access to, or serving in any way to provide compliance with the requirements of the Ordinance for more than ten (10) lots or ten (10) dwelling units shall meet all design and construction standards for a “Major Private Road,” as defined. Nothing in this paragraph shall serve to limit the use of a private road for occasional use by and for agricultural purposes.

Table 3 Design and Construction Standards for Town Streets and Private Streets

Item	Major Local Street	Minor Local Street	Ind./Comm.	Major Private Road	Minor Private Road
Average Daily Traffic (ADT)/Lots Served ⁽¹⁾	> 400 A ADT	≤ 400 A ADT	n/a	> 10 lots	≤ 10 lots
Surface Type	Paved	Paved	Paved	Paved	Gravel
Min. Right-of-Way Width	60'	50'	50'	50'	50'
Min. Traveled Way Width ⁽²⁾	22'	20'	24'	20'	18'
Primary Shoulder Type ⁽³⁾	Paved	Paved	Paved	Gravel Paved	Gravel
Min. Primary Shoulder Type without Curb	4'	2'	4'	2'	2'
Min. Primary Shoulder Type with Curb	5'	2'	4'	2'	n/a
Min. Primary Shoulder Type with Sidewalk	5'	2'	4'	2'	n/a
Secondary Shoulder Type	Gravel	Gravel	Gravel	Gravel	n/a
Min. Secondary Shoulder Width without Curb	2'	2'	2'	2'	n/a
Min. Clear Zone Width (each side)	8'	7'	7'	n/a	n/a
Min. Esplanade Width	n/a	5'	n/a	n/a	n/a
Minimum Vertical Clearance	14'	14'	14'	14'	14'
Min. Grade	0.50%	0.50%	0.50%	0.50%	0.50%
Min. Grade with Curb	1%	1%	1%	1%	1%
Max. Grade	7%	8%	6%	11%	11%
Min. Centerline Radius	350'	180'	200'	100'	60'
Min. Tangent between curves of reverse alignment	200'	100'	200'	100'	n/a
Min. Angle of Street Intersection ⁽⁴⁾	90	60	90	60	60
Max. Grade at Intersections ⁽⁵⁾	2%	2%	2%	2%	2%
Min. Curb Radii	30'	25'	30'	25'	15'
Max. Dead End Street Length	See Section 543 Streets and Section 911.M.5(b)(5) Dead End Streets				
Min. Sidewalk Width	5'	5'	5'	n/a	n/a
Min. Paved Apron ⁽⁶⁾					20'

Additional Standards

(1) See Section 911(M) for street connection Requirements

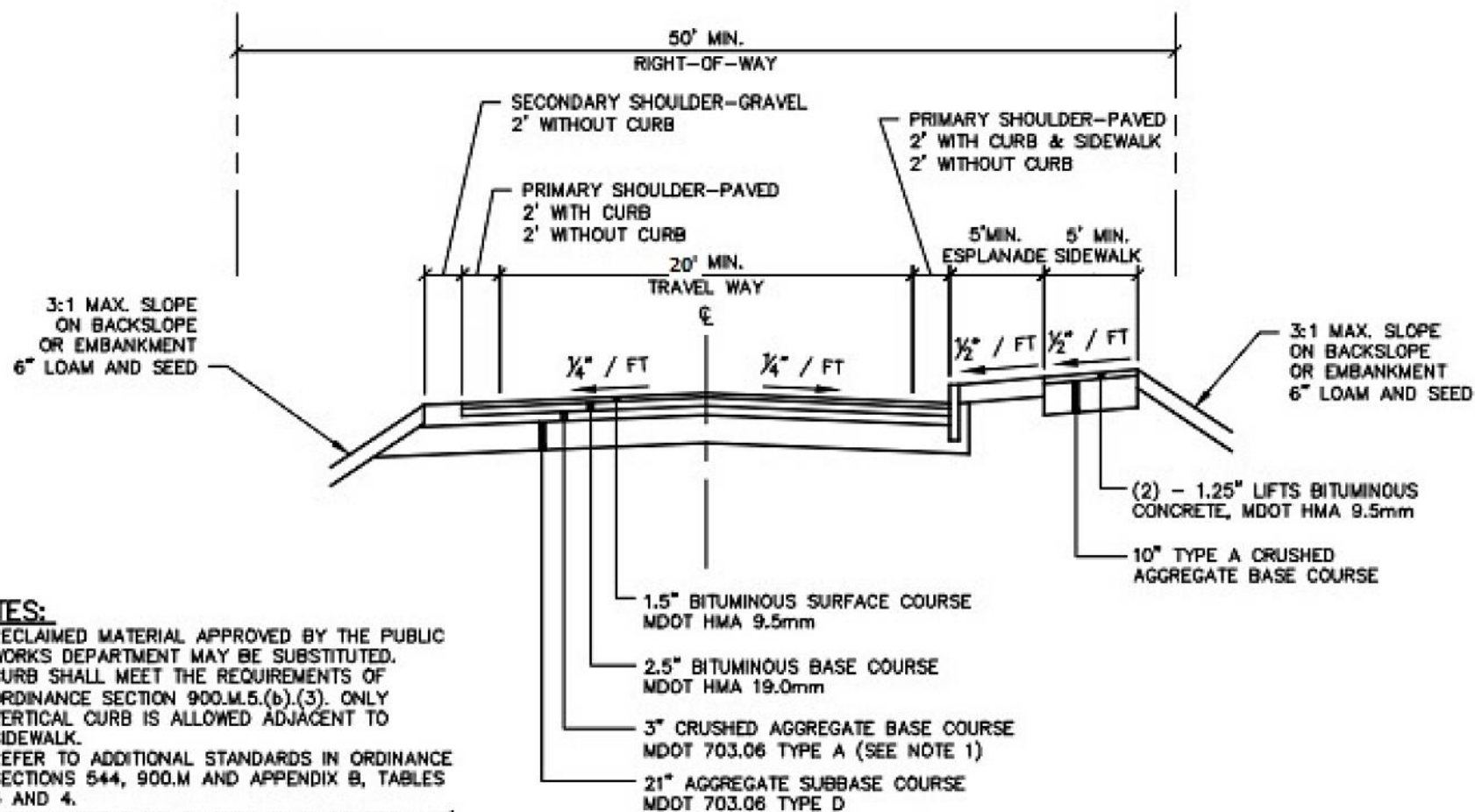
(2) Add 8' of width for each lane of on-street parking

