

Chapter 120

General comments from Ben McCall:-

- I need to understand where the designated growth areas are. I can't judge whether the density in each zone is correct otherwise.
- A possible alternative would be addition of a growth area overlay, which would account for those reduced density requirements without requiring changes to the underlying zoning districts.
- Commercial districts: you need to permit residential uses per 4364-E, but you do not need to permit more than 3 dwelling units, unless those zones are part of the DGA. I see quadplex throughout, so we should clarify that.
- Can't necessarily combine parking standards in Arts 5 and 8, as not all proposals will require site plan review.

LAND USE

Commented [BM1]: General comments:

- Need to clarify number of dwelling units in a multifamily? Either 3+ or 5+. Needs to be consistent with addition of triplex and quadplex.
- I need to understand where the designated growth areas are. I can't judge whether the density in each zone is correct otherwise.
- A possible alternative would be addition of a growth area overlay, which would account for those reduced density requirements without requiring changes to the underlying zoning districts.
- Commercial districts: you need to permit residential uses per 4364-E, but you do not need to permit more than 3 dwelling units, unless those zones are part of the DGA. I see quadplex throughout, so we should clarify that.
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WINDHAM CODE

**[HISTORY: Adopted by the Town Council of the Town of Windham 9-22-2009 (Ch. 140 of the 1991 Code).
Amendments noted where applicable.]**

ARTICLE 1
General

§ 120-101. Title.

This chapter shall be known and cited as the "Land Use Ordinance of the Town of Windham, Maine" and will be referred to herein as "this chapter" or "this ordinance."

§ 120-102. Purpose.

A. This chapter, adopted in accordance with a Comprehensive Plan pursuant to the provision to 30-A M.R.S.A. § 4326 et seq., is designed:

- (1) To encourage the most appropriate use of land throughout the municipality;
- (2) To promote traffic safety; to provide safety from fire and other elements;
- (3) To prevent overcrowding of real estate;
- (4) To prevent housing development in unsanitary areas;
- (5) To promote coordinated development;
- (6) To encourage the formation of community units;
- (7) To provide an allotment of land area in new developments for all the requirements of community life;
- (8) To conserve natural resources; and
- (9) To provide for adequate public services.

B. This chapter does not excuse any person of the necessity of complying with other applicable laws and regulations.

§ 120-103. Severability.

In the event that any section, subsection or any portion of this chapter shall be declared by any court of competent jurisdiction to be invalid for any reason, such decision shall not be deemed to affect the validity of any other section, subsection or other portion of this chapter; to this end, the provisions of this chapter are hereby declared to be severable.

§ 120-104. Conflict with other provisions. [Amended 4-29-2025 by Order No. 25-043]

A. Whenever a provision of this chapter conflicts with or is inconsistent with another provision of this chapter or of any other Town ordinances, state or federal regulations or statutes, the more restrictive provision shall control.

B. Notwithstanding the foregoing, where state law expressly preempts municipal home rule authority or establishes a maximum limitation or minimum allowance for housing, accessory dwelling units, density, dimensional standards, parking, or review procedures, the requirements of state law control and this chapter shall be administered and interpreted as required by state law.

A-C. Nothing in this chapter shall be interpreted to exempt an affordable housing development, a dwelling unit, a mixed-use development, or an accessory dwelling unit from the provisions of Chapter 185, Shoreland Zoning.

§ 120-105. Conformance required. [Amended 12-12-2024 by Order No. 24-173]

- A. All buildings or structures hereinafter erected, reconstructed, altered, enlarged, or moved, and uses of premises, in the Town of Windham shall be in conformity with the provisions of this chapter.
- B. 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.
- C. Notwithstanding any other provisions of this chapter, any alteration of an existing building which is required in order to meet the requirements of the Americans with Disabilities Act (ADA)¹ and/or the State Fire Code is not considered to be an enlargement or expansion of a structure, or expansion of a use, and is therefore not required to meet otherwise applicable setback requirements, provided that the Code Enforcement Officer determines that the alterations are the minimum necessary to satisfy the ADA and/or State Fire Code.
- D. Except as otherwise set forth in this chapter or Chapter 185, all areas located within shoreland areas governed by Chapter 185, Shoreland Zoning, are exempt from this chapter.

§ 120-106. Word usage.

For the purposes of this chapter:

- A. The word "person" includes a firm, association, organization, partnership, trust, company or corporation, as well as an individual.
- B. The present tense includes the future tense.
- C. Words used in the singular include the plural, and words used in the plural include the singular.
- D. The word "shall" is mandatory; the word "may" is permissive.
- E. The word "used" or "occupied" includes the words "intended," "designed" or "arranged to be used or occupied."
- F. The word "dwelling" includes the word "residence."
- G. The word "lot" includes the words "plot" and "parcel."
- H. In case of any difference of meaning or implication between the text of this chapter and any map of illustration, the text shall control.
- I. Terms not defined shall have their customary dictionary meaning.

§ 120-107. Amendment procedure.

After review and recommendation by the Planning Board, this chapter may be amended in accordance with the Town Charter.

§ 120-108. Conditional or contract zoning. [Amended 7-8-2014 by Order 14-223; 6-16-2022 by Order No. 22-108; 9-23-2025 by Order No. 25-126]

- A. Authority and purpose. Pursuant to 30-A M.R.S.A. § 4352(8), conditional or contract zoning is hereby authorized for development where, for reasons such as the unusual nature or unique location of the development proposed, the Town Council finds it necessary or appropriate to impose, by agreement with the property owner or otherwise, certain conditions or restrictions not generally applicable to other properties similarly zoned. All contract or conditional zoning under this section shall establish rezoned areas which are compatible with the existing and permitted uses within the original zones. Nothing in this section shall authorize a rezoning, or an agreement to change or retain

1. Editor's Note: See 42 U.S.C. § 12101 et seq.

a zone, which is inconsistent with the Town's Comprehensive Plan.

- B. Applicable conditions and restrictions. All conditions and restrictions imposed shall relate only to the physical development and/or operation of the property. This includes, but is not limited to, the following:
- (1) Limitations on the number and types of uses permitted;
 - (2) Restrictions on the scale and density of the development;
 - (3) Specifications for the design and layout of the buildings, structures, and other improvements;
 - (4) Schedules for commencement and completion of construction, including anticipated schedules (i.e., beginning and completion dates) for all construction phases;
 - (5) Performance guarantees securing completion and/or maintenance of public and private improvements, and guarantees against defects;
 - (6) Preservation and enhancement of open spaces and buffers, and protection of natural areas and historic sites;
 - (7) Contributions toward the provisions of municipal services required by the development; and
 - (8) Provisions for enforcement and remedies for breach of any condition or restriction.
- C. Submission requirements. All applications for conditional or contract zoning shall contain, at minimum, 20 copies of the following plans and related information:
- (1) A detailed written description of the proposal that includes the following information:
 - (a) The reason or reasons for the rezoning request.
 - (b) How the proposal is in conformance with the Town's most recently adopted Comprehensive Plan.
 - (c) The current zoning district(s) applicable to the property.
 - (d) The proposed conditions or restrictions regarding the use and/or development.
 - (e) Land uses on abutting property and how they relate to the proposed use.
 - (2) Application forms, as required.
 - (3) A nonrefundable application fee in such amount(s) as the Town Council may from time to time establish in the Fee Schedule.²
 - (4) A consulting and review fee in such amount as the Town Council may from time to time establish in the Fee Schedule. The fee shall be placed in escrow with the Town when the application is filed with the Planning Board. The fee shall be used by the Town in accordance with § 120-810C.
 - (5) Evidence of right, title or interest in the property proposed for contract or conditional zoning.

2. Editor's Note: The current Fee Schedule established by the Town Council is on file at the Town Clerk's office and available on the Town website.

- (6) A copy of the Tax Map on which the property is located.
 - (7) A draft contract agreement, if the Town Staff, Planning Board or Council determines it to be necessary.
- D. Rezoning procedure. This subsection governs the procedure to be followed after the Town has received a conditional or contract zone application.
- (1) Town Council. All required submission material shall be submitted to the Windham Town Council at least 21 days prior to the meeting at which the applicant wishes to be heard by the Council. The Town Council may choose to send the application to the Planning Board with, or without, suggested amendments.
 - (2) Planning Board. Applications for conditional or contract zoning shall include all required submission materials and shall be submitted to the Planning Department no later than 30 calendar days prior to the date at which the petitioner/property owner wishes to be heard by the Board. The Planner shall determine completeness as specified in this article. The application shall not be placed on the Planning Board's agenda until it is found to be complete.
 - (3) Public hearing. The Planning Board shall hold a public hearing.
 - (a) Notice content. The public hearing notice shall contain the following information:
 - [1] The date, time and place of the public hearing.
 - [2] A copy of the proposed conditions or restrictions with a map indicating the property to be rezoned.
 - (b) Notification requirements. The Planning Board shall publicize the public hearing as stated below. Notices shall be deemed given when said notices are mailed, and the failure of any petitioner and/or property owner to receive such notice shall not necessitate another hearing, shall not constitute grounds for objections by such petitioner, and shall not invalidate any recommendation by the Planning Board on such zoning matter or any final action taken by the Town Council thereon.
 - [1] To the owner(s) of abutting property at least seven days prior to the hearing.
 - [2] Posted in the municipal office at least 13 days before the hearing.
 - [3] Published, at least two times, in a newspaper having general circulation in the Town of Windham. The date of the first publication must be at least seven days before the hearing.
 - [4] To a public drinking water supplier if the area to be rezoned is within the supplier's source water protection area.
 - (4) Planning Board recommendation. The Planning Board shall use the following procedure when making a recommendation to the Council on a conditional or contract zone application:
 - (a) The Planning Board shall forward its report and recommendations on the proposal to the Town Council after the Planning Board has taken its final vote on the application.
 - (b) The Planning Board's recommendation to the Town Council shall address the proposal's conformance with the Town's Comprehensive Plan.

- (c) The Planning Board's recommendation to the Town Council shall address how the change establishes a rezoned area that is consistent with the existing and permitted uses within the original zoning district.
 - (d) The Planning Board's report shall include all proposed conditions and restrictions, including those recommended by the Planning Board.
- E. Town Council approval. The Town Council may approve a conditional or contract zoning if it finds that:
 - (1) The change establishes a rezoned area that is consistent with the existing and permitted uses within the original zoning district.
 - (2) The change is consistent with the Comprehensive Plan. In making its determination that the conditional or contract zone application is in conformance with the Town of Windham's Comprehensive Plan, the Town Council shall consider the following:
 - (a) The Planning Board's report and recommendation.
 - (b) Any proposed plot plans, site plans and/or subdivision plans reflecting the proposed use, development or redevelopment of the property under consideration for rezoning.
- F. Additional requirements. The following additional requirements and standards shall apply to conditional or contract zone applications:
 - (1) All property or development receiving a contract rezoning is not exempt from the otherwise applicable standards in Article 8, Site Plan Review, or Article 9, Subdivision Review, of this chapter.
 - (2) No proposal to amend the Official Land Use Map shall be entertained within one year of the date of denial of the same request, unless the Planning Board determines that the application is a substantial change from the previously denied rezoning application.

ARTICLE 2
Nonconforming Provisions

§ 120-201. General provisions.

- A. The use of land or structures that are existing and lawful at the time of adoption, or subsequent amendment, of this chapter may continue and be expanded subject to the provisions of this article.
- B. Transfer of ownership. Ownership of land and structures which remain lawful but become nonconforming by the adoption or amendment of this chapter may be transferred and the new owner may continue the nonconforming use subject to the provisions of this article.
- C. Restoration of unsafe property. A nonconforming structure declared unsafe by the Code Enforcement Officer, or damaged by fire or other casualty, shall be permitted to be strengthened or restored to safe condition.

§ 120-202. Nonconforming structures. [Amended 9-13-2011 by Order 11-153]

- A. Expansion of a nonconforming structure. A nonconforming structure may be expanded, repaired, maintained or improved subject to the provisions of this article.
 - (1) The expansion shall be attached to the existing structure.
 - (2) Nonconforming front, side or rear yard setback. A structure may be expanded within a nonconforming yard area so long as the expansion does not further extend into a nonconforming front, side or rear yard setback.
 - (3) Nonconforming height limit. Where a structure contains a portion that is nonconforming in its height at the time of the adoption of this chapter, the height of the remaining portion of the building may be increased so long as the expansion does not extend further than the existing height of the structure.
 - (4) All other setback requirements in the appropriate zoning district shall be met.
 - (5) An expansion of a nonconforming use within an expanded nonconforming structure must meet the standards of § 120-203.
 - (6) Expansion with a variance.
 - (a) An applicant for an expansion that cannot meet the standards of Subsection A(2) or (3), above, must seek a variance from the Board of Appeals.
 - (b) The Board of Appeals shall use the appropriate variance standards of Article 11 for the review of applications under this section.
- B. Reconstruction or replacement.
 - (1) A nonconforming structure that is damaged or destroyed by any cause, or is demolished, may be reconstructed or replaced, provided that a building permit is obtained within two years of the date of damage, destruction, or demolition. The replacement or reconstruction of any nonconforming portion of the structure must be located within the original building footprint. The replacement or reconstruction may increase or decrease the number of square feet of floor area, but may not create any additional, or expand any existing, nonconformity, except as allowed by § 120-202A above.

- (2) The Code Enforcement Officer shall grant a one-year extension for the reconstruction or replacement of structures that are involved in litigation.

§ 120-203. Nonconforming uses.

- A. Expansion of a nonconforming use. The structure(s) in which a nonconforming use is located may be cumulatively expanded subject to the provisions of this section.
 - (1) General provisions. The following provisions shall apply to all nonconforming uses:
 - (a) The expansion shall not allow for the introduction of new, or increase the number of, nonconforming uses on the property.
 - (b) The expansion shall not cause a structure to become nonconforming according to the dimensional requirements of the applicable zoning district.
 - (c) Expansion within an existing nonconforming structure shall meet the requirements of § 120-202.
 - (2) Nonresidential uses. A nonconforming nonresidential use may be expanded as follows:
 - (a) By 10% of the size existing at the time of the amendment to the ordinance that made the use nonconforming, with approval from the Code Enforcement Officer. **[Amended 10-24-2023 by Order No. 23-193]**
 - (b) Between 11% and 100% of the size existing at the time of the amendment to the ordinance that made the use nonconforming, with approval from the Board of Appeals. The Board of Appeals shall use the following standards in granting approval: **[Amended 10-24-2023 by Order No. 23-193]**
 - [1] That the expanded use shall not reduce the level of service, as defined, on adjacent roadways or intersections.
 - [2] That the property has adequate sight distance for the location and type of expanded use.
 - [3] That the amount of parking required to meet the minimum chapter requirements for the expanded use shall be provided.
 - [4] That the amount of noise, odors, vibrations, smoke, dust and air discharges of the expanded use shall be equal to or less than the present use.
 - [5] That the amount of surface water runoff from the site shall not be increased.
 - [6] That an adequate buffer has been provided to screen an expanded commercial or industrial use from any abutting residential use.
 - (c) The Board of Appeals may impose conditions of approval that are specific to the standards in § 120-203A(2)(b).
 - (3) Residential uses. A nonconforming residential use may be expanded as long as the building in which it is located meets either:
 - (a) The dimensional standards of the zoning district in which it is located; or

(b) The nonconforming structures or buildings standards in § 120-202, above.

B. Discontinuance of a nonconforming use.

- (1) A nonconforming use which is discontinued for a period of two years may not be resumed. Use of the land, building or structure shall thereafter conform to the provisions of this chapter.
- (2) When a nonconforming use is changed to a permitted use, the following provisions shall apply:
 - (a) The use shall thereafter conform to the provisions of this chapter; and
 - (b) The nonconforming use may not thereafter be resumed.

C. Change of a nonconforming use.

- (1) The Board of Appeals may grant permission for the conversion of an existing nonconforming use into another nonconforming use subject to the following provisions:
 - (a) The new nonconforming use will be more conforming to the intent of this chapter.
 - (b) The existing nonconforming use shall be discontinued and shall not thereafter be resumed if the Board of Appeals approves the conversion.
- (2) In determining whether the proposed use is in greater conformance with this chapter, the Board of Appeals must find:
 - (a) That the existing use was made nonconforming by the adoption or amendment of this chapter and is not a home occupation.
 - (b) That the proposed use shall not reduce the level of service on adjacent roadways or intersections.
 - (c) That the property has adequate sight distance for the location and type of proposed use.
 - (d) That the amount of parking required to meet the minimum chapter requirements for the proposed use shall be provided.
 - (e) That the amount of noise, odors, vibrations, smoke, dust and air discharges of the proposed use shall be equal to or less than the present use.
 - (f) That the amount of surface water runoff from the site shall not be increased.
 - (g) That the hours of operations of the proposed use are compatible with the surrounding land uses.
 - (h) That an adequate buffer has been provided to screen a proposed commercial or industrial use from any abutting residential use.
- (3) The Board of Appeals may impose conditions of approval that are specific to the standards in § 120-203C(2).

§ 120-204. Nonconforming lots of record. [Amended 2-28-2017 by Order 17-037]

- A. A use allowed in the zoning district may be erected on any single lot of record at the effective date of adoption or amendment of this chapter, provided that such lot shall be in separate ownership and not

contiguous with any other lot in the same ownership and that all other dimensional standards of this chapter shall be met. In the event that all other dimensional standards cannot be met, the property owner may apply for a variance in accordance with Article 11 of this chapter. **[Amended 10-24-2023 by Order No. 23-193]**

- B. If two or more contiguous lots or parcels are in single ownership of record at the time of adoption or amendment of this chapter and if all or part of the lots do not meet the dimensional and area requirements of this chapter, the lands involved shall be considered to be a single parcel for the purpose of this chapter, and no portion of said parcel shall be built upon or sold which does not meet dimensional and area requirements of this chapter, nor shall any division of the parcel be made which creates any dimension or area below the requirements of this chapter. Two contiguous lots in single ownership prior to July 8, 1976, which each have an existing residential structure(s) on them and which do not meet the requirements of this chapter are exempt from this section and may be divided. When such lots are divided, each lot thus created must be as conforming as possible to the dimensional requirements of this chapter.
- C. Lots in subdivisions approved by the Windham Planning Board after February 7, 1972, are exempt from the provisions of § 120-204A and B, above.
- D. Alteration of nonconforming lots. A nonconforming lot, legally existing as of the effective date of this chapter, may be further divided or have its lot lines altered, provided that such action does not increase or extend the degree of, or create any new, nonconformity with regard to any applicable dimensional standard.

~~D.E.~~ Notwithstanding any other provision of this chapter to the contrary, an accessory dwelling unit may be constructed on a nonconforming lot that contains an existing residential structure, so long as the accessory dwelling does not increase the nonconformity of the nonconforming lot.

§ 120-205. Nonconforming mobile home parks. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

Expansion of a nonconforming mobile home park shall conform to the dimensional standards of the zoning district in which the park is situated, provided that:

- A. No lot within the park that is served by public sewer shall be less than the smaller of 6,500 square feet or the area of the smallest residential lot size allowed in the Town of Windham;
- B. No lot within the park that is served by septic shall be less than 20,000 square feet in size; or
- C. The size of any lot served by a central on-site subsurface wastewater disposal system approved by the Department of Health and Human Services shall be at least 12,000 square feet in area, provided that the overall density of the mobile home park is not greater than one home for every 20,000 square feet.

§ 120-206. Nonconforming shipping containers.

- A. Residential districts.
- (1) No more than one nonconforming shipping container shall be allowed on any lot.
- (2) Any shipping container located in a residential district on, or prior to, September 21, 2000, may continue to be used if it meets the following requirements:
- (a) The property owner shall provide documentation, to the satisfaction of the Code Enforcement Officer, that the shipping container was located on the site on, or prior to,

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September 21, 2000. Information from abutting property owners, in the form of a letter stating the existence of the shipping container on or around a specific date, could assist in this documentation.

(b) Permit required.

- [1] The property owner shall obtain a permit from the Code Enforcement Officer. The permit shall document the following: the container's existence, size, and location on the property. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**
- [2] The permit must be acquired by March 21, 2001, unless good cause can be shown to the Code Enforcement Officer. If a permit is not requested by September 21, 2001, the shipping container must be removed, unless the shipping container was located on the property prior to November 9, 1999.

ARTICLE 3
Definitions

§ 120-301. Definitions. [Amended 4-27-2010 by Order 10-075; 9-14-2010 by Order 10-164; 2-14-2012 by Order 12-014; 10-23-2012 by Order 12-148; 10-23-2012 by Order 12-149; 7-8-2014 by Order 14-164; 10-14-2014 by Order 14-387; 11-18-2014 by Order 14-463; 12-16-2014 by Order 14-491; 3-28-2017 by Order 17-052; 9-12-2017 by Order 17-160; 10-10-2017 by Order 17-161; 6-12-2018 by Order 18-099; 1-15-2019 by Order 18-257; 6-11-2019 by Order 19-057; 5-26-2020 by Order 20-048; 8-11-2020 by Order 20-151; 10-13-2020 by Order 20-211; 4-12-2022 by Order No. 22-062; 6-16-2022 by Order No. 22-108; 10-11-2022 by Order No. 22-175; 3-28-2023 by Order No. 23-041; 4-25-2023 by Order No. 23-060; 8-15-2023 by Order No. 23-149; 8-15-2023 by Order No. 23-150; 4-9-2024 by Order No. 24-018; 5-14-2024 by Order No. 24-052; 8-20-2024 by Order No. 24-165; 1-14-2025 by Order No. 25-001; 1-14-2025 by Order No. 25-002; 4-29-2025 by Order No. 25-043; 5-27-2025 by Order No. 25-090]

In this chapter, the following terms shall have the following meaning unless a contrary meaning is required by the text or is specifically prescribed. In addition to the following definitions, performance standards regulating specified land uses should be reviewed in the district standards for each zoning district (Article 4) and the performance standards (Article 5) that apply to all zoning districts in the Town.

ABUTTING LAND — A lot of land currently listed by the Windham Tax Assessor, having a common border with or being separated from such a common border by a right-of-way or easement, or another lot of land currently listed by the Windham Tax Assessor. For the purposes of this chapter, the owners of properties shall be considered to be those parties currently listed by the Windham Tax Assessor against whom taxes are assessed.

~~ACCESSORY APARTMENT-ACCESSORY DWELLING UNIT (ADU) (formerly "Accessory Apartment") — A self-contained dwelling unit located within, attached to, or detached from a single-family dwelling unit or a multi-unit residential structure located on the same parcel of land, that has been added onto, or created within, a single family detached dwelling or accessory building to a single family detached dwelling.~~

ACCESSORY BUILDING — See definition of "building, accessory."

ACCESSORY USE — See definition of "use, accessory."

ADULT AMUSEMENT DEVICE — Any device capable of showing, by audio or visual reproduction, projection or otherwise, and used primarily to display materials containing details, descriptions or narrative accounts of acts of sexual stimulation, intercourse or deviation, the dominant theme of which is an appeal to the prurient interest of the listener or viewer within a cubicle or other enclosed area.

ADULT BUSINESS ESTABLISHMENT — Any retail business, including but not limited to any bookstore, newsstand, novelty store, nightclub, bar, cabaret, amusement arcade or theater, which:

- A. Keeps for public patronage or permits or allows the operation of any adult amusement device as defined in this section.
- B. Customarily exhibits motion pictures or displays any other visual representation described or advertised as being X-rated or for adults only or which customarily excludes persons from any portion of the premises by reason of immaturity of age by the use of such or similar phrases.
- C. Maintains a substantial inventory of sexually oriented or sexually explicit materials.
- D. Customarily provides entertainment primarily involved with the explicit depiction or description of sexual intercourse or sexual acts (as defined in 17-A M.R.S.A. § 251).

ADULT USE MARIJUANA STORE — A facility licensed under 28-B M.R.S.A. Chapter 1 to purchase adult use marijuana, immature marijuana plants and seedlings from a cultivation facility, to purchase

adult use marijuana and adult use marijuana products from a manufacturing facility and to sell adult use marijuana, adult use marijuana products, immature marijuana plants and seedlings to consumers.

AFFORDABLE HOUSING DEVELOPMENT —

- A. For rental housing, a development in which a household whose income does not exceed 80% of the area median income as defined by the United States Department of Housing and Urban Development under the United States Housing Act of 1937, Public Law 75-412, 50 Stat. 888, Section 8, as amended, can afford 51% or more of the units in the development without spending more than 30% of the household's monthly income on housing costs; and
- B. For owned housing, a development in which a household whose income does not exceed 120% of the area median income as defined by the United States Department of Housing and Urban Development under the United States Housing Act of 1937, Public Law 75-412, 50 Stat. 888, Section 8, as amended, can afford 51% or more of the units in the development without spending more than 30% of the household's monthly income on housing costs.
- C. For purposes of this definition, "housing costs" means:
 - (1) For a rental unit, the cost of rent and any utilities (electric, heat, water, sewer, and/or trash) that the household pays separately from the rent; and
 - (2) For an ownership unit, the cost of mortgage principal and interest, real estate taxes (including assessments), private mortgage insurance, homeowner's insurance, condominium fees, and homeowners' association fees.

AGRICULTURE — The production, storage, keeping, harvesting, grading, packaging, processing, boarding, or maintenance, for sale, lease, or personal use, of plants and animals useful to humans, including but not limited to: forages and sod crops; grains and seed crops; dairy animals and dairy products; poultry and poultry products; livestock, including beef cattle, sheep, swine, horses, ponies, mules, or goats or any mutations or hybrids thereof, including the breeding and grazing of any or all of such animals; bees and apiary products; fur animals; trees and forest berries; vegetables; nursery, floral, ornamental, and greenhouse products. Agriculture does not include forestry or sawmills, as defined in this chapter. (See Article 5, Performance Standards.)

AGRICULTURE, PIGGERY — A premises, area, fenced enclosure, building or structure, or portion thereof, used or designed for the keeping of pigs. (See Article 5, Performance Standards.)

AGRICULTURE, POULTRY FACILITY — A premises, area, fenced enclosure, building or structure, or portion thereof, used or designed for the keeping of poultry or fowl. (See Article 5, Performance Standards.)

ANTENNA — Any structure or device used for the purpose of wirelessly transmitting or receiving electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), or wireless telecommunication signals, including but not limited to directional antennas, such as panels, microwave dishes, and satellite dishes, and omnidirectional antennas, such as whip antennas.

AREA MEDIAN INCOME — The midpoint of the Portland, Maine Metropolitan Statistical Area income distribution calculated on an annual basis by the U.S. Department of Housing and Urban Development.

AREA OF SPECIAL FLOOD HAZARD — The land in the floodplain having a 1% or greater chance of flooding in any given year, as specifically identified by the Federal Emergency Management Agency in a report entitled "Flood Insurance Study — Town of Windham, Maine, Cumberland County."

ARTERIAL STREET — See definition of "street classification," Subsection A, Arterial street.

ARTIST STUDIO — A place of work for an artist, artisan, or craftsperson, including persons engaged in the application, teaching, or performance of fine arts, such as, but not limited to, drawing, vocal or instrumental music, painting, sculpture, writing, woodworking, sewing, and saw sharpening.

ASSISTED LIVING FACILITY — Residences for the frail elderly that provide rooms, meals, personal care, and supervision of self-administered medication. They may provide other services, such as recreational activities, financial services, and transportation.

AUCTION HOUSE — A place where objects or art, furniture, and other goods are offered for sale to persons who bid on the object in competition with each other.

AUTOMOBILE — A motor vehicle designed for the conveyance of passengers that has a seating capacity of not more than 15 persons, including the operator.

AUTOMOBILE AUCTION FACILITY — Any parcel of land, building or other premises, or portion thereof, which is used for the temporary storage of whole, wrecked automobiles that are offered for sale by an automobile auction business. This use does not include automobile graveyards, automobile recycling businesses or junkyards, as defined according to 30-A M.R.S.A. § 3752, as amended from time to time.

AUTOMOBILE GAS STATION — Any building, land area, or other premises, or portion thereof used for the retail dispensing or sales of vehicular fuels and as an accessory use the sale of lubricants, tires, batteries, and similar vehicle accessories. The sale of additional items or services on the same site must also be allowed by the applicable zoning district(s). (See definitions of "retail sales, minimart"; "automobile repair services.")

AUTOMOBILE GRAVEYARD — An "automobile graveyard" shall be defined according to 30-A M.R.S.A. § 3752, as amended from time to time.

AUTOMOBILE REPAIR SERVICES — Establishments primarily engaged in the maintenance and repair of passenger vehicles, pickup trucks, all classes of commercial trucks and similar vehicles. The type of work typically provided includes, but is not limited to, engine tune-ups and overhauls, transmission repairs, glass repair and replacement, oil changes, tire repairs and replacement, brake and muffler work, bodywork, painting and diagnostic tune-ups. (See Article 5, Performance Standards, and definition of "small engine repair.")

AUTOMOBILE SALES — See "retail sales, automobile sales."

AUTOMOBILE STORAGE LOT — A parcel of land, building, or facility that is used for the temporary storage of wrecked, towed or impounded motor vehicles usually awaiting insurance adjustments, reclamation by titleholders or their agents, or transport to a repair shop. (See Article 5, Performance Standards.)

BACKLOT — See definition of "lot, backlot."

BANK — A bank or similar financial institution.

BASE FLOOD — The flood having a 1% chance of being equaled or exceeded in any given year, commonly called the "100-year flood."

BED-AND-BREAKFAST INN — Overnight accommodations and a morning meal in a dwelling unit provided to transients for compensation. (See Article 5, Performance Standards.)

BLOCK — A parcel or parcels of land surrounded by streets.

BOARDING HOME FOR SHELTERED CARE — A group home for the sheltered care of persons with special needs, which, in addition to providing food and shelter, may also provide some combination of personal care, social or counseling services, and transportation. This definition does not include facilities

for the treatment of substance abuse. (See Article 5, Performance Standards.)

BUFFER — A combination of physical space and vertical elements, such as plants, berms, fences, or walls, the purpose of which is to separate and screen incompatible adjacent or proximate land uses.

BUFFER YARD — A unit of land, together with a specified type and amount of planting thereon, and any structures such as but not limited to fences, retaining walls and berms, which may be required between land uses to eliminate or minimize conflicts. (See Article 5 Performance Standards)

BUILDING — Any structure having a roof supported by columns or walls and intended for the shelter, housing, or enclosure of any individual, animal, process, equipment, goods, or materials of any kind. (See definition of "structure.")

BUILDING COVERAGE — The ratio of the horizontal area, measured from the exterior surface of the exterior walls of the ground floor, of all principal and accessory buildings on a lot to the total lot area.

BUILDING FOOTPRINT — The area encompassed by a building's outer wall at ground level.

BUILDING HEIGHT — The vertical distance from grade plane to the average height of the highest roof surface.

BUILDING, ACCESSORY — A subordinate building detached from but located on the same lot as the principal building, the use of which is incidental to that of the principal building.

BUILDING, PRINCIPAL — A building in which is conducted the principal use of the lot on which it is located.

BUSINESS AND PROFESSIONAL OFFICE — The place of business of lawyers, accountants, financial advisors, architects, surveyors, real estate and insurance businesses, psychiatrists, counselors, and the like, or in which a business conducts its administrative, financial or clerical operations, including banks, other financial services and call centers. This also includes the office functions of publishing and media businesses (see definition of "industry, light" for printing operations).

CALL CENTER — A functional area within an organization or an outsourced, separate facility that exists solely to answer inbound or place outbound telephone calls; usually a sophisticated voice operations center that provides a full range of high-volume, inbound or outbound call-handling services, including customer support, operator services, directory assistance, multilingual customer support, credit services, card services, inbound and outbound telemarketing, interactive voice response and web-based services. (See definition of "business and professional office.")

CAMPGROUND, COMMERCIAL — Any premises providing temporary accommodation to the public for a fee in a recreational vehicle or tent.

CAMPGROUND, PERSONAL — Any premises providing temporary accommodation on three or fewer campsites in a recreational vehicle or tent and used exclusively by the owner of the property and his or her family and friends. The definition of a personal campground does not include the storage of recreational vehicles. (See Article 5, Performance Standards.)

CAMP TRAILER — A trailer or semitrailer primarily designed and constructed to provide temporary living quarters for recreational, camping, travel or other use. "Camp trailer" includes a manufactured or homemade tent trailer, so called, that consists of a platform, shelf or box with means of permanently or temporarily attaching a tent. "Camp trailer" does not include a mobile home.

CENTRALLY MANAGED WATER SYSTEM — A water system that provides water for human consumption through pipes or other conveyances to at least fifteen (15) service connections or serves an average of at least twenty-five (25) people for at least sixty (60) days per year, whether publicly or privately owned. A centrally managed water system is a "comparable" system for purposes of calculating minimum density requirements in this chapter.

CENTRAL SEWAGE SYSTEM — A wastewater disposal system that receives wastewater from two or

more structures. (See Article 5, Performance Standards.)

CHILD-CARE FACILITY — A building in which a person maintains or otherwise carries out a regular program, for consideration, for any part of a day providing care and protection for children under 13 years of age. (See Article 5, Performance Standards.)

CHILD CARE, FAMILY HOME — A home used to provide child care in the resident's home on a regular basis, for consideration, for three to 12 children under 13 years of age who are not the children of the provider. (See Article 5, Performance Standards.)

CLEAR ZONE — The area adjacent to a street (measured from the edge of the travel lane) in which fixed objects or obstructions are not permitted. Fixed objects include, but are not limited to, trees, signs, utility poles, walls, boulders, and mailboxes. (See Article 9, Subdivision Review.)

CLUB — A group organized for a common purpose, goal, interest, or activity, usually social, religious, cultural or educational in nature, usually characterized by certain membership qualifications, payment of fees and dues, regular meetings, a constitution, and bylaws.

COMMERCIAL USE — “Commercial use” means the use of lands, buildings or structures the intent or result of which is the production of income from the buying or selling of goods or services. Commercial use does not include a home-based business, the rental of a single dwelling unit on a single lot or incidental sales of goods or services as may be allowed by permit or standard. For purposes of this rule, this definition does not include areas zoned exclusively for industrial uses.

COMPARABLE SEWER SYSTEM — A subsurface wastewater disposal system that discharges over 2,000 gallons of wastewater a day. A comparable sewer system is a “comparable” system for purposes of calculating minimum density requirements.

COMPLETE SUBSTANTIAL CONSTRUCTION — The completion of a portion of the improvements which represents no less than 30% of the costs of the proposed improvements within a subdivision. If the subdivision is to consist of individual lots to be sold or leased by the subdivider, the cost of construction of buildings on those lots shall not be included. If the subdivision is a multifamily development, or if the applicant proposes to construct the buildings within the subdivision, the cost of building construction shall be included in the total costs of proposed improvements.

COMPREHENSIVE PLAN — A document or interrelated documents adopted by the municipal officers, containing the elements established under 30-A M.R.S.A. § 4326, Subsections 1 to 4, including the strategies for an implementation program which are consistent with the state goals and guidelines established under 30-A M.R.S.A. §§ 4312 et seq.

CONDITIONAL USE — A use which shall be authorized when all of the conditions of § 120-516 and other applicable provisions of this chapter have been met. (See § 120-516, Conditional use, in Article 5, Performance Standards.)

CONSERVATION SUBDIVISION — A form of development that permits a reduction in lot area and bulk requirements, and the remaining land area is devoted to open space, active recreation, preservation of environmentally sensitive areas, or agriculture. (See Article 4, Zoning Districts, and Article 9, Subdivision Review.)

CONSTRUCTION SERVICES, HEAVY — A business engaged in the construction and maintenance of infrastructure, including road and utility construction or paving. This use is characterized by specialized heavy equipment, including graders, loaders, backhoes, dump trucks, cement mixers, etc. This use includes indoor repair, maintenance, or storage of contractor's vehicles, machinery, equipment or materials and space for the contractor's business office. (See Article 5, Performance Standards.)

- A. **HEAVY CONSTRUCTION SERVICES, MAJOR** — A business with four or more vehicles types that are classified by the Federal Highway Administration as Class 6-13 vehicles.
- B. **HEAVY CONSTRUCTION SERVICES, MINOR** — A business with three or fewer vehicles types that are classified by the Federal Highway Administration as Class 6-13 vehicles.

CONTRACTOR SERVICES — A business engaged in the construction, renovation, maintenance or repair of residential or commercial buildings and structures, including building systems exterior to those buildings or structures. Such businesses include, but are not limited to, plumbing, painting, building, well drilling, carpentry, masonry, electrical, roofing, heating, cooling and ventilation systems, and siding. This use includes indoor repair, maintenance, or storage of contractor's vehicles, machinery, equipment or materials and space for the contractor's business office. (See Article 5, Performance Standards.)

CONTRACTOR SERVICES, LANDSCAPING — A business engaged in the decorative and functional alteration, planting and maintenance of residential and commercial grounds, including winter maintenance, like snow plowing and shoveling services. Such a business may engage in the installation and construction of underground improvements but only to the extent that such improvements (e.g., drainage or irrigation) are accessory to the principal business and are necessary to support or sustain the landscaped surface of the ground. (See Article 5, Performance Standards.)

CONTRACTOR STORAGE YARD — A portion of a lot or parcel used for the outdoor storage of equipment, vehicles, machinery, or materials used by and accessory to on-site contractor services or contractor services, landscaping, or heavy construction services. (See Article 5, Performance Standards.)

CONTROLLED ACCESS STREET — See definition of "street classification," Subsection C, 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 curbline, at which point vehicles may enter or leave the roadway. (See Article 5, Performance Standards.)

DAYTIME HOURS — Those hours between 7:00 a.m. and 7:00 p.m.

DEAD-END STREET — See definition of "street classification," Subsection F, Dead-end street.

DEMOLITION — The removal of part, or all, of a building or structure.

DESIGNATED GROWTH AREA — Those areas designated in the Town's comprehensive plan as suitable for orderly residential, commercial, or industrial development, or any combination thereof, and into which most development projected over ten (10) years is directed.

DEVELOPABLE LAND — Parcels, lots or sites that meet the requirements of developable land in Article 5, 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.

DIMENSIONAL STANDARDS — Standards that govern the size and placement of structures such as building height, lot area, lot area per dwelling unit, lot frontage, lot depth, and setbacks.

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 is 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 Article 5, Performance Standards.)

DRIVEWAY — A route that provides access to no more than two lots from either a public or private right-of-way. A driveway shall not be used to provide frontage. (See the definition of "frontage" in this section.)

DWELLING — A building, or portion thereof, that is used exclusively for human habitation.

DWELLING, DUPLEX — A building containing two attached dwelling units. A duplex may, or may not, be attached to a nonresidential use.

DWELLING, MIXED-USE — A building containing one or more dwelling unit(s) and one or more nonresidential use(s) where residential uses are located above the first story of a building that contains a nonresidential use on at least the first story. (See definition of "story.")

DWELLING, MULTIFAMILY — A building containing ~~three~~five or more dwelling units. A multifamily dwelling may be attached to a nonresidential use.

DWELLING, SINGLE-FAMILY — A structure or portion of a structure containing a single dwelling unit.

DWELLING, QUADPLEX – A building containing four dwelling units.

DWELLING, TRIPLEX – A building containing three dwelling units.

DWELLING UNIT — One or more rooms, designed and equipped exclusively for use as living quarters, occupied, or intended for occupancy as separate living quarters, with cooking, sleeping, and sanitary facilities provided within the dwelling unit for the exclusive use of a single family. Recreational vehicles are not and may not be used (or permitted) as dwelling units.

ENGINEER — A civil engineer licensed by the State of Maine.

FAMILY — One or more persons occupying a premises and living as a single housekeeping unit as distinguished from a group occupying a boardinghouse, lodging house, motel, or hotel as herein defined.

FARM ENTERPRISE — A use accessory to agriculture which is dependent upon the property, buildings or on-site agricultural products or animals that would allow working farms to generate additional income from uses such as indoor or outdoor events, weddings, restaurants, lodging for special events and other on-farm activities not directly related to agriculture. (See Article 5, Performance Standards.)

FISHERIES, SIGNIFICANT — Areas identified by a government agency such as the Maine Department of Inland Fisheries and Wildlife, Atlantic Salmon Authority, or Maine Department of Marine Resources as having significant values as fisheries or any areas identified in the Town's Comprehensive Plan.

FITNESS CENTER — An establishment that provides facilities for aerobic exercises, running and jogging, exercise equipment, game courts, swimming facilities, and saunas, showers, massage rooms, and lockers to members and their guests.

FLOOD INSURANCE RATE MAP (FIRM) — The official map on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the Town of Windham.

FORESTRY — The operation of timber tracts, tree farms, forest nurseries, the gathering of forest products, or the performance of forest services.

FRONT LOT LINE — See definition of "lot line, front."

FRONTAGE — The length of the front lot line measured at the street right-of-way. (See § 120-523, Developable land, in Article 5, Performance Standards.)

FUNERAL HOME — A building used for the preparation of the deceased for burial and the display of the deceased and rituals connected therewith before burial or cremation.

GOLF COURSE — A tract of land laid out for at least nine holes for playing the game of golf that may include a clubhouse, dining and snack bars, pro shop, and practice facilities.

GRADE PLANE — A reference plane representing the average of finished ground level adjoining the building at all exterior walls. Where the finished ground level slopes away from the exterior walls, the reference plane shall be established by one of the following:

- A. The lowest points within the area between the building and the lot line; or
- B. Where the lot line is more than six feet from the building, the lowest points between the building and the lot line as measured at a point six feet from the building.

GROSS FLOOR AREA (GFA) — The sum of the gross horizontal areas of all enclosed stories of a building, including cellars, basements, mezzanines, penthouses, corridors, and lobbies, measured from the exterior face of the exterior walls, or from the center line of a common wall separating two buildings, but excluding any space with a floor-to-ceiling height of less than six feet six inches.

GROUNDWATER SENSITIVE AREA — An area that has been identified as being particularly vulnerable to the discharge of pollutants from on-site sewage disposal systems due to its proximity to a groundwater aquifer and/or a wellhead.

HAZARDOUS MATERIAL — Hazardous material includes the following:

- A. Highly combustible or explosive products or materials that are likely to burn with extreme rapidity or that may produce poisonous fumes or explosions.
- B. Highly corrosive, toxic, or noxious alkalis, acids, or other liquids or chemicals producing flame, fume, or poisonous, irritant, or corrosive gases.
- C. Materials producing explosive mixtures of dust or that result in the division of matter into fine particles subject to spontaneous ignition.
- D. Any substance that is a present or potential danger to people or to the natural environment when deposited on land or discharged on or into water or ambient air.

HISTORIC OR ARCHAEOLOGICAL RESOURCES — Areas identified by a government agency such as the Maine Historic Preservation Commission as having significant value as a historic or archaeological resource or any areas identified in the Town's Comprehensive Plan.

HOME OCCUPATION 1 — An occupation or profession which is customarily carried on in a dwelling unit or in a building or other structure accessory to a dwelling unit and clearly incidental and secondary to the use of the dwelling unit for residential purposes. See § 120-527, Home occupation 1, in Article 5, Performance Standards.

HOME OCCUPATION 2 — An occupation or profession which is customarily carried on in a dwelling unit or in a building or other structure accessory to a dwelling unit and clearly incidental and secondary to the use of the dwelling unit for residential purposes. Home occupation 2 uses must be approved by the Board of Appeals. (See Article 5, Performance Standards.)

HOSPITAL — An institution providing primary health services and medical or surgical care to persons, primarily inpatients, suffering from illness, disease, injury, deformity, and other abnormal physical or mental conditions and including as an integral part of the institution related facilities, such as laboratories, outpatient facilities, training facilities, medical offices, and staff residences.

HOTEL — A facility offering transient lodging accommodations to the general public for a fee. Hotels may include additional facilities and services, such as restaurants, meeting rooms, entertainment, personal services, and recreational facilities in those zoning districts in which these facilities are permitted. (See Article 5, Performance Standards.)

HOUSEHOLD PETS — Those animals normally considered as household companions, but not including

horses, cows, sheep, goats, mink, swine, chickens, turkeys, or any animals raised for sale or for the sale of their products.

IMPERVIOUS AREA — Means the total area of a parcel covered with a low-permeability material that is highly resistant to infiltration by water, such as asphalt, concrete, or rooftop, and areas such as gravel roads and unpaved parking areas that will be compacted through design or use to reduce their permeability. Common impervious areas include, but are not limited to, rooftops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and macadam or other surfaces which similarly impede the natural infiltration of stormwater. Pervious pavement, pervious

pavers, pervious concrete and underdrained artificial turf fields are all considered impervious. For the purpose of determining jurisdictional thresholds, the Department may, depending on the design, consider such facilities to provide alternative treatment as described in Section 4(B)(3)(e) of this Chapter.³

IMPERVIOUS SURFACE — A surface that has been compacted or covered with a layer of material so that it is highly resistant to infiltration by water. Examples include, but are not limited to, buildings, structures, and pavement. Surfaces with a percolation rate faster than 120 minutes per inch shall not be considered impervious.

INDUSTRIAL HEMP — Any variety of cannabis sativa L. with a delta-9-tetrahydrocannabinol concentration that does not exceed 0.3% on a dry-weight basis and that is grown or possessed by a licensed grower in compliance with state law. For the purposes of this chapter, the use is treated the same as agriculture but shall also comply with the odor standards of § 120-537B.

INDUSTRIAL OR COMMERCIAL STREET — See definition of "street classification," Subsection G, Industrial or commercial street.

INDUSTRY, HEAVY — A use engaged in the basic processing and manufacturing of materials or products predominately from extracted or raw materials, or a use engaged in storage of, or manufacturing processes using, flammable or explosive materials, or storage or manufacturing processes that potentially involve hazardous or commonly recognized offensive conditions. (See definitions of "manufacturing" and "manufacturing, hazardous.")

INDUSTRY, LIGHT — A use engaged in the manufacture, predominantly from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, packaging, incidental storage, incidental sales and incidental distribution of such products, but excluding basic industrial processing. (See definition of "manufacturing" and Article 5, Performance Standards.)

JUNKYARD — A yard, field or other outside area used to store, dismantle or otherwise handle:

- A. Discarded, worn-out or junked plumbing, heating supplies, electronic or industrial equipment, household appliances or furniture;
- B. Discarded, scrap and junked lumber; and
- C. 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 or more dogs, cats, or domesticated animals are boarded for a fee or compensation. (See Article 5, Performance Standards.)

KENNEL, MINOR — An establishment in which four or fewer dogs, cats, or domesticated animals are boarded for a fee or compensation. (See Article 5, Performance Standards.)

LANDSCAPED BUFFER STRIP — See definition of "buffer strip, landscaped."

LANDSCAPED GREEN AREA — Means an area of land that has been disturbed and re-planted or covered with one or more of the following: grass or other herbaceous plants, shrubs, trees, or mulch; but not including area that has reverted to a natural, vegetated condition. An area of grass is considered landscaped if it is mowed more than twice per twelve-month period.

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

3. Editor's Note: See 06-096 CMR Ch. 500.

Board.

LIGHT TRUCK — A truck with a registered gross vehicle weight of 10,000 pounds or less.

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," Subsection H, Local street, major, and Subsection I, Local street, minor.

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 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, BACKLOT — A lot that does not have the required minimum frontage directly on a public street and meets the standards of § 120-533, Lot, backlot. (See Article 5, Performance Standards.)

LOT, CORNER — A lot abutting on and at the intersection of two or more streets. (See Article 5, Performance Standards.)

LOT, DEVELOPABLE — See definition of "developable land."

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.

LOW IMPACT DEVELOPMENT — "Low impact development" or "green infrastructure" means site planning and design strategies intended to replace or replicate predevelopment hydrology through the use of source control and relatively small-scale measures integrated throughout a site to disconnect impervious surfaces and enhance filtration, treatment, and management of stormwater runoff as close to its source as possible. Low impact development strategies may be either nonstructural or structural, except that low impact development strategies utilizing structural stormwater management techniques shall be limited to an impervious contributing drainage area equal to or less than one acre. Low impact development strategies include, but are not limited to: bioretention filters, grass swales and channels, vegetated filter strips, permeable pavements, rain gardens and vegetated rooftops. More information is available in Maine DEP Chapter 10, Low Impact Development Practices.

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.")

MAJOR SUBDIVISION — Any subdivision containing five or more lots or dwelling units.

MANUFACTURED HOUSING — Manufactured housing shall be defined according to 30-A M.R.S.A. § 4358, as amended from time to time. (See Article 5, 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:

- A. Highly combustible or explosive products or materials that are likely to burn with extreme rapidity or that may produce poisonous fumes or explosions.
- B. Highly corrosive, toxic, or noxious alkalis, acids, or other liquids or chemicals producing flame, fume, or poisonous, irritant, or corrosive gases.
- C. Materials producing explosive mixtures of dust or that result in the division of matter into fine particles subject to spontaneous ignition.

MARIJUANA — The leaves, stems, flowers and seeds of a marijuana plant, whether growing or not. "Marijuana" includes marijuana concentrate but does not include hemp as defined in 7 M.R.S.A. § 2231, Subsection 1-A, or a marijuana product.

MARIJUANA BUSINESSES — Includes adult use marijuana store, marijuana cultivation facility, marijuana testing facility, marijuana manufacturing facility, medical marijuana registered caregivers, medical marijuana caregiver retail store, marijuana registered dispensary and medical marijuana registered caregiver (home occupation).

MARIJUANA CULTIVATION FACILITY — A facility used to purchase marijuana plants and seeds from other cultivation facilities; to cultivate, prepare and package adult use marijuana; to cultivate medical marijuana that exceeds 1,000 square feet floor area; to sell marijuana to products manufacturing facilities, stores and to other cultivation facilities; and to sell marijuana plants and seeds to other cultivation facilities and immature marijuana plants and seedlings to marijuana stores. Cultivation facilities may be of the following types:

- A. **TIER 1 MARIJUANA CULTIVATION FACILITY** — Not more than 500 square feet of plant canopy.
- B. **TIER 2 MARIJUANA CULTIVATION FACILITY** — Not more than 2,000 square feet of plant canopy.
- C. **TIER 3 MARIJUANA CULTIVATION FACILITY** — Not more than 7,000 square feet of plant canopy.
- D. **TIER 4 MARIJUANA CULTIVATION FACILITY** — Not more than 20,000 square feet of plant canopy.

MARIJUANA MANUFACTURING FACILITY —

- A. A registered Tier 1 or Tier 2 manufacturing facility, as designated by state law, or a person authorized to engage in marijuana extraction under 22 M.R.S.A. § 2423-F; or
- B. A facility licensed under 28-B M.R.S.A. Chapter 1, Subchapter 2, to purchase marijuana from a cultivation facility or another products manufacturing facility; to manufacture, label and package marijuana and marijuana products; and to sell marijuana and marijuana products to marijuana stores and to other products manufacturing facilities.

MARIJUANA REGISTERED DISPENSARY — An entity registered under 22 M.R.S.A. § 2425-A that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, sells, supplies or dispenses marijuana plants or harvested marijuana or related supplies and educational materials to qualifying patients

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and the caregivers of those patients.

MARIJUANA TESTING FACILITY — A public or private laboratory that is authorized and accredited in accordance with state law for the research and analysis of marijuana, marijuana products or other substances for contaminants, safety or potency.

MEDICAL MARIJUANA CAREGIVER RETAIL STORE — A store that has attributes generally associated with retail stores, including, but not limited to, a fixed location, a sign, regular business hours, accessibility to the public and sales of goods or services directly to a consumer, and that is used by a registered caregiver to offer marijuana plants or harvested marijuana for sale to qualifying patients.

MEDICAL MARIJUANA REGISTERED CAREGIVER — A person or an assistant of that person that provides care for a qualifying patient in accordance with state law and licensing and is registered with the state in accordance with state law.

MEDICAL MARIJUANA REGISTERED CAREGIVER (HOME OCCUPATION) — A person or an assistant of that person that provides care for a qualifying patient in accordance with state law and licensing and is registered with the state in accordance with state law and in accordance with the home occupation permitting and operational standards of this chapter.

MEDICAL OFFICE — A building housing one or more offices of doctors, such as doctors of medicine, dentistry, or non-boarding veterinary clinics.

MINERAL EXTRACTION — The removal, processing and storage of topsoil, loam, rock, sand, gravel, stone, and other earth materials. (See Article 6, Mineral Extraction.)

MINOR SUBDIVISION — Any subdivision containing not more than four lots or dwelling units.

MOBILE HOME PARK — "Mobile home park" shall be defined according to 30-A M.R.S.A. § 4358, as amended from time to time. (See Manufactured Housing Park Overlay District in Article 4, Zoning Districts.)

MOTEL — A building or group of attached or detached buildings containing guest rooms or dwelling units most of which have separate outside entrances and parking spaces nearby intended to be used by automobile transients for compensation. (See Article 5, Performance Standards.)

MULTIFAMILY DEVELOPMENT — A development that will contain ~~three-five~~ or more dwelling units created in any five-year period on one or more lots. For purposes of this definition, multifamily development is only reviewed on multiple lots if they have been under the same ownership within the last five years prior to the creation of the ~~fifth-third~~ unit.

MUNICIPAL FIRE OFFICIAL — The Town of Windham Fire Chief, or their designee.

MUNICIPAL OFFICER — Any member of the Town Council of the Town of Windham.

MUNICIPAL OFFICIAL — Any elected or appointed official of the Town of Windham.

MUNICIPAL REVIEW AUTHORITY — The board designated by either the State of Maine or this chapter to hear and decide upon specified applications.

MURALS — Hand-painted, hand-tiled, digitally printed, or other created images (which may contain lettering), on or affixed to the exterior wall of a building, but which do not contain any commercial message, including advertising copy, symbols, lettering/font, logos or other such recognized branding related to products or services provided on or in the premises.

NATURAL AREAS AND NATURAL COMMUNITIES, UNIQUE — Areas identified by a government agency such as the Maine Department of Agriculture, Conservation and Forestry Natural Areas Program as having significant value as a natural area or any areas identified in the Town's Comprehensive Plan.

NET RESIDENTIAL AREA OR ACREAGE — The area of a parcel which is suitable for division as

determined by the standards for net residential density in Article 5.

NET RESIDENTIAL DENSITY — The number of dwelling units per net residential acre.

NONCONFORMING LOT — A lot, the area, dimensions, or location of which was lawful prior to the adoption, revision, or amendment of this chapter but that fails by reason of such adoption, revision, or amendment to conform to the present requirements of the zoning district.

NONCONFORMING STRUCTURE OR BUILDING — A structure or building, the size, dimensions, or location of which was lawful prior to the adoption, revision, or amendment of this chapter but that fails by reason of such adoption, revision, or amendment to conform to the present requirements of this chapter.

NONCONFORMING USE — A use or activity that was lawful prior to the adoption, revision, or amendment of this chapter but that fails by reason of such adoption, revision, or amendment to conform to the present requirements of the zoning district.

NURSING HOME — An institution or a part of an institution that is licensed or approved to provide health care under medical supervision for 24 or more consecutive hours to two or more patients who are not related to the governing authority or its members by marriage, blood, or adoption.

OFF-STREET PARKING SPACE — A temporary storage area for a motor vehicle that is not located on a dedicated street right-of-way.

OFFICIAL MAP — The Land Use Map adopted by the Town of Windham, Maine on May 25, 1976, as amended from time to time.

OFFICIAL SHORELAND ZONING MAP — The most current map delineating the shoreland zones adopted by the Town of Windham, Maine, as amended from time to time, in accordance with the provisions of 38 M.R.S.A. § 435 et seq.

OPEN SPACE — Land set aside for permanent protection from development within a conservation subdivision. Open space uses may include passive and/or active use, including play fields and playgrounds, for preservation of environmentally sensitive areas, agriculture, forestry, or buffers.

OTHER — A land use category that includes all uses not specifically defined in this section and listed as permitted uses in a zoning district.

OUTSIDE SALES or OUTDOOR SALES — See definition of "retail sales, outdoor."

PARCEL —

- A. A piece or area of land formally described and recorded with map, block and lot numbers, by metes and bounds, by ownership, or in such a manner as to specifically identify the dimensions and/or boundaries.
- B. Informally, as land in general.
- C. "Parcel" shall be defined the same as "parcel of land" according to DEP regulations adopted pursuant to the Site Law.

[PARKING AGREEMENT — A legally binding agreement between a property owner and the owner of an off-site parking facility to provide required parking spaces within 0.25 miles of a residential development site, as measured in a straight, direct line from the nearest edge of the parcel containing the residential development to any point on the parcel\(s\) that make up the parking facility.](#)

PARK, PUBLIC — A tract of land available to the general public for recreational purposes. Public parks do not include recreation facilities that are fully enclosed.

PERMITTED USE — The use of any building or land in a manner subject to the express conditions and limitations stated in this chapter.

PERSON — Means any individual, person, firm, association, partnership, trust, corporation, municipal or other local governmental entity, quasi-municipal entity, state agency, federal agency, educational or

charitable organization or institution or other legal entity. "Person" shall also be defined according to rules adopted pursuant to the Site Law.

PLACE OF WORSHIP — A church, synagogue, temple, mosque, or other facility that is used for prayer by persons of similar beliefs. This definition shall also include a special-purpose building that is architecturally designed and particularly adapted for the primary use of conducting formal religious services on a regular basis. Educational and child-care activities that are conducted outside of the facility's religious services or gatherings shall be defined separately in this chapter.

PRINCIPAL USE — See definition of "use, principal."

PRIVATE ROAD — See definition of "street classification," Subsection J, Private road, major, and Subsection K, Private road, minor.

PRIVATE WAY — See definition of "street classification," Subsection L, Private way.

PUBLIC BUILDING —

- A. Any building, structure or installation used exclusively for public purposes by any department or branch of government.
- B. Buildings, structures or installations of an institutional nature and serving a public need, such as schools; libraries; museums; post offices; public safety, public works, and public utilities and services. (See § 120-543, Public building, in Article 5, Performance Standards.)

PUBLIC STREET — See definition of "street classification," Subsection M, Public street.

PUBLIC UTILITY FACILITY — Buildings, structures, or facilities, including switching stations, owned by a registered public utility, relating to the furnishing of utility services, such as electric, gas, telephone, water, and sewer, to the public. This definition shall not include the following buildings, structures or facilities (see Article 5, Performance Standards):

- A. Wireless telecommunications tower and facility (see definition).
- B. Pump station (see definition of "pump station"; see § 120-544, Pump station, in Article 5, Performance Standards).
- C. Solar energy system (see definition).

PUMP STATION — A building or structure containing the necessary equipment to pump sanitary sewage or public water to a higher elevation.

RECREATIONAL VEHICLE — A vehicle that is self-propelled and is primarily designed to provide temporary living quarters for recreational, camping or travel use, complies with all applicable federal vehicle regulations and does not require special highway movement permits to legally use the highways. "Recreational vehicle" does not include motor homes, travel trailers, fifth-wheel trailers and folding camping trailers.

RECREATION FACILITY, INDOOR — The use of a building for play, sports, games, and other similar diversions. (See definition of "fitness center.")

RECREATION FACILITY, OUTDOOR — The use of a land outside of a fully enclosed building, as defined, for play, sports, games, and other similar diversions.

RECREATION, PASSIVE — Activities that involve relatively inactive or less energetic activities, such as walking, sitting, picnicking, and board and table games.

RESEARCH LABORATORY — A facility for investigation into the natural, physical or social sciences,

which may include engineering and/or product development.

RESIDENTIAL USE — “Residential use” means any use providing human habitation permitted by this chapter. Residential uses may include single-family, duplex, triplex, quadplex, and other multifamily housing; condominiums; time-share units; and apartments. For purposes of this chapter, the following uses are not included under this definition, unless otherwise allowed in local ordinance: (1) Dormitories; (2) Congregate living facilities; (3) Campgrounds, campsites, hotels, motels, beds and breakfasts, or other types of lodging accommodations; and (4) Transient housing or short-term rentals.

RESTAURANT — An establishment where food and drink are prepared, served and consumed. A restaurant may serve food to be taken from the premises for consumption.

RETAIL SALES — Establishments engaged in the selling or rental of goods or merchandise and in rendering services incidental to the sale of such goods.

RETAIL SALES, ACCESSORY — The sale of goods or merchandise that are directly related to, or are the product of, the primary use located on the property.

RETAIL SALES, AUTOMOBILE SALES — The use of any building, land area, or other premises principally for the display, sale, rental, or lease of new or used automobiles, light trucks, and/or vans. This definition shall not include recreational vehicles. This use includes any vehicle preparation, warranty, or repair work conducted as an accessory use. (See Article 5, Performance Standards.)

RETAIL SALES, CONVENIENCE — A retail establishment of up to 1,500 square feet selling primarily food products, household items, newspapers and magazines, candy, and beverages, and a limited amount of freshly prepared foods such as sandwiches, pizzas, and salads. (See Article 5, Performance Standards.)

RETAIL SALES, MINIMART — A convenience store that is located on the same lot and is accessory to an automobile gas station. (See definition of "retail sales, convenience".)

RETAIL SALES, NURSERY — The growing, cultivation, storage, and sale of garden plants, flowers, trees, shrubs, and fertilizers, as well as the sale of garden tools and similar accessory and ancillary products, to the general public. A nursery may also include a greenhouse structure in which plants, vegetables, and flowers are grown for sale.

RETAIL SALES, OUTDOOR — The display or sale of products and services outside of a building. This includes, but is not limited to: camp trailers, recreational vehicles; garden supplies, flowers, shrubs, and other plant materials; boats and aircraft; farm equipment; motor homes; burial monuments; building and landscape materials; and lumber. This definition does not include yard sales conducted on residential properties. (See Article 5, Performance Standards.)

RETIREMENT COMMUNITY — Any age-restricted development, which may be in any housing form, including detached and attached units, apartments, and residences, offering private and semiprivate rooms. (See Article 5, Performance Standards.)

RIDING STABLE — Any land or structure designed, intended or used for the keeping of horses or ponies for hire, either with or without instruction in riding.

ROADSIDE STAND — A structure for the display and sale of agricultural products. (See definition of "agriculture" and standards for agriculture in Article 5, Performance Standards.)

ROCKERY (or ROCKERIES) — Rough rocks stacked in an interlocking pattern without concrete, mortar, or steel reinforcement. Neither mechanical nor physical connections are made between the individual rocks; interlocking is accomplished through proper rock layout, rock weight, and frictional interaction.

ROOMING HOUSE — A building used for temporary occupancy of individuals who are lodged with or without meals and in which bathroom and kitchen facilities may be shared. (See Article 5, Performance Standards.)

SAWMILL, PERMANENT — A facility where logs are cut into boards or timbers; a mill or machine for

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sawing logs or producing firewood that is in operation on a permanent basis. (See Article 5, Performance Standards.)

SAWMILL, TEMPORARY — A facility where logs are cut into boards or timbers, a mill or machine for

sawing logs or producing firewood that is in operation for a cumulative duration of two months or fewer in any twelve-month period. This definition does not include the use of handheld chain saws. (See Article 5, Performance Standards.)

SELF-STORAGE FACILITY — A building or group of buildings containing separate, individual, and private storage spaces of varying sizes available for lease or rent for varying periods of time. (See definition of "warehousing, public.")

SERVICE BUSINESS — Establishments primarily engaged in providing assistance, as opposed to products, to individuals, business, industry, government, and other enterprises.

SERVICE BUSINESS, COMMERCIAL — Establishments primarily engaged in providing services to business establishments on a fee or contract basis. This includes, but is not limited to, advertising and mailing, building maintenance, employment services, management and consulting services, protective services, equipment rental and leasing.

SERVICE BUSINESS, PERSONAL — Establishments primarily engaged in providing services involving the care of a person or his or her personal goods or apparel. This includes, but is not limited to, laundry or dry-cleaning services, beauty shops, barbershops, shoe repair, and clothing rental.

SETBACK — The distance between any structure and the nearest lot line or street.

SETBACK, FRONT — The distance between any structure and the front lot line or street and measured perpendicular to the structure to the closest point of the front lot line or street.

SETBACK LINE — That line that is the required minimum distance from any lot line and that establishes the area within which any structure may be erected or placed.

SETBACK, PRIMARY STREET — The distance between any principal structure and the lot line abutting a primary street.

SETBACK, REAR — The distance between any structure and the rear lot line or street and measured perpendicular to the structure to the closest point of the rear lot line or street.

SETBACK, REQUIRED — The minimum distance between any structure and a lot line or street within which no structure is permitted to be located except as provided in this chapter.

SETBACK, SECONDARY STREET — The distance between any principal structure and the lot line abutting a secondary street.

SETBACK, SIDE — The distance between any structure and the side lot line or street and measured perpendicular from the side lot line or street to the closest point of the structure.

SEXUALLY EXPLICIT — The display or depiction of sex organs during actual or simulated sexual intercourse or sexual acts as defined in 17-A M.R.S.A. § 251.

SHIPPING CONTAINER — A freestanding container typically assembled with steel and/or aluminum. The container typically does not have wheels, but rather is transported via a flatbed truck, rail cars, or ship. The container is used for the transportation and/or storage of goods and materials. (See Article 5, Performance Standards.)

SIDEWALK — A paved way for pedestrian traffic which is constructed parallel to a road. (See Article 9, Subdivision Review.)

SIGN — A name, identification, description, emblem, trade name, trademark, display or illustration which is affixed to, painted or represented directly or indirectly upon a building, structure, parcel or lot and which relates to an object, product, place, activity, person, institution, organization or business and as further described in § 120-712, Exemptions.

SITE LAW — Means the Site Location of Development Law, 38 M.R.S.A. §§ 481 through 490, as may be amended from time to time.

SLAUGHTERHOUSE — A structure, building, or facility used to process live animals for human consumption.

SMALL ENGINE REPAIR — The maintenance and repair of engines or motors used for the following types of equipment: power tools, lawn mowers, snowblowers and wood splitters. Small engine repair shall not include the maintenance or repair of engines or motors used in passenger vehicles, all-terrain vehicles (ATVs), mopeds, motorcycles and snowmobiles.

SMOKEHOUSE — A structure, building, or facility used to process or cure animal meat or products through the use of smoke.

SOLAR ENERGY SYSTEM — A solar energy system, consisting of solar panels combined with other associated components such as mounting racks, transformers, inverters and/or batteries, whose primary purpose is to harvest energy by transforming solar energy into another form of energy or transferring heat from a collector to another medium using mechanical, electrical, or chemical means. It may be roof-mounted or ground-mounted, and may be of any size as follows:

- A. Small-scale solar energy system is one whose physical size based on total area projected over a roof or the ground is less than 25,000 square feet;
- B. Medium-scale solar energy system is one whose physical size based on total area projected over a roof or the ground is equal to or greater than 25,000 square feet but less than 43,560 square feet (one acre); and
- C. Large-scale solar energy system is one whose physical size based on total area projected over a roof or the ground is equal to or greater than 43,560 square feet.

STORMWATER MANAGEMENT LAW — Means the Storm Water Management Law, 38 M.R.S.A. § 420-D, as may be amended from time to time.

STORY — That portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above. A story is measured as the vertical distance from top to top of two successive tiers of beams or finished floor surfaces and, for the topmost story, from the top of the floor finish to the top of the ceiling joists or, where there is not a ceiling, to the top of the roof rafters.

STORY, BASEMENT — That portion of a building which is partly or completely below grade.

STORY, FIRST — The lowest story having its finished floor surface entirely above grade, except that a basement shall be considered the first story where the finished surface of the floor above the basement is:

- A. More than six feet (1,829 mm) above grade plane;
- B. More than six feet (1,829 mm) above the finished ground level for more than 50% of the total building perimeter; or
- C. More than 12 feet (3,658 mm) above the finished ground level at any point.

STORY, MEZZANINE — An intermediate level or levels between the floor and ceiling of any story with an aggregate floor area of not more than 1/3 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 Article 5, Performance Standards.)

STREET CLASSIFICATION —

- A. **ARTERIAL STREET** — A major thoroughfare which serves as a major traffic way for travel between and through the Town. For the purpose of this chapter, only the following roadways shall be classified as arterial streets: Route 302, Route 202, Route 115, Route 35, River Road, and Falmouth Road.
- B. **COMMERCIAL STREET** — A street that provides frontage in the C-1 and C-2 Zoning Districts, primarily in areas dominated with nonresidential uses.
- C. **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 chapter, only the following roadway shall be classified as a controlled access street: Manchester Drive and Veterans Memorial Drive (the Eastern Connector). (See Commercial I and Commercial II District Standards.) (See § 120-521, Controlled access street, in Article 5, Performance Standards.)
- D. **CURBED LANE** — A street that provides frontage in the C-1 and C-2 Zoning Districts, primarily in mixed-use areas or as a secondary road in a more commercial area.
- E. **RESIDENTIAL STREET** — A street that provides frontage in the C-1 and C-2 Zoning Districts, primarily in residential neighborhood settings.
- F. **DEAD-END STREET** — A street with a single common ingress and egress.
- G. **INDUSTRIAL OR COMMERCIAL STREET** — Streets servicing industrial or commercial uses.
- H. **LOCAL STREET, MAJOR** — A street designed for public acceptance which complies in width and construction with the specifications in § 120-911M, Traffic conditions and streets, Subsection M(5), and has an estimated average daily traffic count of more than 400 vehicles per day.
- I. **LOCAL STREET, MINOR** — A street designed for public acceptance which complies in width and construction with the specifications in § 120-911M, Traffic conditions and streets, Subsection M(5), and has an estimated average daily traffic count of 400 or fewer vehicles per day.
- J. **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 § 120-911M, Traffic conditions and streets, Subsection M(5), and serves more than 10 lots.
- K. **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 § 120-911M, Traffic conditions and streets, Subsection M(5), and serves 10 or fewer lots.
- L. **PRIVATE WAY** — A street that was constructed prior to October 22, 2009, that does not meet the specifications for private roads in § 120-911M, Traffic conditions and streets, Subsection M(5), and that has not been accepted by the Town of Windham. Private ways do not include accessways typically referred to as "tote roads" or "woods roads."
- M. **PUBLIC STREET** — Any street that complies in width and construction with the standards for public streets in Article 9, Subdivision Review, or a street meeting lesser standards that the Town of Windham agrees to accept. (See Article 9, Subdivision Review.)

STREET, PRIMARY — The street abutting a corner lot where the highest traffic volume exists or is anticipated, as determined by the Director of Public Works.

STREET, SECONDARY — The street abutting a corner lot that is not the primary street.

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 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 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 affects 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.

UNFINISHED AREA — The vertical interior of the exterior walls, which may include rough wiring and rough plumbing, but no insulation, ceiling, inside partitions or heat.

USE — The purpose or activity for which land or structures are designed, arranged, or intended or for which land or structures are occupied or maintained.

USE, ACCESSORY — A use customarily incidental and subordinate to the principal building or use and located on the same lot with such principal building or use. For the purposes of this chapter, the following structures, either attached to or detached from the primary use, shall be considered accessory uses: porches, garages, pools, and decks.

USE, PRINCIPAL — The primary or predominant use of any lot or parcel.

VARIANCE — Permission to depart from the literal requirements of this chapter. (See Article 11, Board of Appeals.)

WAIVER — A relaxation of the terms of either Article 8, Site Plan Review, or Article 9, Subdivision Review. (See Article 8, Site Plan Review; see Article 9, Subdivision Review.)

WAREHOUSING, PRIVATE — A building used primarily for the storage of goods and materials by the owner of the goods or operated for a specific commercial establishment or group of establishments in a particular industrial field.

WAREHOUSING, PUBLIC — A building or lot used primarily for the storage of goods and materials and available to the general public for a fee. This use definition includes self-storage facilities, as defined.

WATER BODY — Any natural or artificial collection of water, whether permanent or temporary; any body of water that meets the definition of "water body" in Chapter 185, Shoreland Zoning. This definition does not include swimming pools. (See Chapter 185, Shoreland Zoning.)

WETLAND —

- A. An area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation adapted for life in saturated soil conditions.
- B. An area that meets the definition of a "freshwater wetland" in Chapter 185, Shoreland Zoning. (See Chapter 185, Shoreland Zoning.)

WILDLIFE HABITAT; SIGNIFICANT WILDLIFE HABITAT — Areas identified by a government agency such as the Maine Department of Inland Fisheries and Wildlife as having significant value as habitat for animals or any areas identified in the Town's Comprehensive Plan.

WIRELESS TELECOMMUNICATIONS TOWER AND FACILITY —

- A. A parcel of land containing a tower, sending and receiving antennas attached to the tower, and a prefabricated or modular structure or cabinets containing electronic equipment.
- B. A Federal Communications Commission (FCC) licensed facility, designed and used for the purpose of transmitting, receiving, and relaying voice and data signals from various wireless communication devices and equipment. For purposes of this chapter, amateur radio transmission facilities and facilities used exclusively for receive-only antennas are not classified as wireless telecommunications towers and facilities.

YARD — An open space that lies between any structure and the nearest lot line.

YARD, FRONT — An open space extending the full width of the lot between any structure and the front lot line and measured perpendicular to the structure at the closest point to the front lot line.

YARD, REAR — A space extending across the full width of the lot between any structure and the rear lot line and measured perpendicular to the structure to the closest point of the rear lot line.

YARD, REQUIRED — The minimum open space between a lot line and the yard line within which no structure is permitted to be located except as provided in this chapter.

YARD, SIDE — A space extending from the front yard to the rear yard between any structure and the side lot line and measured perpendicular from the side lot line to the closest point of the structure.

ZONE — A specifically delineated area or district in the Town within which uniform regulations and requirements govern the use, placement, spacing, and size of land and buildings.

ZONING — The delineation of districts and the establishment of regulations governing the use, placement, spacing, and size of land and buildings in the Town of Windham.

ZONING DISTRICT — See definition of "zone."

ARTICLE 4
Zoning Districts

§ 120-401. Districts enumerated.

To implement the provisions of this chapter, the Town of Windham is hereby divided into the following districts:

- A. Shoreland Zoning (see Chapter 185 from the Code of the Town of Windham).
 - (1) Resource Protection District (RP).
 - (2) General Development District (GD). **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**
 - (3) Limited Residential District (LR). **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**
 - (4) Stream Protection District (SP).
- B. Zoning districts.
 - (1) Farm District (F).
 - (2) Farm-Residential District (FR).
 - (3) Light-Density Residential District (RL).
 - (4) Medium-Density Residential District (RM).
 - (5) Commercial District I (C-1).
 - (6) Commercial District II (C-2).
 - (7) Commercial District III (C-3).
 - (8) Industrial District (I).
 - (9) Enterprise Development District (ED).
 - (10) Village Commercial District (VC). **[Added 9-14-2010 by Order 10-162]**
- C. Overlay districts.
 - (1) Aquifer Protection Overlay District Zone A (APA).
 - (2) Aquifer Protection Overlay District Zone B (APB).
 - (3) Manufactured Housing Park Overlay District (MHPO).
 - (4) Roosevelt Trail Business and Professional Office Overlay Zone.⁴
 - (5) Retirement Community and Care Facility Overlay District (RCCFO). **[Added 10-23-2012 by Order 12-148⁵]**

4.

D. Contract zones.

- (1) Village at Little Falls Contract Zone (VLF).
- (2) Windham Center Contract Zone (WCC). [Added 8-24-2010 by Order 10-153]
- (3) Amendment to Contract Zoning Agreement between RKR, LLC and the Town of Windham (WCC). [Added 9-24-2013 by Order 13-144]
- (4) Mallison Falls Contract Zone (MF). [Added 7-28-2015 by Order 15-100]

§ 120-402. Location of districts; Land Use Map.

- A. District location. The districts identified in § 120-401 are located and bounded as shown on the Official Land Use District Map, entitled "Land Use Map of Windham, Maine," dated May 25, 1976, as amended from time to time, and on file in the office of the Municipal Clerk. Said map is hereby incorporated in and made part of this chapter.
- B. The Official Land Use Map shall be filed in the office of the Municipal Clerk. Copies of the Land Use Map may be filed in the Assessing, Code Enforcement, or Planning Department.

§ 120-403. Uncertain boundary locations.

Where uncertainty exists with respect to the boundaries of the various districts as shown on the Land Use Map, the following rules shall apply:

- A. Boundaries indicated as approximately following the center lines of streets, highways, or alleys shall be construed to be following 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 lines shall be construed as following municipal limits.
- D. Boundaries indicated as following railroad lines, power lines, or pipelines shall be construed as following such lines.
- E. Boundaries indicated as following shorelines shall be construed as following such shorelines and, in the event of natural change in the shoreline, shall be construed as moving with the actual shoreline; boundaries indicated as approximately following the center line of streams, rivers, canals, lakes or other bodies of water shall be construed as following such center lines.
- F. Boundaries on the Land Use Map indicated as being parallel to, or extensions of, features indicated in Subsections A through E, above, shall be determined by the scale of the map.
- G. Where physical features existing on the ground are at variance with those shown on the Land Use Map, or in other circumstances not covered by Subsections A through E, above, the Board of Appeals shall interpret the district boundaries.

5. Editor's Note: The Retirement Community and Care Facility Overlay District (RCCFO) was removed 5-23-2023 by Order No. 23-091.

§ 120-404. Division of lots by districts.

Where a land use district boundary line divides a lot or parcel of land of the same ownership, the following standards shall apply: The regulations applicable to the less restricted portion of the lot may not be extended more than 50 feet into the more restricted portion of the lot; however, extension of the regulations applicable to the less restricted portion of the lot may be extended more than 50 feet subject to approval by the Board of Appeals. The Board of Appeals shall use the standards for a variance in § 120-1106 in making its decision.

§ 120-405. Shoreland zoning districts.

The following zoning districts shall be governed by the provisions of Chapter 185, Shoreland Zoning:

- A. Resource Protection District (RP).
- B. General Development District (GD).
- C. Limited Residential District (LR).
- D. Stream Protection District (SP).

§ 120-406. Farm District (F).

- A. Intent. The Farm District is intended primarily for rural and residential land uses. Development is restricted in order to protect farmlands, woodlands, open space, wildlife habitat and scenic areas.
- B. Permitted uses. The following uses, as they are defined in Article 3, shall be permitted in the Farm District as a matter of right. Refer to Article 5, Performance Standards, or Subsection F, District standards, for additional use information. [Amended 5-26-2020 by Order 20-048; 10-13-2020 by Order 20-211; 8-15-2023 by Order No. 23-150]

- Agriculture
- Agriculture, piggery
- Agriculture, poultry facility
- Building, accessory
- Campground, commercial
- Campground, personal
- Cemetery
- Child care, family home
- Contractor services, landscaping
- Contractor storage yard
- Dwelling, single-family
- Dwelling, ~~duplex~~
- ~~Dwelling, triplex~~
- Farm enterprise
- Forestry
- Golf course

Commented [BM2]: Deleting throughout in zoning districts where only 3 dwelling units are permitted per lot.

Commented [SP3R2]: Should we allow quadplexes?

- Home occupation 1
- Home occupation 2
- Kennel, minor
- Medical marijuana registered caregiver
- Medical marijuana registered caregiver (home occupation)
- Mineral extraction
- Place of worship
- Public building
- Research laboratory
- Retail sales, nursery
- Riding stable
- Sawmill, permanent
- Sawmill, temporary
- Shipping container
- Solar energy systems – roof-mounted, small, medium and large scale
- Solar energy systems – ground-mounted, small scale
- Use, accessory
- Wireless telecommunications tower and facility

Commented [BM4]: At some point we should change "marijuana" to "cannabis."

Commented [SP5R4]: I agree

C. Conditional uses. The following uses, as defined in Article 3, shall be allowed as a conditional use in accordance with § 120-516. Refer to Article 5, Performance Standards, or Subsection F, District standards, for additional use information.

- (1) Assisted living facility.
- (2) Bed-and-breakfast Inn.
- (3) Boarding home for sheltered care.
- (4) Kennel, major.
- (5) Medical office.
- (6) Nursing home.
- (7) Public utility facility.
- (8) Recreation facility, indoor.
- (9) Recreation facility, outdoor.
- (10) Retail sales, convenience.
- (11) Rooming house.
- (12) Solar energy systems – ground-mounted, medium scale. **[Added 8-15-2023 by Order No. 23-150]**

(13) Solar energy stems – ground-mounted, large scale.

D. Prohibited uses. Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited.

E. Dimensional standards. The following dimensional standards shall apply in the Farm District:
[Amended 12-16-2014 by Order 14-491; 6-9-2020 by Order 20-140]

(1) Minimum lot size:

(a) Standard: 80,000 square feet.

(b) Conservation subdivision:

[1] All subdivision lots connected to public water: 30,000 square feet.

[2] Subdivision served by wells or a private system: 30,000 square feet.

(c) Country subdivision: six acres.

(d) Rooming house: four acres.

(2) Net residential density: 60,000 square feet.

(a) Country subdivision: 250,000 square feet.

(3) Minimum frontage:

(a) Standard: 200 feet.

(b) Conservation subdivision: 100 feet.

(c) Conservation subdivision, where frontage is entirely on cul-de-sac: 50 feet.

(4) Minimum front setback:

(a) Standard: 40 feet.

[1] The minimum front setback of a lot may be reduced to the average setback distance of the existing buildings located on the lots to either side of said lot.

[2] The minimum front setback of a lot may be increased in accordance with buffers along streets standard in § 120-511, Buffer yard. **[Added 10-13-2020 by Order 20-210; amended 8-15-2023 by Order No. 23-149]**

(b) Conservation subdivision: 25 feet.⁶

(5) Minimum side setback:

(a) Standard: 10 feet.

(b) Conservation subdivision: 10 feet.

(6) Minimum rear setback:

Commented [BM6]: Confirming that the entirety of the Farm District is outside of a growth area and is not/will not be connected to public sewer.

Commented [SP7R6]: I believe that is true.

6. Editor's Note: Former Subsection E(4)(c), regarding nonresidential use buffer strips, was repealed 8-15-2023 by Order No. 23-149.

- (a) Standard: 10 feet.
 - (b) Conservation subdivision: 10 feet.
- (7) Maximum building height: 35 feet.
- (a) Agriculture, public buildings, church steeples: no limit.
- (8) Maximum building coverage: 25%.
- F. District standards. In addition to Article 5, Performance Standards, these standards shall apply to the following uses in the Farm District:
- (1) Automobile repair services in existence prior to August 7, 2014. **[Amended 7-8-2014 by Order 14-164]**
 - (a) All repair operations shall be conducted inside an enclosed building.
 - (b) No more than three vehicles shall be serviced or stored on the property at any one time.
 - (c) Hours of operation shall be Monday through Saturday from 8:00 a.m. to 5:00 p.m.
 - (2) Conservation subdivision. (See Article 9, Subdivision Review.) All submissions for subdivisions in the Farm District must be designed as a conservation subdivision or a country subdivision. **[Amended 12-16-2014 by Order 14-491; 1-15-2019 by Order 18-257; 6-9-2020 by Order 20-140]**
 - (3) Curb cuts. See § 120-522, Curb cuts and driveway openings, in Article 5, Performance Standards, for standards applicable to the Farm District.
 - (4) Dwelling, duplex, and triplex. ~~This use shall only be allowed for the conversion of an existing dwelling or accessory building that was in existence prior to May 13, 1986. The following standards shall apply: **[Amended 11-14-2023 by Order No. 23-213]** These may be established by new construction or conversion, subject to all applicable provisions of this chapter.~~
 - (a) No more than three dwelling units may be constructed, placed, or established on a single lot, subject to all applicable dimensional standards.
 - (b) Medical office. See § 120-538, Medical office, in Article 5, Performance Standards, for size limitations.
 - (5) Research laboratory. This use in the Farm District must conduct investigative research that is primarily related to the items defined in the definition of "agriculture." Refer to Article 3, Definitions.
 - (6) Contractor services, landscaping. This use shall be an accessory use to a retail sales, nursery use under the following conditions:
 - (a) The contractor services, landscaping and contractor storage yard use shall not exceed 50% of the gross area (both interior and exterior areas) occupied by the principal retail sales, nursery use.
 - (7) Buffer requirements for specific nonresidential uses. See § 120-511, Buffer yard, in Article 5, Performance Standards, for requirements. **[Amended 8-15-2023 by Order No. 23-149]**
 - (8) Buffers along streets. See § 120-511, Buffer yard, in Article 5, Performance Standards, for

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Commented [BM8]: The thinking here is that 30-A M.R.S. Sec. 4364-A(3) prohibits establishing dimensional standards for multiple units that are greater than those for single-family dwelling units. Tiny homes cannot exceed 400 square feet, so in theory, the minimum size of a tiny home would need to be the minimum size of a dwelling unit (at least for land use purposes).

requirements. [Added 10-13-2020 by Order 20-210; amended 8-15-2023 by Order No. 23-149]

§ 120-407. Farm-Residential District (FR).

- A. Intent. The Town, as a rapidly growing community, recognizes that certain areas of the Town will experience residential growth while the basic rural agricultural orientation remains. It is the intent of this chapter to allow these uses to coexist and develop harmoniously.
- B. Permitted uses. The following uses, as they are defined in Article 3, shall be permitted in the Farm-Residential District as a matter of right. Refer to Article 5, Performance Standards, or Subsection F, District standards, for additional use information. [Amended 12-14-2010 by Order 10-230; 5-26-2020 by Order 20-048; 10-13-2020 by Order 20-211]
 - (1) Agriculture.
 - (2) Building, accessory.
 - (3) Campground, commercial.
 - (4) Campground, personal.
 - (5) Cemetery.
 - (6) Child care, family home.
 - ~~(7)~~ Dwelling, duplex.
 - ~~(7)(8)~~ Dwelling, triplex.
 - ~~(8)(9)~~ Dwelling, single-family detached.
 - ~~(9)(10)~~ Farm enterprise.
 - ~~(10)(11)~~ Forestry.
 - ~~(11)(12)~~ Golf course.
 - ~~(12)(13)~~ Home occupation 1.
 - ~~(13)(14)~~ Home occupation 2.
 - ~~(14)(15)~~ Kennel, minor.
 - ~~(15)(16)~~ Medical marijuana registered caregiver.
 - ~~(16)(17)~~ Medical marijuana registered caregiver (home occupation).
 - ~~(17)(18)~~ Mineral extraction.
 - ~~(18)(19)~~ Place of worship.
 - ~~(19)(20)~~ Public building.
 - ~~(20)(21)~~ Sawmill, temporary.
 - ~~(21)(22)~~ Shipping container.

~~(22)~~(23) Use, accessory.

~~(23)~~(24) Wireless telecommunications tower and facility.

~~(24)~~(25) Solar energy system – roof-mounted, small, medium, and large scale. [Added 8-15-2023 by Order No. 23-150]

~~(25)~~(26) Solar energy system – ground-mounted, small scale. [Added 8-15-2023 by Order No. 23-150]

C. Conditional uses. The following uses, as defined in Article 3, shall be allowed as a conditional use in accordance with § 120-516. Refer to Article 5, Performance Standards, or Subsection F, District standards, for additional use information.

- (1) Agriculture, piggery.
- (2) Agriculture, poultry facility.
- (3) Assisted living facility.
- (4) Bed-and-breakfast inn.
- (5) Boarding home for sheltered care.
- (6) Kennel, major.
- (7) Medical office.
- (8) Nursing home.
- (9) Public utility facility.
- (10) Recreation facility, indoor.
- (11) Recreation facility, outdoor.
- (12) Retail sales, convenience.
- (13) Retail sales, nursery.
- (14) Riding stable.
- (15) Sawmill, permanent.
- (16) Solar energy system – ground-mounted, medium scale. [Added 8-15-2023 by Order No. 23-150]
- (17) Solar energy system – ground-mounted, large scale. [Added 8-15-2023 by Order No. 23-150]

D. Prohibited uses. Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited.

E. Dimensional standards. The following dimensional standards shall apply in the Farm-Residential District: [Amended 12-16-2014 by Order 14-491; 6-9-2020 by Order 20-140]

- (1) Minimum lot size:
 - (a) Standard: 50,000 square feet.

- (b) Conservation subdivision:
 - [1] All subdivision lots connected to public water: 20,000 square feet.
 - [2] Subdivision served by wells or a private system: 20,000 square feet.
 - (c) Country subdivision: six acres.
 - (2) Net residential density: 40,000 square feet.
 - (a) Country subdivision: 250,000 square feet.
 - (3) Minimum frontage:
 - (a) Standard: 150 feet.
 - (b) Conservation subdivision: 75 feet.
 - (c) Conservation subdivision, where frontage is entirely on cul-de-sac: 50 feet.
 - (4) Minimum front setback.
 - (a) Standard: 30 feet.
 - [1] The minimum front setback of a lot may be reduced to the average setback distance of the existing buildings located on the lots to either side of said lot.
 - [2] The minimum front setback of a lot may be increased in accordance with streetscape landscaping standard below. **[Added 10-13-2020 by Order 20-210; amended 8-15-2023 by Order No. 23-149]**
 - (b) Conservation subdivision: 25 feet.⁷
 - (5) Minimum side setback:
 - (a) Standard: 10 feet.
 - (b) Conservation subdivision: 10 feet.
 - (6) Minimum rear setback:
 - (a) Standard: 10 feet.
 - (b) Conservation subdivision: 10 feet.
 - (7) Maximum building height: 35 feet.
 - (a) Agriculture, public buildings, church steeples: no limit.
 - (8) Maximum building coverage: 20%.
- F. District standards. In addition to Article 5, Performance Standards, these standards shall apply to the following uses in the Farm-Residential District:
- (1) Agriculture, poultry facility. A facility may raise 25 or fewer birds at any one time.

7. Editor's Note: Former Subsection E(4)(c), regarding nonresidential use buffer strips, was repealed 8-15-2023 by Order No. 23-149.

- (2) Agriculture, piggery. Piggeries shall conform with the standards for "agriculture, piggery" in § 120-503 of the Performance Standards.
- (3) Conservation subdivision. (See Article 9, Subdivision Review). All submissions for subdivisions in the Farm-Residential District must be designed as a conservation subdivision or a country subdivision. **[Amended 12-16-2014 by Order 14-491; 1-15-2019 by Order 18-257; 6-9-2020 by Order 20-140]**
- (4) Curb cuts. See § 120-522, Curb cuts and driveway openings, in Article 5, Performance Standards, for standards applicable to the Farm-Residential District
- ~~(5)~~ Dwelling, duplex, and triplex. These may be established by new construction or conversion, subject to all applicable provisions of this chapter.
 - (a) No more than three dwelling units may be constructed, placed, or established on a single lot, subject to all applicable dimensional standards.
- ~~(5)(6)~~ Medical office. See § 120-538, Medical office, in Article 5, Performance Standards, for size limitations.
- ~~(6)(7)~~ Buffer requirements for specific nonresidential uses. See § 120-511, Buffer yard, in Article 5, Performance Standards, Table 2 for requirements. **[Amended 8-15-2023 by Order No. 23-149]**
- ~~(7)(8)~~ Buffer along streets. See § 120-511, Buffer yard, in Article 5, Performance Standards, Table 2. **[Added 10-13-2020 by Order 20-210; amended 8-15-2023 by Order No. 23-149]**

§ 120-408. Light-Density Residential District (RL).

- A. Intent. It is the intent of this district to ensure the proper development of residential areas by encouraging the formation of community units while developing, protecting, and preserving open spaces.
- B. Permitted uses. The following uses, as they are defined in Article 3, shall be permitted in the Light-Density Residential District as a matter of right. Refer to Article 5, Performance Standards, or Subsection F, District standards, for additional use information: **[Amended 5-26-2020 by Order 20-048]**
 - (1) Agriculture.
 - (2) Building, accessory.
 - (3) Cemetery.
 - (4) Child care, family home.
 - (5) Dwelling, single-family detached.
 - (6) Dwelling, duplex,
 - ~~(6)(7)~~ Dwelling, triplex.
 - ~~(7)(8)~~ Forestry.

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- ~~(8)~~(9) Home Occupation 1.
- ~~(9)~~(10) Home Occupation 2.
- ~~(10)~~(11) Medical marijuana registered caregiver.
- ~~(11)~~(12) Medical marijuana registered caregiver (home occupation).
- ~~(12)~~(13) Place of worship.
- ~~(13)~~(14) Public building.
- ~~(14)~~(15) Sawmill, temporary.
- ~~(15)~~(16) Shipping container.
- ~~(16)~~(17) Use, accessory.
- ~~(17)~~(18) Wireless telecommunications tower and facility.
- ~~(18)~~(19) Solar energy system – roof-mounted, small, medium and large scale. **[Added 8-15-2023 by Order No. 23-150]**
- ~~(19)~~(20) Solar energy system – ground-mounted, small scale. **[Added 8-15-2023 by Order No. 23-150]**
- ~~(20)~~(21) Solar energy system – ground-mounted medium scale. **[Added 8-15-2023 by Order No. 23-150]**

C. Conditional uses. The following uses, as defined in Article 3, shall be allowed as a conditional use in accordance with § 120-516. Refer to Article 5, Performance Standards, or Subsection F, District standards, for additional use information.

- (1) Assisted living facility.
- (2) Bed-and-breakfast inn.
- (3) Boarding home for sheltered care.
- (4) Hotel.
- (5) Nursing home.
- (6) Medical office.
- (7) Mineral extraction.
- (8) Motel.
- (9) Public utility facility.
- (10) Recreation facility, indoor.
- (11) Recreation facility, outdoor.
- (12) Retail sales, convenience.
- (13) Retail sales, nursery.

- (14) Solar energy system – ground-mounted, large scale. **[Added 8-15-2023 by Order No. 23-150]**
- D. Prohibited uses. Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited.
- E. Dimensional standards. The following dimensional standards shall apply in the Light-Density Residential District: **[Amended 12-16-2014 by Order 14-491; 6-9-2020 by Order 20-140]**
- (1) Minimum lot size:
 - (a) Standard: 40,000 square feet.
 - (b) Conservation subdivision:
 - [1] All subdivision lots connected to public water: 20,000 square feet.
 - [2] Subdivision served by wells or a private system: 20,000 square feet.
 - (2) Net residential density: 30,000 square feet.
 - (3) Minimum frontage:
 - (a) Standard: 150 feet.
 - (b) Conservation subdivision: 75 feet.
 - (c) Conservation subdivision, where frontage is entirely on cul-de-sac: 50 feet.
 - (4) Minimum front setback:
 - (a) Standard: 30 feet. The minimum front setback of a lot may be reduced to the average setback distance of the existing buildings located on the lots to either side of said lot.
 - (b) Conservation subdivision: 25 feet.
 - (c) Nonresidential use: minimum buffers along streets: see § 120-511, Buffer yard. **[Amended 8-15-2023 by Order No. 23-149]**
 - (5) Minimum side setback: 10 feet.
 - (6) Minimum rear setback: 10 feet.
 - (7) Maximum building height: 35 feet.
 - (a) Agriculture, public buildings, church steeples: no limit.
 - (8) Maximum building coverage: 20%.
- F. District standards. In addition to Article 5, Performance Standards, these standards shall apply to the following uses in the Light-Density Residential District:
- (1) Curb cuts. See § 120-522, Curb cuts and driveway openings, in Article 5, Performance Standards, for standards applicable to the Light-Density Residential District.
 - (2) Dwelling, duplex, and triplex. ~~This use shall only be allowed for the conversion of an existing dwelling or accessory building that was in existence prior to May 13, 1986. The following standards shall apply: [Amended 11-14-2023 by Order No. 23-213] These may be established by new construction or conversion, subject to all applicable provisions of this chapter.~~

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~~(a) No more than three dwelling units may be constructed, placed, or established on a single lot, subject to all applicable dimensional standards.~~

~~(a) No more than three dwelling units shall be erected per lot.~~

~~(b) All dwelling units shall have a minimum area of 500 square feet.~~

(3) Conservation subdivision (see Article 9, Subdivision Review). **[Amended 12-16-2014 by Order 14-491; 6-9-2020 by Order 20-140]**

(a) Conservation subdivisions shall only be permitted on lots with a minimum of five acres of gross land area.

(b) Conservation subdivisions are eligible for a density bonus of 20% to be applied after the net residential density calculation, if the subdivision open space meets the criteria in § 120-911K(6)(d)[2].

(4) Medical office. See § 120-538, Medical office, in Article 5, Performance Standards, for size limitations.

~~(5)~~ Buffer requirements for specific nonresidential uses. See § 120-511, Buffer yard, in Article 5, Performance Standards, Table 2 for requirements. **[Amended 8-15-2023 by Order No. 23-149]**

§ 120-409. Medium-Density Residential District (RM).

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A. Intent. It is the intent of this chapter to assure the proper development of residential areas by encouraging the formation of community units while developing and preserving open space.

B. Permitted uses. The following uses, as they are defined in Article 3, shall be permitted in the Medium-Density Residential District as a matter of right. Refer to Article 5, Performance Standards, or Subsection F, District standards, for additional use information. **[Amended 5-26-2020 by Order 20-048]**

(1) Agriculture.

(2) Building, accessory.

(3) Cemetery.

(4) Child care, family home.

(5) Dwelling, single-family detached.

~~(6)~~ Dwelling, duplex.

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~~(7)~~ Dwelling, triplex.

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~~(6)(8)~~ Dwelling, quadplex

~~(7)(9)~~ Dwelling, multifamily.

~~(8)(10)~~ Forestry.

~~(9)(11)~~ Home occupation 1.

~~(10)(12)~~ Home occupation 2.

~~(11)(13)~~ Medical marijuana registered caregiver.

Town of Windham, ME

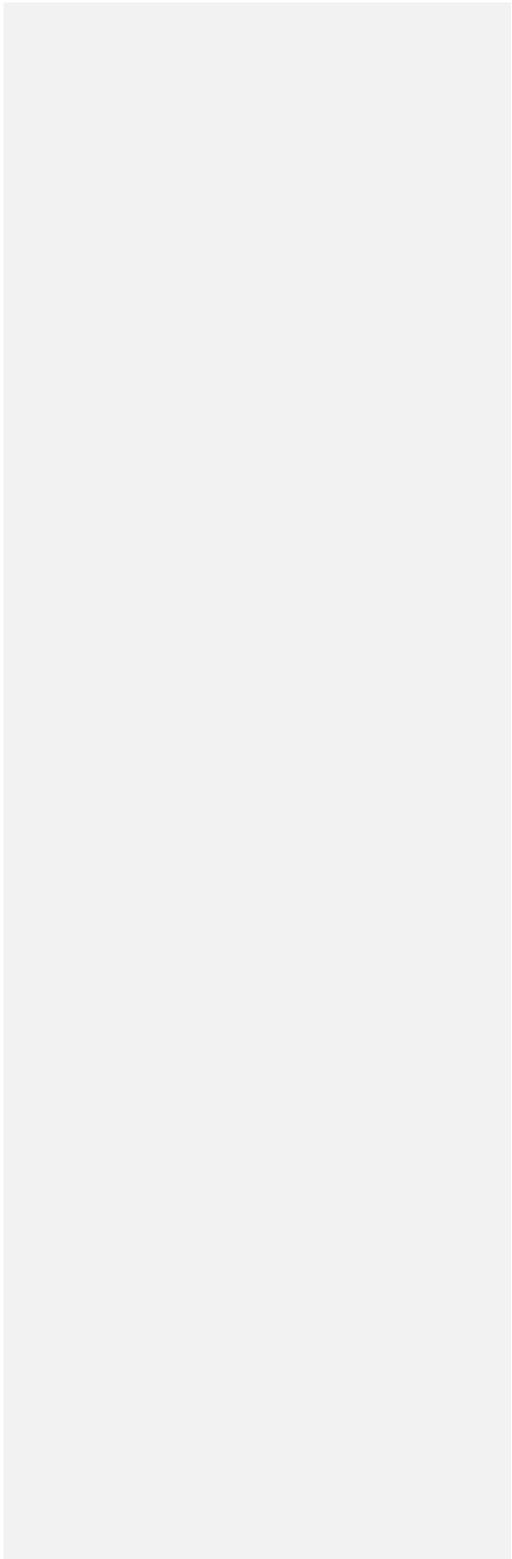
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~~(12)~~(14) Medical marijuana registered caregiver (home occupation).

~~(13)~~(15) Housing for older persons.



- ~~(14)~~(16) Place of worship.
- ~~(15)~~(17) Public building.
- ~~(16)~~(18) Sawmill, temporary.
- ~~(17)~~(19) Shipping container.
- ~~(18)~~(20) Use, accessory.
- ~~(19)~~(21) Solar energy system – roof-mounted, small, medium, and large scale. [Added 8-15-2023 by Order No. 23-150]
- ~~(20)~~(22) Solar energy system – ground-mounted, small scale. [Added 8-15-2023 by Order No. 23-150]
- ~~(21)~~(23) Solar energy system – ground-mounted, medium scale. [Added 8-15-2023 by Order No. 23-150]

C. Conditional uses. The following uses, as defined in Article 3, shall be allowed as a conditional use in accordance with § 120-516. Refer to Article 5, Performance Standards, or Subsection F, District standards, for additional use information.

- (1) Assisted living facility.
- (2) Bed-and-breakfast inn.
- (3) Boarding home for sheltered care.
- (4) Medical office.
- (5) Mineral extraction.
- (6) Nursing home.
- (7) Recreation facility, indoor.
- (8) Recreation facility, outdoor.
- (9) Retail sales, convenience.
- (10) Public utility facility.
- (11) Solar energy system – ground-mounted, large scale. [Added 8-15-2023 by Order No. 23-150]

D. Prohibited uses. Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited.

E. Dimensional standards. The following dimensional standards shall apply in the Medium-Density Residential District: [Amended 12-16-2014 by Order 14-491; 6-9-2020 by Order 20-140; 6-16-2022 by Order No. 22-108; 8-15-2023 by Order No. 23-149]

Type	Public Water	Well
Minimum lot size		
Standard	20,000 square feet	30,000 square feet
Housing for older persons	None	n/a

Type	Public Water	Well
Conservation subdivision	20,000 square feet	20,000 square feet
Net residential density		
Standard	15,000 square feet	15,000 square feet
Housing for older persons		
1-bedroom unit	8,000 square feet	n/a
Each additional bedroom	6,000 square feet	n/a
Minimum frontage	100 feet	100 feet
Conservation subdivision	50 feet	50 square feet
Minimum front setback	30 feet	30 feet
The minimum front setback of a lot may be reduced to the average setback distance of the existing buildings located on the lots to either side of said lot.		
Nonresidential use, minimum buffers along streets: see § 120-511, Buffer yard.		
Minimum side setback	10 feet	10 feet
Minimum rear setback	10 feet	10 feet
Maximum building height	35 feet	35 feet
Maximum building coverage	20%	20%

- F. District standards. In addition to Article 5, Performance Standards, these standards shall apply to the following uses in the Medium-Density Residential District:
- (1) Curb cuts. See § 120-522, Curb cuts and driveway openings, in Article 5, Performance Standards, for standards applicable to the Medium-Density Residential District.
 - (2) Conservation subdivision (see Article 9, Subdivision Review). **[Amended 12-16-2014 by Order 14-491; 6-9-2020 by Order 20-140]**
 - (a) Conservation subdivisions shall only be permitted on lots with a minimum of five acres of gross land area.
 - (b) Conservation subdivisions are eligible for a density bonus of 20% to be applied after the net residential density calculation, if the subdivision open space meets the criteria in § 120-911K(6)(d)[2].
 - (3) Housing for older persons. The State of Maine Minimum Lot Size Law of 12 M.R.S.A. §§ 4807 to 4807-G shall apply to the housing for older persons' use.
 - (4) Medical office. See § 120-538, Medical office, in Article 5, Performance Standards, for size limitations.
 - (5) Buffer requirements for specific nonresidential uses. See § 120-511, Buffer yard, in Article 5, Performance Standards, for requirements. **[Added 8-15-2023 by Order No. 23-149]**
 - (6) Affordable housing. Affordable housing developments are eligible for increases in residential density and building height and reductions in lot size, frontage and parking requirements identified in Article 5, Performance Standards, if the development meets the applicable criteria

in § 120-501.1. [Added 4-25-2023 by Order No. 23-060]

§ 120-410. Commercial District I (C-1). [Amended 9-14-2010 by Order 10-164; 12-14-2010 by Order 10-230; 5-14-2013 by Order 13-072; 6-28-2016 by Order 16-111; 6-12-2018 by Order 18-099; 7-9-2019 by Order 19-121; 5-26-2020 by Order 20-048; 4-12-2022 by Order No. 22-062; 7-12-2022 by Order No. 22-126; 11-10-2022 by Order No. 22-205; 4-25-2023 by Order No. 23-060; 8-15-2023 by Order No. 23-150; 8-15-2023 by Order No. 23-151; 8-15-2023 by Order No. 23-149; 3-12-2024 by Order No. 24-033; 1-14-2025 by Order No. 25-002; 2-25-2025 by Order No. 25-033]

- A. Intent. To provide general retail sales, services and business space within the Town of Windham in locations capable of conveniently servicing community-wide and/or regional trade areas, with safe, well-regulated automobile access and pedestrian access where appropriate, within the Town's designated growth area (DGA) as defined in the Comprehensive Plan adopted on May 10, 2024.
- B. Permitted uses. The following uses, as they are defined in Article 3, shall be permitted in the Commercial District I as a matter of right. Refer to Article 5, Performance Standards, or Subsection F, District standards, for additional use information.