(3) See Section 911(M)(5)(b)(6) for shoulder and sidewalk requirements

(4) Angle must be maintained for at least 60' from intersection.

(5) Maximum grade must be maintained for at least 60' from the intersection

(6) A negative 2.0% grade from the existing edge of pavement must be provided to an appropriate drainage way what is no less than 5 feet from the travel surface or private way it intersects.

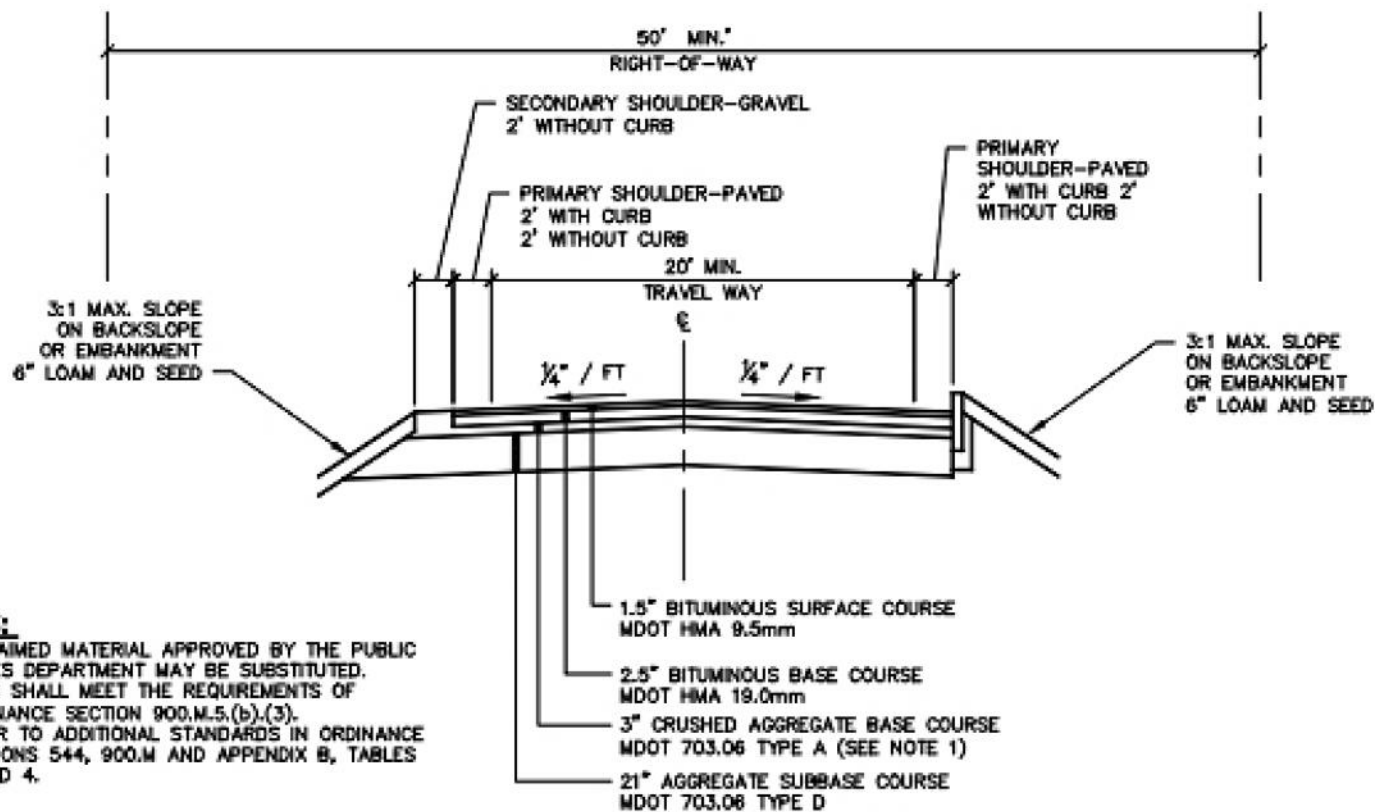


NOTES:

1. RECLAIMED MATERIAL APPROVED BY THE PUBLIC WORKS DEPARTMENT MAY BE SUBSTITUTED.
2. CURB SHALL MEET THE REQUIREMENTS OF ORDINANCE SECTION 900.M.5.(b).(3). ONLY VERTICAL CURB IS ALLOWED ADJACENT TO SIDEWALK.
3. REFER TO ADDITIONAL STANDARDS IN ORDINANCE SECTIONS 544, 900.M AND APPENDIX B, TABLES 3 AND 4.
4. MINIMUM CLEAR ZONE WIDTH ON EACH SIDE IS 7', MEASURED FROM EDGE OF TRAVEL WAY.

MINOR LOCAL STREET

NOT TO SCALE



MAJOR PRIVATE ROAD

NOT TO SCALE