Adult business establishment

Adult use marijuana store

Agriculture

Assisted living facility

Automobile gas station

Automobile repair services

Bank

Building, accessory

Business and professional office

Child-care facility

Child care, family home

Club

Contractor services

Contractor services, landscaping

Contractor storage yard

Construction services, heavy, major

Construction services, heavy, minor

Convention center

Distribution center

Drive-through facility

Dwelling, single-

family

Dwelling, ~~two-~~

~~familyduplex~~

Dwelling, triplex

Dwelling, quadplex

- Dwelling, mixed-use
- Fitness center
- Forestry
- Funeral home
- Home occupation 1
- Home occupation 2
- Hospital
- Hotel
- Housing for older persons
- Industry, light
- Industry, heavy
- Marijuana cultivation facility
- Marijuana manufacturing facility
- Marijuana registered dispensary
- Marijuana testing facility
- Medical marijuana registered caregiver
- Medical marijuana registered caregiver (home occupation)
- Medical marijuana caregiver retail store
- Medical office
- Mineral extraction
- Motel
- Nursing home
- Place of worship
- Public building
- Public utility facility
- Recreation facility, outdoor
- Recreation facility, indoor
- Research laboratory
- Restaurant
- Retail sales
- Retail sales, automobile sales
- Retail sales, convenience
- Retail sales, minimart
- Retail sales, nursery
- Retail sales, outdoor
- Sawmill, temporary
- Service business, commercial
- Service business, personal
- Small engine repair
- Solar energy system – roof-mounted, small, medium, and large scale

- Solar energy system – ground-mounted, small scale
- Solar energy system – ground-mounted, medium scale
- Solar energy system – ground-mounted, large scale (see Subsection F, District standards, below)
- Theater
- Use, accessory
- Warehousing, private
- Wireless telecommunications tower and facility

C. Conditional uses. The following uses, as defined in Article 3, shall be allowed as a conditional use in accordance with § 120-516. Refer to Article 5, Performance Standards, or Subsection F, District standards, for additional use information:

(1) Other.

D. Prohibited uses. Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited.

E. Dimensional standards. The following dimensional standards shall apply in the Commercial District I:

(1) Minimum lot size: none.

(2) Net residential density: none.

(3) Minimum frontage: 100 feet.

(4) Front setback:

(a) Building, principal.

[1] On Route 302: 10 feet to 20 feet.

[2] All other streets: 0 feet to 20 feet.

(b) Building, accessory: principal building setback, plus 20 feet minimum.

(c) |

(d) Hotel use: primary street setback for principal building, 10 feet to 75 feet; secondary street setback for principal building, 20 feet minimum.

(5) Minimum side setback: six feet.

(6) Minimum rear setback: six feet.

(7) Maximum building height: 75 feet.

F. District standards. In addition to Article 5, Performance Standards, these standards shall apply to the following uses in the Commercial District I:

(1) Parking. No parking shall be located within a structure's front setback area. When parking is located at the side of a building, the parking area shall not extend closer to the street than the front facade of the building. The space between the parking lot and the street shall be landscaped

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according to an overall plan for the property.

- (2) Aquifer Protection Overlay District. See § 120-416 or 120-417, Aquifer Protection Overlay Districts, and the Town's Official Map.
- (3) Building orientation. The facade of all buildings must be oriented parallel to a front lot line. In cases where a property has more than one front lot line, a single building development will orient to the front lot line on the street with the higher traffic volume. Multibuilding development may orient individual buildings to different front lot lines.
- (4) Pedestrian access. At least one primary entrance must be located on the building's front facade. Primary entrances must provide ingress and egress and be operable at all times the building is occupied.
- (5) Zoning district boundary buffer. See § 120-511, Buffer yard, in Article 5, Performance Standards, for requirements.
- (6) Controlled access street. For standards pertaining to controlled access streets in the C-1 District see Article 3, Definitions, and Article 5, Performance Standards.
- (7) Curb cuts. See § 120-522, Curb cuts and driveway openings, in Article 5, Performance Standards, for additional standards applicable to the C-1 District. New, enlarged or rebuilt uses on an arterial road, as defined in Article 3, shall be limited to one curb cut. In addition, the following standards shall apply to these curb cuts:
 - (a) A minimum center-line turning radius of 25 feet must be provided.
 - (b) A larger turning radius shall be provided if the curb cut will be used by vehicles with a wheel base of 35.8 feet or larger. In this case, the latest American Association of State Highway and Transportation Officials (AASHTO) standard shall apply.
- (8) Industry, heavy. In the C-1 District, this use shall not involve any activity defined in Article 3 as "manufacturing, hazardous." (See Article 3, Definitions.)
- (9) Minimum lot size. The State of Maine minimum lot size, and minimum lot size waiver, standards apply in the C-1 District when the Town's minimum lot size requirements are less restrictive than those of the State of Maine.
- (10) Retail sales, outdoor. The display or sale of products outside of a building shall meet the standards of Article 5. (See Article 5, Performance Standards.)
- (11) All new and reconstructed streets must be built to public street, commercial street, curbed lane or residential street standards.
- (12) Block standards.
 - (a) Land must be divided with streets to create blocks conforming with block perimeter, below.
 - (b) Blocks should be generally rectangular in shape, but are expected to respond to natural features and the block pattern of the surrounding street network.
 - (c) Blocks should be a minimum width so as to provide two rows of developable lots.
 - (d) Portions of development sites abutting areas of undeveloped land, areas unsuitable for

development, or preexisting incomplete blocks may be granted a waiver from the block size requirements in accordance with the provisions of Article 8 if part of a site plan or Article 9 if part of a subdivision plan.

- (e) Block perimeter. No block shall have a perimeter of more than 1,600 feet.

(13) Sidewalks.

- (a) The Planning Board may require the construction of public sidewalks on Roosevelt Trail (Route 302), Tandberg Trail (Route 35 and 115), River Road, and Manchester Drive as part of a site plan or subdivision application.
- (b) When the construction of the sidewalk is not required by the Planning Board as part of a site plan approved in accordance with Article 8 of this chapter, the following commercial development activities shall pay the North Windham sidewalk impact fee in § 120-1202 to provide safe pedestrian conditions in the Commercial 1 District:

[1] The construction or placement of new building(s) with a cumulative area that is greater than, or equal to, 500 square feet; or

[2] The enlargement of existing buildings by more than 500 square feet.

- (14) Marijuana cultivation facility. Cultivation facilities may be of the following types: Tier 1 and Tier 2. (See Article 3, Definitions.) These uses shall only be allowed on a lot where marijuana businesses were in existence prior to September 14, 2022.
- (15) Affordable housing. Affordable housing developments are eligible for increases in residential density and building height and reductions in lot size, frontage and parking requirements identified in Article 5, Performance Standards, if the development meets the applicable criteria in § 120-501.1.
- (16) Solar energy system – ground-mounted, large scale. This use shall only be allowed when co-located with parking lots or to supply the electrical or thermal power to reduce the on-site consumption of utility power or fuels by a principal commercial or residential use on the same parcel or abutting land. See § 120-556, Solar energy systems, in Article 5, Performance Standards, for additional requirements. When not co-located with a parking lot, a solar energy system shall not be designed to generate more than 125% of the power needs of the principal uses on the same parcel or abutting land. Any excess powering from on-site or abutting land usage that is less than the designed capacity may be sold into the grid.
- (17) Marijuana registered dispensary. In the C-1 District, this use shall not involve any cultivation or manufacturing of marijuana on site, notwithstanding the definition of "marijuana registered dispensary" in Article 3. (See Article 3, Definitions.)
- (18) Hotels. Hotels on corner lots in the C-1 District are not subject to § 120-534. All parking areas shall be located along the side or rear of the principal structure. One curb cut is permitted in the front setback. A two-way travel lane for access, as well as a fire lane around the principal structure, are also required. See § 120-511, Buffer yard, in Article 5, Performance Standards, for additional buffer yard requirements.

§ 120-410.1. Commercial District 1 North (C-1N). [Added 7-12-2022 by Order No. 22-126; 4-25-2023 by Order No. 23-067; 4-25-2023 by Order No. 23-060; 8-15-2023 by Order No. 23-150]

Commented [BM11]: You only need to permit quadplexes in growth areas. Is this one? If not, do you still want to do this? Would also suggest deleting as there are no additional performance standards applicable to quadplexes beyond compliance with dimensional standards.

- A. Intent. The intent of this district is to provide and enable the continuation of existing general retail sales, services and business space within the Town of Windham in locations capable of conveniently servicing community-wide and/or regional trade areas, with safe, well-regulated automobile access and pedestrian access where appropriate, within the Town's designated growth area (DGA) as defined in the Comprehensive Plan adopted on May 10, 2024.
- B. Permitted uses. The following uses, as they are defined in Article 3, shall be permitted in the Commercial District I North as a matter of right. Refer to Article 5, Performance Standards, or Subsection F, District standards, for additional use information.

Agriculture

Assisted living facility

Adult business establishment

Adult use marijuana store

Automobile gas station

Automobile repair services

Bank

Building, accessory

Business and professional office

Child-care facility

Child care, family home

Club

Contractor services

Contractor services, landscaping

Contractor storage yard

Construction services, heavy, major

Construction services, heavy, minor

Convention center

Distribution center

Drive-through facility

Dwelling, ~~two-~~

~~family duplex~~

Dwelling, triplex

Dwelling, quadplex

Dwelling, mixed-use

Fitness center

Forestry

Town of Windham, ME

§ 120-410.1

LAND USE

§ 120-410.1

Funeral home

Home occupation 1

Home occupation 2

Hospital

Hotel

Housing for older persons

Industry, light

Industry, heavy

Marijuana manufacturing facility

Marijuana registered dispensary

Marijuana testing facility

Medical marijuana caregiver

Medical marijuana caregiver (Home occupation)

Medical marijuana caregiver retail store

Medical office

Mineral extraction

Motel

Nursing home

Place of worship

Public building

Public utility facility

Recreation facility, outdoor

Recreation facility, indoor

Research laboratory

Restaurant

Retail sales

Retail sales, automobile sales

Retail sales, convenience

Retail sales, minimart

Retail sales, nursery

Retail sales, outdoor

Sawmill, temporary

Service business, commercial

Service business, personal

Small engine repair

Solar energy system – roof-mounted, small, medium, and large scale

Solar energy system – ground-mounted, small scale

Solar energy system – ground-mounted, medium scale

Solar energy system – ground-mounted, large scale (see Subsection F, District standards, below)

Theater

Use, accessory

Warehousing, private

Wireless telecommunications tower and facility

C. Conditional uses. The following uses, as defined in Article 3, shall be allowed as a conditional use in accordance with § 120-516. Refer to Article 5, Performance Standards or Subsection F, District standards, for additional use information:

(1) Other.

D. Prohibited uses. Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited.

E. Dimensional standards. The following dimensional standards shall apply in the Commercial District I North:

(1) Minimum lot size: none.

(2) Net residential density: none.

(3) Minimum frontage: 100 feet.

(4) Minimum front setback: 40 feet.

(a) Minimum landscaped buffer strip: 20 feet.

(5) Minimum side setback: six feet.

(6) Minimum rear setback: six feet.

(7) Maximum building height: 60 feet. **[Amended 8-15-2023 by Order No. 23-151]**

F. District standards. In addition to Article 5, Performance Standards, these standards shall apply to the following uses in the Commercial District I North: **[Amended 3-12-2024 by Order No. 24-033]**

- (1) Aquifer Protection Overlay District. See § 120-416 or § 120-417, Aquifer Protection Overlay Districts and the Town's Official Land Use Map.
- (2) Zoning district boundary buffer. See § 120-511, Buffer yard, in Article 5, Performance Standards, for requirements.
- (3) Curb cuts. See "Curb Cuts and Driveway Openings"⁸ in Article 5, Performance Standards, for additional standards applicable to the C-1N District.
 - (a) New, enlarged or rebuilt uses on an arterial road, as defined in Article 3, shall be limited to one curb cut. In addition, the following standards shall apply to these curb cuts:
 - [1] A minimum center-line turning radius of 25 feet must be provided.
 - [2] A larger turning radius shall be provided if the curb cut will be used by vehicles with a wheel base of 35.8 feet or larger. In this case, the latest American Association of State Highway and Transportation Officials (AASHTO) standard shall apply.
- (4) Industry, heavy. In the C1 District, this use shall not involve any activity defined in Article 3 as "manufacturing, hazardous." (See Article 3, Definitions.)
- (5) Minimum lot size. The State of Maine minimum lot size, and minimum lot size waiver, standards apply in the C-1N District when the Town's minimum lot size requirements are less restrictive than those of the State of Maine.
- (6) Retail sales, outdoor. The display or sale of products outside of a building shall meet the standards of Article 5. (See Article 5, Performance Standards.)
- (7) Sidewalks.
 - (a) The Planning Board may require the construction of public sidewalks on Roosevelt Trail (Route 302) as part of a site plan or subdivision application.
 - (b) When the construction of the sidewalk is not required by the Planning Board as part of a site plan approved in accordance with Article 8 of this chapter, the following commercial development activities shall pay the North Windham sidewalk impact fee in § 120-1202 to provide safe pedestrian conditions in the Commercial 1N District:
 - [1] The construction or placement of new building(s) with a cumulative area that is greater than, or equal to, 500 square feet; or
 - [2] The enlargement of existing buildings by more than 500 square feet.
- (8) Affordable housing. Affordable housing developments are eligible for increases in residential density and building height and reductions in lot size, frontage and parking requirements identified in Article 5, Performance Standards, if the development meets the applicable criteria in § 120-502.

8. Editor's Note: See § 120-522.

- (9) Solar energy system – ground-mounted, large scale. This use shall only be allowed when co-located with parking lots or to supply the electrical or thermal power to reduce the on-site consumption of utility power or fuels by a principal commercial or residential use on the same parcel. When not co-located with a parking lot, a system shall not be designed to create additional power, but additional power may result from on-site use that is less than the designed capacity.
- (10) Marijuana registered dispensary. In the C-1N District, this use shall not involve any cultivation or manufacturing of marijuana on site, notwithstanding the definition of "marijuana registered dispensary" in Article 3. (See Article 3, Definitions.) **[Added 3-12-2024 by Order No. 24-033]**

§ 120-411. Commercial District II (C-2). [Amended 9-14-2010 by Order 10-164; 6-12-2018 by Order 18-099; 7-9-2019 by Order 19-121; 5-26-2020 by Order 20-048; 4-25-2023 by Order No. 23-060; 8-15-2023 by Order No. 23-149; 8-15-2023 by Order No. 23-150; 8-15-2023 by Order No. 23-151; 2-25-2025 by Order No. 25-033]

- A. Intent. The intent of this district is to provide for a mixed commercial and residential zone as a buffer zone between the Commercial District I and the abutting residential areas, within the Town's designated growth area (DGA) as defined in the Comprehensive Plan adopted on May 10, 2024.
- B. Permitted uses. The following uses, as they are defined in Article 3, shall be permitted in the Commercial II District as a matter of right. Refer to Article 5, Performance Standards, or Subsection F, District standards, for additional use information.

Adult business establishment

Agriculture

Bank

Bed-and-breakfast inn

Building, accessory

Business and professional office

Child-care facility

Child care, family home

Club

Convention center

Drive-through facility

Dwelling, single-family detached

Dwelling, duplex

Dwelling, triplex

Dwelling, quadplex

Dwelling, mixed-use

Fitness center

Forestry

Funeral home

Home occupation 1

Home occupation 2

Town of Windham, ME		
§ 120-414	LAND USE	§ 120-415
Town of Windham, ME		
§ 120-411	WINDHAM CODE	§ 120-411

- Hotel
- Housing for older persons
- Medical marijuana registered caregiver
- Medical marijuana registered caregiver (home occupation)
- Medical office
- Motel
- Public building
- Public utility facility
- Recreation facility, indoor
- Recreation facility, outdoor
- Research laboratory
- Restaurant
- Retail sales
- Retail sales, convenience
- Retail sales, nursery
- Retail sales, outdoor
- Service business, personal
- Solar energy system – roof-mounted, small, medium, and large scale
- Solar energy system – ground-mounted, small scale
- Solar energy system – ground-mounted, medium scale
- Solar energy system – ground-mounted, large scale
- Theater
- Use, accessory
- Wireless telecommunications tower and facility

C. Conditional uses. The following uses, as defined in Article 3, shall be allowed as a conditional use in accordance with § 120-516. Refer to Article 5, Performance Standards or Subsection F, District standards, for additional use information.

(1) Other.

D. Prohibited uses. Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited.

E. Dimensional standards. The following dimensional standards shall apply in the Commercial District II:

(1) Minimum lot size: none for commercial development.

(a) Dwelling, single-family; duplex; triplex on lots located outside Designated Growth Area (DGA) and not served by public water and sewer or comparable systems: 40,000 square feet .

(b) Dwelling, single-family; duplex; triplex on lots located in Designated Growth Area (DGA) and served by public water and sewer or comparable systems: 5,000 square feet

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~~(c)~~ Dwelling, single-family; duplex; triplex on lots located in Designated Growth Area (DGA) and not served by public water and sewer or comparable systems: 20,000 square feet.

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~~(2)~~ Net residential density:

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~~(a)~~ 5,000 square feet for lots located outside the Designated Growth Area (DGA) and not served by public water and sewer or comparable systems.

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~~(b)~~ 1,250 square feet for the first four (4) dwelling units and 5,000 square feet for each additional dwelling unit when in Designated Growth Area (DGA) and served by public water and sewer or comparable systems.

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~~(c)~~ 5,000 square feet for first two (2) dwelling units within a single structure for lots outside of the Designated Growth Area (DGA) served by public water and sewer or comparable systems. Accessory Dwelling Units (ADUs) are exempted from density requirements.

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~~(2)(3)~~ Minimum frontage: 150 feet.

~~(3)(4)~~ Front setback:

- (a) Building, principal: 10 to 20 feet.
- (b) Building, accessory: principal building setback, plus 20 feet minimum.

~~(4)(5)~~ Minimum side setback: 10 feet.

~~(5)(6)~~ Minimum rear setback: 10 feet.

~~(6)(7)~~ Maximum building height: 45 feet.

F. District standards. In addition to Article 5, Performance Standards, these standards shall apply to the following uses in the Commercial District II:

- (1) Parking. No parking shall be located within a structure's front setback area. When parking is located at the side of a building, the parking area shall not extend closer to the street than the front facade of the building. The space between the parking lot and the street shall be landscaped according to an overall plan for the property.
- (2) Building orientation. The facade of all buildings must be oriented parallel to a front lot line. In cases where a property has more than one front lot line, a single building development will orient to the front lot line on the street with the higher traffic volume. Multibuilding development may orient individual buildings to different front lot lines.
- (3) Pedestrian access. At least one primary entrance must be located on the building's front facade. Primary entrances must provide ingress and egress and be operable at all times the building is occupied.
- (4) Controlled access street. For standards pertaining to controlled access streets in the C-2 District see Article 3, Definitions, and Article 5, Performance Standards.
- (5) Curb cuts. See § 120-522, Curb cuts and driveway openings, in Article 5, Performance Standards, for standards applicable to the C-2 District.
- (6) Minimum lot size. The State of Maine minimum lot size, and minimum lot size waiver, standards apply in the C-2 District when the Town's minimum lot size requirements are less restrictive than those of the State of Maine.
- (7) Minimum side setback reduction. The required minimum side setback shall be permitted to be

reduced to zero where a common wall is proposed between buildings.

- (8) Retail sales, outdoor. The display or sale of products outside of a building shall meet the standards of Article 5. (See Article 5, Performance Standards.)
- (9) All new and reconstructed streets must be built to public street, commercial street, curbed lane or residential street standards.
- (10) Block standards. This subsection applies to development sites that create new or reconfigured blocks or that create any new public streets.
 - (a) Land must be divided with streets to create blocks conforming with block perimeter, below.
 - (b) Blocks should be generally rectangular in shape, but are expected to respond to natural features and the block pattern of the surrounding street network.
 - (c) Blocks should be a minimum width so as to provide two rows of developable lots.
 - (d) Portions of development sites abutting areas of undeveloped land, areas unsuitable for development, or preexisting incomplete blocks may be granted a waiver from the block size requirements in accordance with the provisions of Article 8 if part of a site plan or Article 9 if part of a subdivision plan.
 - (e) Block perimeter. No block shall have a perimeter of more than 1,600 feet.
- (11) Zoning district boundary buffer. See § 120-511, Buffer yard, in Article 5, Performance Standards, for requirements.
- (12) Affordable housing. Affordable Housing developments are eligible for increases in residential density and building height and reductions in lot size, frontage and parking requirements identified in Article 5, Performance Standards, if the development meets the applicable criteria in § 120-501.1.

§ 120-411.1. Commercial District IV (C-4). [Added 8-15-2023 by Order No. 23-151]

- A. Intent. The intent of this district is to provide for a mixed commercial and residential zone as a buffer zone between the Commercial District I North and the abutting residential areas, within the Town's designated growth area (DGA) as defined in the Comprehensive Plan adopted on May 10, 2024.
- B. Permitted uses. The following uses, as they are defined in Article 3, shall be permitted in the Commercial IV District as a matter of right. Refer to Article 5, Performance Standards, or Subsection F, District standards, for additional use information.

- Adult business establishment
- Agriculture
- Bank
- Bed-and-breakfast inn
- Building, accessory
- Business and professional office
- Child-care facility
- Child-care, family home
- Club
- Convention center

- Drive-through facility
- Dwelling, single-family detached
- Dwelling, duplex
- Dwelling, triplex
- Dwelling, mixed-use
- Fitness center
- Forestry
- Funeral home
- Home occupation 1
- Home occupation 2
- Hotel
- Housing for older persons
- Medical marijuana registered caregiver
- Medical marijuana registered caregiver (home occupation)
- Medical office
- Motel
- Public building
- Public utility facility
- Recreation facility, indoor
- Recreation facility, outdoor
- Research laboratory
- Restaurant
- Retail sales
- Retail sales, convenience
- Retail sales, nursery
- Retail sales, outdoor
- Service business, personal
- Solar energy system - roof-mounted, small, medium, and large scale
- Solar energy system - ground-mounted, small scale
- Solar energy system - ground-mounted, medium scale
- Solar energy system - ground-mounted, large scale
- Theater
- Use, accessory
- Wireless telecommunications tower and facility

C. Conditional uses. The following uses, as defined in Article 3, shall be allowed as a conditional use in accordance with § 120-516. Refer to Article 5, Performance Standards or Subsection F, District standards, for additional use information.

(1) Other.

D. Prohibited uses. Uses that are not expressly enumerated herein as either permitted uses or conditional

uses are prohibited.

E. Dimensional standards. The following dimensional standards shall apply in the Commercial District IV:

- (1) Minimum lot size: none ~~for commercial developments.~~
- (2) Minimum lot size for residential developments
 - (a) Dwelling, single-family; ~~duplex; multifamily~~triplex: 40,000 square feet.
 - (b) Dwelling, single-family; duplex; triplex on lots located outside Designated Growth Area (DGA) and not served by public water and sewer or comparable systems: 40,000 square feet.
 - (c) Dwelling, single-family; duplex; triplex on lots located in Designated Growth Area (DGA) and served by public water and sewer or comparable systems: 5,000 square feet.
 - (d) Dwelling, single-family; duplex; triplex on lots located in Designated Growth Area (DGA) and not served by public water and sewer or comparable systems: 20,000 square feet.

~~(2)~~(3) Net residential density:

- (a) 5,000 square feet for lots located outside the Designated Growth Area (DGA) and not served by public water and sewer or comparable systems.
- (b) 1,250 square feet for the first four (4) dwelling units and 5,000 square feet for each additional dwelling unit when in Designated Growth Area (DGA) and served by public water and sewer or comparable systems.
- (c) 2,500 square feet for first two (2) dwelling units within a single structure for lots outside of the Designated Growth Area (DGA) served by public water and sewer or comparable systems. Accessory Dwelling Units (ADUs) are exempted from density requirements.

~~(3)~~(4) Minimum frontage: 150 feet.

~~(4)~~(5) Minimum front setback: 40 feet

- (a) Minimum buffer along streets: See § 120-511, Buffer yard.

~~(5)~~(6) Minimum side setback: 10 feet.

~~(6)~~(7) Minimum rear setback: 10 feet.

~~(7)~~(8) Maximum building height: 45 feet.

F. District standards. In addition to Article 5, Performance Standards, these standards shall apply to the following uses in the Commercial District IV:

- (1) Curb cuts. See § 120-522, Curb cuts and driveway openings, in Article 5, Performance Standards, for standards applicable to the C-4 District.
- (2) Minimum lot size. The State of Maine minimum lot size, and minimum lot size waiver, standards apply in the C-4 District when the Town's minimum lot size requirements are less restrictive than those of the State of Maine.
- (3) Minimum side setback reduction. The required minimum side setback shall be permitted to be reduced to zero where a common wall is proposed between buildings.
- (4) Retail sales, outdoor. The display or sale of products outside of a building shall meet the standards of Article 5 (see Article 5, Performance Standards).

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- (5) Zoning district boundary buffer. See § 120-511, Buffer yard, in Article 5, Performance Standards, for requirements.
- (6) Affordable housing. Affordable housing developments are eligible for increases in residential density and building height and reductions in lot size, frontage and parking requirements identified in Article 5, Performance Standards, if the development meets the applicable criteria in § 120-501.1.

§ 120-412. Commercial District III (C-3). [Amended 9-14-2010 by Order 10-164]

- A. Intent. The intent of the Commercial District III is to provide areas for a mixture of light, low-traffic-generating commercial uses and single-family housing.
- B. Permitted uses. The following uses, as they are defined in Article 3, shall be permitted in the Commercial District III as a matter of right. Refer to Article 5, Performance Standards, or Subsection F, District standards, for additional use information. **[Amended 5-14-2013 by Order 13-071; 9-27-2016 by Order 16-148; 6-11-2019 by Order 19-057; 5-26-2020 by Order 20-048; 8-15-2023 by Order No. 23-150]**

- Adult business establishment
- Agriculture
- Building, accessory
- Business and professional office
- Child-care facility
- Child care, family home
- Contractor services
- Contractor services, landscaping
- Contractor storage yard
- Dwelling, single-family
- Dwelling, **duplex**
- Dwelling, **triplex**
- Dwelling, mixed-use
- Forestry
- Home occupation 1
- Home occupation 2
- Medical marijuana registered caregiver
- Medical marijuana registered caregiver (home occupation)
- Medical office
- Place of worship
- Public building
- Recreation facility, indoor
- Retail sales
- Retail sales, convenience
- Retail sales, nursery
- Retail sales, outdoor
- Service business, personal

Solar energy system – roof-mounted, small, medium, and large scale

Solar energy system – ground-mounted, small scale

Solar energy system – ground-mounted, medium scale

Theater

Use, accessory

Warehousing, private

Warehousing, public

Wireless telecommunications tower and facility

C. Conditional uses. The following uses, as defined in Article 3, shall be allowed as a conditional use in accordance with § 120-516. Refer to Article 5, Performance Standards, or Subsection F, District standards, for additional use information.

- (1) Assisted living facility.
- (2) Automobile repair services.
- (3) Bed-and-breakfast inn.
- (4) Campground, commercial.
- (5) Campground, personal.
- (6) Club.
- (7) Hotel.
- (8) Industry, light.
- (9) Motel.
- (10) Nursing home.
- (11) Public utility facility.
- (12) Restaurant.
- (13) Shipping container.
- (14) Small engine repair.
- (15) Solar energy system – ground-mounted, large scale. **[Added 8-15-2023 by Order No. 23-150]**

D. Prohibited uses. Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited.

E. Dimensional standards. The following dimensional standards shall apply in the Commercial District III:

- (1) Minimum lot size:
 - (a) Dwelling, single-family; duplex; triplex: 80,000 square feet.
 - (b) Dwelling, mixed-use: 80,000 square feet.
 - (c) Nonresidential: 20,000 square feet.

Commented [BM12]: To confirm: no public water and sewer?

Commented [SP13R12]: Yes, that is correct.

- (2) Net residential density: 60,000 square feet.
- (3) Minimum frontage:
 - (a) Residential: 200 feet.
 - (b) Nonresidential: 100 feet.
- (4) Minimum front setback:
 - (a) Arterial street: 60 feet.
 - (b) Nonarterial street: 40 feet.
 - (c) Minimum buffers along streets: see § 120-511, Buffer yard. **[Amended 8-15-2023 by Order No. 23-149]**
- (5) Minimum side setback: 10 feet.
- (6) Minimum rear setback: 10 feet.
- (7) Maximum building height: 45 feet. **[Amended 8-15-2023 by Order No. 23-151]**
- F. District standards. In addition to Article 5, Performance Standards, these standards shall apply to the following uses in the Commercial District III:
 - (1) Automobile repair services. The repair of commercial trucks shall be limited to those vehicles with a gross vehicle weight rating equal to, or less than, 26,000 pounds. **[Amended 7-8-2014 by Order 14-164]**
 - (2) Controlled access street. For standards pertaining to controlled access streets in the C-3 District see Article 5, Performance Standards.
 - (3) Curb cuts. See § 120-522, Curb cuts and driveway openings, in Article 5, Performance Standards, for standards applicable to the C-3 District.
 - (a) No more than three dwelling units may be created per lot.
 - (4) Minimum side setback reduction. The required minimum side setback shall be permitted to be reduced to zero where a common wall is proposed between buildings.
 - (5) Retail sales, outdoor. The display or sale of products outside of a building shall meet the standards of Article 5 (see Article 5, Performance Standards).
 - (6) Zoning district boundary buffer. See § 120-511, Buffer yard, in Article 5, Performance Standards, for requirements. **[Amended 8-15-2023 by Order No. 23-149]**

§ 120-413. Industrial District (I). **[Amended 7-8-2014 by Order 14-164; 5-26-2020 by Order 20-048; 8-15-2023 by Order No. 23-150; 8-15-2023 by Order No. 23-149; 11-14-2023 by Order No. 23-214; 3-12-2024 by Order No. 24-033; 2-25-2025 by Order No. 25-033]**

- A. Intent. The intent of this district is to provide areas within the Town of Windham for manufacturing, processing, treatment, research, warehousing, storage, distribution, and outdoor recreation uses.
- B. Permitted uses. The following uses, as they are defined in Article 3, shall be permitted in the Industrial District as a matter of right. Refer to Article 5, Performance Standards, or Subsection F, District standards, for additional use information.

Agriculture

Agriculture, piggery
Agriculture, poultry facility
Automobile repair services
Building, accessory
Business and professional office
Contractor services
Contractor services, landscaping
Contractor storage yard
Construction services, heavy, major
Construction services, heavy, minor
Distribution center
Dwelling, existing single-family
Dwelling, existing duplex
Dwelling, existing [triplex](#)
Home occupation 1
Home occupation 2
Industry, heavy
Industry, light
Marijuana cultivation facility
Marijuana manufacturing facility
Marijuana registered dispensary
Marijuana testing facility
Medical marijuana registered caregiver
Medical marijuana registered caregiver (home occupation)
Mineral extraction
Recreational facility, outdoor
Research laboratory
Retail sales
Small engine repair
Solar energy system – roof-mounted, small, medium, and large scale
Solar energy system – ground-mounted, small scale
Solar energy system – ground-mounted, medium scale
Solar energy system – ground-mounted, large scale
Truck terminal
Use, accessory
Warehousing, private
Warehousing, public
Wireless telecommunications tower and facility

C. Conditional uses. The following uses, as defined in Article 3, shall be allowed as a conditional use in

accordance with § 120-516. Refer to Article 5, Performance Standards, or Subsection F, District standards, for additional use information.

- (1) Automobile storage lot.
- (2) Correctional facility, public.
- (3) Public building.
- (4) Public utility facility.
- (5) Shipping container.

D. Prohibited uses. Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited.

E. Dimensional standards. The following dimensional standards shall apply in the Industrial District:

- (1) Minimum lot size: 20,000 square feet.
- (2) Minimum frontage: 100 feet.
- (3) Minimum front setback: 40 feet.
 - (a) Minimum buffers along streets. See § 120-511, Buffer yard, in Article 5, Performance Standards, for requirements.
- (4) Minimum side setback: greater of 25 feet or 50% of building height.
 - (a) Dwelling, existing (all associated structures): 15 feet. Either side setback for an existing dwelling may be reduced one foot for every foot that the lot's other side setback is increased. However, no side setback shall be less than 10 feet.
- (5) Minimum rear setback: greater of 25 feet or 50% of building height.
 - (a) Dwelling, existing (all associated structures): 10 feet.
- (6) Maximum building height: none.
 - (a) Dwelling, existing (all associated structures): 35 feet.
- (7) Maximum building coverage: 50%.
- (8) Maximum impervious area: 75%.

F. District standards. In addition to Article 5, Performance Standards, these standards shall apply to the following uses in the Industrial District:

- (1) Curb cuts. See § 120-522, Curb cuts and driveway openings, in Article 5, Performance Standards, for standards applicable to the I District.
- (2) Industry, heavy. In accordance with the conditional use standards in Article 5, the appropriate review authority may approve the manufacturing or use of hazardous material, as defined in Article 3 (see Article 3 for definition of "manufacturing, hazardous").
- (3) Storage. Outdoor storage must be screened from view of public ways.
- (4) Zoning district boundary buffer. See § 120-511, Buffer yard, in Article 5, Performance Standards, for requirements.

Commented [BM14]: Do you want to set a minimum density?

- (5) Marijuana cultivation facility. Cultivation facilities may be of the following types: Tier 1, Tier 2, and Tier 3. (See Article 3, Definitions.)
- (6) Marijuana registered dispensary.
 - (a) In the Industrial District, a marijuana registered dispensary engaging in the cultivation of marijuana shall be limited to cultivating not more than 7,000 square feet of plant canopy on site.
 - (b) In the Industrial District, this use shall not involve the sale, transfer, supply or dispensing of marijuana to any qualifying patient or other person on site, notwithstanding the definition of "marijuana registered dispensary" in Article 3. (See Article 3, Definitions.)

§ 120-414. Enterprise Development District (ED).

- A. Intent. The intent of this district is to provide a unique area within the Town of Windham to allow manufacturing, processing, treatment, warehousing, storage, research and distribution with safe, well-regulated vehicle access located off a major street which can conform to the performance standards set forth in this section and in all other applicable ordinances of the Town of Windham.
- B. Permitted uses. The following uses, as they are defined in Article 3, shall be permitted in the Enterprise Development District as a matter of right. Refer to Article 5, Performance Standards, or Subsection F, District standards, for additional use information. [Amended 10-14-2014 by Order 14-387; 5-26-2020 by Order 20-048; 8-15-2023 by Order No. 23-150; 3-12-2024 by Order No. 24-033; 8-20-2024 by Order No. 24-165]

- Auction house
- Automobile auction facility
- Automobile repair services
- Building, accessory
- Business and professional office
- Contractor services
- Contractor storage yard
- Construction services, heavy, major
- Construction services, heavy, minor
- Convention center
- Distribution facility
- Dwelling, mixed-use
- Forestry
- Hotel
- Industry, heavy
- Industry, light
- Marijuana cultivation facility
- Marijuana manufacturing facility
- Marijuana registered dispensary
- Marijuana testing facility
- Mineral extraction
- Motel

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- Public utility facility
- Recreation facility, indoor
- Recreation facility, outdoor
- Recreational, passive
- Retail sales, accessory
- Small engine repair
- Solar energy system – roof-mounted, small, medium, and large scale
- Solar energy system – ground-mounted, small scale
- Solar energy system – ground-mounted, medium scale
- Solar energy system – ground-mounted, large scale
- Use, accessory
- Warehousing, private
- Warehousing, public
- Wireless telecommunications tower and facility

C. Conditional uses. The following uses, as defined in Article 3, shall be allowed as a conditional use in accordance with § 120-516. Refer to Article 5, Performance Standards, or Subsection F, District standards, for additional use information:

- (1) Automobile storage lot. **[Added 7-8-2014 by Order 14-164]**
- (2) Shipping container.

D. Prohibited uses. Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited.

E. Dimensional standards. The following dimensional standards shall apply in the Enterprise Development District:

- (1) Minimum lot size: none
- (2) Minimum frontage: 100 feet.
- (3) Minimum front setback: 40 feet.
 - (a) Minimum buffer along streets: see § 120-511, Buffer yard. **[Amended 8-15-2023 by Order No. 23-149]**
- (4) Minimum side setback: greater of 30 feet or 50% of building height.
- (5) Minimum rear setback: greater of 30 feet or 50% of building height.
- (6) Maximum building height: 40 feet.
 - (a) Maximum building height exemption: See district standards.
- (7) Maximum building coverage: 50%.
- (8) Maximum impervious area: 75%.

F. District standards. In addition to Article 5, Performance Standards, these standards shall apply to the following uses in the Enterprise Development District:

- (1) Access management.
 - (a) Any parcel of land which is divided or developed may be required by the Town to provide one or more sixty-foot rights-of-way to abutting land in the Enterprise Development Zone.
 - (b) An Enterprise Development District may have one or more dead-end access streets from an existing public right-of-way. If two or more entrances to an Enterprise Development District are proposed, such entrances shall be separated by at least 1,000 linear feet, unless waived by the Planning Board.
 - (c) The Town may require that one or more turning lanes be provided on the public right-of-way from which the Enterprise District is accessed. The need for these lanes will be based on proposed traffic volumes and conditions.
 - (d) Access to all lots within an Enterprise Development District shall be limited to the district's interior road system.
- (2) Convention center. Convention centers shall only be permitted as an accessory use to a hotel or motel.
- (3) Buffers and screening. **[Amended 10-14-2014 by Order 14-387; 8-15-2023 by Order No. 23-149]**
 - (a) Residential district boundary buffer. See § 120-511, Buffer yard, in Article 5, Performance Standards, for requirements.
 - (b) Commercial district boundary buffer. See § 120-511, Buffer yard, in Article 5, Performance Standards, for requirements.
 - (c) Screening of outdoor storage. Outdoor storage shall be completely screened from adjoining properties by means of evergreen trees at least six feet in height at time of planting.
 - [1] Automobile auction facility. Opaque fencing six feet in height shall enclose any outdoor storage area in lieu of evergreen trees.
 - (d) Screening of lighting. See Subsection F(7)(e) below.
- (4) Industry, heavy. In accordance with the conditional use standards in Article 5, the appropriate review authority may approve the manufacturing or use of hazardous material, as defined in Article 3. (See Article 3 for definition of "manufacturing, hazardous.")
- (5) Maximum building height exemption. Buildings over 40 feet high shall be allowed if approved by the Board of Appeals. The Board of Appeals shall use the conditional use standards in § 120-516 to make its findings on the application.
- (6) Parking lot setback. Parking lots shall maintain a thirty-foot setback from all property lines.
- (7) Performance standards.
 - (a) Air pollution. All uses shall comply with minimum federal, state and local air pollution requirements.
 - [1] Applicants shall submit information demonstrating compliance with any applicable federal, state or local requirements. If the application does not require subdivision or site plan review, the information shall be submitted to the Code Enforcement Officer for approval before a building permit is issued.
 - [2] The maximum permitted density of smoke, dust and other particulate emissions during normal operations of any activity shall not exceed the maximum allowable

under the regulations of the Maine Department of Environmental Protection. In case of doubt, the Code Enforcement Officer may employ such independent, recognized consultants as necessary, at the expense of the applicant, to assure compliance with performance standards and all other requirements of this chapter related to the public health, safety and welfare and the abatement of nuisances.

- (b) Electromagnetic interference. No use, activity or process shall be conducted which produces electromagnetic interference in the transmission or reception of electrical impulses beyond any lot lines, including radio and television. In all cases, federal, state and local requirements shall be met. Violations of this standard shall be considered a public nuisance.
- (c) Fire protection.
 - [1] All buildings or structures shall be connected to the public water supply and have a sprinkler system or a fire suppression system installed when required by the Town of Windham Building Code.⁹
 - [2] Storage, utilization, or manufacture of solid materials or products, including free burning and intense burning, is permitted, provided that said materials or products shall be stored, utilized, or manufactured within completely enclosed buildings having incombustible walls and protected throughout by an automatic fire-extinguishing system.
 - [3] The storage, utilization, or manufacture of flammable liquids, or materials which produce flammable or explosive vapors or gases, shall be permitted in accordance with the most current edition of the National Fire Protection Association Standards for Flammable and Combustible Liquids (NFPA 30) or the most current edition of the NFPA 1 Fire Code. The most restrictive standards shall apply. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**
 - [4] Any change in use or occupancy shall require a review and approval by the Code Enforcement Officer and the Fire-Rescue Chief.
 - [5] Tanks or other underground storage facilities abandoned or not in use for a period exceeding one year shall be removed or otherwise assured safe conditions are present. In all cases, applicable federal, state and local regulations shall prevail.
- (d) Groundwater and surface water protection.
 - [1] Water pollution. 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, quantity, obnoxiousness, toxicity or temperature that run off, seep,

9. Editor's Note: See Ch. 28, Building Construction.

percolate, or wash into surface waters or groundwater 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.

- [a] All provisions of 38 M.R.S.A. Chapter 3, Protection and Improvements of Waters, and such rules and regulations adopted by the Maine Board of Environmental Protection pursuant to the referenced statute shall apply. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art.**

D)

- [b] No development or use shall result in the existing groundwater quality becoming inferior to the physical, biological, chemical and/or radiological levels for raw and untreated drinking water supply sources specified in the Maine State Drinking Water Regulations, pursuant to 22 M.R.S.A. § 2601 et seq. If the existing groundwater quality is inferior to the State Drinking Water Regulations, the developer or landowner will not degrade the water quality any further.
 - [c] Representatives of the municipality or the Maine Department of Environmental Protection may enter the premises for the purpose of gauging, sampling and testing any wastewater systems which may enter into watercourses.
 - [d] No development or use of land shall lower the groundwater table more than 10 feet.
- [2] Subsurface wastewater disposal. The Enterprise Development District has been determined by the Town of Windham to be particularly sensitive to the discharge of pollutants from on-site subsurface sewage disposal systems and is therefore designated as a groundwater sensitive area. When the sewage contains effluent other than usual bathroom and/or on-premises food preparation water, the Town of Windham may require a pretreatment system for the effluent before its entry into any subsurface sewage disposal system.
- [a] The Town may hire a third-party consultant to review any subsurface wastewater disposal applications. The costs for this review shall be the responsibility of the applicant.
 - [b] The Town of Windham may require groundwater monitoring of the project at the owner's expense.
- (e) Lighting.
- [1] No light 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 the 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 towards the sky or adjacent residential properties.
 - [3] No rotating or flashing lights or signals, except safety signaling devices as required by law, are permitted.
 - [4] Adequate buffers using either the natural landscape or artificial screening are required to prevent unnecessary light from being directed beyond any lot lines onto adjacent residential properties.
- (f) Noise. Noise is required to be muffled so as not to be objectionable due to emission, beat frequency or shrillness. The average dBA count resulting from any activity shall not exceed at any point on or beyond any lot line 60 dBA during the day and 50 dBA at night. The average dBA count for any activity shall be computed based on samples taken at intervals over a twenty-four-hour period.
- [1] During the peak activity of 60 minutes in a twenty-four-hour period, a noise may not exceed these average dBA counts by more than 10 dBA.

- [2] Temporary activities that are unable to meet these requirements shall require a special permit from the Code Enforcement Officer. The noise standards shall not apply to the temporary use of such machinery as chain saws, lawn mowers and snowmobiles.
- (g) Odors. The emission of odorous or toxic matter in such quantities as to be readily detectable at any point along any lot lines so as to produce a public nuisance or hazard is prohibited.
 - [1] Such activities shall comply with applicable minimum federal, state and local requirements.
 - [2] Detailed plans shall be submitted to the Code Enforcement Officer for approval before a permit is granted.
 - [3] Violations of this standard shall be considered a public nuisance.
- (h) Vibrations. No vibration shall be produced which is transmitted through the ground and is discernible without the aid of instruments at or at any point beyond any lot line.
- (8) Street and road design. All streets in the Enterprise Development District shall be designed and constructed to meet the industrial road standards set forth in Article 9, Subdivision Review.
- (9) Utilities. All utilities, including telephone and electrical services, shall be placed underground. If the development is being reviewed by the Planning Board as either a site plan or subdivision, the applicant may request a waiver under the applicable waiver standards of either Article 8, Site Plan Review, or Article 9, Subdivision Review.
- (10) Marijuana cultivation facility. Cultivation facilities may be of the following types: Tier 1, Tier 2, Tier 3, and Tier 4. (See Article 3, Definitions.) **[Added 5-26-2020 by Order 20-048]**
- (11) Marijuana registered dispensary. **[Added 3-12-2024 by Order No. 24-033]**
 - (a) In the Enterprise Development District, a marijuana registered dispensary engaging in the cultivation of marijuana shall be limited to cultivating not more than 20,000 square feet of plant canopy on site.
 - (b) In the Enterprise Development District, this use shall not involve the sale, transfer, supply or dispensing of marijuana to any qualifying patient or other person on site, notwithstanding the definition of "marijuana registered dispensary" in Article 3. (See Article 3, Definitions.)

§ 120-415. Village Commercial District (VC). [Added 9-14-2010 by Order 10-162]

A. Intent. The intent of the Village Commercial District is to serve as a primarily residential area with a mix of stores, services and commercial enterprises. Growth, at a village scale, is to be well planned in this area of Town served by public water and sewer, [within the Town's designated growth area \(DGA\) as defined in the Comprehensive Plan adopted on May 10, 2024.](#)

B. Permitted uses. **[Amended 5-26-2020 by Order 20-048; 8-15-2023 by Order No. 23-150]**

- Agriculture
- Artist studio
- Assisted living facility
- Bank
- Bed-and-breakfast inn
- Boarding home for sheltered care
- Building, accessory
- Business and professional office
- Child-care facility
- Child care, family home
- Contractor services
- Contractor storage yard
- Construction services, heavy, major
- Construction services, heavy, minor
- Convention center
- Dwelling, mixed-use
- Dwelling, single-family
- Dwelling, duplex
- [Dwelling, triplex](#)
- [Dwelling, quadplex](#)
- Dwelling, multifamily
- Fitness center
- Funeral home
- Home occupation 1
- Home occupation 2
- Hotel
- Housing for older persons
- Industry, light
- Medical marijuana registered caregiver
- Medical marijuana registered caregiver (home occupation)
- Medical office
- Nursing home
- Park, public

- Place of worship
- Public building
- Public utility facility
- Recreation facility, indoor
- Recreation facility, outdoor
- Research laboratory
- Restaurant
- Retail sales
- Retail sales, convenience
- Retail sales, nursery
- Senior citizen housing detached
- Service business, commercial
- Service business, personal
- Solar energy system – roof-mounted, small, medium, and large scale
- Solar energy system – ground-mounted, small scale
- Solar energy system – ground-mounted, medium scale
- Theater
- Use, accessory
- Wireless telecommunications facility

C. Conditional uses.

- (1) Auto repair services.
- (2) Drive-through facility.
- (3) Small engine repair.

D. Prohibited uses. Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited.

E. Dimensional standards.

- (4) Minimum lot size.
 - (a) Standard.
 - [1] Lots connected to public water and sewer: 5,000 square feet.
 - [2] Lots served by wells or a private sanitary system: 20,000 square feet.
- (5) Net residential density.
 - (a) Lots connected to public water and sewer: ~~2,500~~1,250 square feet.
 - (b) Lots served by wells or a private sanitary system: 20,000 square feet.
- (6) Minimum frontage: 50 feet.
- (7) Minimum front setback: no minimum. New buildings constructed in the Village Commercial District shall be located in such a manner as to maintain the established relationship of buildings

to the street. No building shall be set back further than the average of the existing setbacks in the block in which the building is located or, if an existing building is being demolished, than the preexisting setback, whichever is greater.

- (8) Minimum side setback: no minimum. Structures that share a common wall shall meet the requirements of the building code adopted by the Town of Windham.
 - (a) Portions of new buildings constructed in the Village Commercial District over 35 feet in height shall be no closer than 10 feet from the side lot line. **[Added 4-25-2023 by Order No. 23-060]**
- (9) Minimum rear setback: 20 feet.
- (10) Maximum building height: 35 feet.
 - (a) Public buildings, church steeples: no limit.
- (11) Maximum building coverage: no limit.

F. District standards.

- (12) Zoning district boundary buffer. See § 120-511, Buffer yard, in Article 5, Performance Standards, for requirements. **[Amended 8-15-2023 by Order No. 23-149]**
- (13) Design guidelines. Designs for new and rehabilitated structures and building sites are encouraged to use the objectives and guidelines contained in the Town of Windham's 2005 Design Guidelines.
- (14) Parking. Uses shall meet the parking standards of § 120-542, Parking and loading, except for the following:
 - (a) Dwellings, single-family and duplex: one per dwelling unit.
 - (b) No portion of the lot in front of a commercial use shall be used for off-street parking, service or loading.
- (15) Restaurant.
 - (a) Maximum seating for any bar area shall be 20 seats.
 - (b) Restaurants shall not be permitted to include a drive-through facility.
- (16) Retail sales. The maximum area of a building dedicated to retail sales shall be 10,000 square feet.
- (17) Affordable housing. Affordable housing developments are eligible for increases in residential density and building height and reductions in lot size, frontage and parking requirements identified in Article 5, Performance Standards, if the development meets the applicable criteria in § 120-501.1. **[Added 4-25-2023 by Order No. 23-060]**

§ 120-415.1. Windham Center District (WC). [Added 5-23-2023 by Order No. 23-091; 8-15-2023 by Order No. 23-149; 8-15-2023 by Order No. 23-150; 4-9-2024 by Order No. 24-018; 2-25-2025 by Order No. 25-033]

A. Intent.

- (1) The intent of the Windham Center District is to serve as a primarily residential area with a walkable mixture of various uses that will support and promote business and community within the area. Uses are intended to complement one another and allow for different offerings such as

art and cultural spaces, public community space, educational/institutional uses, residential, and other small business enterprise uses that meet local neighborhood needs for limited business services, within the Town's designated growth area (DGA) as defined in the Comprehensive Plan adopted on May 10, 2024.

B. Permitted uses.

- (1) Agriculture;
- (2) Artist studio;
- (3) Bank;
- (4) Bed and breakfast inn;
- (5) Boarding home for sheltered care;
- (6) Building, accessory;
- (7) Business and professional office;
- (8) Cemetery;
- (9) Child-care facility;
- (10) Child-care, family home;
- (11) Dwelling, mixed use;
- (12) Dwelling, single-family;
- (13) Dwelling, ~~two family~~duplex;
- ~~(14)~~ Dwelling, multifamily;
- ~~(15)~~ Dwelling, quadplex;
- ~~(14)~~~~(16)~~ Dwelling, triplex;
- ~~(15)~~~~(17)~~ Fitness center;
- ~~(16)~~~~(18)~~ Forestry;
- ~~(17)~~~~(19)~~ Home occupation 1;
- ~~(18)~~~~(20)~~ Home occupation 2;
- ~~(19)~~~~(21)~~ Housing for older persons;
- ~~(20)~~~~(22)~~ Medical marijuana caregiver;
- ~~(21)~~~~(23)~~ Medical marijuana caregiver (home occupation);
- ~~(22)~~~~(24)~~ Medical office;
- ~~(23)~~~~(25)~~ Park, public;
- ~~(24)~~~~(26)~~ Place of worship;
- ~~(25)~~~~(27)~~ Public building;
- ~~(26)~~~~(28)~~ Restaurant;

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- ~~(27)~~(29) Retail sales;
- ~~(28)~~(30) Retail sales, convenience;
- ~~(29)~~(31) Service business, commercial;
- ~~(30)~~(32) Service business, personal;
- ~~(31)~~(33) Theater;
- ~~(32)~~(34) Use, accessory;
- ~~(33)~~(35) Wireless telecommunications facility.
- ~~(34)~~(36) Solar energy system – roof-mounted, small, medium, and large scale.
- ~~(35)~~(37) Solar energy system – ground-mounted, small scale.
- ~~(36)~~(38) Solar energy system – ground-mounted, medium scale.

C. Conditional uses.

- (1) Drive-through facility;
- (2) Public utility facility;
- (3) Recreation facility, indoor;
- (4) Recreation facility, outdoor;
- (5) Riding stable;
- (6) Rooming house;
- (7) Small engine repair.
- (8) Solar energy system – ground-mounted, large scale.

D. Prohibited uses.

- (1) Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited.

E. Dimensional standards.

- (1) Minimum lot size:
 - (a) Standard: 30,000 square feet.
 - (b) Lots connected to public water: 20,000 square feet.
- (2) Net residential density: 15,000 square feet.
- (3) Minimum frontage: 100 feet.
- (4) Minimum front setback: 20 feet.
 - (a) The minimum front setback of a lot may be reduced to the average setback distance of the existing buildings located on the lots to either side of said lot.
 - (b) Multifamily dwellings and nonresidential uses:

[1] Minimum buffers along streets: see § 120-511, Buffer yard.

(5) Minimum side setback: 10 feet.

(a) The minimum side setback shall be increased to 15 feet when building height is over 35 feet.

(6) Minimum rear setback: 10 feet.

(a) The minimum rear setback shall be increased to 15 feet when building height is over 35 feet.

(7) Maximum building height: 45 feet.

(a) Public buildings, church steeples: No limit.

(8) Maximum building coverage: 50%.

F. District standards.

(1) In addition to Article 5, Performance Standards, these standards shall apply to the following uses in the Windham Center District:

(a) Bank:

[1] Building footprint shall be limited to 3,000 square feet.

[2] Drive-through facilities must be in the rear of the building.

(b) Zoning district boundary buffer. See § 120-511, Buffer yard, in Article 5, Performance Standards, for requirements.

(c) Fitness center. The maximum area of a building dedicated to a fitness center shall be 3,000 square feet.

(d) Retail sales. The building footprint shall be limited to 3,000 square feet.

(e) Restaurant:

[1] Maximum seating shall be 40 seats.

[2] Restaurants shall not be permitted to include a drive-through facility.

(f) Retail sales. The maximum area of a building dedicated to retail sales shall be 3,000 square feet.

(g) Sidewalks. New, enlarged or rebuilt uses shall provide sidewalks along any public way that border the property when there is an existing sidewalk to which the proposed sidewalk can connect.

[1] Sidewalks shall be constructed in accordance with the standards in Tables three and four in Appendix B of this chapter.

[2] Sidewalk construction shall meet all applicable American with Disabilities Act (ADA) Standards.

(h) Streets. All new and reconstructed streets must be built to public street standards.

(i) Street trees shall be planted along the street frontage, at least one tree every 50 feet.

[1] These trees must be evenly spaced and placed within the right-of-way as close to the

property as possible. In the event the lot owner does not have the right to plant within the right-of-way, the street trees will be placed on the lot as close to the right-of-way as possible.

[2] Street trees shall be of a size and a variety specified on a Town of Windham recommended tree list available from the Public Works Department.

- (j) Theater. The maximum seating shall be 90 seats.
- (k) Signs. The regulations in § 120-708. Signs permitted in all residential districts, shall apply to all uses in the Windham Center District.
- (l) Affordable housing. Affordable housing developments are eligible for increases in residential density and building height and reductions in lot size, frontage and parking requirements identified in Article 5, Performance Standards, if the development meets the applicable criteria in § 120-501.1.

§ 120-415.2. Village Residential District (VR). [Added 5-23-2023 by Order No. 23-091; amended 8-15-2023 by Order No. 23-149; 8-15-2023 by Order No. 23-150; 4-9-2024 by Order No. 24-018; 4-30-2024 by Order No. 24-057; 2-25-2025 by Order No. 25-033]

A. Intent.

- (1) The intent of the Village Residential District is to serve as a residential area with a walkable mixture of limited small business enterprise uses that meet local neighborhood needs for limited business services.

B. Permitted uses.

- Agriculture
- Artist studio
- Building, accessory
- Campground, personal
- Cemetery
- Child-care facility Child care, family home
- Dwelling, single
- Dwelling, duplex
- Dwelling, multifamily
- Dwelling, quadplex
- Dwelling, triplex
- Farm enterprise
- Forestry
- Home occupation 1
- Home occupation 2
- Kennel, minor
- Housing for older persons
- Medical marijuana caregiver
- Medical marijuana caregiver (home occupation)

- Park, public
- Place of worship
- Public building
- Sawmill, temporary
- Service business, personal
- Solar energy system – roof-mounted, small, medium, and large scale
- Solar energy system – ground-mounted, small scale
- Use, accessory
- Wireless telecommunications facility

C. Conditional uses.

- Agriculture, piggery
- Agriculture, poultry facility
- Bed and breakfast inn
- Boarding home for sheltered care
- Campground, commercial
- Contractor services, landscaping
- Contractor storage yard
- Kennel, major
- Medical office
- Public utility facility
- Recreation facility, indoor
- Recreation facility, outdoor
- Riding stable
- Retail sales, convenience
- Retail sales, nursery
- Rooming house
- Solar energy system – ground-mounted, medium scale
- Solar energy system – ground-mounted, large scale

D. Prohibited uses.

- (1) Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited.

E. Dimensional standards.

- (1) Minimum lot size:
 - (a) Standard: 40,000 square feet.
- (2) Net residential density: 30,000 square feet.
- (3) Minimum frontage: 100 feet.
- (4) Minimum front setback: 30 feet.

- (a) The minimum front setback of a lot may be reduced to the average setback distance of the existing buildings located on the lots to either side of said lot.
- (b) Nonresidential uses. Minimum buffers along streets: see § 120-511, Buffer yard.
- (5) Minimum side setback: 15 feet.
- (6) Minimum rear setback: 15 feet.
- (7) Maximum building height: 35 feet.
 - (a) Public buildings, church steeples: No limit.
- (8) Maximum building coverage: 20%.

F. District standards.

- (1) In addition to Article 5, Performance Standards, these standards shall apply to the following uses in the Village Residential District:
 - (a) Multifamily dwellings: No more than four dwelling units per building.
 - (b) Medical office: See "medical office" in Article 5, Performance Standards, for size limitations.
 - (c) Buffer requirements for specific nonresidential uses. See § 120-511, Buffer yard, in Article 5, Performance Standards, Table 2 for requirements.
 - (d) Child-care facility.
 - [1] Outdoor play areas must be located to the rear of the building.
 - [2] Maximum capacity of 50 children.
 - (e) Design guidelines: Designs for new and rehabilitated structures and building sites are encouraged to use the standards in § 120-813 and in the objectives and guidelines contained in the Town of Windham's 2005 Design Guidelines.
 - (f) Streets. All new and reconstructed streets must be built to public street standards.
 - (g) Street trees shall be planted along the street frontage, at least one tree every 50 feet.
 - [1] These trees must be evenly spaced and placed within the right-of-way as close to the property as possible. In the event the lot owner does not have the right to plant within the right-of-way, the street trees will be placed on the lot as close to the right-of-way as possible.
 - [2] Street trees shall be of a size and a variety specified on a Town of Windham recommended tree list available from the Public Works Department.
 - (h) Signs. The regulations in § 120-708, Signs permitted in all residential districts, shall apply to all uses in the Village Residential District.
 - (i) Affordable housing. Affordable housing developments are eligible for increases in residential density and building height and reductions in lot size, frontage and parking requirements identified in Article 5, Performance Standards, if the development meets the applicable criteria in § 120-501.1.

§ 120-416. Aquifer Protection Overlay District Zone A (APA).

- A. Intent. The purpose of this section is to protect the Town of Windham's well water supply by restricting the uses and activities on land overlying aquifer and aquifer recharge areas in proximity to Chaffin Pond.
- B. Permitted uses. The following uses, as they are defined in Article 3, shall be permitted in the Aquifer Protection Overlay District Zone A as a matter of right. Uses allowed in the underlying zoning district shall only be permitted if allowed in the Aquifer Protection Overlay District Zone A. Refer to Article 5, Performance Standards, or Subsection F, District standards, for additional use information.
- (1) Forestry.
 - (2) Public utility facility.
 - (3) Recreation facility, passive.
- C. Conditional uses. The following uses, as defined in Article 3, shall be allowed as a conditional use in accordance with § 120-516. Refer to Article 5, Performance Standards, or Subsection F, District standards, for additional use information.
- (1) None.
- D. Prohibited uses. Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited.
- E. Dimensional standards. The following dimensional standards shall apply in the Aquifer Protection Overlay District Zone A:
- (1) Maximum building height. The maximum building height of the underlying zoning district shall not apply to the public utility facilities allowed in the overlay district.
- F. District standards. In addition to Article 5, Performance Standards, these standards shall apply to the following uses in the Aquifer Protection Overlay District Zone A:
- (1) Except as otherwise required by state law, no person shall use herbicides or pesticides in this district except for herbicides and pesticides in nonpersistent amounts normally associated with individual households. Nonpersistent amounts shall have a half-life of less than 20 days in soil under aerobic conditions.
 - (2) All spreading or disposal of manure and fertilizers shall conform to the Manual of Best Management Practices for Maine Agriculture published by the Maine Department of Agriculture, Conservation and Forestry, as amended.
 - (3) Erosion and sedimentation shall be minimized by adherence to erosion control management practices contained in the Environment Quality Handbook, 1986, published by the Maine Soil and Water Conservation Commission, and subsequent revisions and amendments.
 - (4) Zone change request. Any person who wishes to remove or include his property in the AP District Zone A may apply to the Town of Windham for a zone change as provided by § 120-107 of this chapter. In addition to the requirements of § 120-107, a person who applies for zone change must send notification of said application to the Portland Water District to the attention of the Director of Quality Control. The applicant shall bear the burden of proof to demonstrate that the property should not be included within the AP District Zone A.

§ 120-417. Aquifer Protection Overlay District Zone B (APB).

- A. Intent. The purpose of this section is to protect the Town of Windham's well water supply by restricting

the uses and activities on land overlying aquifer and aquifer recharge areas in proximity to Chaffin Pond.

B. Permitted uses. The following uses, as defined in Article 3, shall be permitted in the Aquifer Protection Overlay District Zone B as a matter of right. Refer to Article 5, Performance Standards, or Subsection F, District standards, for additional use information.

(1) All permitted uses allowed in the underlying zoning district.

C. Conditional uses. The following uses, as defined in Article 3, shall be allowed as a conditional use in accordance with § 120-516. Refer to Article 5, Performance Standards, or Subsection F, District standards, for additional use information.

(1) All conditional uses allowed in the underlying zoning district.

D. Prohibited uses. Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited.

E. Dimensional standards. The following dimensional standards shall apply in the Aquifer Protection Overlay District Zone B:

(1) Minimum lot size:

(a) Dwellings: Greater of the underlying district or 80,000 square feet.

~~(2)~~ Maximum impervious area;

~~(2)~~

(a) Nonresidential uses: 50%.

F. District standards. In addition to Article 5, Performance Standards, these standards shall apply to the following uses in the Aquifer Protection Overlay District Zone B:

(1) The use or storage or manufacture of hazardous material, as defined in Article 3, for the industry, heavy use, in amounts in excess of those normally associated with individual households, is prohibited.

(2) Except as otherwise required by state or federal law, below-ground storage of petroleum products is prohibited.

(3) Salt and sand piles are prohibited.

(4) All spreading or disposal of manure and fertilizers shall conform to the Manual of Best Management Practices for Maine Agriculture published by the Maine Department of Agriculture, Conservation and Forestry, as amended.

(5) Erosion and sedimentation shall be minimized by adherence to erosion control management practices contained in the Environment Quality Handbook, 1986, published by the Maine Soil and Water Conservation Commission, and subsequent revisions and amendments.

(6) Zone change request. Any person who wishes to remove or include his property in the AP District Zone B may apply to the Town of Windham for a zone change as provided by § 120-107 of this chapter. In addition to the requirements of § 120-107, a person who applies for zone change must send notification of said application to the Portland Water District to the attention of the Director of Quality Control. The applicant shall bear the burden of proof to demonstrate that the property should not be included within the AP District Zone B.

§ 120-418. Manufactured Housing Park Overlay District (MHPO).

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- A. Permitted uses. The following uses, as defined in Article 3, shall be permitted in the MHPO District as a matter of right. Refer to Article 5 Performance Standards, or Subsection E, District standards, for additional use information.
- (1) All permitted uses allowed in the underlying zoning district.
 - (2) Mobile home.
 - (3) Mobile home, double-wide.
- B. Conditional uses. The following uses, as defined in Article 3, shall be allowed as a conditional use in accordance with § 120-516. Refer to Article 5, Performance Standards, or Subsection E, District standards, for additional use information.
- (1) All conditional uses allowed in the underlying zoning district.
- C. Prohibited uses. Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited.
- D. Dimensional standards. The following dimensional standards shall apply in the MHPO District:
- (1) Minimum lot size:
 - (a) Public sewer: 6,500 square feet.
 - (b) Individual septic system: 20,000 square feet.
 - (c) Central sewage system: 12,000 square feet.
 - (2) Net residential density:
 - (a) Septic and central sewage systems: 20,000 square feet per unit.
 - (b) Public sewer. For mobile home parks in which all units shall be served by public sewer, at least 10% of the combined area of all individual lots shall be reserved or improved for open space, storage or recreational purposes.
 - (c) In addition to the standards for calculating net residential density in Article 5, § 120-541, Net residential area or acreage, land within any required buffer shall not be used for the calculation of net residential density.
 - (3) Minimum frontage:
 - (a) Public sewer: 50 feet.
 - (b) Individual septic system: 100 feet.
 - (c) Central sewage system: 75 feet.
 - (4) Minimum unit setbacks requirements:
 - (a) Front setback: 30 feet.
 - (b) Side and rear setback:
 - [1] Lot size equals 10,000 square feet or less: 10 feet.
 - [2] Lot size equals 10,001 square feet or greater: 15 feet.
- E. District standards.

- (1) Applicability. New mobile home parks may be located, and existing parks expanded, only in the Manufactured Housing Park Overlay District (MHPO). This overlay district is delineated on the Town's Official Land Use Map.
- (2) Sale of individual lots. The sale of any individual lot or lots in an approved mobile home park is prohibited unless the status of the park as a whole is changed, with the approval of the Planning Board, to other permissible residential uses under the provisions of this chapter.
- (3) Planning Board review requirement. No mobile home park may be established, and no existing mobile home park may be enlarged, unless the Planning Board finds that the following standards have been met:
 - (a) Buffers. A buffer, as defined, meeting the Buffer Yard D standards in § 120-511, Table 1 shall be required along the mobile home park's exterior public or private street frontage. **[Amended 8-15-2023 by Order No. 23-149]**
 - (b) No building within the mobile home park shall be closer than 50 feet to any abutting residential land.
 - (c) Water and sewage facilities for the park shall comply with all applicable regulations of the Town and the State of Maine, and all other applicable standards as set forth in the State of Maine Rules and Regulations of the Department of Health and Welfare relating to Mobile Home Parks and Camping Areas, approved and adopted November 6, 1972.
 - (d) New or enlarged mobile home parks shall meet the standards of Article 9, Subdivision Review, except where exempted by state statute.
 - (e) All mobile homes within the park shall be accessed by interior minor streets owned and maintained by the park owner. Road layout and entrance requirements shall conform with the street design standards of Article 9, Subdivision Review, except that: **[Added 4-24-2012 by Order 12-042]**
 - [1] The right-of-way may be reduced to 23 feet; and
 - [2] The width of pavement may be reduced to 20 feet.
 - (f) Where a central sewage system is proposed, the following standards shall be met:
 - [1] Additional land shall be set aside in the event of a system failure.
 - [a] The amount of land set aside shall be based upon an independent analysis from a licensed engineer.
 - [b] The cost of the independent engineering analysis shall be the responsibility of the applicant.
 - [2] The system shall be approved by the Maine Department of Health and Human Services.
 - (g) All other applicable standards of 30-A M.R.S.A. § 4358 presently effective or as hereinafter amended shall apply.
 - (h) The development will not pollute a public water supply or aquifer.
 - (i) Wherever feasible, all new or enlarged mobile home parks shall be served by a public water supply provided by the Portland Water District or assignee.

§ 120-419. Roosevelt Trail Business and Professional Office Overlay Zone.

- A. Intent. The purpose of this overlay district is to allow business offices and personal service businesses within the portions of the Medium-Density Residential, Farm, and Farm-Residential Zoning Districts that are located on Roosevelt Trail between the Pleasant River and Page Road. Businesses seeking to locate in this overlay district must meet the standards for both the zoning district and conditional uses.
- B. Area of zone. The area to be included in the Roosevelt Trail Business and Professional Office Overlay Zone is depicted on the Windham Land Use Map.
- C. Permitted uses. The following uses, as they are defined in Article 3, shall be permitted in the Roosevelt Trail Business and Professional Office Overlay Zone as a matter of right. Refer to Article 5, Performance Standards, or Subsection G, District standards, for additional use information.
- (1) None.
- D. Conditional uses. The following uses, as defined in Article 3, shall be allowed as a conditional use in accordance with § 120-516. Notwithstanding the provisions of § 120-516, the Planning Board shall be responsible for review and approving all conditional use applications in the overlay zone. Refer to Article 5, Performance Standards, or Subsection G, District standards, for additional use information.
- (1) Business and professional office.
- (2) Service business, personal, excluding laundry or dry-cleaning services.
- E. Prohibited uses. Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited.
- F. Dimensional standards. In addition to the standards of the underlying zoning district, the following dimensional standards shall apply in the Roosevelt Trail Business and Professional Office Overlay District:
- (1) Maximum building size: 5,000 square feet.
- G. District standards. In addition to Article 5, Performance Standards, these standards shall apply to the uses in the Roosevelt Trail Business and Professional Office Overlay District:
- (1) Signs. The regulations in § 120-708, Signs permitted in all residential districts, shall apply to all uses in the Roosevelt Trail Business and Professional Office Overlay Zone.
- (2) Parking. The minimum off-street parking standards in § 120-812C of this chapter shall apply to all uses allowed in the overlay district.
- (3) Windham design guidelines.
- (a) The design guidelines of § 120-813 shall apply to the following activities:
- [1] New structures over 500 square feet in cumulative area.
- [2] Exterior improvements to existing structures. Exterior improvements to existing structures shall be reviewed and approved by the Staff Review Committee as established in § 120-803 of this chapter.
- (b) In addition to the Windham design guidelines, the following design features shall be required standards for uses allowed by the overlay district:
- [1] Building materials. Traditional, high-quality building materials, including brick, clapboard, shingles or other similar projects, shall be used as the primary siding material. Contemporary materials that have the same visual characteristics as

traditional materials such as cement plank clapboards or vinyl clapboard siding are also acceptable.

- [2] Rooflines. Pitched roofs that are compatible with the surrounding residential uses shall be required. The minimum pitch of all rooflines shall be at least 5/12.
- (4) Screening/buffering. Buildings and parking areas shall be screened from adjoining residential properties located at the side and rear of the property. Screening shall consist of either vegetation or fencing that is opaque and at least six feet in height at the time of installation.
- (5) Lighting. All exterior lighting shall use a ninety-degree cutoff fixture.

§ 120-420. Retirement Community and Care Facility Overlay District (RCCFO). [Added 10-23-2012 by Order 12-148]

- A. Intent. The intent of the Retirement Community and Care Facility Overlay District (RCCFO) is to provide areas in the Town of Windham where housing for older persons can be provided at higher residential densities. The RCCFO includes land adjacent to arterial roadways. The proximity to arterial roads is intended to provide housing for older persons suitable access to commercial establishments and public safety services.
- B. Permitted uses. The following uses, as defined in Article 3, shall be permitted in the RCCFO District as a matter of right. Refer to Article 5, Performance Standards, or Subsection E, District standards, for additional use information.
 - (1) Assisted living facility.
 - (2) Boarding home for sheltered care.
 - (3) Retirement community.
 - (4) Nursing home.
- C. Prohibited uses. Uses that are not expressly enumerated herein, or in the underlying zoning district, as either permitted uses or conditional uses are prohibited.
- D. Dimensional standards. Notwithstanding the dimensional standards set forth in the underlying zoning district, the following dimensional standards shall apply to uses permitted by the RCCFO District:
 - (1) Minimum lot size: 200,000 square feet. **[Amended 11-18-2014 by Order 14-468]**
 - (2) Net residential density:
 - (a) Assisted living facility: none.
 - (b) Nursing home: none.
 - (c) Boarding home for sheltered care: none.
 - (d) Retirement community: 5,000 square feet.
 - (3) Minimum setback requirements:
 - (a) Duplex dwelling; multifamily dwelling: See Subsection E, District standards.
- E. District standards.
 - (1) Standards applicable in the RCCFO District.

- (a) Public water. All nursing home facilities or assisted living facilities shall be served by a utility connection to the Portland Water District system. All retirement community uses shall be connected to a public drinking water supply, as defined by the Maine Department of Health and Human Services. No retirement community dwelling units or facilities utilizing the standards of this overlay district shall be served by a private well. This standard does not apply to retirement community dwelling units or facilities developed in accordance with the standards of the underlying zoning district.
 - (b) Public street lot width. Lots that contain uses permitted by the overlay district shall meet the minimum lot width requirement of the underlying zoning district.
 - (c) Street connection requirement. Uses permitted by the overlay district shall meet the street connection requirements of § 120-911M(5)(b)[7].
 - (d) Parking requirements. All uses in the overlay district shall meet the applicable off-street parking requirement contained in § 120-812C.
 - (e) Site design/building orientation. When the development proposal provides for the construction or expansion of a building within 100 feet of an existing road on the perimeter of the site, the project shall incorporate the following design features:
 - [1] Buildings shall be designed so that they front on the existing road or, as an alternative, do not turn their backs to the road. A site that has frontage on two or more existing streets shall use the street with the greater traffic volume for the purpose of this standard.
 - [2] No service or storage areas shall be located between the building and the road.
 - [3] Vehicular access shall be from internal streets or combined entrances where practical.
 - [4] Parking lots shall not be located, where practical, between the building and the existing road.
 - [5] If a sidewalk or pedestrianway exists along the existing road, provisions shall be made to link it with the planned buildings.
 - (f) Buffer requirement. The following site features shall be screened with either solid fencing or vegetation from any existing residential dwelling located on an abutting property:
 - [1] Storage areas.
 - [2] Dumpsters or trash collection areas.
 - [3] Service areas or accessways for emergency vehicles.
 - [4] Parking lots, and their associated access drives, that contain spaces for five or more vehicles.
 - (g) Lighting. All exterior lighting shall use a ninety-degree cutoff fixture.
 - (h) Solid waste collection. Collection of solid waste from exterior dumpsters shall only occur during daytime hours, as defined in Article 3 of this chapter.
- (2) Standards applicable where the underlying zoning district is the Farm, Farm-Residential, Light-Density Residential, or Medium-Density Residential District.
- (a) Setback requirements. Setbacks for multifamily facilities or multifamily dwelling units:
 - [1] No building or part of a building shall be located within 100 feet of the external

perimeter of the overall site.

- [2] The minimum setback from the external perimeter of the overall site shall vary depending on the height of the building as follows:

Building Height (feet)	Minimum Setback (feet)
0 to 30	100
31 to 35	150

- (b) Services and retail sales. Any service and retail sales shall be designed as an integral part of the building. Such facilities shall be designed for use by the residents and not to serve those living outside the facility.
- (c) Number of bedrooms. Retirement community dwellings shall be limited to three or fewer bedrooms per dwelling unit.
- (3) Standards applicable where the underlying zoning district is the Commercial I, Commercial II, or Commercial III District:
 - (a) Setback requirements. Setbacks for multifamily facilities or multifamily dwelling units:
 - [1] Multifamily buildings permitted by the overlay district that are located on a lot that abuts a residential zoning district, or abuts a property occupied by an existing dwelling, shall not be located within 100 feet of said abutting lot.
 - (b) Basement and first-story dwelling units. Dwelling units permitted in the overlay district shall be permitted in the basement or first story of a building in the RCCFO. **[Amended 6-16-2022 by Order No. 22-108]**

§ 120-421. (Reserved)¹⁰

§ 120-422. Contract zones.

See § 120-108 for contract zone standards and procedures.

- A. Village at Little Falls Contract Zone. See Appendix G, included as an attachment to this chapter.
- B. Windham Center Contract Zone. See Appendix H, included as an attachment to this chapter. **[Added 8-24-2010 by Order 10-153]**
- C. Amendment to Contract Zoning Agreement between RKR, LLC and the Town of Windham (WCC). See Appendix H, included as an attachment to this chapter. **[Added 9-24-2013 by Order 13-144]**
- D. Mallison Falls Contract Zone (MF). See Appendix I, included as an attachment to this chapter. **[Added 7-28-2015 by Order 15-100]**
- E. 322 Roosevelt Trail Contract Zone. See Appendix K, included as an attachment to this chapter. **[Added 7-11-2023 by Order No. 23-129]**

10. Editor's Note: Former § 120-421, Child-care Overlay District (CCO), added 2-28-2023 by Order 23-031, as amended, was repealed 5-23-2023 by Order No. 23-091.

ARTICLE 5
Performance Standards

The following standards are applicable in all zoning districts within this chapter. A performance standard shall not be applicable to uses that lawfully existed prior to enactment of the performance standard, except that it may be applied within the context of an application for a building permit or expansion or change of use.

§ 120-501. ~~Accessory apartment~~ Accessory Dwelling Unit (ADU). [Added 10-23-2012 by Order 12-149; amended 3-28-2017 by Order 17-052]

The following standards shall apply to ~~accessory apartments~~ Accessory Dwelling Unit (ADU)-created after ~~November 23, 2012~~ July 1, 2026:

A. To allow accessory dwelling units as a permitted residential use consistent with state law and to expand housing options while maintaining neighborhood compatibility.

B. Allowed.

(1) An accessory dwelling unit is permitted on any lot containing a single-family dwelling unit or a multi-unit residential structure.

(2) An accessory dwelling unit may be located:

(a) Within an existing dwelling unit or multi-unit residential structure;

(b) Attached to or sharing a wall with a dwelling unit or multi-unit residential structure; or

~~(a)~~(c) As a new, detached structure on the lot for the primary purpose of creating an accessory dwelling unit.

~~(b)~~(d) An ~~accessory apartment~~ accessory dwelling unit shall have a maximum cumulative floor area of 800 square feet. [Amended 11-14-2023 by Order No. 23-213]

C. Owner occupancy shall not be required for either the accessory dwelling unit or the principal dwelling unit(s) on the lot.

D. Dimensional standards.

(a) An accessory dwelling unit must be at least 190 square feet in size, unless the Technical Building Code and Standards Board, pursuant to 10 M.R.S. § 9722, adopts a different minimum standard; if so, that standard applies.

(b) Accessory dwelling units shall be subject to the same dimensional as the principal structure on the lot.

(c) One (1) accessory dwelling unit is exempt from density requirements otherwise applicable to the underlying lot.

E. off-street parking is required for any accessory dwelling unit above and beyond that required for the principal dwelling unit(s) or principal structure on the lot, per §120-542 and §120-812C. Parking and loading requirements

F. Water and wastewater verification.

(1) Prior to issuance of a certificate of occupancy (or similar final approval), the applicant shall provide written verification that the accessory dwelling unit will be connected to adequate water and

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wastewater services in accordance with applicable state law and rules.

(2) ~~Where wastewater disposal is by subsurface system, verification shall be by the local plumbing inspector under applicable state standards; the Town shall not require additional review or documentation beyond that verification.~~

G. ~~Review authority.~~

(1) ~~The Code Enforcement Officer (or designee) shall review ADU permits for compliance with this chapter and applicable building and plumbing codes.~~

A. ~~The accessory apartment shall be attached to a principal dwelling unit or contained within an accessory building to a single-family detached dwelling.~~

B. ~~The owner(s) of the principal dwelling must reside in the principal structure or the accessory apartment.~~

C. ~~The accessory apartment shall have its own entrance.~~

D. ~~The accessory apartment shall not have more than two bedrooms. [Amended 11-14-2023 by Order No. 23-213]~~

E. ~~All necessary building or certificates of occupancy shall be obtained from the Code Enforcement Officer. [Amended 6-16-2022 by Order No. 22-108]~~

~~(a) Compliance with all building codes applicable to the construction of an accessory apartment is required.¹¹~~

F. ~~Only one accessory apartment shall be permitted per lot.~~

G. ~~Accessory apartments shall not count towards the zoning district's maximum residential density standard.~~

§ 120-501.1. Affordable housing development. [Added 4-25-2023 by Order No. 23-060]

11. Editor's Note: Former Subsection F(2), regarding the issuance of a permit to the property owner, which immediately followed, was repealed 11-14-2023 by Order No. 23-213.

Commented [BM15]: Would there be a situation (other than an amendment to an approved site plan or subdivision) where Planning Board review and approval would be required?

Commented [SP16R15]: No, the planning board doesn't review ADU applications.

Commented [BM17]: Redundant to G(1) above.

Commented [BM18]: This would be the case anyway.

- A. To encourage the availability of affordable housing to low- and moderate-income families in Affordable Housing Developments (as defined in § 120-301) the following increases in residential density and building height and reductions in lot size, frontage and parking requirements shall be permitted in the Commercial District I (C-1), Commercial District I North (C-1N), Commercial District II (C-2), Commercial IV (C-4), Medium-Density Residential (RM), Village Commercial (VC), Windham Center (WC) and Village Residential (VR) Districts; or other zoning districts when the development is served by a public, special district or other centrally managed water system and a public, special district or other comparable sewer system: **[Amended 8-15-2023 by Order No. 23-151; 4-9-2024 by Order No. 24-018]**
- (1) The affordable housing development may be developed at 2.5 times the net residential area or acreage calculated in accordance with § 120-541.
 - ~~(2) The affordable housing development may be developed with an increase of 20% in building height and reduction of 20% in lot size and lot frontage without obtaining a variance from the Board of Appeals.~~
 - ~~(3)~~(2) Notwithstanding any other provision of this chapter to the contrary, the structure height of an affordable housing development may exceed maximum building height otherwise in effect by one (1) story or 14 feet, whichever is greater, subject to building permit review and review by the municipal fire official (or designee) regarding ability to serve the development with fire apparatus, consistent with state law.
 - ~~(4)~~(3) In no event shall the parking requirement be greater than two off-street parking spaces for every three dwelling units of an affordable housing development.
- B. Long-term affordability. The affordability for all units designated affordable in the development receiving benefits from the Town under Subsection A above shall be guaranteed in accordance with the following requirements:
- (1) The period of affordability shall be at least 30 years after completion of construction.
 - (2) An application for a subdivision or other residential development that includes a request for a density bonus under this section shall include a written statement on the subdivision plan or other filing plat indicating the dwelling units are earmarked as affordable. Such plat must be approved and signed by the Planning Board and then filed at the Cumberland County Registry of Deeds prior to receiving any building permits.
 - (3) The method of guaranteeing affordability is determined on a case by case basis by the Town, provided that the application demonstrates to the satisfaction of the Planning Board that, by means of restrictive covenants, deed restrictions, financial agreements, or other appropriate legal and binding instruments, the dwelling units will remain affordable for the required period of time.
 - (a) For rental housing, occupancy of all the units designated affordable in the development will remain limited to households at or below 80% of the local area median income at the time of initial occupancy; and
 - (b) For owned housing, occupancy of all the units designated affordable in the development will remain limited to households at or below 120% of the local area median income at the time of initial occupancy.
 - (4) A copy of the deed restriction shall be included as part of the subdivision or other residential development application and the deed restriction shall reference the book and page number at which the subdivision/residential development plan is recorded in the Cumberland County

Town of Windham, ME

Registry of Deeds. Affordable housing covenants shall be held and enforceable by a party acceptable to the Town.

- (5) The period of enforceability shall be guaranteed by the developer in a document satisfactory to

the Town and recorded at the Cumberland County Registry of Deeds prior to granting a certificate of occupancy for the affordable housing development. The document shall include, but not be limited to, authorization for the Town to seek the penalties outlined in the document and to seek injunctive relief, including attorney's fees and costs, or both.

§ 120-502. Agriculture.

A. Minimum setbacks.

- (1) Farm buildings, other than dwellings: 50 feet from the property line or 100 feet from an existing dwelling on neighboring land, whichever is farthest.
- (2) Feed lots, fenced runs, pens and similar animal-raising and -care facilities: 100 feet from a neighboring property line, excluding pastures.
- (3) Roadside stands for the sale of agricultural products: 20 feet from the nearest edge of roadway surfaces.

B. Agriculture sales.

- (1) Sales of retail items customarily associated with the primary agricultural business on the property, but not grown, produced, assembled or manufactured on-site, may be permitted, provided that the lesser of the following two options is met:
 - (a) No more than 20% of the agricultural business's gross square footage shall be utilized for the sales and storage of said retail items.
 - (b) No more than 2,000 square feet of the agricultural business's gross square footage may be used for the sales and storage of said retail items.
- (2) The gross square footage of the agricultural business shall be calculated using the sum of both the interior and exterior areas used as part of the agricultural business, including any accessory uses to the agricultural business.

C. Roadside stands. Shall conform to the following standards:

- (1) Stands shall be allowed in all districts in which agriculture is a permitted use or conditional use.
- (2) Stands shall be used exclusively for the sale of agricultural products.
- (3) Signs shall conform to provisions set forth in Article 7, Signs.
- (4) Stands shall be operated on land owned or leased by the person, company or partnership that cultivated and/or produced the agricultural products sold from the stand. The stand does not have to be on the same property on which the agricultural product was cultivated and/or produced.
- (5) The setback requirement of § 120-502A(3), above, shall apply.

D. Keeping of domesticated pets.

- (1) Dogs and cats. No limitations.
- (2) Horses, ponies and other large pets. The raising of more than two of each species of such animals six months of age or older requires conformance with this § 120-502 and the standards

Commented [BM19]: Suggest striking because: (1) the minimum units allowed are all subject to dimensional standards, (2) those provisions are already borne out in the zone-specific sections, and (3) the other provisions are best placed elsewhere.

of the applicable land use district.

- (3) Chickens. The keeping of chickens is governed by the standards of § 120-504, Agriculture, poultry facility, and Chapter 15, Animals, Article II, Domesticated Chickens. **[Added 8-14-2012 by Order 12-099]**
- E. Spreading or disposal of manure. All spreading or disposal of manure shall be accomplished in conformance with the Manual of Best Management Practices for Maine Agriculture published by the Maine Department of Agriculture, Conservation and Forestry, as amended.

§ 120-503. Agriculture, piggery.

- A. Number of animals. These standards apply to the keeping of two or more pigs that are six months old or older. These standards do not apply to the raising and selling of any number of pigs that are under six months of age.
- B. Setbacks. The following distances are from the identified use to the nearest property not owned or controlled by the operator/owner of the piggery:
- (1) Structures: 50 feet.
 - (2) Feed lots, pens and extensively used areas: 100 feet.
- C. Erosion and sediment control. The property owner shall demonstrate to the Code Enforcement Officer that erosion and sediment runoff will not enter an abutting property.
- D. Spreading or disposal of manure. All spreading or disposal of manure shall be accomplished in conformance with the Manual of Best Management Practices for Maine Agriculture published by the Maine Department of Agriculture, Conservation and Forestry, as amended.

§ 120-504. Agriculture, poultry facility.

- A. Number of animals. These standards apply to the keeping of 13 or more poultry that are six months old or older in zoning districts in which agriculture, poultry facility is either a permitted use or a conditional use. These standards do not apply to the raising and selling of any number of poultry that are under six months of age. The keeping of 12 or fewer chickens in the residential zoning districts (Farm, Farm-Residential, Light-Density Residential, and Medium-Density Residential) is governed by the standards of Chapter 15, Animals; Article II, Domesticated Chickens. **[Amended 8-14-2012 by Order 12-099]**
- B. Setbacks. The following distances are from the identified use to the nearest property not owned or controlled by the operator/owner of the poultry facility:
- (1) Structure, including barns or coops: 50 feet.
 - (2) Feed lots, pens and extensively used areas: 100 feet.
- C. Erosion and sediment control. The property owner shall demonstrate to the Code Enforcement Officer that erosion and sediment runoff will not enter an abutting property.
- D. Spreading or disposal of manure. All spreading or disposal of manure shall be accomplished in conformance with the Manual of Best Management Practices for Maine Agriculture published by the Maine Department of Agriculture, Conservation and Forestry, as amended.

§ 120-505. Adult business establishment.

- A. Such establishment shall be at least 2,000 feet from the nearest property line of any school, place of worship, library, playground, child-care family home, child-care facility or any residential zoning district. Said distance shall be measured in a straight line without regard to intervening structures or objects.
- B. No sexually explicit materials, entertainment, or activity shall be visible from the exterior of the premises.

§ 120-506. Automobile auction facility. [Added 10-14-2014 by Order 14-387]

- A. Automobiles shall be kept on the lot for no more than 180 cumulative days. After 180 days, the operator must prove application to the State of Maine for an abandoned vehicle title or show a legal reason the automobile cannot be sold, such as active litigation.
- B. All stored automobiles shall be kept in a designated parking area. The designated parking area shall be no closer than 300 feet to a residential structure that conforms to this chapter and is not owned or controlled by the operator of the automobile auction facility.
- C. The designated parking area shall be screened from public ways and abutting properties. Such screening shall consist of opaque fencing which must be a minimum of six feet in height.
- D. The automobile auction facility shall ensure that leaking fluids from damaged or wrecked vehicles are collected or contained, per applicable Maine Department of Environmental Protection standards.
 - (1) Burned vehicles shall be stored under cover to protect them from the elements.
 - (2) No stacking of vehicles will be allowed.
- E. No dismantling of automobiles or storage of more than 50 gallons of fluid will be allowed on site.
- F. Automobile auction facilities shall require an annual inspection by the Code Enforcement Officer. The following checklist will be used as a guide for annual inspections:

Item	Compliant	Not Compliant
Proof of application to state for automobiles stored for more than 180 days?		
All stored vehicles stored in designated parking area?		
Fencing installed around the designated parking area?		
All burned vehicles stored under cover?		
No evidence of dismantling of automobiles or storage of more than 50 gallons fluids on-site?		
Date of inspection:		

Item	Compliant	Not Compliant
Code Enforcement Officer signature:		

§ 120-507. Automobile repair services. [Amended 7-8-2014 by Order 14-164]

The following standards shall apply to all automobile repair services:

- A. The sale of gasoline or other petroleum products shall not be allowed as an accessory use (see definition of "automobile gas station" in Article 3). **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**
- B. Upon completion of all repair work, as requested by the customer, no more than two registered automobiles shall be left on-site in excess of 45 cumulative days each in a calendar year. (See definition for "automobile graveyard" in Article 3.) The storage of automobiles in excess of this standard shall not be allowed as an accessory use for automobile repair services established after August 7, 2014 (see standards for automobile storage lot¹²).
- C. Automobiles may not be displayed for sale, or sold, on the premises, unless retail sales, automobile sales is a permitted use or a conditional use in the applicable zoning district. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**

§ 120-508. Automobile storage lot. [Added 7-8-2014 by Order 14-164]

The following standards shall apply to automobile storage lots created after August 7, 2014:

- A. Automobiles shall be kept on the lot for no more than 45 cumulative days in a calendar year.
- B. All stored automobiles shall be kept in a designated parking area. The designated parking area shall be no closer than 300 feet to a residential structure that conforms to this chapter and is not owned or controlled by the operator of the automobile storage lot.
- C. The designated parking area shall be screened from public ways or structures on abutting properties. Such screening shall consist of opaque fencing, which must be a minimum of six feet in height.
- D. The automobile storage lot shall ensure that leaking fluids from damaged or wrecked vehicles are collected or contained, per applicable Maine Department of Environmental Protection standards.
- E. Automobile storage lots shall require an annual inspection by the Code Enforcement Officer.

§ 120-509. Bed-and-breakfast inn.

The following standards shall apply to all bed-and-breakfast inns:

- A. A maximum of three guest bedrooms shall be allowed in the inn.
- B. Total sleeping accommodations shall be for eight or fewer guests.
- C. Breakfast shall be the only meal served and shall be limited to overnight guests.
- D. Rental for more than 30 cumulative days in a calendar year to the same guest, or guests, is prohibited.

12. Editor's Note: See § 120-508.

- E. The bed-and-breakfast inn must be the primary residence of the property's owner or operator.
- F. A structure shall not be used or occupied as a bed-and-breakfast inn until:
 - (1) The State Fire Marshal certifies the structure to be in compliance with applicable sections of the NFPA 101 Life Safety Code;
 - (2) All necessary state approvals have been received; and
 - (3) A certificate of occupancy has been issued by the Code Enforcement Officer.

§ 120-510. Boarding home for sheltered care.

The facility shall be licensed as a boarding care or congregate care facility according to regulations issued by the Maine Department of Health and Human Services.

§ 120-511. Buffer yard. [Amended 8-15-2023 by Order No. 23-149]

- A. Purpose. Buffers are plantings, berms, and/or walls, fences or natural features that are used to separate conflicting land uses, districts, or activities from one another. They should be used to:
 - (1) Create attractive visual settings designed to break up or interrupt building lines, accent buildings and scale down larger architectural elements; surround and frame signs; and substantially obscure headlights and other glare caused by vehicles, windows, outdoor lighting, or other modifications of the landscape.
 - (2) Reduce the impact of noise and mask its source.
 - (3) Reduce air pollution, wind, dust, dirt, and litter and contribute to healthy air and water quality.
 - (4) Help prevent undesirable access to dangerous areas.
 - (5) Direct the eye to more attractive views in keeping with the planned character of the Town.
- B. General standards.
 - (1) Unless otherwise stated, the buffer yard requirements shall apply:
 - (a) At perimeter property lines of conservation and country subdivisions.
 - (b) At or beyond the perimeter of developed areas associated with single developments where such single developments are not associated with a subdivision. Where no land use exists within 200 feet of the rear of the developed area, no buffer is required along the rear perimeter of the developed area, and the sideline buffers need not extend beyond the limits of the developed area.
 - (c) Along public and private street frontages.
 - (d) In the commercial districts, at the boundaries of new nonresidential developments proposed adjacent to Residential District boundary lines.
 - (e) In the commercial districts encompassing all nonresidential outside storage areas, loading docks, garbage collection areas, on-ground electrical transformer stations, service areas and similar facilities.

- (2) Natural features shall be maintained wherever possible to meet buffer requirements. When natural features such as topography, gullies, stands of trees, shrubbery or rock outcrops do not exist or are insufficient to provide an effective buffer, landscaped buffers shall be created. Indigenous plantings shall be used whenever possible; landscape plans shall strive for a "natural" look.
- (3) Although this section does not prohibit landscaping within a road or street right-of-way, no part of the right-of-way shall be used to satisfy the buffer yard requirement.
- (4) Buffer yard design and materials.
 - (a) Existing native plant material. The use of existing plant material is strongly encouraged in landscape buffer yards. Existing natural groundcover should be retained where possible by avoiding scraping, grading and sodding within the landscape buffer yard. Where the planting requirements require additional trees or shrubs to be installed in an existing natural area, installation should minimize disturbances to native species.
 - (b) Trees. Where the planting requirements indicate that additional trees shall be installed, required trees shall be a minimum of six feet in height or two inches in caliper, as appropriate. At least 1/2 of the required trees shall be locally adapted natural evergreen species. Trees shall be distributed throughout the yards, so that there are no horizontal gaps between trees greater than 30 feet as measured parallel to the property line. Required canopy trees shall have an expected mature height of 30 feet or greater. Required understory trees shall have an expected mature height of at least 15 feet.
 - (c) Shrubs. Shrubs planted to meet the minimum standards of this article shall be a minimum of 1 1/2 feet in height when planted and at least 1/2 shall be expected to reach five feet or greater in height within five years of planting. At least 1/2 of the required shrubs shall be locally adapted evergreen species. Shrubs planted on berms may have a lesser mature height provided that the combined height of the berm and plantings after five years is at least five feet. Shrubs shall be planted in such a way as to form continuous coverage with no shrub being greater than five feet from another as measured parallel to the property line. Shrubs may be planted in staggered rows or any other pattern which still achieves the desired continuous coverage.
 - (d) Compatibility of landscaping materials. Supplemental plantings should be chosen to enhance the existing vegetation within the landscape buffer yard. The species used in the supplemental plantings should be species that occur naturally in the landscape, and should be selected for their noninvasive properties.
 - (e) Grading and use of berms. Proposals for grading within a buffer yard shall demonstrate superior enhancement of the buffer function compared to retention of the existing grades. Grading should not endanger or remove existing trees which occur within a landscape buffer yard, unless the proposal clearly demonstrates an enhanced buffer. Where berms are incorporated into the yard, the required plantings may have a lesser mature height, provided that the combined height of the berm and plantings will equal the required mature heights of plantings.
 - (f) Other uses within buffer yards prohibited, except:
 - [1] Trails may occur within buffer yards provided that the required effect of the yard is not compromised.

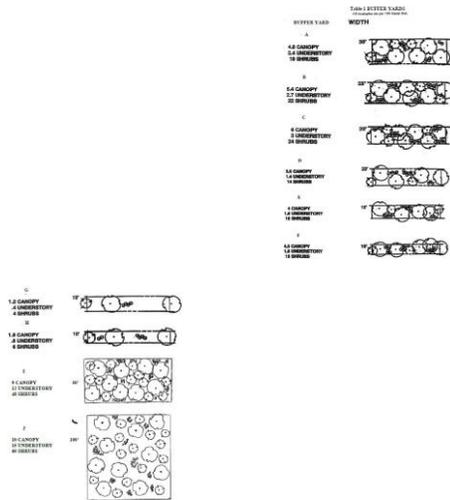
[2] The following stormwater infrastructure shall be allowed within the buffer yard: low-impact development (LID) systems as identified in the September 21, 2007, report, "LID Guidance Manual for Maine Communities," as amended.

- (g) Buffer yards shall be continuous and unbroken except for driveways or sidewalks required to access parking areas or streets. Driveway/sidewalk penetrations shall cross the buffer yard as close to perpendicular as possible.
- (h) Maintenance of required landscape materials. The property owner shall maintain the landscaping required by this section.
- (i) Design standards. Clear lines of sight shall be maintained along streets and driveways to provide for the safety of motorists, pedestrians and bicyclists.

C. Buffers between different uses.

- (1) Table 1 shall be used in determining the specific buffer yard width and landscaping requirements along perimeter property lines of developments.
 - (a) General. These yard requirements are stated in terms of minimum yard width and the density of required plant material per linear foot of yard. To determine the total number of plants required, the length of the lot frontage shall be divided by 100 and multiplied by the number of plants shown in the illustration.
 - (b) Flexibility in buffering requirements. To accommodate circumstances where the required buffering may not fit site conditions, an applicant may submit an alternative plan for buffer areas, provided that, to the maximum extent possible, an equal or greater amount of buffer area is provided than would otherwise be required. Alternative buffer plans shall be approved, provided the applicant demonstrates that site conditions, including special project design features, topographic features, physical constraints imposed by existing or adjacent development, and/or existing natural or vegetative features, prevent the placement of buffers as otherwise required by these regulations, and provided that the alternative buffer plan conforms to the maximum extent possible to the buffer requirements of these regulations.
 - (c) The following are guidelines applicable to making decisions about buffers:
 - [1] High-intensity uses of any type. In general, projects having high-intensity characteristics should provide a wider and thicker buffer where they abut residences or residential district lines. Fencing or berms may also be necessary for sites where vegetation will take longer to establish an effective screen, topographic conditions dictate, or the applicant wishes to maintain or establish less vegetative cover.
 - [2] Industrial uses abutting commercial, residential, business and professional or institutional uses. A buffer along perimeter property lines between an industrial project and a residential property should use predominantly evergreen plantings with some deciduous material to provide a high degree of opacity in screening the potential visual impacts. The buffer should break up a substantial amount of the industrial form, texture and building mass or activity. Where industrial uses abut other nonresidential uses, the buffer should provide a transition space between activities and may be used to provide open space amenities for employees and visitors.

- [3] Commercial uses abutting residential, business and professional, and institutional uses. In residential and industrial zones, the intent is to fully screen commercial uses from view of existing abutting residential uses, so predominantly evergreen plantings may be necessary if natural vegetation is not available. Where commercial uses abut business, professional and institutional uses in residential and industrial zones, buffers should provide transition spaces between and may be used to provide open space amenities for employees and visitors.



(2) Buffers for abutting land uses.

- (a) Buffer yard requirements in residential districts. Table 2 shall be used in determining which applicable buffer yard from Table 1 is required.

Table 2 Minimum Buffer Yard Requirements For Abutting Land Uses		
Proposed Land Use in F, FR, RL, RM, VR	Abutting Land Use in F, FR, RL, RM, VR	
	Residential	Business professional, retail, service business, industrial, commercial
Residential (single, two-family duplex, triplex, quadplex, multifamily up to 4 dwelling units)	Not required	Not required
Other residential (boarding home, nursing home, multifamily over 4 dwelling units)	E	Not required
Business professional	F	H
Retail, service businesses	B	H

Table 2 Minimum Buffer Yard Requirements For Abutting Land Uses		
Abutting Land Use in F, FR, RL, RM, VR		
Proposed Land Use in F, FR, RL, RM, VR	Residential	Business professional, retail, service business, industrial, commercial
Other commercial	H	H
Industrial	G	G

- (b) Buffer yard requirements in commercial districts (C-1, C-2, C-3, C-4, I, ED, VC and WC Districts). **[Amended 8-15-2023 by Order No. 23-151]**
- [1] All nonresidential uses permitted in the commercial zoning districts and proposed to abut a Residential Zoning District (F, FR, RL, RM, VR or any residential district in an adjacent municipality) line shall use Buffer Yard I along the boundary abutting the Residential Zoning District line.
- [2] In an ED District a lot that abuts or is within 100 feet of the boundary line of any commercial district, shall use Buffer Yard G along the boundary abutting the Commercial Zoning District line.
- (3) Buffers along streets.
- (a) The buffer yard shall be adjacent to, and parallel with, the front property line of a lot or parcel.
- (b) Commercial Districts (C-1, C-2, C-3, C-4, VC and WC Districts): use Buffer Yard G. **[Amended 8-15-2023 by Order No. 23-151]**
- (c) Industrial District: use Buffer Yard A.
- (d) Enterprise Development District:
- [1] Frontage on improved public rights-of-way that was in existence prior to the creation of the Enterprise Development District: use Buffer Yard J.
- [a] One sign that identifies the establishments within the Enterprise Development District shall be permitted within the landscaped buffer strip. See Article 7, Signs.
- [2] Other streets: use Buffer Yard A.
- (e) Nonresidential uses in certain Residential Zoning Districts (RL, RM, VR): use Buffer Yard G.
- (f) Farm and Farm Residential Districts: agriculture and forestry uses and lots created as part of a residential subdivision approved after July 9, 2020 are not subject to this standard. The property owner may choose among the following buffer yard widths and plantings to satisfy the requirement:
- [1] Farm District:
- [a] Public street frontage: use Buffer Yard A, B, or C.

- [b] Private way or private road frontage: use Buffer Yard D, E, or F.
- [2] Farm Residential District:
 - [a] Public street frontage: use Buffer Yard D, E, or F.
 - [b] Private way or private road frontage: use Buffer Yard G or H.
- [3] Or front setback increased to 100 feet, one street tree planted for every 50 feet of lot frontage, and a minimum two-foot tall, piled stone wall exists or is constructed at the front lot line. Street trees must be evenly spaced and placed within the right-of-way as close to the property as possible. In the event the lot owner does not have the right to plant within the right-of-way, the street trees will be placed on the lot as close to the right-of-way as possible.

§ 120-512. Campground, personal.

Personal campgrounds may be used for no more than 120 days within a calendar year.

§ 120-513. Central sewage system. [Amended 4-27-2010 by Order 10-075]

The following standards, in addition to those required by the State of Maine, shall apply to centralized sewer systems:

- A. A centralized system may include a private sewer collection system flowing into a larger septic tank, or it may include building drains flowing into individual smaller septic tanks.
- B. The wastewater, after receiving primary treatment in the septic tank or tanks, may be pumped or gravity fed to a single subsurface disposal field or several fields on a common land area.
- C. A maintenance agreement between the property owners served by the central sewage system must be established and submitted to the Town of Windham prior to installation of the central sewage system.

§ 120-514. Child-care facility. [Amended 4-27-2010 by Order 10-075]

- A. Child-care facilities must have a license from the Department of Health and Human Services to operate the facility.
- B. All outdoor play areas shall meet applicable State of Maine requirements with regards to boundaries or fencing.

Note: Child-care applicants should refer to the state plumbing standards in 30-A M.R.S.A. § 4211.

§ 120-515. Child care, family home.

- A. Family home child care must have a certificate from the Department of Health and Human Services.
- B. All outdoor play areas shall meet applicable State of Maine requirements with regards to boundaries or fencing.
- C. The child-care operation shall use a maximum of 20% of the total floor area of the dwelling unit in which it is located. The basement floor areas shall be excluded in the calculation of the 20%.

Note: Child-care applicants should refer to the state plumbing standards in 30-A M.R.S.A. § 4211.

§ 120-516. Conditional use.

- A. The review authority shall permit as a conditional use any matter so referred to it by other provisions of this chapter, provided that the standards of this section are met. Conditional use permits run with the land and thus pass from one owner of the property to the next unless the approval is limited to the petitioner by the review authority.
- B. Review authority.
- (1) Board of Appeals. The Board of Appeals shall serve as the review authority for all conditional use applications, except where the application is reviewed by the Planning Board.
 - (2) Planning Board. The Planning Board shall serve as the review authority for all conditional use applications that are submitted in combination with the following:
 - (a) A minor site plan review application under Article 8, Site Plan Review;
 - (b) A major site plan review application under Article 8, Site Plan Review; or
 - (c) A minor or major subdivision review application under Article 9, Subdivision Review.
- C. Submission time lines. **[Amended 7-8-2014 by Order 14-223]**
- (1) Applications to the Board of Appeals shall be filed at least 21 days prior to the meeting at which the applicant wishes to be heard.
 - (2) Submissions to the Planning Board shall meet the submission deadlines for subdivision or site plan review applications, as appropriate (See Articles 8 and 9).
- D. Submission requirements. The petitioner shall submit the following information to the proper review authority:
- (1) A cover letter describing the requested conditional use and location of the property.
 - (2) Written statements describing how the conditional use will meet the review criteria of this section.
 - (3) Diagrams and/or photographs demonstrating that the conditional use will meet the review criteria of this section. If the information is contained in either a site plan or subdivision application, it must be referenced in § 120-516D(1), above.
 - (4) Proof of right, title or interest in the property on which the conditional use will be located.
 - (5) An "ability to serve" letter from the Portland Water District if public water or sewer is to be supplied to the conditional use.
 - (6) Documentation of the applicant's technical capacity to implement the proposed use.
- E. Application fees. The application shall include: **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**
- (1) A nonrefundable application fee as established by the Town Council.
 - (2) A peer review escrow deposit as established by the Town Council. Unexpended peer review escrow funds shall be returned to the applicant.

F. Consulting and review fees.

- (1) The review authority may retain the services of an independent consulting firm for the review and/or post-approval inspection of any conditional use application.
- (2) The following procedures shall govern the use of an independent consulting firm:
 - (a) Board of Appeals. The provisions of § 120-1103C (Board of Appeals consulting and review fees).
 - (b) Planning Board and staff review committee. The provisions of § 120-810C (site plan review consulting and review fees).

G. Public hearing.

- (1) The review authority shall hold a public hearing on any conditional use application.
- (2) Notification requirements. The notice shall contain the time, date, and place of the hearing and be:
 - (a) Published in a newspaper of general circulation at least seven days prior to the hearing.
 - (b) Mailed to abutting property owners at least seven days prior to the hearing. Notices shall be deemed given when said notices are mailed. The failure of any petitioner or property owner to receive said notice shall not necessitate another hearing.

H. Review criteria. The review authority shall have the power and duty to approve, approve with conditions, or deny conditional use applications based on the following standards:

- (1) Property value. The proposed use will not depreciate the economic value of surrounding properties.
- (2) Wildlife habitat. The proposed use will not damage significant wildlife habitat or spawning grounds identified by the Maine Department of Inland Fisheries and Wildlife or by the Town of Windham's Comprehensive Plan.
- (3) Botanical species. The proposed use will not damage rare or endangered botanical species as identified by the Maine Department of Agriculture, Conservation and Forestry or by the Town of Windham's Comprehensive Plan.
- (4) Potable water.
 - (a) The proposed use has access to potable water.
 - (b) The proposed use will not burden either a groundwater aquifer or public water system.
- (5) Sewage disposal. The proposed use has adequate capacity to dispose of sewage waste. A change from one use to another use must show that either:
 - (a) The existing sewage system has adequate capacity for the proposed use; or
 - (b) The existing system will be improved, or a new system will be installed to provide adequate waste disposal capacity.
- (6) Traffic. The proposed use has adequate sight distance as established by current Maine DOT Highway Entrance and Driveway Rules.

- (7) Public safety. The proposed use will not overburden police, fire and rescue services, as determined by response time, accessibility to the site of the proposed use, and numbers and types of emergency personnel and equipment presently serving the community.
 - (8) Vibration. The proposed use will not produce inherently and recurrently generated vibrations that exceed a peak particle velocity greater than 2.0 at the closest protected structure, as defined by the Maine Department of Environmental Protection. **[Amended 4-17-2010 by Order 10-061]**
 - (9) Noise. The proposed use shall meet the noise standards in § 120-812S of Article 8, Site Plan Review.
 - (10) Off-street parking and loading. The proposed use meets the parking and loading standards of § 120-812C of Article 8, Site Plan Review.
 - (11) Odors. The proposed use will not emit noxious or odorous matter in such quantities as to be offensive at the lot boundaries.
 - (12) Air pollution. No emission of dust or other form of air pollution is permitted which can cause any damage to health, to animals or vegetation, or other forms of property, or which can cause any excessive soiling at any point, and in no event any emission, from any activity permitted, composed of any solid or liquid particles in concentration exceeding 0.3 grain per cubic foot of the conveying gas or air at any point.
 - (13) Water pollution. No discharge at any point into any private sewage disposal system or stream or into the ground of any materials in such nature or temperature as to contaminate any water supply or otherwise cause the emission of dangerous or objectionable elements is permitted.
 - (14) Erosion and sediment control. The proposed use will not cause water pollution, sedimentation, or erosion, nor contaminate any water supply, nor reduce the capacity of the land to hold water, so that a dangerous or unhealthy condition may result.
 - (15) Hazardous material. No use shall for any period of time discharge across the boundaries of the lot wherein it is located toxic and noxious matter in concentrations so that a dangerous or unhealthy condition may result.
 - (16) Zoning district and performance standards. The proposed use meets the applicable zoning district standards in Article 4 and the applicable performance standards of Article 5.
 - (17) Solid waste management. The proposed use shall provide for adequate disposal of solid wastes. All solid waste must be disposed of at a licensed disposal facility having adequate capacity to accept the project's wastes.
- I. Conditions of approval. In granting a conditional use, the review authority shall have the authority to impose such conditions as it deems necessary in furtherance of the intent and purpose of this chapter, to assure that there will be no adverse effects on adjacent properties, and to assure that the proposed use or modification will be compatible with other uses in the neighborhood or district. Such conditions of approval may be imposed based upon, but shall not be limited to, the following factors:
- (1) The location of drives, parking areas, lighting, signs, dumpsters, snow storage areas and outdoor storage areas.
 - (2) Access to the site for vehicular and pedestrian traffic, and emergency access.

- (3) Sight distance at access points.
 - (4) Fences, screening and buffering.
 - (5) Landscaping and stormwater drainage.
 - (6) Hours of operation.
 - (7) Any other factors relating to the impact of the proposed use on neighboring properties.
- J. Inspections. The review authority may require the provision of third-party inspections during installation of the proposed use.
- (1) The applicant shall be responsible for all third-party inspections,
 - (2) An escrow account for the provision of third-party inspections shall be established prior to the issuance of a building permit, or installation of the proposed use. All unexpended funds from the escrow account shall be returned to the applicant.

§ 120-517. Contractor services. [Added 6-11-2019 by Order 19-057]

- A. Type of contractor vehicles. Contractor services uses are limited to single-unit, dual-axle vehicles only. These vehicle types are classified by the Federal Highway Administration as Class 1-5 vehicles. See table below.

Class 1 Motorcycles		Class 7 Four or more axle, single-unit	
Class 2 Passenger vans		Class 8 Four or five axle, single trailer	
Class 3 Four axle, single-unit		Class 9 2-AXL, motor controlled	
Class 4 Buses		Class 10 Six or more axle, single trailer	
Class 5 Two axle, six tire, single-unit		Class 11 Five or less axle, multi-trailer	
Class 6 Three axle, single-unit		Class 12 Two axle, multi-trailer	
		Class 13 Three or more axle, multi-trailer	

Federal Highway Administration Vehicle Classification Table

- B. Storage of materials. Machinery, trailers, equipment and materials must be stored indoors (see § 120-519, Contractor storage yard, for standards related to outdoor storage).
- C. Lighting. Lighting may be used which serves security, safety and operational needs.
- (1) All lighting shall be shielded or hooded so that the lighting elements are not exposed to normal view by motorists or pedestrians or from adjacent dwellings.
 - (2) All lighting shall be designed and directed to minimize light levels at the property line.
 - (3) The Code Enforcement Officer may require a lighting plan or lighting details when areas to be illuminated are near property lines. Such information may become a condition on a building permit or certificate of occupancy.

§ 120-518. Contractor services, landscaping. [Added 6-11-2019 by Order 19-057]

- A. Type of contractor vehicles. Contractor services uses are limited to single-unit, dual-axle vehicles only. These vehicle types are classified by the Federal Highway Administration as Class 1-5 vehicles. See table below.

Class 1 Mopeds		Class 7 Four or more axle, high trailer	
Class 2 Recreator cars		Class 8 Four or five axle, high trailer	
Class 3 Four axle, single axle		Class 9 Six axle tractor/trailer	
Class 4 Buses		Class 10 Six or more axle, high trailer	
Class 5 Five axle, single axle		Class 11 Five or less axle, high trailer	
Class 6 Three axle, single axle		Class 12 Six axle, double trailer	
		Class 13 Seven or more axle, high trailer	

Federal Highway Administration Vehicle Classification Table

- B. Storage of materials. Machinery, trailers, equipment and materials must be stored indoors (see § 120-519, Contractor storage yard, for standards related to outdoor storage).
- C. Lighting. Lighting may be used which serves security, safety and operational needs.
 - (1) All lighting shall be shielded or hooded so that the lighting elements are not exposed to normal view by motorists or pedestrians or from adjacent dwellings.
 - (2) All lighting shall be designed and directed to minimize light levels at the property line.
 - (3) The Code Enforcement Officer may require a lighting plan or lighting details when areas to be illuminated are near property lines. Such information may become a condition on a building permit or certificate of occupancy.

§ 120-519. Contractor storage yard. [Added 6-11-2019 by Order 19-057]

- A. Visual screening. All stockpiled materials, including sand, gravel, crushed rock, topsoil, mulch and other similar materials, as well as outdoor storage areas for equipment and heavy construction service vehicles, must be screened from abutting properties and public rights-of-way with six-foot opaque fencing or screened with well-maintained evergreen vegetation a minimum of six feet high at the time of planting. Fencing or landscaping requirements may be reduced by the review authority where the contractor storage yard is adequately screened through existing vegetated areas, the position of buildings on-site, or by using a site's topography to minimize view of the contractor storage yard from abutting properties and public rights-of-way.
- B. Solid waste and recycling. All dumpsters or similar large collection receptacles for waste materials and recyclables must be located on level, compacted gravel or pavement. These receptacles shall be screened from view with opaque fencing or landscaping.
- C. Lighting. Lighting may be used which serves security, safety and operational needs. All lighting shall be shielded or hooded so that the lighting elements are not exposed to normal view by motorists or

pedestrians or from adjacent dwellings.

§ 120-520. Construction services, heavy (major and minor). [Added 6-11-2019 by Order 19-057]

- A. Type of vehicles. Heavy construction services uses may include multi-axle vehicles, such as three- and four-axle dump trucks, cement mixers, multi-unit vehicles and other heavy vehicles. These vehicle types are classified by the Federal Highway Administration as Class 6-13 vehicles. See table below.

Class 1 Motorcycles		Class 7 Four or more axle, single-unit	
Class 2 Passenger cars		Class 8 Two or three axle, single trailer	
Class 3 Four axle, single-unit		Class 9 Multi-unit non-trailer	
Class 4 Buses		Class 10 Two or three axle, single trailer	
Class 5 Two axle, two single axle		Class 11 Two or three axle, multi-trailer	
Class 6 Three axle, single-unit		Class 12 Three or more axle, multi-trailer	

Federal Highway Administration Vehicle Classification Table

- B. Storage of materials and vehicles. All heavy construction services vehicles, trailers, machinery, equipment and materials must be stored indoors (see § 120-519, Contractor storage yard, for standards related to outdoor storage).
- C. Lighting. Lighting may be used which serves security, safety and operational needs.
 - (1) All lighting shall be shielded or hooded so that the lighting elements are not exposed to normal view by motorists or pedestrians or from adjacent dwellings.
 - (2) All lighting shall be designed and directed to minimize light levels at the property line.
 - (3) The Code Enforcement Officer may require a lighting plan or lighting details when areas to be illuminated are near property lines. Such information may become a condition on a building permit or certificate of occupancy.

§ 120-521. Controlled access street. [Amended 1-22-2013 by Order 13-002; 5-27-2025 by Order No. 25-090]

- A. For the purposes of this chapter, only the following streets shall be classified as controlled access streets: Manchester Drive and Veterans Memorial Drive (the Eastern Connector).
- B. All curb cuts on a controlled access street must be spaced at least 300 linear feet from the nearest curb cut on said controlled access street. (See Article 3, definition of "street classification.")

§ 120-522. Curb cuts and driveway openings. [Amended 1-22-2013 by Order 13-001; 6-16-2022 by Order No. 22-108; 7-12-2022 by Order No. 22-126; 5-23-2023 by Order No. 23-091; 8-15-2023 by Order No. 23-151; 5-27-2025 by Order No. 25-090]

- A. These standards provide for the review of any entrance onto a public way for compliance with sound

construction and design practices to ensure that traffic safety, drainage and public improvements are not adversely affected. In many cases, this section works in conjunction with the street design standards in Article 9, Subdivision Review.

B. Zoning district standards.

(1) F, FR, RL, RM, VR Districts.

- (a) A parcel shall be limited to two curb cuts on the same street.
- (b) Each curb cut shall be limited to 30 feet in width.

[1] The Planning Board may waive this standard if the request is part of a site plan or subdivision application. The applicable waiver criteria of Article 8, Site Plan Review, or Article 9, Subdivision Review, shall apply.

(2) C-1, C-1N, C-2, C-3, C-4, I, VC, WC Districts.

- (a) A parcel shall be limited to one curb cut on the same street. The Planning Board may waive this standard to allow a maximum of two curb cuts on a nonarterial street if the request is part of a site plan or subdivision application. The applicable waiver criteria of Article 8, Site Plan Review, or Article 9, Subdivision Review, shall apply.
- (b) Each curb cut shall be limited to 40 feet in width.

[1] The Planning Board may waive this standard if the request is part of a site plan or subdivision application. The applicable waiver criteria of Article 8, Site Plan Review, or Article 9, Subdivision Review, shall apply.

- (c) Parking areas with more than two parking spaces shall be so arranged that vehicles can maneuver within such areas and exit onto the street in a forward motion.

C. Permit required.

- (1) No driveway, entrance or approach or other improvement within the limits of a public right-of-way may be constructed, altered or relocated except in accordance with an entrance permit issued by the Town upon application.
- (2) The Town Council may establish the fee for an entrance permit.
- (3) Entrance permits shall be reviewed and approved by the Director of Public Works, or his designee.
- (4) The entrance permit shall be valid for a period of 12 months from the date of original issue.
- (5) No entrance, approach or other improvement constructed on a public right-of-way shall be relocated or its dimensions altered without an entrance permit from the Town.
- (6) The property owner is responsible for future maintenance of the entrance within the limits of the public right-of-way and shall maintain the entrance in accordance with the approved permit.
- (7) All work to a curb cut in accordance with the approved permit must be completed prior to the issuance of a certificate of occupancy for any structure accessed by said curb cut, except for the following:

- (a) During periods of the year in which asphalt may not be obtained from a manufacturer, the Director of Public Works or Code Enforcement Officer may grant a conditional certificate of occupancy with a condition that all required work on the curb cut must be completed within two months of the opening of the local asphalt plants. Failure to complete all work to a curb cut in accordance with the approved permit shall constitute a violation of this chapter. (See Article 10, Administration.)

D. Approval criteria.

- (1) General. Entrances shall be designed and constructed to provide safe access to the public right-of-way. Applicants are encouraged to comply with the "Access Management Handbook for Local Officials" as developed by the Maine Department of Transportation, 1994, as amended.
- (2) Applicant. The applicant for a permit shall be the owner of the property being served, or his designee. Any driveway or approach constructed by the owner shall be for the bona fide purpose of securing access to the owner's property and not for the purpose of parking or servicing vehicles in, or on, the public right-of-way.
- (3) Sight distance criteria. 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.
 - (a) Measurements to determine sight distance shall be made in the proposed entrance at a point 10 feet from the edge of the traveled way with the height of eye 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 4.25 feet is first seen.
 - (b) Driveway placement shall be such that an exiting vehicle has an unobstructed sight distance according to the minimum sight distance standards in § 120-911M(4) and Table 1 of Article 9, Subdivision Review. (See Article 9, Subdivision Review.)

E. Geometry.

- (1) The entrance shall have a maximum slope of 3% for a minimum of one car length from the edge of pavement of the public street.
- (2) For uncurbed public rights-of-way, the entrance shall in general slope away from the public street surface at a rate of not less than 1/4 inch per foot nor more than one inch per foot for a distance of not less than the prevailing width of the existing shoulder, but in no case less than four feet from the edge of pavement.
- (3) The entrance should intersect the traveled public street in accordance with the applicable standards in Table 3 in Appendix B for a driveway and entrances, the minimum angle of street intersection standards for a local street shall apply. (See Table 3 in Appendix B, Street Design and Construction Standards.¹³)
- (4) No part of the entrance shall extend beyond the property lot frontage for the lot being served.
- (5) The entrance shall be set back at least 50 feet from a public intersection.

F. Drainage.

13. Editor's Note: Appendix B is included as an attachment to this chapter.

- (1) Existing roadside drainage in gutter or ditch lines shall not be altered or impeded by the applicant. The applicant must provide at his/her expense suitable and approved drainage structures at all entrances.
- (2) The applicant, at his/her expense, may be required to make improvements to existing drainage structures to mitigate any impacts of the proposed curb cut.
- (3) Surface drainage shall be provided so that all surface water on the areas adjacent to the road shall be carried away from the roadway.
- (4) Where a drainage culvert is required to maintain roadside drainage, the Town must approve the pipe diameter/length and type of pipe material prior to installation. In any case, the pipe size shall be at least 12 inches in diameter.

G. Construction.

- (1) The owner shall be responsible for all construction and restoration of disturbed areas for the entrance within the limits of the public right-of-way.
- (2) The entire portion of any entrance within the limits of the public right-of-way shall be constructed with a well-graded gravel base course that meets the aggregate subbase standards for the street on which the entrance is located. (See Table 4 in Appendix B, Street Design and Construction Standards¹⁴).
- (3) The entrance shall have a paved apron that extends at least four feet back from the edge of pavement of the public street. At a minimum, the paved apron shall consist of a 1.5-inch base course that complies with the HMA 19.0 mm standard.

H. Curb and sidewalk.

- (1) 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.
- (2) Where curb exists, curb tip-downs shall be provided at each side of the new entrance.
- (3) Where sidewalk is removed to accommodate a new entrance, a new walk surface of equal-type construction is to be provided. In general, sidewalks shall meet the following standards:
 - (a) The maximum sidewalk longitudinal transition slope is not to exceed one 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.¹⁵

14. Editor's Note: Appendix B is included as an attachment to this chapter.

15. Editor's Note: See 42 U.S.C. § 12101 et seq.

§ 120-523. Developable land. [Amended 10-10-2017 by Order 17-161]

Land proposed for development shall meet the following standards:

- A. A parcel of land that meets the standards of the zoning district in which it is located; or
- B. If located in an approved subdivision, a parcel of land that meets the standards for net residential area or acreage in Article 5, Performance Standards, § 120-541.

§ 120-524. Drive-through facility. [Amended 5-23-2023 by Order No. 23-091]

- A. A drive-through facility shall only be allowed as part of a principal use that is allowed as either a permitted use or conditional use in the applicable zoning district (See Article 4, Zoning Districts).
- B. Drive-through facilities shall be designed and have sufficient stacking capacity to avoid the queuing of vehicles on any public street.

§ 120-525. Dwelling, mixed-use.

The following standards shall apply to mixed-use dwellings:

- A. ~~These uses~~ Dwelling units are not ~~shall not be~~ permitted in the basement or first story of a building.
- B. The entire building in which the uses are located shall be equipped with a sprinkler system approved by the Windham Fire-Rescue Department or State Fire Marshal's Office.

§ 120-526. Farm enterprise. [Added 10-13-2020 by Order 20-211]

- A. Approval required. The Board of Appeals must approve all applications for a farm enterprise. The granting of a farm enterprise shall apply to the applicant and shall not be transferable to a subsequent owner of the property.
- B. Public notification. Notice shall be sent to all owners of abutting property at least seven days prior to the Board's initial consideration of an application.
- C. Public hearing. The Board of Appeals shall hold a public hearing on any application. Notice of the public hearing shall be:
 - (1) Mailed to the owners of all abutting property at least seven days prior to the hearing.
 - (2) Advertised in a newspaper of general circulation at least seven days prior to the hearing.
- D. Permitted uses. Farm enterprise uses shall be as follows:
 - (1) Uses that meet the standards of § 120-526E. Uses may include public or private events such as meetings, parties, weddings, receptions, dances, sporting events and on-site lodging for the special event.
- E. Standards.
 - (1) The property serving as the site for a farm enterprise shall be at least five contiguous acres and principal agriculture use. The property may or may not have a residential use.
 - (2) The farm enterprise shall be owned by the owner of the agriculture use.

- (3) The farm enterprise is located on property owned by the owner of the agriculture use.
 - (4) Should the farm enterprise not be conducted in an existing structure, new structure(s) constructed, or temporary structures, such as tents, erected for the sole purpose of conducting a farm enterprise shall not exceed a total of 10,000 square feet of ground area.
 - (5) Noise. The standards in § 120-812S shall apply.
 - (6) Hours. Hours of operation shall be limited to the hours of 8:00 a.m. to 10:00 p.m.
 - (7) Lighting. All lighting associated with the farm enterprise shall be turned off by 11:00 p.m. Lighting fixtures shall be shielded or hooded so that the lighting elements are not exposed to normal view by motorists or pedestrians or from adjacent dwellings and so that they do not unnecessarily light the night sky.
 - (8) Parking. In addition to the off-street parking provided to meet the normal requirements of the farm, adequate off-street parking shall be provided for the following:
 - (a) Vehicles of each employee; and
 - (b) Vehicles of the maximum number of users which the farm enterprise may attract during peak operating hours.
 - (9) Sewage. Evidence shall be provided that the property's subsurface disposal system can accommodate the wastewater generated by the farm enterprise. Temporary use of portable toilet units is allowed for special events. Prior to each event, the location and number of portable toilet units shall be approved by the Code Enforcement Officer.
 - (10) Traffic.
 - (a) The Board of Appeals may require parking attendant(s) to direct traffic into the facility and towards available parking at the start of the event.
 - (b) Temporary directional signage shall be located on any entrance and within the parking area to ensure orderly flow of traffic. Temporary signs shall be placed prior to all events and removed at the conclusion of the event.
 - (11) Operation limits for public or private events, and other types of periodic uses. No more than 24 individual events may be held in a calendar year.
- F. Conditions. The Board of Appeals may place conditions on the farm enterprise to minimize impacts on area properties. The conditions must be related to the Board of Appeals findings on the standards listed in § 120-526E.

§ 120-527. Home occupation 1.

- A. Permit required. A permit must be obtained from the Code Enforcement Department prior to the installation of a home occupation 1. The granting of a home occupation shall apply to the applicant only while the applicant resides at the property.
- B. Permitted uses. The following uses, as defined in Article 3, shall be allowed as a home occupation 1:
 - (1) Artist studio.
 - (2) Small engine repair.

- (3) Business and professional office.
 - (4) Service business, personal [see § 120-527C(1) below].
 - (5) Medical marijuana registered caregiver (home occupation) (see § 120-537, Marijuana businesses).
- C. Standards. In making its findings, the Code Enforcement Department shall use the standards for a home occupation 2 in § 120-528F and the following:
- (1) Service business, personal. When authorized as a home occupation 1, this use shall not include laundry or dry-cleaning services. (Laundry and dry-cleaning services may apply under § 120-528, Home occupation 2).
- D. Conditions. The Code Enforcement Department may place conditions on the home occupation to minimize impacts on area properties. The conditions must be related to the Code Enforcement Officer's findings on the standards listed in § 120-528F.

§ 120-528. Home occupation 2.

- A. Approval required. The Board of Appeals must approve all applications for a home occupation 2. The granting of a home occupation shall apply to the applicant only while the applicant resides at the property and shall not be transferable to a subsequent resident of the property.
- B. Public notification. Notice shall be sent to all owners of abutting property at least seven days prior to the Board's initial consideration of an application.
- C. Public hearing. The Board of Appeals shall hold a public hearing on any application. Notice of the public hearing shall be:
 - (1) Mailed to the owners of all abutting property at least seven days prior to the hearing.
 - (2) Advertised in a newspaper of general circulation at least seven days prior to the hearing.
- D. Permitted uses. Home occupation 2 uses shall be as follows:
 - (1) Uses that meet the standards of § 120-528F.
 - (2) Uses that are not prohibited by § 120-528E.
- E. Prohibited uses. The following uses are specifically prohibited as a home occupation 2:
 - (1) Auto repair services.
 - (2) Welding.
 - (3) Slaughterhouse.
 - (4) Smokehouse.
- F. Standards.
 - (1) The home occupation shall be carried on wholly within the dwelling or accessory structure.
 - (2) The home occupation shall be carried on primarily by a member or members of the family residing in the dwelling unit. Not more than two persons who are not family members residing

in the dwelling unit shall be employed.

- (3) There shall be no exterior display, no exterior sign, other than those permitted in § 120-705D of Article 7, Signs; no exterior storage of materials and no other exterior indication of the home occupation or variation from the residential character of the principal building.
 - (4) Objectionable conditions, such as noise, vibration, smoke, dust, electrical disturbance, odors, heat, glare or activity at unreasonable hours, shall not be permitted.
 - (5) In addition to the off-street parking provided to meet the normal requirements of the dwelling, adequate off-street parking shall be provided for the following:
 - (a) Vehicles of each employee; and
 - (b) Vehicles of the maximum number of users which the home occupation may attract during peak operating hours.
 - (6) The home occupation shall not utilize more than 20% of the total floor area of the dwelling unit. The basement floor area and accessory structure floor area shall be excluded in the calculation of the 20%.
 - (7) Evidence shall be provided that the property's subsurface disposal system can accommodate the wastewater generated by the home occupation.
 - (8) The home occupation shall not generate traffic of a substantially greater volume than would normally be expected in the neighborhood.
 - (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 Appeals findings on the standards listed in § 120-528F.

§ 120-529. Hotel.

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

§ 120-530. 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, the storage and use of hazardous materials as part of a production process shall be permitted.

§ 120-531. Kennel, major.

The kennel, including all uses accessory to the kennel, must be set back:

- A. A minimum of 200 feet from an abutting residential structure; or
- B. A minimum of 100 feet from the lot line where there is no abutting residential structure.

§ 120-532. Kennel, minor.

The kennel, including all uses accessory to the kennel, must be set back:

- A. A minimum of 200 feet from an abutting residential structure, or
- B. A minimum of 100 feet from the lot line where there is no abutting residential structure.

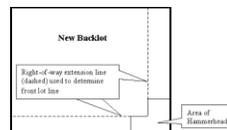
§ 120-533. Lot, backlot.¹⁶ [Added 8-11-2020 by Order 20-151]

- A. Zoning districts. Backlots shall be permitted in the following zoning districts:
 - (1) Farm.
 - (2) Farm-Residential.
 - (3) Light-Density Residential.
 - (4) Medium-Density Residential.
- B. Standards. The following standards shall apply to the creation of backlots, or the extension of existing backlot rights-of-way:
 - (1) General standards. The following general standards apply to backlots:
 - (a) Rights-of-way.
 - [1] Backlots must be accessed by a right-of-way having a minimum width of 50 feet. The required minimum width must be continued for the entire length of the right-of-way.
 - [2] A right-of-way shall serve no more than one backlot.
 - [3] A right-of-way serving more than one backlot shall meet the applicable street construction standards of § 120-555.
 - [4] A hammerhead turnaround shall be provided in accordance with § 120-555D(8)(f)[2].
 - [5] 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.

16. Editor's Note: A former section providing backlot standards was amended 3-14-2012 by Order 12-014 and repealed 10-10-2017 by Order 17-161.

- (b) Frontage. The backlot shall meet the minimum frontage requirement of the applicable zoning district along the right-of-way. 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 Article 5. 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 Article 11 of this chapter.
 - [5] No dwelling unit shall be erected on a backlot that is closer than 200 feet to an existing public street, private road or private way.

Diagram A
Front Lot Line



§ 120-534. 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.

§ 120-535. 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.

§ 120-536. Marijuana for personal use. [Added 5-26-2020 by Order 20-048]

All marijuana cultivated for personal use under Title 28-B of the Maine Revised Statutes shall be grown indoors only on a property with an occupied dwelling.

§ 120-537. Marijuana businesses. [Added 5-26-2020 by Order 20-048¹⁷]

This section regulates marijuana businesses as defined uses within the Town of Windham. The permitting standards outlined here shall be adhered to for all marijuana businesses, in addition to other applicable standards in this chapter and other ordinances or state law.

- A. Marijuana businesses shall not locate within 1,000 feet of a public or private school, measured from the exterior wall of the marijuana business to the property line of the protected use. Marijuana businesses other than caregiver (home occupation) shall not locate within 250 feet of a state-licensed day care of any size, measured from the main entrance door of the day-care facility to the main entrance door of the marijuana business. This section shall not prohibit the activity of a caregiver or other authorized individual from administering medical marijuana to a qualified patient who is located within one of these protected areas.
- B. Marijuana businesses shall not have any odor of marijuana detectable beyond the area controlled by the business, whether that be a leased or owned area that is a portion or all of a recorded parcel of land. Odors shall be controlled by whatever best practices exist.
- C. Marijuana grown by any marijuana business shall be grown indoors only.
 - (1) A medical marijuana registered caregiver shall not conduct any sale of the product on premises unless the business is also permitted as a medical marijuana caregiver retail store or marijuana registered dispensary. [Amended 4-12-2022 by Order No. 22-062]
 - (2) Medical marijuana grown by medical marijuana registered caregivers shall be limited to less than 1,000 square feet floor area measured cumulatively per lot unless the business is also permitted as a marijuana cultivation facility. A medical marijuana registered caregiver or medical marijuana registered caregiver (home occupation) in operation as of the effective date of this section shall be permitted to maintain the grow area in existence as of the effective date of this section.
- D. Medical marijuana registered caregiver or medical marijuana registered caregiver (home occupation), when required by state law to be licensed to manufacture, may only manufacture medical marijuana products in zoning districts where marijuana manufacturing facilities are permitted.
- E. Medical marijuana registered caregiver (home occupation) shall at all times meet all permit and operational requirements for a home occupation and the additional license requirements for a medical marijuana registered caregiver (home occupation). See § 120-527, Home occupation 1, for limitations of medical marijuana registered caregiver (home occupation). Medical marijuana grown by medical marijuana registered caregiver (home occupation) in basements and accessory structures shall be

17. Editor's Note: This order also repealed the section on medical marijuana in Art. 5 added 12-13-2011 by Order 11-206.

limited to less than 1,000 square feet floor area measured cumulatively per lot for all caregivers cultivating on the lot.

§ 120-538. Medical office. [Amended 5-23-2023 by Order No. 23-091]

A. Residential Districts: F, FR, RL, RM., VR

- (1) A medical office located on a lot in a residential district shall have a combined footprint of 2,000 gross square feet or less. (See definition of "building footprint.")
- (2) A medical office located in a residential district shall be limited to the first story of the building. The additional height of the building's roof shall meet the height standard of the applicable zoning district.

§ 120-539. Mobile home park.

Mobile home parks shall be located according to the Manufactured Housing Park Overlay District.

§ 120-540. Motel.

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

§ 120-541. Net residential area or acreage. [Amended 4-27-2010 by Order 10-075]

- A. Nonsubdivision. The net residential area or acreage of a lot shall be calculated by dividing the area of the parcel by the net residential density standard of the appropriate zoning district.
- B. Subdivisions. The net residential area or acreage of a lot proposed for subdivision, as defined, shall be calculated by subtracting the items listed below from the gross acreage of a lot and dividing the resulting net residential area of the parcel by the net residential density standard of the appropriate zoning district (see Article 4, Zoning Districts). The following shall be subtracted from the gross acreage of the lot:
 - (1) Acreage which is used for public or private rights-of-way.
 - (2) Portions of the parcel containing slopes over 25%.
 - (3) Portions of the parcel shown to be within the 100-year floodplain and floodway as designated by the Federal Emergency Management Agency (FEMA) on the Flood Insurance Rate Maps for the Town of Windham, Maine.
 - (4) Portions of the parcel located in the Resource Protection District.
 - (5) Portions of the parcel which are unsuitable for development in their natural state due to drainage or subsoil conditions, including but not limited to:
 - (a) A water table at or near the surface for all or part of the year.
 - (b) Soils identified as "very poorly drained" by the U.S. Department of Agriculture's (USDA) Soil Survey for Cumberland County, Maine; however, a property owner may conduct a soil survey of appropriate class for the development to refute the classification of the Soil Survey for Cumberland County, Maine. The Code Enforcement Officer shall make a final determination based upon the results of the soil survey and any other applicable

information supplied by the property owner.

- (6) Portions of the parcel covered by surface water bodies.
- (7) Boundaries of areas on the parcel containing significant wildlife habitat, as determined by the applicant in consultation with the Maine Department of Inland Fisheries and Wildlife.
- (8) Boundaries of areas on the parcel containing endangered botanical resources, as determined by the applicant in consultation with the Maine Department of Agriculture, Conservation and Forestry.

§ 120-542. Parking and loading.

All development shall comply with the parking and loading standards of Article 8, Site Plan Review of this chapter.

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§ 120-543. Public building. [Amended 10-11-2022 by Order No. 22-175]

- A. Public buildings and public utility facilities, excepting solar energy systems, shall not be required to meet the dimensional standards or district standards in the applicable zoning district.
- B. Where site plan review is required for a new public building or public utility facility, the Planning Board may require landscaping, fences, screening or buffering between the lot on which the public building or public utility facility is to be located and any lot occupied by a residential dwelling.

§ 120-544. Pump station.

- A. Pump stations shall be allowed in all zoning districts.
- B. Pump stations shall not require a building permit.
- C. Pump stations shall not be required to meet the dimensional standards in the applicable zoning district.
- D. Pump stations located on a controlled access street shall not be subject to the curb cut spacing requirement established by § 120-521. [Added 10-24-2023 by Order No. 23-193]
- E. If an entrance permit is required, the entrance permit shall not be subject to the requirements of § 120-522D(3) and E if the access to the pump station does not have an access location that can comply with these requirements. [Added 10-24-2023 by Order No. 23-193]

§ 120-545. Restaurants. [Amended 12-14-2010 by Order 10-230; at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

Restaurants established after December 14, 2010, shall meet the following standards:

- A. Trash/dumpster. All trash containers or dumpsters located outside of a building shall be stored so as to be screened from view.
- B. Grease removal. All new or expanded restaurants shall install a grease trap as required by the Maine

State Plumbing Code.

- C. Buffer. A buffer strip, as defined, shall be provided between the restaurant and any abutting dwelling, existing single-family detached; dwelling, existing ~~two-family duplex~~; dwelling, existing ~~multifamily triplex~~; dwelling, existing ~~quadplex~~; existing housing for older persons; or any residential zoning district.
- D. Noise. The restaurant shall comply with the noise standards contained in § 120-812S of this chapter.
- E. Smoke. Indoor or outdoor cooking that produces smoke from grills, smokers or open fires shall be located at least 100 feet from any abutting dwelling, existing single-family detached; dwelling, existing ~~two-family duplex~~; dwelling, existing ~~multifamily triplex~~; dwelling, existing ~~quadplex~~; existing housing for older persons; or any residential zoning district.
- F. Outside seating. Outdoor seating located within 100 feet of any dwelling, existing single-family detached; dwelling, existing duplex; dwelling, existing ~~triplex~~; dwelling, existing ~~quadplex~~; existing housing for older persons; or any residential zoning district shall be limited to the following hours:
- (1) Sunday to Thursday: daytime hours, as defined.
 - (2) Friday and Saturday: 7:00 a.m. to 9:00 p.m.
- G. Septic. All new or enlarged restaurants shall provide evidence that the septic system is in compliance with the Maine State Plumbing Code.

§ 120-546. Retail sales, automobile sales.

- A. Parking area layout and minimum space requirements. See § 120-812C for parking requirements applicable to the storage of vehicles for display, repair or sale.

§ 120-547. Retail sales, convenience.

- A. Gross square footage for retail and storage purposes may not exceed 1,500 square feet.
- B. Outdoor storage shall not be permitted.
- C. The sale of gasoline shall not be permitted.

§ 120-548. Retail sales, outdoor. [Amended 9-14-2010 by Order 10-164; 6-16-2022 by Order No. 22-108; 1-14-2025 by Order No. 25-001]

Outdoor sales may be approved if the following standards have been met:

- A. Outdoor retail sales shall be allowed as either an accessory use to the principal retail use on the property or as a standalone principal use.
- B. If outdoor retail sales are conducted in a parking lot, the minimum off-street parking space requirements of this chapter shall be maintained.
- C. Approvals for outdoor retail sales shall be obtained from the Code Enforcement Officer for accessory outdoor retail sales or from the Planning Board, following a major site plan review, for principal outdoor retail sales.
- D. The outdoor retail sales approval shall be limited to the applicant and, therefore, shall not run with the land.

- E. An application fee, in an amount established by the Town Council, shall be submitted to the Code Enforcement Officer or Planning Board, as applicable, at the time of application.
- F. A plan shall be submitted to the Code Enforcement Officer or Planning Board, as applicable, delineating the area on which the outdoor retail sales will be conducted (at a minimum, the plan shall also show the Tax Map boundaries of the property, the approximate location of all buildings, and the location of parking areas).
- G. Outdoor retail sales shall not be conducted in a vehicular travel way. For the purposes of this section, "vehicular travel way" shall mean the public or private right-of-way used primarily for vehicular travel, excluding parking lots.
- H. Outdoor retail sales conducted on any public or private walkways or sidewalks shall meet the standards of the Americans with Disabilities Act (ADA).¹⁸
- I. Outdoor retail sales shall not be located in any side setback or landscaped buffer strip required by this chapter or as a condition of a property's site plan approval.
- J. These standards shall not apply to roadside stands governed by the standards for agriculture in § 120-502.
- K. These standards shall not apply to a temporary outside sales events. Temporary outside sales events shall meet the following standards:
 - (1) The outside sales event shall not last for more than three consecutive days.
 - (2) A permit shall be obtained from the Code Enforcement Officer for each outdoor sales event.
 - (3) An application fee, in an amount established by the Town Council, shall be submitted to the Code Enforcement Officer at the time of application.
 - (4) The Code Enforcement Officer must find that the following conditions have been met:
 - (a) Safe vehicular access and on-site circulation is provided to reduce vehicular queuing on public ways.
 - (b) The applicant demonstrates that adequate parking is provided to accommodate all vehicles either on site or in an off-site location that meets the requirements of § 120-812C(2)(b).

§ 120-549. Retirement community. [Added 10-23-2012 by Order 12-148]

- A. The retirement community shall meet the standards established in 42 U.S.C. § 3601 et seq. for housing for older persons. The property owner shall notify the Code Enforcement Department when compliance reports have been submitted to the U.S. Department of Housing and Urban Development (HUD). The Code Enforcement Department may request that copies of any report be sent to the Town of Windham. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**
- B. Retirement community projects shall conform with the street and road design standards in Article 9, Subdivision Review.

§ 120-550. Rooming house.

¹⁸. Editor's Note: See 42 U.S.C. § 12101 et seq.

A. General standards.

- (1) Creation of use. A rooming house shall only be allowed through the conversion of an existing dwelling, nursing home or boarding home for sheltered care facility.
- (2) Number of dwelling units. A rooming house shall contain between 10 to 15 rooms.

B. Common area/facility requirements.

- (1) Kitchen. A full kitchen shall be provided for use by all tenants.
- (2) Toilets. At least one properly working toilet shall be supplied for each six persons, or fraction thereof, residing within the rooming house.
- (3) Bathing. At least one properly working bathtub or shower shall be supplied for each eight persons, or fraction thereof, residing within the rooming house.
- (4) All common facilities shall be located within the rooming house so as to be reasonably accessible from a common hall or passageway to all persons sharing such facilities. Every kitchen, lavatory basin, bathtub, or shower shall be supplied with hot water at all times.

C. Driveway requirements.

- (1) Minimum width of pavement or gravel: 22 feet.
- (2) Maximum grade: 3% within 50 feet of private way or street.
- (3) Minimum angle of intersection: 60°.
- (4) Sight distance: Maine Department of Transportation standard.

D. Fire/emergency safety and protection.

- (1) The rooming house shall be sprinklered throughout.
- (2) Smoke detectors shall be required in all bedrooms and common areas.
- (3) All fire safety and protection systems shall meet or exceed local and state fire safety regulations.
- (4) All sleeping rooms shall provide adequate ventilation and means of egress.
- (5) The parking lot shall be arranged so as not to restrict fire and/or emergency vehicle access.

E. Landlord-tenant legal requirements.

- (1) Rooms shall be for hire by the week.
- (2) Lease/rental agreements and rental policy rules and regulations shall be required.

F. Maintenance requirements.

- (1) The facility shall provide on-premises management.
- (2) The operator shall be responsible for the sanitary maintenance of all walls, floors and ceilings and for maintenance of a sanitary condition in every other part of the rooming house and the premises on which it is located.

- G. Plan requirements. The operator or applicant shall submit a set of detailed plans drawn to scale by a professional engineer or architect of the interior of the building showing how it meets the requirements for the rooming house.
- H. Sleeping unit requirements.
 - (1) Minimum floor area.
 - (a) Single-occupancy unit: 90 square feet.
 - (b) Double-occupancy unit: 160 square feet

§ 120-551. Sawmill, permanent.

- A. Permit required. The sawmill shall require a use permit from the Code Enforcement Department.
- B. Hours of operation. The sawmill shall only operate during daytime hours, as defined in Article 3.
- C. Setback. The sawmill shall be set back at least 100 feet from the following uses:
 - (1) Dwelling, not owned or occupied by the sawmill operator.
 - (2) School.
 - (3) Place of worship.
- D. Buffers. The sawmill shall establish and maintain a buffer, as defined, meeting the Buffer Yard J standards in § 120-51 Table 1 along all property lines that abut a use listed in § 120-551C above. Mature trees in the buffer strip shall be preserved to the maximum extent practical. **[Amended 8-15-2023 by Order No. 23-149]**
- E. Stacking of wood. Wood shall not be stacked to a height that is greater than the buffer provided along abutting property lines.
- F. Maximum noise limit at all property lines.
 - (1) Daytime hours: 60 dBA.
 - (2) Nighttime hours: 50 dBA.
 - (3) Temporary chain saw use: no limit.
- G. Erosion control. The sawmill shall provide an erosion control plan to the Code Enforcement Department prior to receiving a use permit. The erosion control plan shall include a written description of the management practices and a plot plan identifying the placement of any silt fence, check dams, or erosion control barriers. Erosion control mix mulch barriers may be utilized. The erosion control mix mulch shall meet the Maine Department of Environmental Protection's most current specifications for installation and maintenance.

§ 120-552. Sawmill, temporary.

- A. Hours of operation. The sawmill shall only operate during daytime hours, as defined in Article 3.
- B. Maximum noise limit at all property lines.

- (1) Daytime hours: 60 dBA.
 - (2) Nighttime hours: 50 dBA.
 - (3) Temporary chain saw use: no limit.
- C. Erosion control. The temporary sawmill shall not cause the erosion and waterborne transportation of soil onto any abutting property.

§ 120-553. Shipping container.

- A. General standards. The following standards shall apply to all shipping containers in the Town of Windham:
- (1) Housing of land uses. Shipping containers shall not be used to conduct land use activities that are carried on in a principal building or an accessory building;
 - (2) Stacking. Shipping containers shall not be stacked one on top of the other;
 - (3) Floor area. The floor area of a shipping container shall be measured by calculating the footprint of the container from its exterior walls;
 - (4) Location. Shipping containers shall not be located in any of the following areas:
 - (a) Parking spaces required by this chapter.
 - (b) Required front, side, or rear yard areas (see Article 4, Zoning Districts).
 - (c) A location that reduces vehicular sight distance below minimum Maine Department of Transportation standards.
 - (d) A location that would cause a hazard to the traveling public.
 - (e) A location that impacts stormwater runoff.
- B. Residential district standards.
- (1) No more than one shipping container shall be allowed on any lot.
 - (2) Permit required. A permit shall be required for the installation of a shipping container in all residential zoning districts.
 - (3) Time limit. A shipping container shall not be located on-site for more than six months, with the exception that one extension of not more than three months may be granted at the discretion of the Code Enforcement Officer.
 - (4) Permitted shipping containers. A shipping container shall only be permitted for the temporary storage of residential items under the following circumstances:
 - (a) While a resident is in the process of moving into or out of a home;
 - (b) While a home is being remodeled; or
 - (c) After a home or building has experienced a fire, flood, or other damaging event.
 - (5) Permitted items. Items such as, but not limited to, the following shall be permitted in a shipping

container:

- (a) Household furniture;
- (b) Appliances;
- (c) Bathroom fixtures;
- (d) Clothing; and
- (e) Building materials.

C. Nonresidential district standards. The following standards shall apply to Shipping Containers that are currently located, or proposed, in a nonresidential district:

- (1) The total floor area of all shipping containers on site shall not exceed 700 square feet. Additional shipping containers that exceed the 700 square feet limitation shall not be allowed by variance.
- (2) If the property on which the shipping container is located received a site plan approval on or after March 13, 1991, the Planning Board shall be responsible for review and approval under the following standards:
 - (a) Conditional use.
 - (b) Site plan review.
- (3) The shipping container must come into compliance with this chapter by March 21, 2001, unless good cause can be shown by the petitioner. After March 21, 2001, any existing shipping containers shall be removed from the site, unless:
 - (a) There is a pending conditional use application before the Board of Appeals.
 - (b) There is a pending conditional use and site plan application before the Planning Board.
- (4) Shipping containers that are part of an existing commercial or industrial use, and are being actively used for the temporary storage and eventual shipping of goods, products, or materials that are manufactured or assembled as part of the commercial or industrial use, shall be allowed, provided that:
 - (a) The location of the shipping containers is duly noted on the site plan if the project was reviewed by the Planning Board and/or the Board of Appeals, or the building permit plot plan if no Planning Board or Board of Appeals review was required.
 - (b) The same shipping container(s) shall not be located on site for more than 30 consecutive days at a time.

D. Construction project standards.

- (1) Shipping containers may be placed on property where a construction project is occurring. The shipping container shall only be utilized for the storage of construction materials, equipment, tools, etc.
- (2) A permit shall not be required from the Code Enforcement Officer, Planning Board, and/or Board of Appeals.
- (3) The shipping container(s) shall be removed within 30 days after the completion of the

construction project.

§ 120-554. Solid waste dumpsters.

All permanent solid waste dumpsters shall be installed on an appropriate concrete pad and shall be screened on all sides by fencing or vegetation. Vegetation must screen the dumpster within one growing season from the time it is planted.

§ 120-555. Streets. [Amended 4-27-2010 by Order 10-075; 10-10-2017 by Order 17-161;¹⁹4-20-2018 by Order 18-049]

- A. Public streets. All public streets, as defined in Article 3, and private roads submitted as part of a subdivision application, constructed on or after October 22, 2009, shall meet the street design standards in Article 9, Subdivision Review. 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. New private roads or extensions of existing private roads or private ways will be exempt from this requirement if the cumulative length of the new road or road extension(s) is no greater than the length of the required frontage in the applicable zoning district within a five-year period. Note that the new road or road extension will still need to meet the requirements of § 120-555D below.
- C. ²⁰Private roads not part of a subdivision application.
- (1) Applicability. These standards apply to private roads used to obtain the required frontage in the applicable zoning district. (See § 120-523, Developable land, in Article 5, 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. All private roads application forms and plans shall be submitted to and approved by the Director of Code Enforcement. For private roads that provide frontage to four or more lots, the plan must be reviewed by the Town Engineer or consulting engineer.
 - (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 consulting engineer be conducted during construction. The property owner shall be responsible for the costs of all observations.

19. Editor's Note: Order 17-161 also repealed the section on driveways in Art. 5.

20. Editor's Note: Former Subsection C, regarding new streets with direct connections to public streets, was repealed 5-24-2022 by Order No. 22-095. This order also renumbered former Subsections D and E as Subsections C and D, respectively.

- (7) Final approval. Prior to the issuance of any certificates of occupancy for the lots with frontage on said private road, the applicant shall provide the following:
- (a) Private roads with three or fewer lots. A statement, from the Maine licensed professional engineer 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. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**
 - (b) Private roads with four 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 § 120-911M(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 Design and Construction Standards.²¹
 - (b) Streetlights. Streetlights may be required at intersections with existing public streets. The use of additional streetlights 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 § 120-522, 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 B, Street Design and Construction Standards²²).
 - (e) Gravel surface limit. Notwithstanding other provisions of this chapter to the contrary, no gravel-surfaced private road shall provide access to or serve in any way to provide compliance with the requirements of this chapter for more than the greater of 10 lots or 10 dwelling units; provided, however, that nothing in this subsection shall serve to limit the use of such private road for occasional use by and for agricultural purposes. Private roads providing access to 11 or more lots shall meet the standards for a major private road contained in Table 3 and Table 4 of Appendix B, Street Design and Construction Standards.²³ When determining the number of dwelling units, the Code Enforcement Officer shall not include permitted ~~accessory apartments~~ **accessory dwelling units**.
 - (f) Dead-end streets. The following standards shall apply to dead-end private roads. (See Article 3 for definition of "dead-end street.")

[1] Maximum length. Dead-end private roads shall meet the following standards:

- [a] 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

21. Editor's Note: Appendix B is included as an attachment to this chapter.

22. Editor's Note: Appendix B is included as an attachment to this chapter.

23. Editor's Note: Appendix B is included as an attachment to this chapter.

hammerhead turnarounds installed every 1,000 linear feet. However, the street connectivity standards of Subsection D(8)(g) below shall apply.

- [b] Private roads not served by public water. Dead-end private roads 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-Rescue Chief and hammerhead turnarounds installed every 1,000 linear feet. The street connectivity standards of Subsection D(8)(g) below shall apply.
 - [i] 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.
 - [ii] 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 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. All hammerhead turnarounds 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 center line 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 twenty-five-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.
 - [f] No driveway shall be located at the end of the street or off of the turnaround side branch. **[Added 7-12-2022 by Order No. 22-127]**
 - [g] The turnaround side branch shall be located on the right side of the street. **[Added 7-12-2022 by Order No. 22-127]**
- (g) Connection requirements. The following standards determine the number of connections a private road must have with an existing local 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 Enforcement Officer shall not include permitted ~~accessory apartments~~ accessory dwelling units.

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

[1] Street connection separation requirements. Private roads with two or more connections to an existing public street shall be separated according to the standards in Table 2 of Article 9, 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 chapter.

D. Sidewalks.

- (1) Where required by this chapter, 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 of Appendix B of this chapter.²⁴
- (2) Accessibility. Sidewalk construction shall meet all applicable Americans with Disabilities Act (ADA)²⁵ standards.

§ 120-556. Solar energy systems. [Added 8-15-2023 by Order No. 23-150]

A. Purpose.

- (1) Solar energy is a local, renewable and nonpolluting energy resource that can reduce fossil fuel dependence and emissions. Energy generated from solar energy systems can be used to offset energy demand on the grid, with benefits for system owners and other electricity consumers.
- (2) The use of solar energy equipment for the purpose of providing electricity and energy for heating and/or cooling is an important component of the Town's sustainability goals.
- (3) The standards that follow enable the accommodation of solar energy systems and equipment in a safe manner while ensuring against unsafe conditions and undue adverse impacts on adjacent properties.

B. Applicability.

- (1) The installation of all solar energy conversion systems, expansion of any existing solar energy

24. Editor's Note: Appendix B is included as an attachment to this chapter.

25. Editor's Note: See 42 U.S.C. § 12101 et seq.

conversion system, or installation of any associated facilities shall be approved under this section and shall obtain site plan approval as required by Article 8, a building permit, and any other necessary Town or state approvals prior to its installation.

- (2) Any physical modification to an existing solar energy conversion system that alters the facility size, type or location of the system or its associated equipment shall require approval under this section. Like-kind replacements or nonstructural maintenance and repair shall not require approval under this section but shall require a building permit.
- (3) For purposes of this section, the Town's zoning districts are categorized as follows:
 - (a) Residential zoning districts. Residential zoning districts include: F, FR, RL, RM, VR.
 - (b) Mixed-use zoning districts. Mixed-use zoning districts include: C-1, C-1N, C-2, C-3, C-4, VC, WC. **[Amended 8-15-2023 by Order No. 23-151]**
 - (c) Nonresidential commercial/industrial zoning districts. Nonresidential commercial/industrial districts include: I, ED.

C. Dimensional standards.

- (1) Height.
 - (a) In residential zoning districts, solar energy systems attached to any building shall be included in the building height measurement, and the height of the building shall not exceed the maximum building height. In mixed-use and nonresidential commercial/ industrial zones, notwithstanding and other provision of this section to the contrary, solar energy systems attached to any building shall not be included in the building height measurement.
 - (b) Ground-mounted solar energy systems.
 - [1] In residential and mixed-use zoning districts, shall not exceed 12 feet in height when oriented at maximum tilt, except that the maximum height shall be 22 feet for systems set back 30 feet or more from any property line.
 - [2] In all other zoning districts such systems shall conform to the building height requirements of the zoning districts in which they are located.
- (2) Setbacks for ground-mounted solar energy systems.
 - (a) Notwithstanding any other provision in this section to the contrary, the setbacks for ground-mounted solar energy systems shall be as follows:
 - [1] Minimum front yard. In residential zoning districts, 50 feet. In mixed use and nonresidential zoning districts, whatever the front yard setback is for that zoning district, but in no event less than 30 feet.
 - [2] Minimum rear yard. In residential zoning districts, 30 feet. In mixed use and nonresidential zoning districts, whatever the rear yard setback is for accessory buildings in that zoning district.
 - [3] Minimum side yard: 30 feet.
 - (b) When ground-mounted solar energy systems are co-located with parking lots in mixed use

and nonresidential zoning districts, the minimum setback is whatever the setback is for parking lots.

- (c) The setbacks set forth in this Subsection C(2) shall not apply to small ground-mounted solar energy systems serving a residential use located on the same parcel. Such systems shall be subject only to setbacks required under the applicable zoning district.

D. Standards for roof-mounted and ground-mounted solar energy systems.

- (1) Roof-mounted and building-mounted solar energy systems and equipment are permitted in conformance with this Subsection D, unless they are determined by the Code Enforcement Officer, with input from the Town Engineer and the Fire Chief, to present one or more unreasonable safety risks, including, but not limited to, the following:
 - (a) Weight load;
 - (b) Wind resistance;
 - (c) Ingress or egress in the event of fire or other emergency; or
 - (d) Proximity of a ground-mounted system relative to buildings.
- (2) All solar energy system installations shall be performed in compliance with the photovoltaic systems standards of the latest edition of the National Fire Protection Association (NFPA) 1, Fire Prevention Code.
- (3) All wiring shall be installed in compliance with the photovoltaic systems standards of the latest edition of the National Electrical Code (NFPA 70).
- (4) Prior to operation, electrical connections must be inspected and approved by the Electrical Inspector.
- (5) Each solar energy installation shall be maintained as necessary to ensure that it is operating safely and as designed over its useful lifetime.

E. Additional standards for medium- and large-scale ground-mounted solar energy systems. In addition to the standards in § 120-566D above, medium- and large-scale ground-mounted solar energy systems shall comply with the following:

- (1) Utility connections. Overhead or pole-mounted electrical wires shall be avoided to the extent possible within the facility.
- (2) Visual impact. Reasonable efforts, as determined by the Planning Board, shall be made to minimize undue visual impacts in the following ways:
 - (a) Fencing. Fencing shall:
 - [1] Be the minimum height necessary to meet the National Electrical Code standard for a fence that does not require barbed wire at the top.
 - [2] Be an unobtrusive color and style so as to blend into the environment as well as possible.
 - [3] Be wildlife friendly and be elevated by a minimum of five inches to allow for passage of small terrestrial animals.

- (b) Buffers. Buffer yards shall be provided in accordance with performance standards of § 120-511. Buffers meeting the Buffer Yard B standards in § 120-511 Table 1 shall be located outside fence lines along any fence line visible from a public or private way or adjacent to an existing residential dwelling. Preservation of native vegetation is encouraged. The Planning Board shall have flexibility to waive some or all of this buffer yard planting depending on site specific conditions as outlined by the applicant and in accordance with the § 120-808 waiver criteria.
- (3) Land clearing, soil erosion, and habitat impacts. Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of ground-mounted solar energy systems or as otherwise prescribed by applicable laws, regulations, and bylaws/ordinances. Ground-mounted facilities shall minimize mowing to the extent practicable. The solar energy system shall be located on the site so as to minimize the cutting of mature trees. Native, pollinator-friendly seed mixtures shall be used to the extent possible. Herbicide and pesticide use shall be minimized. No prime agricultural soil or significant volume of topsoil shall be removed from the site for installation of the system.
- (4) Decommissioning plan. A decommissioning plan shall be submitted to the Town as part of the initial application, which shall detail the costs and procedure for decommissioning. Decommissioning shall consist of:
- (a) Physical removal of all solar energy systems, structures, equipment, security barriers and transmission lines from the site.
 - (b) Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.
 - (c) Stabilization of the site as necessary to minimize erosion. The Planning Board may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.
 - (d) Revegetation. Native, pollinator-friendly seed mixtures shall be used.
- (5) Abandonment, decommissioning, and surety.
- (a) Removal. Any solar energy system which has reached the end of its useful life or has been abandoned consistent with this section shall be removed and fully decommissioned according to the approved decommissioning plan. The owner or the operator shall notify the Code Enforcement Officer by certified mail of the proposed date of discontinued operations. The owner or operator shall physically remove the installation no more than 180 days after the date of discontinued operations.
 - (b) Abandonment. Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, the solar energy system shall be considered abandoned when it fails to operate for more than one year without the written consent of the Code Enforcement Officer. If the owner or operator of the solar energy system fails to remove the installation in accordance with the requirements of this section within 180 days of abandonment or the notice of discontinuance as described in Subsection E(5)(a), the Town retains the right to enter and remove the abandoned, hazardous, or decommissioned solar energy system. As a condition of site plan approval, the applicant and landowner shall agree to allow entry to remove an abandoned or decommissioned installation.

(c) Surety.

- [1] The applicant will provide financial assurance for the decommissioning costs, in the form of a performance bond, surety bond, or irrevocable letter of credit, for the total cost of decommissioning. The financial assurance mechanism shall be effective prior to the commencement of construction and the form of the document shall be approved by the Town Manager.
- [2] The value of the surety shall be based on a professional engineer's estimate submitted by the applicant and approved by the Town Manager.
- [3] The Town may hire, at the applicant's expense, a qualified professional to review the engineer's estimate.
- [4] Every five years subsequent to the initial effective date of the surety, the owner shall submit an updated engineer's estimate and surety to the Planning Office for review and approval. The Town may hire, at the applicant's expense, a qualified professional to review the engineer's estimate.
- [5] If the Maine DEP or other state agency requires a decommissioning bond, the Planning Board may waive the specific requirements of this subsection so long as the Town is named as an additional obligee under the surety and requires as a condition of approval that the applicant comply with any conditions of approval related to the surety.

F. Additional standards for large-scale solar energy systems.

- (1) Large-scale ground-mounted solar energy systems shall not be considered accessory uses.
- (2) Operations and maintenance plan. The applicant shall submit a plan for the operation and maintenance of the large-scale ground-mounted solar energy system, which shall include measures for maintaining safe access to the installation as well as other general procedures for operational maintenance of the installation, including but not limited to fence, vegetation, and buffer maintenance, and proper panel and electrical equipment function.
- (3) Signage. A sign shall be placed on the large-scale solar energy system to identify the owner and provide a twenty-four-hour emergency contact phone number.
- (4) Emergency services. The large-scale ground-mounted solar energy system owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the Fire Chief. Upon request, the owner or operator shall cooperate with the Fire Department in developing an emergency response plan. All means of shutting down the system shall be clearly marked. The owner or operator shall provide to the Code Enforcement Officer the name and contact information of a responsible person for public inquiries throughout the life of the installation.

ARTICLE 6
Mineral Extraction
[Amended 2-9-2010 by Order 10-023; 4-13-2010 by Order 10-061]

§ 120-601. Purpose.

- A. The purpose of this article is to regulate sand and gravel and other quarrying operations, including the removal, processing and storage of topsoil or loam, rock, sand, gravel and other earth materials (hereinafter "mineral extraction"). The Planning Board shall follow the site plan review requirements in Article 8 when more than 25,000 square feet of gross area is to be developed, as defined in Article 3. (See definition of "development.")
- B. The removal of stone, sand and gravel from banks or quarries and the processing of said materials shall not be permitted without the approval of the Planning Board. The removal of loam, topsoil or sod is permitted in any of the Town's zoning districts. Such material may be hauled away to other locations, either inside or outside the Town of Windham. The Planning Board may approve the removal and processing of such materials after public hearing thereon, and a finding that such removal and processing will be performed subject to the conditions and safeguards set forth in this article.
- C. These regulations are intended to protect the quality and quantity of the groundwater and surface waters, to control erosion, to provide for the reclamation and rehabilitation of mineral extraction sites so that future uses shall be compatible with the surrounding neighborhood, and to minimize any adverse impact of such pit operations on adjacent and nearby properties.

§ 120-602. Applicability.

- A. Existing pits, expansions over five acres, loam stripping exceeding 1/4 of an acre, and new operations which are started or approved after the effective date of this amendment shall be governed by this article. This article applies to all private, public and municipal mineral extraction operations within the Town of Windham.
- B. Whereas the Town of Windham recognizes that exceptions to this article may become necessary in a time of great need, such as a natural disaster necessitating ready and immediate access to sand, gravel and other earth materials, provision is herein made for the temporary suspension of the application process included herein if approval for said suspension is granted by a majority of the Town Council.
- C. The applicant shall pay a processing fee and establish a peer review escrow account as set by the Town Council in the Windham Fee Schedule.

§ 120-603. Exemptions; existing pits.

- A. The following activities are exempt from the provisions of this article of this chapter:
 - (1) Excavation whose sole purpose is to determine the nature or extent of mineral resources. It is accomplished by hand sampling, test boring, or other methods which create minimal disturbance. Test holes shall be filled in immediately after use.
 - (2) The removal of less than 200 cubic yards of material (except topsoil) in any one year, provided such removal does not disturb more than one acre of land.
 - (3) The removal of any amount of sand, gravel, or loam from a site is an exempt activity if it is part

of normal farm operations, or the sand, gravel, or loam is being moved to a contiguous site having the same ownership or is being used by the owner for their own use.

- (4) Excavation or grading which is undertaken as part of and subordinate to an approved construction project such as a subdivision, permitted structure or road, unless it is intended to circumvent this article.
- B. Existing pits may only expand in conformance with this article. The owner(s) must file a plot plan within 90 days of the effective date of this article, showing the active part of the pit, as distinguished from those slopes and setbacks existing at the time of adoption of this article, which shall be exempt.

§ 120-604. Permit application requirements.

All applicants shall submit an application to the Planning Department. The Planning Department shall verify that the application is complete prior to placing the applicant on an agenda to appear before the Planning Board. Approval from the Planning Board is required prior to the applicant initiating any phase for which the applicant seeks approval. This information is in addition to information provided as part of the site plan review criteria required under Article 8 et seq. The following information shall be submitted to the Planning Board when applying for a permit. All plans shall be drawn to a scale not greater than one inch equals 100 feet.

- A. The location of existing wells, streams, springs, intermittent streams and wet areas. The depth of groundwater at the site of the proposed excavation as determined by test borings shall substantiate that groundwater will not be disturbed.
- B. Contours of the land within and extending beyond the boundaries of the parcel for 200 feet at five-foot intervals, or at intervals acceptable for a MaineDEP permit application, or at intervals required by the Planning Board for mineral extraction operations of under five acres.
- C. The location of all proposed hazardous materials storage areas. Hazardous materials (including equipment fuel, petroleum products, oil, hydraulic fluids, etc.) shall be located in an impervious containment area designed to contain spills and provide for secondary containment.
- D. Plans for controlling access to the site. At a minimum, a solid gate with a lock shall be located at any entrances or exits.
- E. Provisions for shielding the excavation from surrounding properties with adequate screening or buffering for a visual and acoustical buffer between the project and adjacent properties if a natural buffer does not exist. Signs and lighting shall be designed to prevent public nuisance conditions or undesirable aesthetic effects on the neighborhood.
- F. A final rehabilitation plan, including seeding, planting, drainage, erosion control, final grading, shaping, and surface stabilization plans showing contours at five-foot intervals. Plans shall be approved by the Cumberland County Soil and Water Conservation District, a licensed forester, a certified soils scientist or a licensed Maine civil professional engineer. The proposed use of the property at completion of the project shall be described. A time schedule for rehabilitation shall be included. Any project which is proposed to operate for more than five years shall be designed to operate in phases, if possible. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**
- G. Applicable state and/or federal permits shall be required prior to final approval from the Planning Board. For applications requiring site plan review, the Planning Board shall have the authority to

review the applicant's technical capacity to comply with state and federal permitting requirements, including those for temporary or permanent drainage and sedimentation control, storage and containment of any materials, noise, vibration levels, and dust levels and measures for minimization.

- H. Hours of operation. These shall be compatible with the surrounding neighborhood and shall minimize any adverse impact of the pit operations on adjacent and nearby properties.

§ 120-605. Plan review. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. 1)]

The Planning Board may impose such conditions as are necessary to safeguard the health, safety and welfare of the community. Where considered necessary by the Planning Board, the plan required to accompany the application shall be prepared by a licensed Maine civil professional engineer and/or Maine certified geologist at the applicant's expense. The plan review shall take into consideration at least the following:

- A. Fencing, landscaped buffer strips, and other public safety and nuisance considerations for compliance with §§ 120-604E and 120-606.
- B. Signs and lighting for compliance with § 120-604E.
- C. Adequate parking spaces, loading and unloading areas for compliance with § 120-812C.
- D. Safe entrances and exits for compliance with §§ 120-604D and 120-812B.
- E. Total estimated life of the pit for compliance with § 120-608.
- F. Days and hours of normal operation for compliance with § 120-604H.
- G. Methods of operation, removal or processing for compliance with §§ 120-604G and 120-606.
- H. Area and depth of excavation for compliance with §§ 120-604A and G and 120-606.
- I. Provision for temporary or permanent drainage and sedimentation control for compliance with §§ 120-604G and 120-606.
- J. Disposition of stumps, brush and boulders with §§ 120-812O and 120-606.
- K. Type and location of temporary and permanent structures for compliance with applicable zoning requirements.
- L. Storage and containment of any materials (e.g., petroleum products, salt, hazardous materials, rubbish, treated timber) on the property for compliance with §§ 120-604C, 120-606, and 120-812L and O.
- M. Complete rehabilitation proposals for compliance with § 120-607.
- N. Noise levels for compliance with § 120-812S.
- O. Vibration levels in compliance with §§ 120-604G and 120-606.
- P. Dust levels and measures for minimization in compliance with §§ 120-604G and 120-606.

§ 120-606. Performance standards. [Amended 4-9-2019 by Order 19-053]

Mineral extraction operations within the Town of Windham must comply with the applicable performance standards below unless a variance is first obtained from the Maine Department of Environmental Protection as set forth in Maine Statutes Title 38, Section 490, and approved by the Planning Board. Any existing mineral extraction operation shall be required to meet the performance standards contained within the version of this chapter under which the mineral extraction operation was approved.

- A. Solid waste. Solid waste, including stumps, wood waste and land clearing debris generated on the affected land, must be disposed of in accordance with 38 M.R.S.A. Chapter 13, including any rules adopted to implement those laws.
- B. Groundwater protection. **[Amended 4-23-2019 by Order 19-068]**
- (1) A 200-foot separation must be maintained between any excavation and any private drinking water supply that is a point-driven or dug well and was in existence prior to that excavation.
 - (2) A 100-foot separation must be maintained between any excavation and any private drinking water supply that is drilled into saturated bedrock and was in existence prior to that excavation.
 - (3) Separation must be maintained between any affected land and any public drinking water source as follows:
 - (a) For systems serving a population of 500 persons or fewer, the minimum separation must be 300 feet;
 - (b) For systems serving a population of 501 persons up to 1,000 persons, the separation must be 500 feet;
 - (c) For systems serving a population of more than 1,000 persons, the separation must be 1,000 feet; and
 - (d) For any system that holds a valid filtration waiver in accordance with the federal Safe Drinking Water Act,²⁶ the separation must be 1,000 feet.
 - (4) Refueling operations, oil changes and other maintenance activities requiring the handling of fuels, including but not limited to petroleum products, hydraulic fluids, and other on-site activity involving the storage or use of products that, if spilled, may contaminate groundwater, must be conducted in accordance with the Department of Environmental Protection's spill prevention, control and countermeasures plan. Petroleum products and other substances that may contaminate groundwater must be stored and handled over impervious surfaces that are designed to contain spills. The spill prevention, control and countermeasures plan must be posted at the site. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**
 - (5) Excavation may not occur within five feet of the seasonal high-water table unless the operator first obtains a variance from the Maine Department of Environmental Protection. A bench mark sufficient to verify the location of the seasonal high-water table must be established and at least one test pit or monitoring well must be established on each five acres of unreclaimed land and maintained by the operator to demonstrate separation above groundwater.

26. Editor's Note: See 42 U.S.C. § 201 et seq.

- (6) In the event of excavation below the seasonal high-water table, the operator of a mining activity that affects a public drinking water source or private drinking water supply by excavation activities causing contamination, interruption or diminution must restore or replace the affected water supply with an alternate source of water, adequate in quantity and quality for the purpose served by the supply. This subsection is not intended to replace any independent action that a person whose water supply is affected by a mining activity may have. The applicant shall conduct and report all baseline and routine compliance monitoring (i.e., water levels and water quality monitoring) required by MaineDEP Title 38 Section 490 to the Planning Board for review and approval prior to beginning mineral extraction activities and on an annual basis after mineral extraction activities have begun. Water level and water quality monitoring should be conducted by a third party working under the guidance of a certified geologist or professional engineer.
- (7) In the event of excavation below the seasonal high-water table, a 300-foot separation must be maintained between the permitted limit of excavation and any predevelopment private drinking water supply, and a 1,000-foot separation must be maintained between the permitted limit of excavation and any predevelopment public drinking water source or area previously designated for potential use as a public drinking water source by a municipality or private water company.

C. Protected natural resources.

- (1) A natural buffer strip must be maintained between the working edge of an excavation and any protected natural resource as defined in the Comprehensive Plan and by the Maine Department of Environmental Protection. Excavation activities conducted within 100 feet of a protected natural resource must comply with the applicable permit requirement of the Maine Department of Environmental Protection. The width requirements for natural buffer strips are as follows:
 - (a) A natural buffer strip at least 100 feet wide must be maintained between the working edge of the excavation and the normal high-water line of a great pond classified as GPA or a river flowing to a great pond classified as GPA.
 - (b) A natural buffer strip at least 75 feet wide must be maintained between the working edge of the excavation and any other water body, river, stream, brook, or significant wildlife habitat contained within a freshwater wetland or a freshwater wetland consisting of or containing:
 - [1] Under normal circumstances, at least 20,000 square feet of aquatic vegetation, emergent marsh vegetation or open water, except for artificial ponds or impoundments; or
 - [2] Peat lands dominated by shrubs, sedges and sphagnum moss.
- (2) For purposes of this subsection, the width of a natural buffer strip is measured from the upland edge of floodplain wetlands; if no floodplain wetlands are present, the width of the natural buffer strip is measured from the normal high-water mark of a great pond, river, stream or brook or the upland edge of a freshwater wetland.

- D. Natural buffer strip. Existing vegetation within a natural buffer strip may not be removed. If vegetation within the natural buffer strip has been removed or disturbed by the excavation or activities related to the excavation before submission of a notice of intent to comply, that vegetation must be reestablished as soon as practicable after filing the notice of intent to comply.

E. Public and private roads.

- (1) A natural buffer strip must be maintained between the working edge of an excavation and a road or right-of-way as follows:
 - (a) A natural buffer strip at least 150 feet wide must be maintained between the working edge of an excavation and a road designated as a scenic highway by the Department of Transportation.
 - (b) A natural buffer strip at least 100 feet wide must be maintained between the working edge of an excavation and any public road not designated as a scenic highway by the Department of Transportation.
 - (c) A natural buffer strip at least 25 feet wide must be maintained between the working edge of a topsoil excavation and any public road not designated as a scenic highway by the Department of Transportation.
 - (d) A natural buffer strip at least 50 feet wide must be maintained between the working edge of an excavation and any public right-of-way that does not contain a road. The width of a natural buffer strip adjacent to a public road or right-of-way may be reduced if there is a public entity or entities with authority to grant permission and the applicant receives permission from each authority in writing.
 - (e) A natural buffer strip at least 50 feet wide must be maintained between the working edge of an excavation and any private road or right-of-way. If a private road is contained within a wider right-of-way, the buffer is measured from the edge of the right-of-way. The width of the natural buffer strip adjacent to a private road may be reduced if the applicant receives written permission from the person or persons having a right-of-way over the private road.
- (2) A distance specified in this subsection is measured from the outside edge of the shoulder of the road or edge of the right-of-way unless otherwise specifically provided. A variance from Subsection E(1)(b) is available from the Maine Department of Environmental Protection.

F. Property boundary.

- (1) Excavations for borrow, clay, topsoil or silt. A natural buffer strip at least 50 feet wide must be maintained between any excavation and any property boundary. A natural buffer strip at least 25 feet wide must be maintained between any topsoil excavation and a property boundary. These distances may be reduced to not less than 10 feet with the written permission of the affected property owner or owners, except that the distance may not be reduced to less than 25 feet from the boundary of a cemetery or burial ground. The buffer strip between excavations owned by abutting owners may be eliminated with the abutter's written permission, provided the elimination of this buffer strip does not increase the runoff from either excavation across the property boundary. Any written permission to reduce a buffer must provide that it remains in effect until mining ceases and must be recorded in the registry of deeds. All property boundaries must be identified in the field by markings such as metal posts, stakes, flagging or blazed trees.
- (2) Quarries. A natural buffer strip at least 100 feet wide must be maintained between any excavation and any property boundary. These distances may be reduced to not less than 10 feet with the written permission of the affected property owner or owners, except that the distance may not be reduced to less than 25 feet from the boundary of a cemetery or burial ground. The

buffer strip between excavations owned by abutting owners may be eliminated with the abutter's written permission, provided the elimination of this buffer strip does not increase the runoff from either excavation across the property boundary. Any written permission to reduce a buffer must provide that it remains in effect until mining ceases and must be recorded in the registry of deeds. All property boundaries must be identified in the field by markings such as metal posts, stakes, flagging or blazed trees.

- G. Excavation, except for drainageways, shall be at least 200 feet from any existing residence.
- H. Erosion and sedimentation control. A working pit must be naturally internally drained at all times unless a variance is obtained from the Maine Department of Environmental Protection. In addition to § 120-812F, the following standards apply:
- (1) The area of a working pit shall not exceed 10 acres.
 - (2) Stockpiles consisting of topsoil to be used for reclamation must be seeded, mulched or otherwise temporarily stabilized.
 - (3) Sediment may not leave the parcel or enter a protected natural resource.
 - (4) Grubbed areas not internally drained must be stabilized.
 - (5) Erosion and sedimentation control for access roads must be conducted in accordance with the department's best management practices for erosion and sedimentation control.
 - (6) All areas other than a working pit area that are not naturally internally drained must meet the erosion and sedimentation control standards of § 120-812F. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**
- I. Water quality protection and stormwater management. Surface water discharges from areas not required to be naturally internally drained may not be increased as a result of water runoff and shall comply with § 120-812E.
- J. Traffic.
- (1) Any excavation activity that generates 100 or more passenger car equivalents at peak hour must comply with the applicable permit requirements under 23 M.R.S.A. § 704-A.
 - (2) Existing streets expected to carry traffic generated by the development shall have a paved surface and have the capacity or be suitably improved to accommodate the traffic generated by the development.
 - (3) No new mineral extraction operations shall be permitted to access a private road or private way that provides access to a public street to more than 100 dwelling units.
- K. Noise. Noise levels may not exceed applicable noise limits in § 120-812S.
- L. Dust.
- (1) Dust generated by activities at the excavation site, including dust associated with traffic to and from the excavation site, must be controlled by sweeping, paving, watering or other best management practices for control of fugitive emissions. Except within the direct watershed of a lake most at risk from new development as designated in the Maine Department of Environmental Protection's Chapter 502, Direct Watersheds of Lakes Most at Risk from New

Development, and Urban Impaired Streams,²⁷ dust-control methods may include the application of calcium chloride, providing the manufacturer's labeling guidelines are followed.

- (2) Access driveways shall be paved a minimum of 100 feet from the intersection with the public or private street.
 - (3) Loaded vehicles shall be suitably covered to prevent dust and contents from spilling or blowing from the load.
- M. Blasting. The operator must ensure that blasting is conducted in accordance with Maine Statutes as set forth in Title 25, Chapter 318, and 38 M.R.S.A. § 490-Z, Performance standards for quarries.
- (1) Production blasting may not occur in the period between 4:00 p.m. and 11:00 a.m. Production blasting is not allowed in the daytime on Sunday.
 - (2) On the day of the scheduled blast, or at a greater time requested by a person listed below, in advance of a scheduled blast the operator must notify:
 - (a) The Code Enforcement Department;
 - (b) The Fire-Rescue Department;
 - (c) Property owners within 1/2 mile from the blast site; and
 - (d) Any other property owners that have requested to be notified.
 - (3) A preblast survey is required for all production blasting and must extend a minimum radius of 1/2 mile from the blast site. The preblast survey must document any preexisting damage to structures and buildings and any other physical features within the survey radius that could reasonably be affected by blasting. Assessment of features such as pipes, cables, transmission lines and wells and other water supply systems must be limited to surface conditions and other readily available data, such as well yield and water quality. The list of test parameters will be consistent with typical water quality tests and include: metals (Cu, Fe, Mn, As, U, Na, Pb), chloride, color, fluoride, hardness, nitrate/nitrite, pH, dissolved solids, turbidity, radon, total coliform/E. coli, bacteria. The preblast survey must be conducted prior to the initiation of blasting at the operation. The owner or operator shall retain a copy of all preblast surveys for at least one year from the date of the last blast on the development site.
 - (a) The owner or operator is not required to conduct a preblast survey if the Planning Board determines that no protected natural resource within the limits of the otherwise required survey is likely to be affected by blasting and production blasting will not occur within 2,000 feet of any building not owned or under the control of the developer.
 - (b) The owner or operator is not required to conduct a preblast survey on properties for which the owner or operator documents the rejection of an offer by registered letter, return receipt requested, to conduct a preblast survey. Any person owning a building within a preblast survey radius may voluntarily waive the right to a survey.
 - (4) Detonation of misfires may occur outside of these times but must be reported to the Code Enforcement Office within five business days of the misfire detonation. Blasting may not occur more frequently than two times per day.

27. Editor's Note: See 06-096 CMR Ch. 502.

- (5) Underground production blasting is prohibited unless the applicant receives a waiver from the Maine Department of Environmental Protection.

§ 120-607. Rehabilitation requirements.

Any operation shall be deemed closed 90 days after its permit expires or the operations cease for two years. The site shall be rehabilitated in accordance with this section and MaineDEP regulations (i.e., keep active operating area under 10 acres by progressive reclamation of the pit). The rehabilitation plan shall be completed within two years of closing. Rehabilitation of continuing operations shall be conducted in phases. Upon completion or abandonment of an existing mineral extraction operation in existence on the effective date of this chapter, except for existing exempted slopes and setbacks, the area shall meet the following requirements:

- A. Specific plans shall be established to avoid hazards from excessive slopes. Where an embankment remains after the completion of operations, it shall be graded at a slope not steeper than one foot vertical to 2.5 feet horizontal.
- B. Seeding, planting and loaming, as approved in the rehabilitation plan, shall be accomplished so that exposed areas are stabilized and erosion is minimized. Seeding shall achieve a minimum of 90% establishment of vegetation. Retained topsoil shall be used as loam. These areas shall be guaranteed for 18 months during which time the performance guarantee, where required, shall remain in full force and effect.
- C. The Board may require that trees be planted for a visual and acoustical buffer between the project and adjacent properties if a natural buffer does not exist.
- D. Tree stumps and grubbing from the site may be used to stabilize the banks. The areas of pits with solid or broken ledge rock shall be trimmed of loose rock and the bottom of the pit graded to be compatible with the surroundings.
- E. The pit shall be contoured so that sediment is not directed into streams or drainageways.
- F. Grading and restoration shall be completed in such a manner that it will ensure natural drainage, prevent standing water and minimize erosion and sedimentation.
- G. Existing pits may expand over five acres without Planning Board approval if the area being worked remains no larger than five acres and all the prior existing area has been rehabilitated in conformance with this section and has been inspected and verified by the Planning Department prior to any expansion.

§ 120-608. Permits and inspections. [Amended 4-9-2019 by Order 19-053]

- A. The Code Enforcement Officer shall conduct an annual compliance inspection of all excavations and review and approve all blasting documentation required by the MaineDEP Title 38, Section 490, on an annual basis, including, but not limited to, water quality monitoring and groundwater measurements, individual blast summary reports, annual instrument calibration, and third-party seismograph results. The applicant shall annually perform third-party calibration of all instruments used to document compliance with MaineDEP Title 38, Section 490 (i.e., air blast levels and peak particle velocities). The applicant shall also hire a third party to record seismograph readings during one blast event on an annual basis, to collaborate the seismograph results of the applicant.
- B. After initial permit approval by the Planning Board, the applicant shall submit a report to the Planning

Department every fifth year, two months prior to the expiration of the permit. The applicant shall demonstrate that the operation is in conformance with the standards found in this section. Aerial photography may be required to demonstrate conformance with these standards. If the expansion is proposed beyond the original plan, the applicant must obtain a new permit from the Planning Board.

- C. Change of operator or owner requires application for a new permit from the Planning Department. The new owner or operator shall be required to demonstrate financial and technical capabilities required to operate a mineral extraction operation equal to those required of the original owner.

§ 120-609. Performance guarantee requirements. [Amended 4-9-2019 by Order 19-053]

- A. A surety bond issued by a commercial surety company authorized to do business within the State of Maine; or an interest-bearing trust account made payable to the Town of Windham; or a letter of credit, cash, or a certified check payable to the Town of Windham shall be posted by the owner(s) or operator(s) in an amount recommended by the Town Manager or his/her authorized agent, with the advice of the Cumberland County Soil and Water Conservation District and/or a licensed Maine civil engineer, as sufficient to guarantee conformity with the provisions of the permit approval for the rehabilitation of existing mineral extraction operations, new mineral extraction operations, and/or loam-stripping operations. The performance guarantee shall also include the cost to replace any private drinking water supply within 300 feet of the property boundary of the mineral extraction operation or any supply well within an area in which the elevation of the water table will be impacted by the development (i.e., where safe yield and water quality may be impacted). **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**
- B. The amount of performance guarantee shall be sufficient to fund the costs of that rehabilitation which remains to be completed. The performance guarantee must remain in force until the Planning Department or designee certifies that the site has been rehabilitated according to the approved plan.

§ 120-610. Loam stripping conditions.

The removal of loam, topsoil, or sod from the ground surface may be permitted in any zone and such material may be hauled away to other locations, either in or outside the Town of Windham. If the gross area of such removal exceeds 1/4 acre, the stripping may be done only after public hearing and approval by the Planning Board, subject to appropriate conditions and safeguards, such as but not limited to the following:

- A. Operations shall not adversely affect the health and general welfare of the Town.
- B. The Planning Board shall require the filing of a development plan and the posting of a performance guarantee in an amount set by the Town but not less than \$500 per acre.

ARTICLE 7
Signs

§ 120-701. Purpose.

The purpose of regulating signs is to promote and protect the public health, welfare and safety by regulating existing and proposed outdoor advertising, outdoor advertising signs, and all other outdoor signs of a business or commercial nature; to protect property values, enhance and protect the physical appearance of the community, preserve the scenic and natural beauty and provide a more enjoyable and pleasing community; to reduce sign or advertising distractions and obstructions that may be caused by signs overhanging or projecting over public rights-of-way; provide more open space and curb the deterioration of natural beauty and community environment.

§ 120-702. General.

- A. Every sign shall be maintained in a safe, presentable and good structural condition by the timely replacement of defective parts, periodic cleaning and painting when necessary. The Code Enforcement Officer shall cause to be removed any sign that endangers public safety, including signs which are materially, electrically, or structurally defective; any sign that is abandoned by reason of the property on which the sign is located being unoccupied for a period of three months or more, except signs applicable to businesses temporarily suspended for less than six months due to a change of ownership; or signs for which no permit has been issued. The Code Enforcement Officer shall send by certified mail a notice to the owner of record of the property and/or business of the violation and require correction or removal within 14 days of the notice mailing. Any sign determined to be in violation and not corrected within the prescribed time period may be removed by the Town at the owner's expense. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**
- B. General safety standards for signs. No sign, whether new or existing, shall hereafter be permitted which either causes a traffic, health, welfare or safety hazard or results in a nuisance, due to illumination, placement, display, or manner of construction.
- C. Double-faced signs. A sign with a double signboard or display area shall be constructed to be one sign for the purpose of this chapter.
- D. A banner shall be considered a sign, as defined in Article 3.

§ 120-703. Permits, fees and enforcement.

- A. Sign permit. Except as otherwise herein provided, no person shall erect or move any outdoor advertising signs without first applying for and obtaining a sign permit from the Code Enforcement Officer. Applications shall be on forms prescribed and provided by the Code Enforcement Officer, setting forth such information as may be required for a complete understanding of the proposed work. No sign permit shall be issued until the prescribed application fee has been paid. The fees for said permit shall be set by Council order.
- B. Removal of signs. Illegal signs erected in public rights-of-way shall be removed by the Code Enforcement Officer.
- C. Enforcement and penalties. The enforcement and penalty provisions of this chapter shall apply to the provisions governing signs.

§ 120-704. Existing signs; nonconforming signs.

- A. Existing signs. No outdoor advertising signs shall be permitted in any district except as provided herein. Applicable standards for permitted signs shall apply to all existing signs in any district where such signs are no longer permissible but continue to exist as nonconforming hereunder. Any use permitted in the commercial zone and existing as a legal nonconforming use in any other zone shall be deemed to be located in the commercial district for the purposes of this section, except that the maximum square footage of all signs for said use shall not exceed 75 square feet.
- B. Nonconforming signs. Nonconforming signs existing as legally nonconforming uses at the time of the passage of this amendment may continue and may not be changed, altered, except as indicated below, or relocated on the same premises, except to conforming signs. If a premises changes ownership, the nonconforming signs located on the premises must be brought into compliance with this article. The existence of such nonconforming signs shall prohibit the erection of any permanent sign which is permitted by this article until all nonconforming signs are removed or brought into conformance with this article. All freestanding signs greater than 150 square feet of display area must be removed or brought into compliance with this article within 90 days of the adoption of this amendment. Signs legally erected after April 1, 1982, shall be considered conforming.

§ 120-705. Signs permitted in all districts.

- A. Real estate signs. **[Amended 9-24-2013 by Order 13-143; at time of adoption of Code (see Ch. 1, General Provisions, Art. D)]**
 - (1) One temporary real estate sign not over six square feet in area, attached to a building or freestanding, may be erected in the F, FR, RL, and RM Zones without a permit advertising the sale, lease or rental of the premises upon which the sign is located, except that a lot or building with frontage on two public ways may have one six-square-foot sign on each public way, and shall be removed by the owner or agent of the owner within 10 days of said sale, lease or rental.
 - (2) One temporary real estate sign not over 16 square feet in area, attached to a building or freestanding, may be erected in the C-1, C-2, C-3, I, ED and VC Zones, and on the premises of a conforming commercial use, excluding home occupations, in any zone, without a permit advertising the sale, lease or rental of the premises upon which the sign is located, except that a lot or building with frontage on two public ways may have one sixteen-square-foot sign on each public way, and shall be removed by the owner or agent of the owner within 10 days of said sale, lease or rental. In addition, conforming existing wall and freestanding signs affixed to the premises may advertise the sale, lease, or rental of the premises upon which the sign is located. Such advertising shall be removed by the owner or agent of the owner within 10 days of said sale, lease or rental.
- B. Construction. One temporary development or construction sign, not over 32 square feet in area, attached to a building or freestanding, may be erected, provided such sign shall be limited to a general identification of the project and those responsible therefor and shall be removed within 10 days after completion of the project, except that any sign for an Enterprise Development (ED) District may not exceed 60 square feet in total area.
- C. Home sales. Signs advertising home, garage, barn, basement, or moving sales temporarily held at any premises shall be permitted on premises in any zone without permit for no more than 14 days prior to said sale and shall be promptly removed thereafter.
- D. Identification signs. Signs announcing the name, address and profession of a permitted home occupation or a lawfully existing nonconforming home occupation are allowed on premises without

permit, provided the sign does not exceed six square feet in display area.

- E. Bulletin board. A freestanding bulletin board or similar sign used for occasional commercial purposes, not exceeding 32 square feet in display area, in connection with any church, museum, library, school or similar public structure, is allowed without a permit.
- F. Directional signs. Directional signs, solely indicating ingress and egress, placed at driveway locations, containing no advertising material, and having a display area not exceeding three square feet nor extending higher than seven feet above ground level are permitted in any zone without permit. Directional signs which incorporate either a logo or an identifying symbol are permitted in any zone as long as they meet the requirements of this subsection.
- G. Farm products. Two signs advertising the sale of farm or forestry products produced on the premises shall be permitted in any zone and shall not exceed a total of 32 square feet without permit.
- H. Building directory. Signs which merely identify the occupants of any building or premises and which are intended to be read on such premises are permitted in any district and shall be in addition to any other signs permitted by this chapter. The maximum letter height shall be not more than two inches.
- I. Gasoline price signs. Signs announcing motor fuel prices shall be permitted, ancillary to a properly established retail sales outlet, with numerals no greater than two feet in height and no more than one two-sided sign per road fronted.
- J. Public building signs. A freestanding sign not exceeding 32 square feet is permitted for any school, municipal building, church or similar public structure.
- K. Residential subdivision signs. A freestanding sign not exceeding 32 square feet which identifies the name of the subdivision may be erected at each entrance into such subdivision. Such signs shall be placed either within the fifty-foot right-of-way of the subdivision entrance road or within 50 feet of this right-of-way. No such signs shall obstruct vehicular sight distances.

§ 120-706. Signs permitted in commercial districts.

- A. On-premises signs. Outdoor advertising signs shall be permitted on each premises in the commercial district and shall conform to the following standards:
 - (1) One wall sign may be affixed to the exterior of a building for the principal use that will occupy the building where the maximum gross display area shall not exceed 10% of the wall area to which it is attached or 100 square feet, whichever is greater.
 - (2) In those instances where two principal uses will occupy the building, the gross display area shall be the area of both signs added together. Where additional tenants will occupy the building, in addition to the principal use or uses, one wall sign may be affixed to the exterior of the building for each additional tenant, and the maximum gross display area of the wall sign shall not exceed 100 square feet.
 - (3) In addition to the allowed wall-mounted signage, one freestanding sign may be affixed to the premises. Any freestanding sign will be limited to a maximum area of 100 square feet, unless the additional criteria of this § 120-706 are met. A premises with frontage on two public ways will be permitted a freestanding sign on each way. A premises with frontage in excess of 400 feet on a public way may have two freestanding signs.
 - (4) A maximum of two banners shall be allowed with a maximum of 64 square feet total area, with

an annual permit, from the effective date of this amendment. Such banners shall be firmly affixed to the building. Where a building houses one business, a maximum of two banners may be placed on the entire building. Where a building houses more than one business, banners shall be limited to 32 square feet per business. All banners require a sign permit.

- (5) Freestanding signs shall be permanently affixed to said premises. For each premises containing more than one commercial tenant, one freestanding sign of not more than 100 square feet identifying the tenants of said premises will be allowed. In addition, one wall sign shall be allowed for the principal use where the maximum gross display area shall not exceed 10% of the wall area to which it is attached or 100 square feet, whichever is greater, and in those instances where additional tenants will occupy the building, in addition to the principal use or uses, one wall sign may be affixed to the exterior of the building for each additional tenant and the maximum gross display area of the wall sign shall not exceed 100 square feet. However, if a wall sign is not utilized, a roof sign of not more than 100 square feet shall be permitted for each tenancy thereof. For any premises containing more than 10 tenants, 10 square feet of additional sign area is allowed for each tenant up to a maximum of 150 square feet on any on-premises freestanding sign. If a premises contains more than 10 tenants, then the increase in sign area of 10% for design excellence does not apply. For purposes of this section, "on-premises" shall be construed to include the right-of-way giving access to parcels not located on a public right-of-way. Multiple advertising displays may be grouped together to be counted as one sign assembly. Premises under the same ownership having more than one structure are permitted a separate wall or roof sign of not more than 100 square feet for each tenancy thereof. To encourage design excellence, the maximum sign area for certain business, industrial, marquee, and directory signs may be increased by 10% if one or more of the following conditions are met:
 - (a) Ground signs.
 - [1] When the sign is constructed of solid wood.
 - [2] When a directory sign utilizes uniform coloring and lettering for all establishments listed.
 - [3] When the sign is installed in a landscaped planter that is four times the area of the sign.
 - [4] When the sign is not designed with and does not use illumination. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**
 - (b) Wall signs.
 - [1] When the sign is not designed with and does not use illumination. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**
 - [2] When the sign is constructed of solid wood.
 - (6) Freestanding signs near residential districts. Such signs may be located on any part of the premises, unless otherwise prohibited, except that insofar as possible no sign shall be constructed or oriented in such a manner as to face an adjoining lot in a farm or residential district and no sign shall be constructed in the rear yard or side yard of any premises where the rear property line or side property line abuts a lot in a farm or residential district.
- B. Content of sign in commercial district. Signs in business or commercial districts may only identify the occupant of the premises and advertise the services or products available within said premises and

may in addition advertise events and public services. Clocks and thermometers may be incorporated into a sign. The letters of displays or signs may be changed from time to time by the occupant without a permit as long as there is otherwise no violation of this chapter.

- C. Menu signs. Menu signs are permitted on premises when serving drive-through windows and are intended to be read from inside a motor vehicle while in line for drive-through service and shall be limited to 30 square feet in area.
- D. Specification of signs in commercial districts. Unless otherwise provided, freestanding signs shall conform to the following:
- (1) Maximum gross display area shall not exceed 100 square feet measured from the top of the topmost display elements to the bottom of the lowest display elements, including any blank space between the elements. Supports under the lowest display elements shall not be included in the maximum square footage calculation.
 - (2) Maximum elevation above finished grade: 20 feet.
 - (3) Maximum width: 16 feet.
 - (4) Minimum lot line setback: 50 feet from Residential, Farm, Farm-Residential, Medium-Density Residential, and Light-Density Residential Districts.
 - (5) Maximum height above eave or flat roofline for a roof sign: four feet, but the top of such shall not be higher than 20 feet from the ground.
 - (6) Except as otherwise provided, wall signs shall also conform to the following:
 - (a) Maximum gross display area shall not exceed 10% of the wall area to which it is attached or 100 square feet, whichever is greater. Where two signs are utilized, the gross display area shall be the area of both signs added together.
 - (b) No wall sign shall extend beyond the wall to which it is attached or party wall separating occupancies.
- E. Theater marquees. One theater marquee no larger than 60 square feet shall be allowed on the premises or entrance to the premises of a theater or group of theaters sharing a premises.
- F. Commercial subdivision signs. **[Amended 6-28-2016 by Order 16-114]**
- (1) Except as otherwise provided in this Subsection F, a commercial subdivision sign shall comply with all the requirements of this § 120-706. A commercial subdivision sign shall be deemed an on-premises, freestanding sign, not a billboard.
 - (2) Commercial subdivision signs shall be permitted only in the C-1, C-2, C-3, I, and VC Districts.
 - (3) The maximum gross display area of a commercial subdivision sign shall be 32 square feet. At least 10% of the gross display area shall be devoted to identifying the commercial subdivision by name (or by generic description such as "office park" or "shopping center" if no name has been assigned). The remaining gross display area may be used only to identify and advertise uses within or with direct access, or in the case of a public agency access, through the commercial subdivision, and must be located below the name of the development. Before the Code Enforcement Officer issues a permit for a commercial subdivision sign, the Addressing Officer in coordination with the Town Planner and Fire-Rescue Chief must determine that the

name of the commercial subdivision is not identical to or likely to be confused with the name of any other development already existing in Windham.

- (4) Notwithstanding § 120-706A(5), no lot within a commercial subdivision which utilizes a commercial subdivision sign may contain more than one freestanding sign, except that the lot on which the commercial subdivision sign is located may contain both the commercial subdivision sign and one other freestanding sign otherwise allowed by this chapter.
 - (5) A commercial subdivision sign must be located on property within the commercial subdivision which abuts the arterial, collector or controlled access street, must be visible from said street and must be located at or near the driveway or street entrance to the commercial subdivision in order to direct motorists to that entrance. When a commercial subdivision abuts and has a driveway or street entrance from more than one arterial, collector or controlled access street, the Planning Board may approve one commercial subdivision sign at or near the driveway or street entrance from each of the arterial, collector or controlled access streets for a total of two commercial subdivision signs.
 - (6) Commercial subdivision signs shall comply with all applicable setback requirements, except that no setbacks shall be required from property lines separating lots within the commercial subdivision from one another or from common areas (other than streets), and no setbacks shall be required from boundaries of leasehold or easement interests (other than streets) within the commercial subdivision.
 - (7) If provided, electrical service to a business directory sign must be by underground wiring only.
 - (8) Each owner of a lot or unit of occupancy which is identified or advertised on a commercial subdivision sign shall be responsible for any violations of this chapter arising out of the erection or maintenance of the commercial subdivision sign and shall be deemed an owner of the sign under § 120-703 of this article. The Town may enforce the provisions of this article against any or all such owners.
- G. Bay signs. Signs located over garage doors not over six square feet in area which identify the service available therein are permitted.
- H. Enterprise Development (ED) District signs. A freestanding sign not exceeding 32 square feet which identifies the name of the subdivision or development may be erected at the entrance to an Enterprise Development (ED) District, which road or roads front on a major street, and if a directory to businesses is used, the total square footage of the signage may not exceed 60 square feet.
- I. Customer directional signs. In those instances where one or two principal uses will occupy a building, and the principal use has accessory uses associated with said principal use, customer direction signs may be allowed for each accessory use, provided that only one customer direction sign shall be allowed for each accessory use within the building, and the maximum display area of the wall sign shall not exceed 64 square feet. Customer direction signs shall be firmly affixed to the building's facade and located directly above the entrance that will provide customer access to that portion of the building where the accessory use is to be located.

§ 120-707. Signs permitted in industrial districts.

Signs in an industrial district shall conform to the specifications of signs in the commercial districts.²⁸

28. Editor's Note: Original Sec. 708, Signs Permitted in Business Park Districts, of the 1991 Code, which immediately followed this

§ 120-708. Signs permitted in all residential districts.

- A. On-premises signs for commercial/recreational uses. Outdoor advertising signs shall be permitted on each premises of a permitted commercial or recreational use in the Farm District and all residential districts. Up to two signs may be affixed to the exterior of a building and one freestanding sign may be affixed to the premises, totaling no more than three signs with a maximum aggregate square footage of 32 square feet. Freestanding signs shall not exceed 24 square feet or six feet in height or five feet in width. For the purpose of this article, a home occupation shall not be considered a commercial or recreational use.
- B. Businesses, excluding home occupations, shall be allowed a maximum of one banner totaling not more than 32 square feet, with an annual permit from the effective date of this amendment. Such banners shall be firmly attached to the building. All banners require a sign permit.

§ 120-709. Off-premises signs permitted in all districts. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

- A. Business directional signs. No off-premises signs shall be permitted in any district except two off-premises official business directional signs pursuant to 23 M.R.S.A. §§ 1901 through 1925, as amended and enforced by the Maine Department of Transportation, or unless otherwise provided for in this chapter. Temporary directional signs for new businesses shall also be permitted in accordance with regulations adopted pursuant to 23 M.R.S.A. §§ 1901 through 1925. The applicant for an official business directional sign shall provide certification from the Code Enforcement Officer that the proposed sign is in conformity with all applicable municipal sign ordinances.
- B. Points of scenic, historical, cultural, recreational, educational or religious interest may be allowed a maximum of four signs each, not to exceed 32 square feet each. Each such point of interest shall be credited with five square feet in area toward the total sign size allowed.
- C. Categorical signs. Categorical signs as defined by 23 M.R.S.A. § 1913-A, as amended, shall be permitted in any zone without permit except as otherwise provided for in this article. Categorical signs shall not exceed 32 square feet in area.
- D. Special intracommunity service signs. Special intracommunity service signs as permitted by policy of the Maine Department of Transportation shall be permitted in any zone without permit.

§ 120-710. Temporary signs.

- A. Defined. A "temporary sign" is one which is designed for and intended to be moved from place to place and is not permanently affixed to land, buildings or any other structures. Temporary signs shall be in addition to any sign permitted by this article.
- B. Temporary signs permitted. One temporary advertising sign up to 32 square feet shall be permitted in any district in connection with a legally permissible business conducted on the premises for up to 90 days in any calendar year. Any business that allows a temporary sign to remain in place more than the 90 days allowed by this subsection will not be issued a permit the following year.
- C. Conversion of temporary signs. Temporary signs may be converted to permanent use by being permanently affixed to the premises. The resulting sign must comply with all other sections of this chapter and all applicable building codes.

section, was repealed at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

§ 120-711. Signs prohibited in all districts.

- A. Over rights-of-way. No sign shall project over a public right-of-way.
- B. Moving parts. No sign shall have visible moving parts, blinking, moving or glaring illumination.
- C. Banners, pennants, ribbons, streamers, spinners or other similar devices that contain advertisements, except as provided for in § 120-702 of this article.
- D. String of lights. A string of lights shall not be used for the purpose of advertising or attracting attention as an integral part of a permitted sign.
- E. Billboards. Billboards are prohibited in all zones.
- F. Banners. No banners, streamers, pennants, ribbons, spinners or similar devices shall be constructed or erected within or over a public way without approval from the Code Enforcement Officer.
- G. Floodplains. No freestanding sign shall be erected in a floodplain.
- H. Location; relation to public way. No on-premises signs shall be permitted within the full width of the right-of-way of any public way.
- I. Terminated business. On-premises signs shall not be permitted for any business which has not been conducted on the premises for a period of one year or longer.
- J. Signs located on registered and inspected motor vehicles or trailers which are determined by the Code Enforcement Officer to be circumventing the intent of this chapter are prohibited. Circumvention shall include, but not be limited to, signs which are continuously in the same location or signs which are placed on the above to circumvent this chapter.
- K. Inflatable signs. All exterior inflatable advertising signs.

§ 120-712. Exemptions. [Added 5-14-2024 by Order No. 24-052]

- A. Murals are exempt from the restrictions of this article, except that:
 - (1) A large picture/image (including but not limited to painted art) that is painted or affixed directly onto a vertical building wall, which contains commercial text, logos, and/or symbols, shall be considered building-mounted signage and shall be limited as per the provisions of this article.
 - (2) A wall, facade, or surface that is used for a mural pertaining to the business on which it is located shall be counted as one sign.
 - (3) The mural shall not create an unreasonable distraction for drivers of motor vehicles due to its proximity to the street, as determined by the Code Enforcement Officer, if the mural is visible from any public street or private road.
 - (4) The appropriate building permit has been issued, if required.

ARTICLE 8
Site Plan Review

§ 120-801. Purpose.

The site plan review provisions set forth in this article are intended to protect the public health and safety, promote the general welfare of the community, and conserve the environment by assuring that nonresidential and multifamily construction is designed and developed in a manner which assures that adequate provisions are made for traffic safety and access; emergency access; water supply; sewage disposal; management of stormwater, erosion, and sedimentation; protection of the groundwater; protection of the environment, wildlife habitat, fisheries, and unique natural areas; protection of historic and archaeological resources; minimizing the adverse impacts on adjacent properties; and fitting the project harmoniously into the fabric of the community.

§ 120-802. Applicability. [Amended 12-14-2010 by Order 10-231; 6-12-2018 by Order 18-099; 10-13-2020 by Order 20-211; 3-28-2023 by Order No. 23-041; 4-29-2025 by Order No. 25-043]

- A. A person who has right, title, or interest in a parcel of land shall obtain site plan approval prior to commencing any of the following activities on the parcel, obtaining a building or plumbing permit for the activities, or undertaking any alteration or improvement of the site, including grubbing or grading:
- (1) The construction or placement of any new building or structure for a nonresidential **and residential** uses, including accessory buildings and structures, if such buildings or structures have a total area for all floors of all structures of 1,000 square feet or more measured cumulatively over a five-year period.
 - (2) The expansion of an existing nonresidential building or structure, including accessory buildings, if the enlargement increases the total area for all floors within a five-year period by more than 20% of the existing total floor area or 1,000 square feet, whichever is greater.
 - (3) The conversion of an existing building in which 1,000 or more square feet of total floor area are converted from residential to nonresidential use.
 - (4) The establishment of a new nonresidential use, even if no buildings or structures are proposed, that involves the development of more than 25,000 square feet of land. This includes uses such as gravel pits, cemeteries, golf courses, and other nonstructural, nonresidential uses.
 - (5) The conversion of an existing nonresidential use, in whole or in part, to another nonresidential use if the new use changes the basic nature of the existing use such that it increases the intensity of on- or off-site impacts of the use subject to the standards and criteria of site plan review described in § 120-812 of this article.
 - (6) Multifamily development.
 - (7) The modification or expansion of an existing residential structure that increases the number of dwelling units in the structure by **five** or more in any five-year period.
 - (8) The conversion of an existing nonresidential building or structure, in whole or in part, into **five** or more dwelling units within a five year period.
 - (9) The cumulative development of an area equal to, or greater than, one acre within any five-year period. The applicability of this subsection does not include the construction of streets that are

Commented [BM20]: Note that in the MOCA regs, "planning board review" does not mean site plan review. So site plan review can still be required as before. But other *types* of planning board review can't be required. Given this, would we like to still require site plan review, and if so, would that include triplexes and quadplexes?

Commented [BM21]: These have been amended to conform to the new standard for subdivision. The question is whether the Town wants site plan review for any multi-unit development that is not a subdivision. You're still permitted to do this.

reviewed as part of a subdivision application under the standards of Article 9 of this chapter. For developments of less than one acre, the standards of Chapter 201, Stormwater Management, Article I, Surface Water Protection, may apply.

- B. The following activities shall not require site plan approval. Certain of these activities will, however, require the owner to obtain a building permit, plumbing permit or other state or local approvals:
- (1) The construction, alteration, or enlargement of a single-family or two-family dwelling, including accessory buildings and structures.
 - (2) The placement, alteration, or enlargement of a **up to two** manufactured housing or mobile home dwelling, including accessory buildings and structures on individually owned lots.
 - (3) Agricultural activities, including agricultural buildings and structures, and farm enterprise.
 - (4) Timber harvesting and forest management activities.
 - (5) The establishment and modification of home occupations.
 - (6) Activities involving nonresidential buildings or activities that are specifically excluded from review by the provisions of this article.

§ 120-803. Review and approval authority.

- A. Application classification. The review and approval authority for site plans shall depend on the classification of the project:
- (1) Major developments. The Planning Board is authorized to review and act on all site plans for major developments. In considering site plans under this article, the Planning Board may act to approve, disapprove, or approve the project with such conditions as are authorized by this article.
 - (2) Minor developments. The Staff Review Committee is authorized to review all site plans for minor developments and may approve, disapprove, or approve the project with such conditions as are authorized by this article. In addition, the Committee may reclassify a minor development as a major development, due to the scope or anticipated impacts of a project, and forward it to the Planning Board with its recommendations for Planning Board action. (See § 120-805, Classification of projects.)
- B. Staff Review Committee established. There is hereby created a Staff Review Committee. The Staff Review Committee shall consist of the Director of Planning (Planner), Director of Code Enforcement, Fire-Rescue Chief, Director of Public Works, or their designees, and a designee of the Town Manager.
- C. Operation of the Staff Review Committee. The Planner shall serve as Chair of the Staff Review Committee and shall be responsible for calling meetings of the Committee, presiding at its meetings, and maintaining the records of the Committee. In the absence of the Planner or his/her designee, the Director of Code Enforcement shall serve as Chair Pro Tem.
- (1) Attendance. If any member of the Staff Review Committee is unable to attend any meeting of the Committee, he/she shall designate another member of that department to serve in his/her place. Such designation shall be in writing and shall apply only to that meeting. This designee shall have the same power and authority as the member.

- (2) Meeting dates. The Staff Review Committee shall meet once each month as needed. The Committee may schedule additional meetings, as needed.
 - (3) Advertisement. Meetings of the Committee shall be advertised in the same manner as those of other Town committees and shall be open to the public.
 - (4) Vacancy. If a vacancy exists in any of the positions serving on the Committee, the Town Manager shall name an interim committee member with appropriate expertise in the respective department, until such vacancy is filled.
 - (5) Quorum. A quorum is necessary to conduct any official meeting of the Committee, and a quorum shall consist of at least three members.
 - (6) Voting. A majority vote of the quorum is required to constitute an action (passage or denial) on any motion before the Committee. Should a Committee member need to be recused due to a conflict once a quorum is established and a meeting is in session, the meeting may proceed and the Committee may take action on any motion before the Committee with fewer than three voting members present. In this event, the applicant shall have the right to have a vote postponed to the next Committee meeting.
 - (7) Minutes. The Staff Review Committee shall keep a record of its proceedings.
- D. Attendance of applicant. The Planning Board or Staff Review Committee shall not review any site plan application unless the applicant, or his duly authorized representative, attends the meetings for which the application has been placed on the agenda. Should the applicant or applicant's representative fail to attend, the Planning Board or Staff Review Committee shall reschedule the review of the application to its next available meeting.
- E. No vote if violation exists. No site plan shall be approved by the Planning Board or Staff Review Committee as long as the applicant is in violation of the provisions of a previously approved site plan, subdivision plan, building permit, Shoreland Zoning permit or other approval, applicable storm drainage system requirement, stormwater management permit or Board of Appeals approval or has been found in violation due to the applicant's failure to get any required approvals under any of these ordinances or requirements within the municipality. **[Amended 10-24-2023 by Order No. 23-193]**

§ 120-804. Joint application and hearing.

If an application requires any combination of site plan review, subdivision review, or conditional use approval, the procedures for all applicable application reviews shall be met in order to initiate the fair hearing process. The procedures for the applicable reviews may occur simultaneously.

§ 120-805. Classification of projects. [Amended 8-26-2014 by Order 14-313; 12-12-2024 by Order No. 24-173; 4-29-2025 by Order No. 25-043]

- A. The Planner shall classify each project as a major or minor development. "Minor developments" are smaller-scale projects for which a minor review process is adequate to protect the Town's interest. "Major developments" are larger, more complex projects for which a more detailed review process and additional information are necessary, or are projects subject to Chapter 185 (Shoreland Zoning) that require site plan review by the Planning Board [see § 185-14]. The following thresholds shall be used by the Planner in classifying each project. However, the Planner may, due to the scope or anticipated impacts of a project, classify any project as a major development.

- (1) Minor developments shall include those projects involving:
- (a) The cumulative construction or addition of fewer than 5,000 square feet of gross nonresidential floor area.
 - (b) Any individual or cumulative construction or addition of 5,000 square feet or more of gross nonresidential floor area within an approved subdivision.
 - (c) The establishment of a new nonresidential use, even if no buildings or structures are proposed, that involves the development of more than 25,000 square feet but less than one acre of land.
 - [1] In making its determination to allow a waiver from the flooding standard due to insignificant increases in peak flow rates, the Town Board shall consider cumulative impacts, if additional information is required to make a determination concerning increased flow.
 - [2] The Town may consider cumulative impacts due to runoff from other projects when applying this standard to any wetland.
 - [3] Discretionary authority. Notwithstanding compliance with the PBR requirements and standards set forth in this section, the Town may require that an individual stormwater permit be obtained in any case where the Department determines that the activity:
 - [a] May violate the standards of the Stormwater Management Law or this chapter;
 - [b] Could lead to significant environmental impacts, including cumulative impacts;
~~or~~
 - [c] Could have an unreasonable adverse impact on a protected natural resource.
- (2) Major developments shall include projects involving:
- (a) The individual or cumulative construction or addition of 5,000 or more square feet of gross nonresidential floor area on a lot that is not part of an approved subdivision;
 - (b) Projects involving the creation of five or more dwelling units in a five-year period;
 - (c) The individual or cumulative development of one acre or more land, unless the development is part of a site plan application in an approved subdivision [see § 120-805A(1)(b) above];
 - (d) Projects that also require subdivision (see Article 9) or conditional use approval (see Article 5);
 - (e) Other projects requiring review which are not classified as a minor development; or
 - (f) Any projects involving uses governed by Chapter 185 (Shoreland Zoning) and are permitted with site plan approval by the Planning Board [see § 185-14]. Such projects shall be classified as major developments [see 120-805 below].
- (3) An applicant may request that the Planner classify an application prior to its submission. In this case, the applicant shall make a written request for a classification. This request shall include the following information:
- (a) The names and addresses of the record owner and the applicant and the applicant's legal

Commented [BM22]: Is the goal here to exempt **all** AHDs from Planning Board review, or just those with 3 or 4 units? If the latter, then this should be deleted.

interest in the property.

- (b) The location of the project, including the Tax Map and lot number.
- (c) A brief description of the proposed activities in such detail as to allow a classification to be made.
- (4) When the Planner classifies a project based upon a request for classification rather than an application, the subsequent application shall be consistent with the activities described in the request for classification. The Planner shall review such application to determine if the classification is still correct and may reclassify the application if the scope of activities has been changed.

B. Within 10 working days of the receipt of a site plan application or a request for a classification, the Planner shall notify the applicant and the Chair of the Planning Board of the classification of the project in writing.

§ 120-806. Review procedures for minor developments. [Amended 2-14-2012 by Order 12-016; 7-8-2014 by Order 14-223; 3-26-2019 by Order 19-020; 9-23-2025 by Order No. 25-126]

A. Preapplication conference. Applicants for site plan review of a minor development shall meet with the Planner for a preapplication conference at least seven calendar days prior to the submission of each application. The purpose of this meeting is to familiarize the applicant with the review procedures, submission requirements, and approval criteria, and to familiarize the Planner with the nature of the project. Such review shall not cause the plan to be a pending application or proceeding under 1 M.R.S.A. § 302. No decisions relating to the application may be made at this meeting.

- (1) Such review shall not cause the plan to be a pending application or proceeding under 1 M.R.S.A. § 302. No decisions relative to the plan may be made at this meeting.
- (2) To request a preapplication conference, the applicant shall submit, at a minimum, a brief narrative describing the project, the location of the project on a US Geologic Survey (USGS) topographic map, and a copy of the Tax Map showing the development parcel.

B. Application procedure.

- (1) All minor site plan applications shall include all required submission materials and shall be submitted to the Planning Department. The application will not be placed on the Staff Review Committee agenda until it has been determined complete by the Planning Department as specified in this article.
- (2) Within 30 working days of receipt of an application for a minor site plan, the Planner shall review the material to determine whether or not the submission is complete.
 - (a) If submission requirement waivers are requested, the Planner shall review the requests and make a recommendation to the Staff Review Committee.
 - (b) The Planner shall notify the applicant and the Chair of the Planning Board, in writing, of the finding of completeness. If the Planner determines that the application is incomplete, the notice shall specify the additional material required to make the submission complete, and shall advise the applicant that the application will not be considered by the Staff Review Committee until the application is complete.

- (c) If the application is determined to be complete, the Planner shall:
- [1] Notify members of the Staff Review Committee that the application is complete.
 - [2] Notify the Chair of the Planning Board that the application is complete.
 - [3] Place the item on the agenda for review by the Staff Review Committee.
 - [4] Notify the owners of property within 500 feet of the property under review at least seven days prior to the first meeting at which the project is to be reviewed. Notices shall be sent, at a minimum, via first-class mail.
 - [a] The notice shall:
 - [i] Contain a brief description of the proposed activity and the name of the applicant;
 - [ii] Advise the party that a copy of the application is available for inspection and that written comments on the application will be received and considered by the Staff Review Committee; and
 - [iii] Provide the date, time, and place of the Committee meeting at which the application will be considered.
 - [b] Failure of any abutter to receive such notice shall not be grounds for delay of any consideration of the application nor denial of the project.
- (d) A determination of completeness under this subsection does not preclude the Staff Review Committee from requiring the submission of additional materials that it finds are necessary for review of the project.
- C. Site walk determination. The Planner may schedule a site walk to familiarize the Staff Review Committee with the project site.
- (1) The site walk shall be scheduled by the Planner and shall be attended by the applicant and/or the applicant's representative and members of the Staff Review Committee.
 - (2) All property owners within 500 feet of the property under review shall be notified, in writing, of the time and date of the site walk.
 - (3) The applicant shall stake the center line of the access drive and the corners of any proposed structures and provide a sketch plan (on a sheet 11 inches by 17 inches) of the project for each member of the Staff Review Committee at the site walk.
- D. Staff Review Committee meeting.
- (1) The applicant and/or his/her representatives shall be allowed to make a presentation on the application, address any comments made by the staff or public, and present any proposed revisions to address these issues.
 - (2) The Staff Review Committee shall determine whether to hold a public hearing on the application. If a hearing is not scheduled, the Committee may choose to accept comment on the application during any scheduled meeting.
 - (3) If the Committee decides to hold a public hearing, notice of the time, place and date of such

hearing shall be sent not less than seven days before the hearing to the applicant and to owners of all properties within 500 feet of the property(s) involved. Owners of properties within 500 feet of the property under review shall be those listed in the most recent tax records of the Town of Windham. Failure to receive notice shall not invalidate the public hearing. Notice shall also be published in a newspaper of general circulation in the Town of Windham at least two times, and the first date of publication shall be at least seven days prior to the public hearing.

- (4) The Staff Review Committee shall make findings of fact on the application and approve, approve with conditions, or deny the application. The Committee shall specify, in writing, its findings of fact and reasons for any conditions or denial. The applicant, Chair of the Planning Board, and any abutters who commented on the application or attended the Committee meeting shall be notified, in writing, of the Committee's action. An approval letter from the Planning Department shall constitute adequate notification.
- (5) The Staff Review Committee shall require qualified independent geotechnical, hydrogeologic, site evaluation, engineering, and similar professional consulting services to determine adherence to best practices in planning and engineering when any portion of the development is within the direct watershed of a lake most at risk from new development as designated in Chapter 502, Direct Watersheds of Lakes Most at Risk from New Development, and Urban Impaired Streams, of the Maine Department of Environmental Protection. The project shall be reviewed in compliance with the stormwater standards included in the Maine Department of Environmental Protection Chapter 500, including basic, general, phosphorus, flooding, and other standards.²⁹ The review shall also ensure compliance with performance standards contained in § 120-812E, F, H, J, and K of this chapter. The review shall include attendance at any scheduled Staff Review Committee site walk.

E. Appeal to the Planning Board.

- (1) Any party aggrieved by the decisions of the Staff Review Committee may seek an appellate review by the Planning Board. The appellant shall have 10 days in which to file such an appeal with the Chair of the Planning Board. The appeal shall be submitted, in writing, to the Planning Department and shall specify why the appellant believes the action of the Staff Review Committee was in error.
- (2) If an appeal is filed, the application shall be placed on the agenda in accordance with the most current rules of the Planning Board.
 - (a) The appeal shall be placed on the agenda in the order it was received in relation to other applications filed with the Board.
 - (b) The appellant, applicant, and any interested parties who provided written comments or attended a Committee meeting shall be notified, in writing, of the Board meeting.
 - (c) The Planner shall provide members of the Board with copies of the application, supporting material, any staff review comments, abutters' comments, and minutes of the Staff Review Committee meeting at which the application was considered.
- (3) The Board shall review the existing record of materials on an appellate basis and shall determine if the application conforms to the approval criteria and standards.

²⁹. Editor's Note: See 06-096 CMR Chs. 500 and 502.

- (a) If the Board finds that the application conforms to the standards, it shall approve the application; otherwise, it shall deny the same.
- (b) The Planner shall give notice of the Planning Board's action to the appellant, applicant, and any interested parties who participated in the review.

§ 120-807. Review procedures for major developments. [Amended 2-14-2012 by Order 12-016; 7-8-2014 by Order 14-223; 3-26-2019 by Order 19-020; 6-16-2022 by Order No. 22-108; 10-24-2023 by Order No. 23-193; 4-29-2025 by Order No. 25-043; 9-23-2025 by Order No. 25-126]

- A. Preapplication conference. Applicants for site plan review of a major development shall meet with the Planner for a preapplication conference at least seven calendar days prior to the submission of each application. The purpose of this meeting is to familiarize the applicant with the review procedures, submission requirements, and approval criteria, and to familiarize the Town with the nature of the project. Such review shall not cause the plan to be a pending application or proceeding under 1 M.R.S.A. § 302. No decisions relating to the plan may be made at this meeting.
- B. Information required. To request a preapplication conference, the applicant shall submit, at a minimum, a brief narrative describing the project, the location of the project on a US Geologic Survey (USGS) topographic map, and a copy of the Tax Map showing the development parcel. The applicant should be prepared to discuss the following:
 - (1) The proposed site, including its location, size, and general characteristics;
 - (2) The nature of the proposed use and potential development;
 - (3) Any issues or questions about existing municipal regulations and their applicability to the project; and
 - (4) Any requests for waivers from the submission requirements in § 120-811. (See also § 120-808, Waivers.)
- C. Sketch plan. Applicants for projects classified as major developments shall submit a sketch plan for Planning Board review.
 - (1) The sketch plan shall be completed prior to the preparation and submission of a final site plan application and supporting documentation.
 - (2) The Planning Board shall review the sketch plan with the applicant and shall authorize the submission of the final plan application when the sketch plan review is complete.
- D. Sketch plan review procedures.
 - (1) All sketch plan review applications shall include all required submission materials and shall be submitted to the Planning Department. An application will not be placed on a Planning Board agenda until it has been determined complete by the Planning Department as specified in this Article. The Planning Department shall have up to 30 calendar days from the date of submission to determine completeness.
 - (2) Site walk. The Planning Board may visit the site to observe existing conditions, generally confirm the information submitted, and assess the development proposal. (See "Rules of the Windham Planning Board.")
 - (a) The Board may schedule the site walk either before or after the first meeting at which the

application is considered.

- (b) The applicant shall prepare the property for the site walk by staking the center line of any proposed street or access points and the corners of all proposed buildings. The applicant shall also provide each Board member with a copy of the plan on a sheet 11 inches by 17 inches at the site walk.
 - (c) The Board may decide not to hold, or postpone, a site walk when the site is snow-covered.
 - (d) Notice of the site walk shall be published in a newspaper of general circulation, mailed to the applicant and property owners within 500 feet of the property under review. Notices shall be published and/or sent at least seven days prior to the site walk.
- E. Review of the sketch plan. The review of the sketch plan shall be informational and shall not result in any formal approval or disapproval of the project by the Planning Board.
- (1) The applicant and property abutters shall be notified of the time, date, and place of the Board meeting at which the sketch plan will be reviewed. The notice shall be published in a newspaper of general circulation, mailed to the applicant and property owners within 500 feet of the property under review. Notices shall be published and/or sent at least seven days prior to the meeting.
 - (2) The Board shall review the submission to determine if the information provides a clear understanding of the site and identifies opportunities and constraints that help determine how it should be used and developed.
 - (3) The Board may consider any input from Town staff or Town consultants.
 - (4) The Board may choose to accept public comment on any sketch plan. The Board's option to accept public comment shall be noted on the meeting agenda.
 - (5) The outcome of the review process shall be the identification by the Board of the issues and constraints that shall be addressed in the final site plan review application.
 - (6) The Board shall act on any requests for waivers from the final site plan submission requirements.
- F. Final site plan review procedures.
- (1) As part of the final site plan submission, the applicant shall state whether the following approvals are required and shall provide a copy of any such approval that the applicant has received, unless the Board will be performing delegated review authority for the applicable permits (i.e., Site Law or Stormwater Law). If the applicant has not received a required approval, it shall include the status of the pending approval and evidence of receipt of the required approval shall be included as a condition of Town approval. If the Board is unsure whether a permit or license from a federal, state or local agency is necessary, the applicant may be required to obtain a written opinion from the appropriate agency as to the applicability of their regulations.
 - (a) Site Law permit.
 - (b) Maine Department of Environmental Protection, under the Natural Resources Protection Act³⁰ or Stormwater Law, or if an MEPDES wastewater discharge license is needed.

- (c) Maine Department of Transportation, for a traffic movement permit and/or highway entrance/driveway access management permit outside of the Urban Compact.
 - (d) Town of Windham Public Works Department for a curb cut permit inside the Urban Compact (see § 120-522, Curb cuts and driveway openings, in Article 5, Performance Standards).
 - (e) The Portland Water District if existing or proposed public water or sewer service is to be used.
 - (f) Maine Department of Health and Human Services if a central water supply system is to be used.
 - (g) A Maine licensed professional civil engineer if individual wells serving each building site are to be used. The Board may also require the applicant to submit the results of water quality tests as performed for, or by, the State of Maine Department of Health and Human Services.
 - (h) Maine Department of Health and Human Services if an engineered sewage collection and treatment system is to be utilized.
 - (i) The Plumbing Inspector if individual septic tanks are to be installed by the builder.
 - (j) United States Army Corps of Engineers, if a permit under Section 404 of the Clean Water Act is required.³¹
 - (k) Written approval of any proposed street names from the Town of Windham E911 Addressing Officer.
- (2) If the plan identifies any areas listed on or eligible to be listed on the National Register of Historic Places, the applicant shall submit a copy of the plan and a copy of any proposed mitigation measures to the Maine Historic Preservation Commission prior to submitting the final plan application.
- (3) All final site plan review applications shall include all required submission materials and shall be submitted to the Planning Department. Upon receipt of a formal site plan review application, the Planner shall give a dated receipt to the applicant. An application will not be placed on a Planning Board agenda until it has been determined complete by the Planning Department as specified in this article.
- (4) Within 30 days of the receipt of a formal development review application, the Planner shall review the material and determine whether or not the submission is complete. The Planner shall notify the applicant, in writing, of this finding. If the Planner determines that the application is incomplete, the notice 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.
- (5) When the Planner determines that the application is complete, the Planner shall notify the Planning Board, provide Town staff and Town consultants with the final plan application material, and place the item on the Planning Board's agenda. A determination of completeness

30. Editor's Note: See 38 M.R.S.A. § 480-A et seq.

31. Editor's Note: See 33 U.S.C. § 1344.

under this subsection does not preclude the Planning Board from requiring the submission of additional materials that it finds are necessary for review of the project. Where additional information is required by the Planning Board, the applicant must provide such information at least seven days before the Board's scheduled meeting. If such information is not provided within the required time period, the application shall not be heard by the Board until it has been provided.

- (6) Town staff, including Town consultants, may review the application and make recommendations to the Board. The Planner shall require qualified independent geotechnical, hydrogeologic, site evaluation, engineering, and similar professional consulting services to determine adherence to best practices in planning and engineering when any portion of the development is within the direct watershed of a lake most at risk from new development as designated in Chapter 502, Direct Watersheds of Lakes Most at Risk from New Development, and Urban Impaired Streams, of the Maine Department of Environmental Protection. The project shall be reviewed in compliance with the stormwater standards included in the Maine Department of Environmental Protection Chapter 500, including basic, general, phosphorus, flooding, and other standards.³² The review shall also ensure compliance with performance standards contained in § 120-812E, F, H, J, and K of this chapter. The review shall include attendance at any scheduled Planning Board site walk.
- (7) The Planner shall give written notice of the date, time, and place of the meeting at which the application will be considered to the applicant.
- (8) The Planning Board shall determine whether to hold a public hearing on the final plan.

G. Final site plan; public hearing procedures.

- (1) 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 chapter or other municipal ordinances.
- (2) Notice of the public hearing shall be published in a newspaper of general circulation, mailed to the applicant and property owners within 500 feet of the property under review. Notices shall be published and/or sent at least seven days prior to the public hearing.
- (3) The public hearing shall follow the procedures established in the Town of Windham's Planning Board Rules, as amended.

H. Final site plan; vote on application.

- (1) The Board shall make findings of fact on the application and approve, approve with conditions, or deny the application. The Board shall specify, in writing, its findings of fact and reasons for any conditions or denial.
- (2) The Board shall notify the applicant and abutters who requested to be notified of the action of the Board, including the findings of fact and any conditions of approval. This requirement can be met through the distribution of minutes of the meeting containing the findings of fact and conclusions of the Board.

32. Editor's Note: See 06-096 CMR Chs. 500 and 502.

§ 120-808. Waivers.

- A. Waiver of submission requirements. The Director of Planning or designee may waive any of the submission requirements of § 120-811 based upon a written request by the applicant. Such request shall be submitted at the time of the preapplication conference for minor developments or as part of the sketch plan application for major developments. A waiver of any submission requirement may be granted if the Director of Planning finds that the information is not required to determine compliance with the standards and criteria of this chapter. **[Amended 10-24-2023 by Order No. 23-193]**
- B. Waiver of site plan performance standards. The Planning Board may waive the requirements of § 120-812 if it finds that extraordinary and unnecessary hardships, not self-imposed, may result from strict compliance with the site plan review standards. In all cases, waivers shall not be deemed a right of the applicant, but rather shall be granted at the discretion of the Planning Board.
- (1) Procedure. The applicant shall submit a list of the requested waiver(s), in writing. For each waiver requested, the applicant shall submit answers to each of the criteria in § 120-808B(2) below. The Planning Board may request additional information to make a determination on a waiver request.
 - (2) Criteria. In granting a waiver, the Planning Board shall use the following criteria:
 - (a) The waiver will improve the ability of the project to take the site's predevelopment natural features into consideration. Natural features include, but are not limited to, topography, location of water bodies, surface drainage, location of unique or valuable natural resources, and relation to abutting properties or land uses.
 - (b) The waiver does not result in:
 - [1] Undue water or air pollution.
 - [2] Undue light pollution or glare.
 - [3] An inadequate water supply.
 - [4] Unreasonable soil erosion.
 - [5] Unreasonable traffic congestion or safety risk.
 - [6] Decreased pedestrian safety or access.
 - [7] Inadequate supply of parking spaces.
 - [8] Inadequate sewage disposal capacity.
 - [9] Inadequate solid waste disposal capacity.
 - [10] An adverse impact on scenic or natural beauty, aesthetics, historic sites, or rare or irreplaceable natural areas.
 - [11] Flooding or adverse drainage impacts on abutting properties.
 - (3) Recording of waivers of site plan performance standards. When the Board grants a waiver to any of the improvements required by these regulations, the final plan shall indicate the waivers granted. Waivers shall be listed in a separate location from either the plan's general notes or any conditions of approval. Waivers of the required application submissions do not need to be listed.

§ 120-809. Final approval and filing.

- A. Upon completion of the requirements of this article and an approval vote by the majority of the Planning Board members, or Staff Review Committee members, the application shall be deemed to have final approval.
- B. The applicant shall send an electronic version of the approved plans to the Planner for review. Within seven working days, the Planner shall review and confirm that the plan includes the conditions of approval, amendments, notes and other information as required by the Planning Board's, or Staff Review Committee's, final approval.
- C. Once confirmed by the Planner, the applicant shall provide the following items:
 - (1) One complete full size plan set with a signature block on the overall site plan sheet.
 - (2) One Mylar and one paper copy of the plan sheet containing the signature block.
 - (3) Any additional plan sheets with the signature block for the applicant's records, if desired by the applicant.
 - (4) A complete electronic copy of the site plan in a format acceptable to the Town.
 - (5) Revised GIS data with any changes made during the review process, if necessary.
- D. The site plan shall be signed by a majority of the members of the Planning Board or Staff Review Committee and shall be filed by the applicant with the Planner.
 - (1) Any plan not so filed with the Town within 30 days of the date upon which such plan is approved and signed by the Board as herein provided shall become null and void.
 - (2) The Planning Board, by vote, may extend the filing period for good cause.

§ 120-810. Fees. [Amended 8-20-2024 by Order No. 24-165; 4-29-2025 by Order No. 25-043]

- A. Sketch plan fee. Prior to submitting a sketch plan for a major development, the applicant shall pay the processing fee as set by the Town Council in the Windham Fee Schedule.
- B. Application fee. An application for site plan review shall be accompanied by an application fee. This fee is intended to cover the cost of administrative processing of the application, including notification, advertising, mailings, and similar costs. The fee shall not be refundable. This application fee shall be paid to the municipality, and evidence of payment of the fee shall be included with the application.
- C. Consulting, review and construction observation fees. Notwithstanding any other provision(s) of this chapter, Articles 1 through 12 (the "code"), to the contrary, and in addition to such fees as are otherwise specified by the code, the Town shall assess fees to cover 100% of its costs related to independent geotechnical, hydrologic, engineering, planning, legal, and similar professional consulting services incurred in the review and post-approval inspections of site plan applications. Such fees shall be subject to the following limitations:
 - (1) Such fees shall only be as expressly provided by this § 120-810C;
 - (2) Such consultation shall be limited to reasonable and necessary review, as allowed by the pertinent ordinance, which exceeds the expertise of Town staff or their ability to review the application materials within the time limits otherwise required by law or ordinance;

- (3) Such fees shall be assessed only to recover costs directly associated with review and post-approval inspection of the application submitted by the applicant to whom they are assessed;
 - (4) Such fees shall be reasonable in amount, based upon the consulting time involved and the complexity of the review;
 - (5) The results of the consultation for which such fees are assessed shall be available for public review, but such results shall be deemed to have been made solely for the benefit of the Town of Windham and shall remain its property; and
 - (6) Such fees shall be assessed for the privilege of review and shall be payable without regard to consultation results or the outcome of the application.
- D. An escrow account shall be established with the Town by the applicant to guarantee payment in advance of actual fees assessed pursuant to § 120-810C. The original deposit shall be an amount specific to the application, as accorded in the Town's Fee Schedule.³³ If the balance in the escrow account shall be drawn down by 75%, the Town shall notify the applicant and require that an additional amount be deposited to cover the cost of remaining work before any such remaining work is undertaken. The Town shall continue to notify the applicant and require that any such additional amount(s) be deposited whenever the balance of the account is drawn down by 75% of the original deposit. Any excess amount deposited with the Town in advance shall be promptly refunded to the applicant after final action on the application.
- E. Any dispute regarding the application of § 120-810C or the amount required to be paid, either in advance or upon completion, may be appealed, in writing, within 10 days to the Town Manager. The Town Manager, after due notice and investigation and for good cause shown, may affirm, modify, or reverse the disputed decision or reduce the amount assessed.
- F. In an effort to minimize the use of outside or independent consulting, the provisions of § 120-810C shall be subject to the following additional limitations:
- (1) The Planner, based on his/her work load and in his/her sole discretion, may immediately refer to outside or independent consulting any major site plan. The Town shall charge for this review based on the billing rates of the retained consultant. The first four hours of the review shall be paid for with the project's application fee. Review work beyond the initial four hours shall be paid for with the escrow established in § 120-810D above.
- G. Construction observation fee. At least five days prior to the commencement of construction, the applicant shall pay to the Town a construction observation fee. The fee shall be calculated and administered as follows:
- (1) The applicant's engineer/representative shall prepare a line-item cost estimate of all site improvements.
 - (2) The Town's consulting engineer shall review the cost estimate. This review shall be withdrawn from the escrow balance established in § 120-810D above.
 - (3) The applicant shall post with the Town an amount equal to 3% of the cost estimate for site improvements.

33. Editor's Note: The current Fee Schedule established by the Town Council is on file at the Town Clerk's office and available on the Town website.

- (a) If, and when, a construction observation will result in the Town exceeding the 3% of site improvements amount, the Town's consulting engineer will submit a written notice stating the reasons why the estimate is to be exceeded, and by how much.
 - (b) If the balance in the construction observation fee account shall be drawn down by 75%, the Town shall notify the applicant and require that an additional amount be deposited to cover the cost of remaining work before any such remaining work is undertaken. The Town shall continue to notify the applicant and require that any such additional amount(s) be deposited whenever the balance of the account is drawn down by 75% of the original deposit.
 - (c) Any and all unused observation fee funds shall be returned to the applicant.
- H. Section 120-810C shall be administered by the Planning Director or other Town employee responsible for administering the ordinance under which review is sought. No building permit or certificate of occupancy may be issued or released, and no construction of buildings or site preparation work may commence, until all fees assessed hereunder have been paid in full. For purposes of this subsection, "site preparation work" shall include, but not be limited to: land preparation such as tree clearing, grubbing, grading, and filling; installation of streets and walkways; or excavation of any kind (except for test-pits).
- I. Establishment of fees. The municipal officers may, from time to time and after consultation with the Board, establish the appropriate fees following posting of the proposed schedule of fees and public hearing.

§ 120-811. Submission requirements. [Amended 11-28-2017 by Order 17-347; 6-16-2022 by Order No. 22-108; 5-23-2023 by Order No. 23-092; 4-29-2025 by Order No. 25-043]

A. Sketch plan submission requirements.

- (1) The sketch plan is intended to provide both the applicant and the Planning Board/Staff Review Committee with a better understanding of the site and the opportunities and constraints imposed on its use by both the natural and built environment. It is anticipated that this analysis will result in a development plan that reflects the conditions of the site; those areas most suitable for the proposed use will be utilized, while those that are not suitable or present significant constraints will be avoided to the maximum extent possible. Therefore, the submission requirements provide that the applicant submit basic information about the site and an analysis of that information.
- (2) The sketch plan submission shall contain, at a minimum, five copies of the following information, including full-size plan sets, along with one electronic version of the entire submission unless a waiver of a submission requirement is granted (see § 120-808, Waivers):
 - (a) A complete sketch plan application form.
 - (b) A narrative describing the existing conditions of the site, the proposed use and the constraints or opportunities created by the site. This submission should outline any traffic studies, utility studies, market studies or other applicable work that will be conducted as part of the final plan application.
 - (c) The names, addresses, and phone numbers of the record owner and the applicant.
 - (d) The names and addresses of all consultants working on the project.

- (e) Evidence of right, title, or interest in the property.
 - (f) Evidence of payment of the application and escrow fees.
 - (g) Any anticipated requests for waivers from the submission requirements for the final site plan review application (see § 120-808, Waivers).
 - (h) An accurate scale plan of the parcel, at a scale of not more than 100 feet to the inch, showing at a minimum the following information:
 - [1] The name of the development, North arrow, date and scale.
 - [2] The boundaries of the parcel.
 - [3] The relationship of the site to the surrounding area.
 - [4] The topography of the site at an appropriate contour interval depending on the nature of the use and character of the site (in many instances, submittal of the applicable USGS ten-foot contour map will be adequate);
 - [5] The approximate size and location of major natural features of the site, including wetlands, streams, ponds, floodplains, groundwater aquifers, significant wildlife habitats and fisheries or other important natural features (if none, so state).
 - [6] Existing buildings, structures, or other improvements on the site (if none, so state).
 - [7] Existing restrictions or easements on the site (if none, so state).
 - [8] The approximate location and size of existing utilities or improvements servicing the site (if none, so state).
 - [9] A Class D medium-intensity soil survey (information from the most current soil survey for Cumberland County, Maine, is acceptable).
 - [10] The location and size of proposed buildings, structures, access drives, parking areas, and other development features (if applicable).
 - [11] The sketch plan is not required to be surveyed. Recommendation: If the site is to be surveyed, please refer to the GIS requirements for final plan review. It may be in the applicant's best interest to obtain the required GIS data while the surveyor is on site.
- B. Final site plan review application submission requirements. Applications for final site plan review shall be submitted on application forms provided by the Town. The complete application form, evidence of payment of the required fees, and the required plans and related information shall be submitted to the Planning Department. Applications for major developments will not be received until the review of the sketch plan is completed. The submission shall contain at least the following exhibits and information, unless specifically waived in writing:
- (1) Minor and major final site plans. All final site plan applications shall contain five copies of the following information, including full size plan sets, along with one electronic version of the entire submission:
 - (a) A fully executed and signed copy of the final site plan application form.
 - (b) Evidence of payment of the application and escrow fees.

- (c) Written information. Written materials shall be contained in a bound report.
- [1] A narrative describing the proposed use or activity.
 - [2] Record owner's name, address, and phone number and applicant's name, address and phone number, if different.
 - [3] Names and addresses of all abutting property owners.
 - [4] A copy of the deed to the property, an option to purchase the property or other documentation to demonstrate right, title or interest in the property on the part of the applicant.
 - [5] Copies of existing or proposed covenants or deed restrictions.
 - [6] Copies of existing or proposed easements on the property.
 - [7] The name, registration number and seal of the licensed professional who prepared the plan, if applicable.
 - [8] Evidence of the applicant's technical capability to carry out the project as proposed.
 - [9] An assessment of the adequacy of any existing sewer and water mains, culverts and drains, on-site sewage disposal systems, wells, underground tanks or installations, and power and telephone lines and poles on the property.
 - [10] Estimated demand for water supply and sewage disposal.
 - [11] Provisions for handling all solid wastes, including hazardous and special wastes.
 - [12] Detail sheets of proposed light fixtures.
 - [13] Listing of proposed trees or shrubs to be used for landscaping.
 - [14] An estimate of the weekday a.m. and p.m. and Saturday peak-hour and daily traffic to be generated by the project.
 - [15] A description of important or unique natural areas and site features, including but not limited to floodplains, deer wintering areas, significant wildlife habitats, fisheries, scenic areas, habitat for rare and endangered plants and animals, unique natural communities and natural areas, sand and gravel aquifers, and historic and/or archaeological resources.
 - [16] A narrative describing stormwater drainage, maintenance and inspection program, and erosion and sedimentation control measures, stormwater calculations, and water quality and/or phosphorous export management provisions if the project requires a stormwater permit from the Maine Department of Environmental Protection or if the Planning Board or Staff Review Committee determines that such information is necessary based upon the scale of the project or the existing conditions in the vicinity of the project.
 - [17] A written statement from any utility district providing service to the project as to the adequacy of the water supply in terms of quantity and pressure for both domestic and fire flows, and the capacity of the sewer system to accommodate additional wastewater if public water or sewerage will be utilized.

- [18] Financial capacity.
- [a] Estimated costs. Specify the estimated total cost of the development and itemize the estimated major expenses. The itemization of major costs may include, but not be limited to, the cost of the following activities: land purchase, roads, sewers, structures, water supply, erosion control, pollution abatement and landscaping.
 - [b] Financing. Provide one of the following unless otherwise approved by the Town:
 - [i] Letter of commitment to fund. A letter of commitment, acceptable to the department, from a financial institution, governmental agency, or other funding agency, indicating a commitment to provide a specified amount of funds, and specifying how those funds will be used.
 - [ii] Self-financing.
 - [A] Annual report. The most recent corporate annual report indicating availability of liquid assets to finance the development, together with explanatory material interpreting the report; or
 - [B] Bank statement. Copies of bank statements or other evidence indicating availability of funds if the applicant will personally finance the development.
 - [iii] Other. If 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, provide the following:
 - [A] Cash equity commitment. Cash equity commitment to the development sufficient to demonstrate the applicant's ability to go forward. The Town will consider 20% equity of the total cost of a development as the normal equity commitment but reserves the right to lower or raise this amount if special circumstances of an individual development warrant it.
 - [B] Financial plan. Financial plan for the remaining financing.
 - [C] Letter. Letter acceptable to the Town from an appropriate financial institution indicating an intention to provide financing subject to reasonable conditions of acceptance.
 - [c] Certificate of good standing. If new applicant is a registered corporation, provide either a certificate of good standing (available from the Secretary of State) or a statement signed by a corporate officer affirming that the corporation is in good standing.
- [19] Technical capacity. Describe the technical ability of the applicant and consultant(s) to undertake the development. Include the following information:
- [a] Prior experience. A statement of the applicant's prior experience and appropriate training relating to the nature of the development. Specify prior

experience relating to developments that have received permits from the Town.

- [b] Personnel. Resumes or similar documents detailing the experience and qualifications of full-time, permanent or temporary staff contracted with or employed by the applicant who will design the development.
- (d) Plan information. The maps or drawings shall be at a scale sufficient to allow review of the items listed under the approval criteria, but in no case shall be more than 100 feet to the inch for that portion of the tract of land being proposed for development.
 - [1] Existing conditions.
 - [a] Location map. The location map shall be drawn at a size and scale adequate to allow the Board to locate the subdivision within the municipality.
 - [b] Vicinity plan. A plan drawn at a scale of not over 400 feet to the inch to show the area within 250 feet of the property line of the proposed subdivision. The vicinity plan shall show the following:
 - [i] The approximate location of all property lines and acreage of parcels.
 - [ii] Locations, widths and names of existing, filed or proposed streets, easements, or building footprints.
 - [iii] The location and designations of any public spaces.
 - [iv] An outline of the proposed subdivision, together with its street system and an indication of the future probable street system of the remaining portion of the tract, if the proposed subdivision plan encompasses only part of the applicant's entire property holding.
 - [c] A North arrow identifying all of the following: grid north; magnetic north with the declination between the grid and magnetic; and whether magnetic or grid bearings were used in the plan design.
 - [d] The location of all required building setbacks, yards, and buffers.
 - [e] Boundaries of all contiguous property under the total or partial control of the owner or applicant regardless of whether all or part is being developed at this time.
 - [f] The Tax Map and lot number of the parcel or parcels on which the project is to be located.
 - [g] Zoning classification(s), including overlay and/or subdistricts, of the property and the location of zoning district boundaries if the property is located in two or more zoning districts or subdistricts or abuts a different district.
 - [h] The bearings and length of all property lines of the property to be developed and the stamp of the surveyor that performed the survey. For curve lines, at least three elements shall be provided. These include the arc length, the radius and one of the following: the central angle, the tangent length with bearings, or the chord distance with bearings.

- [i] Existing topography of the site at two-foot contour intervals.
- [j] Location and size of any existing sewer and water mains, culverts and drains, on-site sewage disposal systems, wells, underground tanks or installations, and power and telephone lines and poles on the property to be developed and on abutting streets or land that may serve the development. Appropriate elevations shall be provided as necessary to determine the direction of flow.
- [k] Location, names, and present widths of existing public and/or private streets and rights-of-way within or adjacent to the proposed development.
- [l] The location, dimensions and ground-floor elevation of all existing buildings on the site.
- [m] The location and dimensions of existing driveways, parking and loading areas, walkways, and sidewalks on or immediately adjacent to the site.
- [n] Location of intersecting roads or driveways within 200 feet of the site.
- [o] The location of the following:
 - [i] Open drainage courses;
 - [ii] Wetlands;
 - [iii] Stone walls;
 - [iv] Graveyards;
 - [v] Fences;
 - [vi] Stands of trees or tree line; and
 - [vii] Other important or unique natural areas and site features, including but not limited to floodplains, deer wintering areas, significant wildlife habitats, fisheries, scenic areas, habitat for rare and endangered plants and animals, unique natural communities and natural areas, sand and gravel aquifers, and historic and/or archaeological resources.
- [p] The direction of existing surface water drainage across the site.
- [q] The location, front view, dimensions, and lighting of existing signs.
- [r] Location and dimensions of any existing easements that encumber or benefit the property.
- [s] The location of the nearest fire hydrant, dry hydrant or other water supply for fire protection.
- [2] Proposed development activity.
 - [a] The location and dimensions of all provisions for water supply and wastewater disposal, and evidence of their adequacy for the proposed use, including soils test pit data if on-site sewage disposal is proposed.
 - [b] A grading plan showing the proposed topography of the site at two-foot contour

intervals.

- [c] The direction of proposed surface water drainage across the site, and from the site, with an assessment of impacts on downstream properties.
 - [d] The location and proposed screening of any on-site collection or storage facilities.
 - [e] The location, dimensions, and materials to be used in the construction of proposed driveways, parking and loading areas, and walkways and any changes in traffic flow onto or off site.
 - [f] Proposed landscaping and buffering.
 - [g] The location, dimensions, and ground floor elevation of all proposed buildings or building expansion proposed on the site.
 - [h] Location, front view, materials, and dimensions of proposed signs, together with the method for securing the sign.
 - [i] Location and type of exterior lighting. The Planning Board or Staff Review Committee may require a photometric plan to demonstrate the coverage area of all lighting.
 - [j] The location of all utilities, including fire protection systems.
 - [k] Approval block. Space shall be provided on the plan drawing for the signatures of the Planning Board or Staff Review Committee and date, together with the following words: "Approved: Town of Windham Planning Board, or Town of Windham Staff Review Committee (choose appropriate review authority)."
- (2) Major final site plans, additional information. In addition to the information required for all minor and major site plan applications, an application for a major final site plan shall contain the following information:
- (a) A narrative and/or plan describing how the proposed development plan relates to the sketch plan.
 - (b) A stormwater drainage and erosion control program showing:
 - [1] The existing and proposed method of handling stormwater runoff.
 - [2] The direction of flow of the runoff, through the use of arrows and a description of the type of flow (e.g., sheet flow, concentrated flow, etc.).
 - [3] The location, elevation, and size of all catch basins, dry wells, drainage ditches, swales, retention basins, and storm sewers.
 - [4] At a minimum, engineering calculations used to determine drainage requirements for basins and ponds designed to control flows so as to meet the flooding standard with principal spillways capable of controlling runoff from 24-hour storms of the 2-year, 10-year, and 25-year frequencies.
 - [5] An erosion and sedimentation control plan that contains, at a minimum, permanent stabilization measures to be taken (e.g., paving or planting vegetation), installation

details of the erosion control measures proposed, seeding and mulching rates, and a construction schedule with the proposed construction dates and time frame for major earth moving and construction events. This plan and its details may be included on the site plan instead of being a separate submission and must be fully compliant with the Stormwater Law.

- (c) A groundwater impact analysis prepared by a groundwater hydrologist for projects involving on-site water supply or sewage disposal facilities with a capacity of 2,000 gallons or more per day.
- (d) The name, registration number, and seal of the Maine licensed professional architect, engineer, surveyor, landscape architect and/or similar professional who prepared the plan.
- (e) A utility plan showing, in addition to provisions for water supply and wastewater disposal, the location and nature of electrical, telephone, cable television, and any other utility services to be installed on the site.
- (f) A planting schedule keyed to the site plan indicating the general varieties and sizes of trees, shrubs, and other vegetation to be planted on the site, as well as information pertaining to provisions that will be made to retain and protect existing trees, shrubs, and other vegetation.
- (g) Digital transfer of any site plan data on the Town's Horizontal Datum: Maine State Plane Coordinate System: Maine West Zone FIPS Zone 1802, North American Datum 1983; Units: US survey feet.
 - [1] The preferable vertical datum is North American Vertical Datum 1988 (NAVD88). However, if only National Geodetic Vertical Datum 1929 (NGVD29) is possible, this is permissible. The choice of vertical datum shall be indicated on the digital submission. The Ellipsoid is GRS 80 (Geodetic Reference System 1980).
 - [2] Data shall have survey-grade positional accuracy. Data could be developed using either real-time kinematic (RTK) GPS, survey-grade static GPS data collection or traditional methods of occupying known, high-precision surveyed monuments. The datum, survey methods, and type of survey equipment used shall be identified.
- (h) A traffic impact study, prepared by a Maine licensed professional engineer, demonstrating the impact of the proposed project on the capacity, level of service and safety of adjacent streets, if the project or expansion will generate 50 or more trips during the a.m. or p.m. peak hour based upon the latest edition of the trip generation manual of the Institution of Transportation Engineers, or if required by the Planning Board.

§ 120-812. Performance standards and approval criteria. [Amended 4-27-2010 by Order 10-075; 3-8-2011 by Order 11-03; 8-25-2015 by Order 15-122; 5-22-2018 by Order 18-905; 6-12-2018 by Order 18-099; 3-26-2019 by Order 19-020; 4-9-2019 by Order 19-053; 6-16-2022 by Order No. 22-108; 5-23-2023 by Order No. 23-092; 12-12-2024 by Order No. 24-173; 4-29-2025 by Order No. 25-043]

The following criteria shall be used by the Planning Board or Staff Review Committee in reviewing applications for site plan review and shall serve as minimum requirements for approval of the application. The application shall be approved unless the Planning Board or Staff Review Committee determines 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 who shall produce evidence sufficient to warrant a finding that all applicable criteria have been met.

- A. Utilization of the site. The plan for the development shall reflect the natural capabilities of the site to support development. Buildings, lots, and support facilities shall be clustered in those portions of the site that have the most suitable conditions for development. Environmentally sensitive areas, including but not limited to wetlands, steep slopes, floodplains, significant wildlife habitats, fisheries, scenic areas, habitat for rare and endangered plants and animals, unique natural communities and natural areas, and sand and gravel aquifers shall be maintained and preserved to the maximum extent. Natural drainage areas shall also be preserved to the maximum extent. The development shall include appropriate measures for protecting these resources, including but not limited to modification of the proposed design of the site, timing of construction, and limiting the extent of excavation.
- B. Vehicular traffic.
- (1) Adequacy of road system. Vehicular access to the site shall be on roads which have adequate capacity to accommodate the additional traffic generated by the development.
- (a) Intersections on arterial streets within a half mile of any entrance road which are functioning at a level of service D or better prior to the development shall function at a minimum at level of service D after development. If any such intersection is functioning at a level of service E or lower prior to the development, the project shall not reduce the current level of service. This requirement may be waived by the Planning Board if the project is located within a growth area designated in the Town's adopted Comprehensive Plan and the Board determines that the project will not have an unnecessary adverse impact on traffic flow or safety. A development not meeting this requirement may be approved if the applicant demonstrates that:
- [1] A public agency has committed funds to construct the improvements necessary to bring the level of access to this standard; or
- [2] The applicant will assume financial responsibility for the improvements necessary to bring the level of service to this standard and will assure the completion of the improvements with a financial guarantee acceptable to the municipality.
- (b) Existing streets and intersections that can be expected to carry traffic generated by the development shall have the capacity or be suitably improved to accommodate that traffic. For the purposes of this section, "suitably improved" shall mean that all of the existing private ways in the road network back to the closest public street shall meet the applicable street construction standard (see Article 3, definition of "street classification," and Appendix B, Street Design and Construction Standards³⁴).
- (2) Access to the site. Vehicular access to and from the development shall be safe and convenient.
- (a) Any driveway or proposed street shall be designed so as to provide the minimum sight distance according to the Maine Department of Transportation standards. (See standards for curb cuts in Article 5, Performance Standards.)
- (b) Points of access and egress shall be located to avoid hazardous conflicts with existing turning movements and traffic flows.

34. Editor's Note: Appendix B is included as an attachment to this chapter.

- (c) The grade of any proposed drive shall be not more than $\pm 3\%$ for a minimum of 50 feet, from the intersection.
- (d) The intersection of any access/egress drive or proposed street shall function at a level of service of D following development if the project will generate 1,000 or more vehicle trips per twenty-four-hour period.
- (e) Where a lot has frontage on two or more streets, the primary access to and egress from the lot shall be provided from the street where there is less potential for traffic congestion and for traffic and pedestrians hazards. Access from other streets may be allowed if it is safe and does not promote shortcutting through the site.
- (f) Where it is necessary to safeguard against hazards to traffic and pedestrians and/or to avoid traffic congestion, the applicant shall be responsible for providing turning lanes, traffic directional islands, and traffic controls within public streets.
- (g) Accessways shall be designed and have sufficient capacity to avoid queuing of entering vehicles on any public street.
- (h) The following criteria shall be used to limit the number of driveways serving a proposed project:
 - [1] No use which generates less than 100 vehicle trips per day shall have more than one two-way driveway onto a single roadway. Such driveway shall be no greater than 40 feet wide.
 - [2] No use which generates 100 or more vehicle trips per day shall have more than two points of entry from and two points of egress to a single roadway. The combined width of all accessways shall not exceed 60 feet.
 - [3] The Planning Board or Staff Review Committee may limit a development to one point of ingress/egress onto Routes 302, 35 and 115.
- (3) Accessway location and spacing. Accessways shall meet the following standards:
 - (a) Private entrances/exits shall be located in accordance with Table 2 in Appendix B, Street Design and Construction Standards.³⁵ This requirement may be reduced if the shape of the site does not allow conformance with this standard.
 - (b) Private accessways in or out of a development shall be separated by a minimum of 75 feet where possible.
 - (c) Accessways shall be aligned with accessways on the opposite side of a public street to the greatest extent possible.
- (4) Internal vehicular circulation. The layout of the site shall provide for the safe movement of passenger, service, and emergency vehicles through the site.
 - (a) Nonresidential projects that will be served by delivery vehicles shall provide a clear route for such vehicles with appropriate geometric design to allow turning and backing for a minimum of SU-30 vehicles. If the project is to be served by tractor-trailer delivery vehicles, a clear route for such vehicles with appropriate geometric design shall allow for

35. Editor's Note: Appendix B is included as an attachment to this chapter.

turning and backing for a minimum of WB-50 vehicles.

- (b) Clear routes of access shall be provided and maintained for emergency vehicles to and around buildings and shall be posted with appropriate signage (fire lane - no parking).
- (c) The layout and design of parking areas shall provide for safe and convenient circulation of vehicles throughout the lot.
- (d) All roadways shall be designed as follows:
 - [1] To harmonize with the topographic and natural features of the site insofar as practical by minimizing filling, grading, excavation, or other similar activities which result in unstable soil conditions and soil erosion.
 - [2] By fitting the development to the natural contour of the land and avoiding substantial areas of excessive grade and tree removal, and by retaining existing vegetation during construction.
 - [3] The road network shall provide for vehicular, pedestrian, and cyclist safety, all-season emergency access, snow storage, and delivery and collection services.
- (e) Nonresidential projects that include drive-through services shall be designed and have sufficient stacking capacity to avoid the queuing of vehicles on any public street.

C. Parking and loading requirements.

(1) Off-street parking layout.

- (a) Parking areas with more than two parking spaces shall be arranged so that it is not necessary for vehicles to back into the street.

(b) One off-street motor vehicle parking space per dwelling unit for a residential development in Designated Growth Areas.

(c) All parking spaces, access drives, and impervious surfaces shall be located at least five feet from any side or rear lot line, except where a parking lot is shared between two adjoining properties, or where standards for buffer strips require a greater distance. No parking spaces shall be located within five feet of the front property line. Parking lots on adjoining lots may be connected by accessways not exceeding 24 feet in width.

(d) Parking stalls and aisle layout shall conform to the standards in Table 1 of this subsection.

Parking Angle	Stall Width	Skew Width	Stall Depth	Aisle Width
90°	9' 0"	0' 0"	18' 0"	24' 0" two-way
60°	8' 6"	10' 6"	18' 0"	16' 0" one-way only
45°	8' 6"	12' 9"	17' 6"	12' 0" one-way only
30°	8' 6"	17' 0"	17' 0"	12' 0" one-way only

(e) In parking lots utilizing a parking angle of 90°, spaces shall be created with a stall width of at least nine feet zero inches and a stall depth of at least 18 feet zero inches.

(f) In lots utilizing diagonal parking, the direction of proper traffic flow shall be indicated by signs, pavement markings or other permanent indications and maintained as necessary.

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~~(g)~~ Parking areas for nonresidential uses shall be designed to permit each motor vehicle to proceed to and from the parking space provided for it without requiring the moving of any other motor vehicles. Double-stack parking may be permitted for resident parking in conjunction with residential uses if both spaces in the stack are assigned to the occupants of the same dwelling unit.

~~(h)~~ Provisions shall be made to restrict the overhang of parked vehicles when it might restrict traffic flow on adjacent through roads, restrict pedestrian or bicycle movement on adjacent walkways, or damage landscape materials.

~~(i)~~ Parallel parking spaces may be used along internal driveways or accessways. Stall width and depth shall be at least nine feet by 20 feet.

~~(j)~~ Automobile storage. The parking space dimension requirements in § 120-812C(1)(c) to (g), above, do not apply to vehicles stored for display, sale or repair. However, the operator of the use shall demonstrate that there is enough land area to accommodate all vehicles within any setbacks or required buffer areas of § 120-812C(1)(b) and/or the applicable zoning district. (See Article 4, Zoning Districts.)

(2) Minimum off-street parking space requirements.

(a) No minimum number of parking spaces are required, unless otherwise specified under this chapter or Chapter 185. The applicant should demonstrate that the number of spaces provided on-site will meet the needs of the anticipated uses on the property. Shared parking arrangements are encouraged.

- Notwithstanding the foregoing, any principal residential use within a Designated Growth Area may satisfy this requirement by providing one (1) off-street parking space per dwelling unit. In order to satisfy this requirement, the developer or property owner must provide an off-site parking agreement, subject to review and approval by the Planning Director, which indicates that this off-street parking requirement is met by use of a parking facility located no more than 0.25 miles from the subject lot.

(b) Off-site parking. Parking spaces may be located off-site if the spaces will adequately serve the principal use for which the spaces are required. In making this determination, the Planning Board, Staff Review Committee, or Code Enforcement Officer, as applicable, shall consider the following factors:

- [1] Proximity of the off-street parking.
- [2] Ease of pedestrian access to the off-site parking.
- [3] Provision of sidewalks or paths between the off-site parking and the principal use.
- [4] The applicant has sufficient legal interest in the land on which the off-site parking is provided to establish control as long as the use exists.
- [5] Adequate lighting shall be installed to provide for safe pedestrian movement.

D. Pedestrian traffic. The site plan shall provide for a system of pedestrianways within the development appropriate to the type and scale of development. This system shall connect the major building entrances/exits with parking areas and with existing sidewalks, if they exist or are planned in the vicinity of the project. The pedestrian network may be located either in the street right-of-way or outside of the right-of-way in open space or recreation areas. The system shall be designed to link the project with residential, recreational, and commercial facilities, schools, bus stops, and existing

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sidewalks in the neighborhood or, when appropriate, to connect with amenities such as parks or open space on or adjacent to the site.

E. Stormwater management.³⁶

(1) Adequate provisions shall be made for the collection and disposal of all stormwater that runs off proposed streets, parking areas, roofs, and other surfaces, through a stormwater management plan, which shall not have adverse impacts on abutting or downstream properties.

(a) Stormwater management systems for minor and major site plans shall detain, retain, or result in the infiltration of stormwater from the twenty-four-hour storms of the two-year, ten-year, and twenty-five-year frequencies such that the peak flows of stormwater from the project site do not exceed the peak flows of stormwater prior to undertaking the project. Stormwater systems shall be reviewed for compliance with all applicable stormwater standards included in the Maine Department of Environmental Protection Chapter 500, including basic, general, phosphorus, flooding, and other standards. The Planning Board may waive the flooding standard in accordance with the following criteria:

[1] Insignificant increases in peak flow rates from a project site. When requesting a waiver for a project resulting in an insignificant increase in peak flow rates from a project site, the applicant shall demonstrate that insignificant increases in peak flow rates cannot be avoided by reasonable changes in project layout, density, and stormwater management design. The applicant shall also demonstrate that the proposed increases will not unreasonably increase the extent, frequency, or duration of flooding at downstream flow controls and conveyance structures. In making its determination to allow insignificant increases in peak flow rates, the Planning Board shall consider cumulative impacts.

(b) The applicant shall demonstrate that on- and off-site downstream channel or system capacity is sufficient to carry the flow of a minimum twenty-five-year storm without adverse effects, including but not limited to flooding and erosion of drainage channels and shoreland areas, or that he/she will be responsible for whatever improvements are needed to provide the required increase in capacity and/or mitigation. The Staff Review Committee or Planning Board may require capacity for a storm of greater than 25 years due to soil, topographic, or other factors that affect stormwater drainage.

(c) All natural drainageways shall be preserved at their natural gradients and shall not be filled or converted to a closed system unless approved as part of the site plan review.

(d) The design of the stormwater drainage system shall provide for the disposal of stormwater without damage to streets, adjacent properties, downstream properties, soils, and vegetation.

(e) The design of the storm drainage systems shall be fully cognizant of upstream runoff which shall pass over or through the site to be developed and provide for this movement.

(f) Major site plans, regardless of size, shall submit a stormwater management plan that complies with Section 4C(2) and Section 4C(3) of the General Standards of the DEP Chapter 500, Stormwater Management, as amended.³⁷

(g) Major and minor site plan projects located within the Highland Lake watershed shall also meet the following standards:

[1] Projects in the Highland Lake watershed must include a stormwater plan designed to meet the standards of DEP Chapter 500, Section 4D, Phosphorous standards.³⁸ The

36. Editor's Note: See also Ch. 201, Stormwater Management.

37. Editor's Note: See 06-096 CMR Ch. 500.

option to pay the compensation fee for exceeding the parcel's phosphorus allocation is not allowed in this watershed. Notwithstanding 1 M.R.S.A. § 302, this amendment shall be applicable to and shall govern any application for site plan approval that did not receive lawful final approval by, and so was pending on or at any time after, September 5, 2017, regardless of whether that application was a pending proceeding under 1 M.R.S.A. § 302.

- (2) Mineral extraction stormwater management plan compliance. Any person owning, operating, leasing or having control over stormwater management facilities required by a stormwater management plan approved as part of a mineral extraction operation in accordance with Article 6 of this chapter shall demonstrate compliance with that plan as follows:
 - (a) A qualified third-party inspector hired by that person shall, at least annually, inspect the stormwater management facilities, including but not limited to any parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures, in accordance with all municipal and state inspection, cleaning and maintenance requirements of the approved stormwater management plan.
 - (b) If the stormwater management facilities require maintenance to function as intended by the approved stormwater management plan, that person shall take corrective action(s) to address the deficiency or deficiencies.
 - (c) A qualified third-party inspector hired by that person shall, on or by May 1 of each year, provide a completed and signed certification to the enforcement authority, in a form provided by the Town of Windham, certifying that the person has inspected the stormwater management facilities and that they are adequately maintained and functioning as intended by approved stormwater management plan, or that they require maintenance or repair, describing any required maintenance and any deficiencies found during inspection of the stormwater management facilities, and, if the stormwater management facilities require maintenance or repair of deficiencies in order to function as intended by approved stormwater management plan, the person shall provide a record of the required maintenance or deficiency and corrective action(s) taken.

F. Erosion control.

- (1) All building, site, and roadway designs and layouts shall harmonize with existing topography and conserve desirable natural surroundings to the fullest extent possible, such that filling, excavation and earth moving activity shall be kept to a minimum. Parking lots on sloped sites should be terraced to avoid undue cut and fill and/or the need for retaining walls. Natural vegetation shall be preserved and protected wherever possible.
- (2) An erosion and sedimentation control plan shall show the use of erosion and sediment control best management practices (BMPs) at the construction site consistent with the minimum standards outlined in the Maine DEP Stormwater Rule Chapter 500 Appendix A – Erosion and Sediment Control, Appendix B – Inspections and Maintenance, Appendix C – Housekeeping, Erosion and Sedimentation Control. BMPs shall be designed, installed and maintained in accordance with the standards contained in the latest revisions of the following Maine DEP Documents:
 - (a) Maine DEP Erosion and Sediment Control Best Management Practices (BMPs) Manual

38. Editor's Note: See 06-096 CMR Ch. 500.

for Designers and Engineers.

- (b) Maine Erosion and Sediment Control Practices Field Guide for Contractors.
- (c) Applicants are required to utilize contractors who are certified in erosion and sedimentation control through the Maine Department of Environmental Protection's Voluntary Contractor Certification Program.

G. Water supply provisions.

- (1) The development shall be provided with a system of water supply that provides each use with an adequate supply of water.
- (2) If the project is to be served by a public water supply, the applicant shall secure and submit a written statement from the Portland Water District that the proposed water supply system conforms with its design and construction standards, will not result in an undue burden on the source or distribution system, and will be installed in a manner adequate to provide needed domestic and fire protection flows.

H. Sewage disposal provisions. The development shall be provided with a method of disposing of sewage which is in compliance with the State Plumbing Code.

- (1) All sanitary sewage from new or expanded uses shall be discharged into a public sewage collection and treatment system when such facilities are currently available or can reasonably be made available at the lot line and have adequate capacity to handle the projected waste generation.
- (2) If the public collection system is not at the lot line, but can be extended in the public right-of-way, the collection system shall be extended by the owner and the new or expanded use connected to the public system. Such extension shall be required if the public system is within 100 feet of a new use with a design sewage flow of less than 500 gallons per day or within 300 feet of a new use with a design sewage flow of 500 or more gallons per day and the system has adequate capacity to accommodate the additional flow. The Planning Board may waive this requirement if the use is already served by a properly functioning subsurface disposal system that is properly sized for the projected flows, provided that connection to the public system shall occur if and when the subsurface system needs to be replaced.
- (3) If the public system cannot serve or be extended to serve a new or expanded use, the sewage shall be disposed of by an on-site sewage disposal system meeting the requirements of the Subsurface Waste Water Disposal Rules.³⁹
- (4) When two or more lots or buildings in different ownership share the use of a common subsurface disposal system, the system shall be owned and maintained in common by an owners' association. Covenants in the deeds for each lot shall require mandatory membership in the association and provide for adequate funding of the association to assure proper maintenance of the system.
- (5) Industrial or commercial wastewater may be discharged to public sewers in such quantities and/or of such quality as to be compatible with sewage treatment operations. Such wastes may require pretreatment at the industrial or commercial site in order to render them amenable to public treatment processes. Pretreatment includes, but is not limited to, screening, grinding,

39. Editor's Note: See 10-144 CMR Ch. 241, Maine Subsurface Waste Water Disposal Rules.

sedimentation, pH adjustment, surface skimming, chemical oxidation and reduction and dilution. The pretreatment standards shall be determined by the Portland Water District.

- I. Utilities. The development shall be provided with electrical, telephone, and telecommunication service adequate to meet the anticipated use of the project. New utility facilities shall be screened from view to the extent feasible. Utility lines shall be placed underground.
- J. Groundwater protection. The proposed site development and use shall not adversely impact either the quality or quantity of groundwater available to abutting properties or to public water supply systems. Applicants whose projects involve on-site water supply or sewage disposal systems with a capacity of 2,000 gallons per day or greater shall demonstrate that the groundwater at the property line will comply, following development, with the standards for safe drinking water as established by the State of Maine.
- K. Water quality protection. All aspects of the project shall be designed so that:
- (1) No person shall locate, store, discharge, or permit the discharge of any treated, untreated, or inadequately treated liquid, gaseous, or solid materials of such nature, quantity, obnoxiousness, toxicity, or temperature that may run off, seep, percolate, or wash into surface waters or groundwater 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) All storage facilities for fuel, chemicals, chemical or industrial wastes, and biodegradable raw materials shall meet the standards of the Maine Department of Environmental Protection and the State Fire Marshal's Office.
 - (3) If the project is located within the direct watershed of a body of water most at risk from development, as identified by the Maine Department of Environmental Protection (DEP), the following standards shall apply:
 - (a) If the project does not require review under Chapter 500 of the MaineDEP Stormwater Law,⁴⁰ the Planning Board may require a phosphorus control plan. The plan shall be submitted to the Town for review by an appropriate third-party reviewer at the applicant's expense.
- L. Hazardous, special, and radioactive materials.
- (1) The handling, storage, and use of all materials identified by the standards of a federal or state agency as hazardous, special or radioactive shall be done in accordance with the standards of these agencies.
 - (2) No flammable or explosive liquids, solids or gases shall be stored in bulk above the ground unless they are located at least 75 feet from any lot line, or 40 feet in the case of underground storage. All materials shall be stored in a manner and location which is in compliance with appropriate rules and regulations of the Maine Department of Public Safety and other appropriate federal, state, and local regulations.
- M. Shoreland relationship.
- (1) The development shall not adversely affect the water quality or shoreline of any adjacent water

40. Editor's Note: See 06-096 CMR Ch. 500.

body.

(2) The plan shall meet the requirements of Chapter 185, Shoreland Zoning, where applicable.

N. Technical and financial capacity.

(1) Financial capacity. The applicant shall have adequate financial resources to construct the proposed improvements and meet the criteria of the standards of these regulations. In making its determination, the Planning Board or Staff Review Committee shall consider all relevant evidence to the effect that the developer has the financial capacity to construct, operate, and maintain all aspects of the development.

(2) Technical capacity. The applicant shall retain qualified contractors and consultants to supervise, construct and inspect the required improvements in the proposed site plan. In determining the applicant's technical ability, the Planning Board or Staff Review Committee shall consider the applicant's previous experience, the experience and training of the applicant's consultants and contractors, and the existence of violations of previous approvals granted to the applicant. A violation for the purposes of this article includes any order, consent decree or consent agreement with which the applicant, owner or proposed operator of the facility is not currently in full compliance.

O. Solid waste management. The proposed development shall provide for adequate disposal of solid wastes. All solid waste shall be disposed of at a licensed disposal facility having adequate capacity to accept the project's wastes.

P. Historic and archaeological resources. If any portion of the site has been identified as containing historic or archaeological resources, the development shall include appropriate measures for protecting these resources, including but not limited to modification of the proposed design of the site, timing of construction, and limiting the extent of excavation.

Q. Floodplain management. If any portion of the site is located within a special flood hazard area as identified by the Federal Emergency Management Agency, all use and development of that portion of the site shall be consistent with the Town's floodplain management provisions.⁴¹

R. Exterior lighting. The proposed development shall have adequate exterior lighting to provide for its safe use during operating hours.

(1) Lighting may be used which serves security, safety and operational needs but which does not directly or indirectly produce deleterious effects on abutting properties or which would impair the vision of a vehicle operator on adjacent roadways.

(a) Lighting fixtures shall be shielded or hooded so that the lighting elements are not exposed to normal view by motorists or pedestrians or from adjacent dwellings and so that they do not unnecessarily light the night sky.

(b) Direct or indirect illumination shall not exceed 0.5 footcandle at the lot line or upon abutting residential properties.

(2) Wiring to light poles and other exterior light fixtures shall be underground.

S. Noise.

41. Editor's Note: See Ch. 82, Floodplain Management.

- (1) The maximum permissible sound pressure level of any continuous, regular or frequent or intermittent source of sound produced by any activity on the site shall be limited by the time period and by the abutting land use as listed below. Sound levels shall be measured at least four feet above ground at the closest occupied structure not owned or under the control of the owner or operator of the proposed development or use.

Sound Pressure Level Limits Using the Sound Equivalent Level of One Minute (leq 1) [Measured in dB(a) Scale]		
Abutting Use	7:00 a.m. to 10:00 p.m.	10:01 p.m. to 6:59 a.m.
Residential	55	45
Residential located in a commercial or industrial district	65	55
Public, semipublic and institutional	60	55
Vacant or rural	60	55
Commercial	65	55
Industrial	70	60

- (2) 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 S1 4-1961) "American Standards Specification for General Purpose Sound Level Meters."
- (3) No person shall engage in construction activities on a site abutting any residential use between the hours of 10:00 p.m. and 6:00 a.m.
- (4) These standards shall not apply to the temporary use of such machinery as chain saws, lawn mowers and snowmobiles.

T. Storage of materials.

- (1) Exposed nonresidential storage areas, exposed machinery, and areas used for the storage or collection of discarded automobiles, auto parts, metals or other articles of salvage or refuse shall have sufficient setbacks and screening (such as a stockade fence or a dense evergreen hedge) to provide a visual buffer sufficient to minimize their impact on abutting residential uses and users of public streets.
- (2) All dumpsters or similar large collection receptacles for trash or other wastes shall be located on level surfaces which are paved or graveled. The dumpster or receptacle shall be screened by fencing or landscaping.
- (3) Where a potential safety hazard to children is likely to arise, physical screening sufficient to deter small children from entering the premises shall be provided and maintained in good condition.

§ 120-813. Commercial district design standards. [Added 4-24-2012 by Order 12-052; amended 5-14-2013 by Order 13-072; 6-16-2022 by Order No. 22-108; 7-12-2022 by Order No. 22-126; 3-28-2023 by Order No. 23-041; 5-23-2023 by Order No. 23-091; 8-15-2023 by Order No. 23-151]

The following design standards are hereby established for nonresidential development within Windham's Commercial 1, Commercial 1 North, Commercial 2, Commercial 3, Village Commercial and Windham Center Districts. Where there is a conflict between a provision of the design standards and any other

provision of this chapter, the more restrictive provision shall apply. In addition to meeting all design standards required in the applicable zoning district, development must comply with a minimum of eight other design standards. For purposes of this section, "development" shall mean that portion of the project that is subject to site plan review under Article 8 or will renovate 20% or more of the entire wall area of a structure on the site. For this type of renovation, the renovation will be subject to the required design standards in Section A below, but will not be subject to other required design standards.

Design Standards Framework									
		C-1	C-1N	C-2	C-3	C-4	VC	WC	
A.	Architecture/building								
	1.	Building style	R1	R	R	R	R	R	R
	2.	Materials	R	R	R	R	R	R	R
	3.	Color	R	R	R	R	R	R	R
	4.	Roofline	R	R	R	R	R	R	R
	5.	Facade	R	R	R	R	R	R	R
	6.	Building style coordination (multi-building)	R	R	R	R	R	R	R
	7.	Entrance	R	R	R	R	R	R	R
	8.	Architectural details	R	R	R	R	R	R	R
	9.	LEED certification							
B.	Site/parking								
	1.	Parking location							
	2.	Internal traffic flow							

	3.	Interconnected parking lots							
	4.	Orientation of building							
	5.	Screening, parking			R		R		R

Design Standards Framework

			C-1	C-1N	C-2	C-3	C-4	VC	WC
	6.	Screening, utilities and service areas/ structures	R	R	R		R	R	R
	7.	Parking lot landscaping							
	8.	Low-impact design stormwater							
	9.	Shared stormwater treatment							
C.	Landscaping/lighting								
	1.	Lighting/ photometric plan	R	R				R	
	2.	Lighting coordinated with architecture	R	R				R	

	3.	Lighting coordinated with landscaping	R	R				R	
	4.	Existing trees preserved				R			R
	5.	Snow storage areas designated	R	R	R	R	R	R	R

Design Standards Framework

			C-1	C-1N	C-2	C-3	C-4	VC	WC
	6.	Planting variety							
	7.	Planting suitability							
	8.	Mass plantings							
	9.	Illumination levels							
D.	Bicycle/pedestrian								
	1.	Internal walkways	R	R					
	2.	Links to community	R	R	R		R	R	R
	3.	Outdoor activity area							
	4.	Sidewalks	R	R				R	
	5.	Crosswalks	R	R					

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	6.	Bike parking/ racks	R	R	R		R	R	R
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1. Any item listed with an R in the table is a required design standard in that zoning district.

The following standards are taken from the booklet Town of Windham Design Guidelines, adopted by the Town Council on July 26, 2005, a copy of which is on file in the Windham planning office.

A. Architecture/building.

- (1) Building style. Required in C-1, C-1N, C-2, C-3, C-4, VC, and WC Zoning Districts. National franchise prototypes are permitted, provided they meet the design standards for architectural principles, scale, color, rooflines, and materials. Buildings that are stylized to the point where the structure is a form of advertising are not acceptable.
- (2) Materials. Required in C-1, C-1N, C-2, C-3, C-4, VC, and WC Zoning Districts.
 - (a) Traditional, high-quality building materials common to northern New England (e.g., brick, clapboard, shingles or other similar products) shall be used as the primary siding material. Contemporary materials that have the same visual characteristics as traditional materials (e.g., cement plank clapboards or vinyl siding) are acceptable if attention is paid to detailing (e.g., corners, trim at openings, changes in material). Painted MDO plywood is acceptable when used in combination with traditional materials.
 - (b) Awnings and canopies shall be made of canvas or similar material.
- (3) Color. Required in C-1, C-1N, C-2, C-3, C-4, VC, and WC Zoning Districts. Facade colors shall be low-reflectance. The use of high-intensity, high-reflectance, chrome, metallic, or fluorescent colors is prohibited on the primary building face.
- (4) Roofline. Required in C-1, C-1N, C-2, C-3, C-4, VC, and WC Zoning Districts.
 - (a) Where pitched roofs are used, the minimal pitch shall be at least 5/12. Buildings with projecting rooflines shall be designed to create strong patterns of shade and shadow.
 - (b) Nontraditional roof forms shall not be used as the primary roofline. Examples of nontraditional roof forms include, but are not limited to, false mansard, A-frames, and others.
 - (c) Flat roofs are allowed, provided that the design creates no horizontal line greater than 50 feet.
 - (d) Where parapets are used to break up a flat roofline, the height of the parapet shall be at least 5% of the total length of the wall.
 - (e) Composite asphalt shingles and standing-seam, nonglare metal are acceptable for visible roofing. High-gloss roofing materials shall not be used.
 - (f) Mechanical and other equipment mounted on rooftops must be screened from public view or grouped at the rear of the structure where visibility is limited. Rooftop screening shall be designed as an integral part of the architecture to complement the building's mass and appearance.
- (5) Facade. Required in C-1, C-1N, C-2, C-3, C-4, VC, and WC Zoning Districts.

- (a) Facades that face public streets shall have transparent openings, such as display windows or entry areas, a minimum of 40% of the horizontal length on the ground floor in total. Uses not subject to this standard are:
 - [1] Agriculture.
 - [2] Convention center.
 - [3] Industry, light.
 - [4] Industry, heavy.
 - [5] Warehousing, private.
 - [6] Warehousing, public.
 - (b) Retail and food service facades that are visible or potentially visible from adjacent properties shall be designed to match or complement the architectural treatment of the front facade. Blank or unadorned walls facing public roads or abutting properties are prohibited except when such wall faces a service area.
 - (c) The site plan and architectural elevations shall show the locations reserved for vending machines. Machines will be located within the footprint of the primary structure of the site (drive-up ATMs are not considered vending machines).
 - (d) When in public view, windows, doors, ventilation fixtures, and other openings in frame construction shall be trimmed to create a frame around the opening. Materials used for trim shall match those used on the facade of the building.
 - (e) Horizontal facades greater than 50 feet in length shall incorporate wall plane projections or recesses having a depth of at least 3% of the length of the facade and extending at least 20% of the length of the facade. No uninterrupted facade shall exceed 50 horizontal feet.
- (6) Building style coordination (multibuilding developments). Required in C-1, C-1N, C-2, C-3, C-4, VC, and WC Zoning Districts.
- (a) As part of the site plan application, the applicant shall provide a phasing plan that will illustrate the sequence that development will occur, and what steps will be taken to ensure compatibility between current and future activities.
 - (b) Nonhabitable freestanding structures, such as freestanding ATMs, garages, storage units, recycling sheds, cart corrals, and utility buildings, shall be treated as architectural elements and meet the same design guidelines as larger buildings.
- (7) Entrance. Required in C-1, C-1N, C-2, C-3, C-4, VC, and WC Zoning Districts.
- (a) New or renovated buildings over 20,000 square feet shall have clearly defined and highly visible customer entrances, incorporating at least three of the following elements:
 - [1] Significant variations in rooflines.
 - [2] Distinctive lighting and landscaping.
 - [3] Canopies or porticos.

- [4] Overhangs, recesses, or projections.
- [5] Pedestrian arcades.
- [6] Raised corniced parapets over the door.
- [7] Peaked roof forms in scale with building.
- [8] Outdoor patios.
- [9] Display windows.
- [10] Architectural details such as tile work and moldings which are integrated into the building structure and design.

(b) Linear commercial buildings shall have clearly defined and highly visible customer entrances that are designed as integral architectural elements.

- (8) Architectural details. Required in C-1, C-1N, C-2, C-3, C-4, VC, and WC Zoning Districts. Architectural detailing and trim shall be proportional to the scale and design of the entire building.
- (9) LEED certification. Optional in C-1, C-1N, C-2, C-3, C-4, VC, and WC Zoning Districts. The project shall obtain any level of leadership in energy and environmental design (LEED) certification from the United States Green Building Council (USGBC), for any of the USGBC rating systems.

B. Site/parking.

- (1) Parking location. Optional in C-1, C-1N, C-2, C-3, C-4, VC and WC Zoning Districts. Wherever possible, parking lots shall be located at the rear or sides of commercial buildings. Where land use conflicts occur (e.g., unavoidable siting of a parking lot next to a home), the lot shall be screened with evergreen trees, earth berms, solid walls, or shrubs.
- (2) Internal traffic flow. Optional in C-1, C-1N, C-2, C-3, C-4, VC and WC Zoning Districts.
 - (a) To ensure the safety of motorists, delivery trucks, and pedestrians, the site plan shall clearly delineate internal traffic patterns. Parking space, directional arrows, crosswalks, and other markings on the ground shall be delineated with pavement paint or other suitable material to ensure safe circulation.
 - (b) Circulation patterns for parking lots with more than 40 spaces shall be designed by a traffic engineer to meet the Land Use Ordinance. The Planning Board may require a traffic engineer for smaller lots where there are particular public safety issues.
- (3) Interconnected parking lots. Optional in C-1, C-1N, C-2, C-3, C-4, VC, and WC Zoning Districts. If feasible, connections between abutting properties shall be provided to facilitate deliveries and minimize turning movements onto the highway. As required by the Planning Board during site plan review, internal connections shall be designed by a traffic engineer to provide safe, direct access between adjacent lots. Cross easements shall be provided as required. Traffic-calming measures, such as speed tables, well-marked crosswalks, raised crosswalks, vertical curbing, curvilinear road alignment, neckdowns, curbed islands, and signage, are encouraged to reduce speeding on internal vehicular connections.

- (4) Orientation of building. Optional in C-1, C-1N, C-2, C-3, C-4, VC and WC Zoning Districts.
 - (a) Buildings along the roadways shall be located as close to the front property lines as established under the Land Use Ordinance to establish a visual edge to the street and give scale and interest to the pedestrian environment. In cases where new structures are being proposed, parking shall be located at the rear or side of the building.
 - (b) Service stations, convenience stores, and similar uses shall be sited to face the street. On corner lots, said uses may face both streets.
- (5) Screening, parking. Required in C-2, C-4 and WC; optional in C-1, C-1N, C-3, and VC Zoning Districts. Plant materials and other landscape elements shall be used to create suitable buffers between residential and commercial properties. The design of buffers shall consider the appearance from both commercial and residential viewpoints. Evergreen plantings are particularly effective for year-round buffering.
- (6) Screening, utilities and service areas/structures. Required in C-1, C-1N, C-2, C-4, VC, and WC Zoning Districts; optional in C-3. Service areas, loading docks, delivery areas, trash receptacles, and mechanical equipment shall be screened to minimize visibility from sensitive viewpoints such as public and private roadways, main entrances, abutting neighborhoods, public open spaces, and pathways. Service areas shall be screened with architectural elements such as walls or fences. Screening may be further enhanced with evergreen trees, shrubs, and earth berms. Gates on utility enclosures shall be designed to prevent sagging.
- (7) Parking lot landscaping. Optional in C-1, C-1N, C-2, C-3, C-4, VC, and WC Zoning Districts.
 - (a) A minimum of 10% of the parking lot shall be landscaped for sites with 40 parking stalls or fewer. Parking areas with greater than 40 parking stalls shall landscape a minimum of 15% of the total area. Planting islands shall be a minimum of nine feet in width. All parking lot landscaping shall be able to tolerate parking lot growing conditions.
 - (b) Trees in parking lots may be planted in informal groups, straight rows, or irregular groupings as space permits, or they may be concentrated in certain areas. Trees should be planted a minimum of five feet from the end of parking lot islands.
 - (c) Where trees abut pedestrian walkways or places where people will be walking in parking lots, their lower branches shall be pruned to at least eight feet above the paved surface to avoid becoming an obstacle. Shrubs used in parking lot islands shall not exceed three feet in height to avoid blocking visibility.
 - (d) Landscaped areas used for separation between banks of parking stalls shall contain 50% vegetative cover.
 - (e) Landscape materials surrounding parking lots and in islands shall be able to tolerate large quantities of snow stored during winter months. Delicate plant materials shall not be used in areas where they are likely to be buried under snow.
- (8) Low-impact design stormwater. Optional in C-1, C-1N, C-2, C-3, C-4, VC, and WC Zoning Districts. The project shall incorporate low-impact development (LID) systems as identified in the September 21, 2007, report, "LID Guidance Manual for Maine Communities," as amended.
- (9) Shared stormwater treatment. Optional in C-1, C-1N, C-2, C-3, C-4, VC and, WC Zoning Districts. Wherever appropriate, treatment basins shall be designed to be shared by abutting

properties to minimize the amount of land area dedicated to stormwater management.

C. Landscaping/lighting.

- (1) Lighting/photometric plan. Required in C-1, C-1N and VC Zoning Districts; optional in C-2, C-3, C-4 and WC Zoning Districts.
 - (a) A lighting plan shall be presented to the Planning Board during site plan review or the Code Enforcement Officer during the building permitting process. It shall contain:
 - [1] The lighting fixtures proposed to illuminate all buildings, roadways, service areas, landscaping, parking areas, and pedestrian areas.
 - [2] Specifications and illustrations of all proposed lighting fixtures, including pole heights, height of luminaire, photometric data, Color Rendering Index (CRI) of all lamps (bulbs), and other descriptive information.
 - (b) For site plans with greater than 20 parking spaces or high traffic volumes, the Town may require additional information, including:
 - [1] A narrative that describes the site lighting, how lighting will be used to provide safety and security, and aesthetic effects.
 - [2] A photometric diagram that shows illumination levels from all externally and internally visible lighting sources, including existing sources, to show how the minimum amount of illumination will be provided and the maximum amounts will not be exceeded.
- (2) Lighting coordinated with architecture. Required in C-1, C-1N and VC Zoning Districts; optional in C-2, C-3, C-4 and WC Zoning Districts. If done properly, unique building or landscape features may be highlighted, if the lighting does not create glare or distraction. Neon bulbs used as lighting features are not allowed on the exterior of buildings.
- (3) Lighting coordinated with landscaping. Required in C-1, C-1N and VC Zoning Districts; optional in C-2, C-3, C-4 and WC Zoning Districts. The lighting plan shall consider the ultimate size of trees that could eventually obscure the lighting or create dark spots in parking lots.
- (4) Existing trees preserved. Required in C-3 and WC Zoning Districts; optional in C-1, C-1N, C-2, C-4 and VC Zoning Districts. To maintain the character of the landscape, existing healthy trees and shrubs shall be preserved or be transplanted to another area of the site wherever practical. Where it is not possible to maintain existing trees, the reason for removal shall be given in writing.
- (5) Snow storage areas designated. Required in C-1, C-1N, C-2, C-3, C-4, VC, and WC Zoning Districts. Provisions shall be made for snow storage in the design of all parking areas. The areas used for snow shall not conflict with proposed landscaping. The areas shall be sited to avoid problems with visibility, drainage, or icing during winter months.
- (6) Planting variety. Optional in C-1, C-1N, C-2, C-3, C-4, VC, and WC Zoning Districts. The use of a variety of plant materials that exhibit seasonal color and interesting texture is encouraged to create a distinctive yet low-maintenance environment. Plantings plans should strike a balance between monoculture (the use of a single species) and too much variety.
- (7) Planting suitability. Optional in C-1, C-1N, C-2, C-3, C-4, VC, and WC Zoning Districts. The

use of plant materials and landscape elements that require a low degree of maintenance is strongly encouraged. All plantings shall be resistant to insect infestation, drought, disease, roadside salt, and auto emissions, and hardy to Maine winters.

- (8) Mass plantings. Optional in C-1, C-1N, C-2, C-3, C-4, VC, and WC Zoning Districts. Shrubs and perennials should generally be planted in large masses or drifts, rather than as individual specimens, to provide a pleasing effect for both motorists and pedestrians.
- (9) Illumination levels. Optional in C-1, C-1N, C-2, C-3, C-4, VC, and WC Zoning Districts.
 - (a) Light fixtures used in driveways and parking lots shall be in scale with buildings on site. Maximum pole height along driveways shall not exceed 25 feet.
 - (b) Fixture heights shall vary with the size and position of the lot. Small parking areas (fewer than 150 cars) shall have a maximum pole height of 20 feet. In large parking areas (greater than 150 cars) thirty-foot poles may be allowable to reduce the number of poles. Poles within 200 feet of residential property lines shall not exceed 20 feet in height.
 - (c) Pole heights for pedestrian lighting shall be appropriate for the project and the setting. Bollard fixtures, three feet to four feet in height, and ornamental fixtures, up to 12 feet in height, are encouraged as pedestrian-area lighting. When decorative or special lighting is used, pole height shall be a maximum of 16 feet above the ground.

D. Bicycle/pedestrian.

- (1) Internal walkways. Required in C-1 and C-1N, optional in C-2, C-3, C-4, VC, and WC Zoning Districts. Continuous internal walkways shall be provided from the public sidewalk to the principal customer entrance of all principal buildings on the site. Walkways shall also connect other buildings on multibuilding developments, transit stops, and other focal points of pedestrian activity.
- (2) Links to community. Required in C-1, C-1N, C-2, C-4, VC, and WC Zoning Districts, optional in C-3.
 - (a) Site plans shall preserve or create linkages with surrounding buildings, neighborhoods, and other parts of the community. The design of these links shall consider views, noise, traffic, security, lighting, the privacy of abutting commercial or residential neighbors, and other factors relating to the safety and welfare of the user.
 - (b) Internal pedestrian connections between abutting properties shall be provided to encourage walking and discourage additional auto trips onto major roadways. Connections shall avoid crossing parking lots, major interior roadways, service areas, drive-throughs, and other potential points of conflict. Where such crossings are unavoidable, they shall be well-marked and as direct as possible.
- (3) Outdoor activity area. Optional in C-1, C-1N, C-2, C-3, C-4, VC, and WC Zoning Districts. Commercial buildings with footprints in excess of 15,000 square feet shall provide inviting open spaces where people can sit, relax, and socialize. Open spaces shall be designed as outdoor rooms, with consideration to ground surfaces, landscaping, lighting, site furnishings, and other physical elements. The outdoor activity area(s) shall cumulatively total 10% of the building size, but will not be required to exceed 1,000 square feet.
- (4) Sidewalks. Required in C-1, C-1N and WC; optional in C-2, C-3, C-4 and VC Zoning Districts.

Sidewalks and planted esplanades shall be provided by the developer within or near the right-of-way, or the North Windham sidewalk impact fee paid in accordance with Article 12 of this chapter. In cases where new development calls for the construction of a new street, both sides of the street shall be developed where practical to encourage safe pedestrian and bicycle movement. Facilities shall be coordinated with abutting land uses to create interconnections throughout the commercial district and linkages to surrounding residential neighborhoods where appropriate.

- (5) Crosswalks. Required in C-1 and C-1N; optional in C-2, C-3, C-4, VC, and WC Zoning Districts. Where sidewalks intersect with commercial driveways or roads, crosswalks shall be installed to emphasize the conflict point and improve its visibility. Materials for crosswalks shall be highly durable and slip-resistant. Raised crosswalks may be used as a traffic-calming device to make crosswalks more visible. They shall be designed by a traffic engineer as part of the site circulation plan. Signs may be warranted at the discretion of the Town in certain situations as recommended by the Institute for Traffic Engineers (ITE). Materials selected for crosswalks shall allow safe bicycle movement across the surface.
- (6) Bicycle parking/racks. The applicant shall provide facilities for the parking of two bicycles, or one space per 10,000 square feet of building area, whichever is greater.

§ 120-814. Triplex/Quadplex and Multifamily development standards. [Added 3-28-2023 by Order No. 23-041⁴²]

The purpose of this section is to establish design standards and guidelines that will apply to triplex/quadplex and multifamily development.

A. Building architecture.

- (1) Architectural variety.
 - (a) Buildings shall employ more than a single color application.
 - (b) Buildings shall employ more than a single material application.
 - (c) At least two different building designs shall be included in developments with multiple buildings. Building designs shall be differentiated through variations to building materials, color, rooflines, massing or a variation of form.
- (2) Facade.
 - (a) The composition of a proposed building facade shall be defined by horizontal and vertical articulation. Facades shall be articulated with architectural details that create visual interest.
 - (b) The primary facade and all facades visible from public ways for buildings with more than two dwelling units and greater than 35 feet in length shall provide variation in roof and facade character through changes in facade set-back, roof configuration, and/or projecting or recessed building elements.
 - (c) The primary facade and all facades visible from public ways for buildings three or more stories in height, shall include at least two of the following architectural details: gables or

Commented [BM23]: Do we want these standards to still apply to 3+ dwelling units?

Commented [SP24R23]: Yes, we do.

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Commented [BM25]: Deleting as multifamily is redefined to be 5+ units.

Commented [SP26R25]: Agreed

42. Editor's Note: This ordinance also renumbered former §§ 120-814, Post-approval activities, and 120-815, Appeals, as §§ 120-815 and 120-816, respectively.

dormers, articulated roof lines, balconies, variations in facade setback, bay windows, recessed entries, covered porches (minimum six feet wide), covered entries, stoops, or other means of creating visual interest acceptable to the Planning Board.

- (d) The primary facade and all facades visible from public ways for shall have an area of fenestration a minimum of 25% of the total area of street facing facades. The rhythm, size and proportion of door, window and other openings shall be proportional to the overall massing of the building.

(3) Orientation.

- (a) When buildings are adjacent to an existing street, building entrances shall be oriented to face the street.
- (b) Buildings may be oriented to open space areas, provided that street frontages are developed consistent with above.

B. Site design.

(1) Parking.

- (a) On-site parking may include new internal streets or access drives with parallel or angled on-street parking. Wherever possible, parking lots shall be located to the rear or sides of multifamily buildings.
- (b) Provisions shall be made for snow storage in the design of all parking areas. The areas used for snow shall not conflict with proposed landscaping. The areas shall be sited to avoid problems with visibility, traffic circulation, drainage, or icing during winter months.

(2) Screening.

- (a) Utilities. Service areas, loading docks, delivery areas, trash receptacles, and mechanical equipment shall be screened to minimize visibility from sensitive view-points such as public and private roadways, main entrances, residences outside the development, public open spaces, and pathways. Service areas shall be screened with architectural elements such as walls or fences. Screening may be further enhanced with evergreen trees, shrubs, and earth berms. Gates on utility enclosures shall be designed to prevent sagging.
- (b) Existing residential abutters. When new residential development is adjacent to an existing residential use, landscaping, including large evergreen trees, and/or garden features (e.g., trellis or supplementary fencing), shall provide a buffer or screening between properties and obscure direct sight-lines into private yard areas or windows on adjacent properties.

(3) Bicycle/pedestrian.

- (a) Internal traffic flow internal walkways.

[1] Continuous internal walkways shall be provided from the public sidewalk to the principal entrance of all principal buildings on the site. Walkways shall also connect other buildings on multi-building developments, transit stops, and other focal points of pedestrian activity.

- (b) Links to community.

- [1] Site plans shall preserve or create linkages with surrounding buildings, neighborhoods, and other parts of the community. The design of these links shall consider views, noise, traffic, security, lighting, the privacy of abutting commercial or residential neighbors, and other factors relating to the safety and welfare of the user.
 - [2] Internal pedestrian connections between abutting properties shall be provided to encourage walking and discourage additional auto trips onto major roadways. Connections shall avoid crossing parking lots, major interior roadways, service areas, drive-throughs, and other potential points of conflicts. Where such crossings are unavoidable, they shall be well-marked and as direct as possible.
- (c) Bicycle parking/racks.
- [1] Development with multifamily dwellings shall provide facilities for the parking of bicycles at a ratio of 0.5 bicycle parking space per dwelling unit in the multifamily dwelling.
- (4) Recreation and open space.
- (a) The Planning Board shall require the reservation of land for parks, playgrounds, or open space areas to benefit the residents of the proposed development. The reserved land must be of suitable dimension, topography, and general character for the proposed recreational use and must be reasonably accessible to residents of the development. It must be designated on the plan as "reserved for conservation or recreation purposes."
 - (b) A minimum area of 15% of the total lot area (inclusive of required setback areas) shall be designated, and permanently reserved, as usable common open space. The area may include the required setback areas. Stormwater infrastructure shall not count towards the minimum area, except for low-impact development (LID) systems as identified in the September 21, 2007, report, "LID Guidance Manual for Maine Communities," as amended.
 - (c) In all developments with more than 10 units, excepting developments within 500 feet of a public park or playground that is directly accessible, the site plan shall designate, within the common open space, a minimum of 250 square feet/each of the first 10 units, plus 50 square feet/unit above 10 units, of contiguous area with constructed amenities for passive use (e.g. outdoor courtyards, seating areas, or family picnic area with amenities such as landscaping, lighting, weather protection and other features that encourage use year-round) or active areas (e.g., children's play areas, play fields, and community gardens).
- (5) Landscape/lighting.
- (a) Landscaping.
 - [1] The use of a variety of plant materials that exhibit seasonal color and interesting texture is encouraged to create a distinctive, yet low maintenance environment. Plantings plans should strike a balance between monoculture (the use of a single species) and too much variety, and not include species on the list of invasive plants published by the Maine Department of Agriculture, Conservation and Forestry.
 - [2] The use of plant materials and landscape elements that require a low degree of maintenance is strongly encouraged. All plantings shall be resistant to insect

infestation, drought, disease, roadside salt, and auto emissions, and hardy to Maine winters.

- [3] Shrubs and perennials should generally be planted in large masses or drifts, rather than as individual specimens, to provide a pleasing effect for both motorists and pedestrians.
 - [4] To maintain the character of the landscape, existing healthy trees and shrubs shall be preserved or be transplanted to another area of the site wherever practical. Where it is not possible to maintain existing trees, the reason for removal shall be given in writing.
- (b) Parking lot landscaping.
- [1] Parking areas with 40 or fewer parking stalls shall landscape a minimum of 10% of the total area. Parking areas with greater than 40 parking stalls shall landscape a minimum of 15% of the total area. Planting islands shall be a minimum of nine inches in width. All parking lot landscaping shall be able to tolerate parking lot growing conditions.
 - [2] Trees in parking lots may be planted in informal groups, straight rows, or irregular groupings as space permits, or they may be concentrated in certain areas. Trees should be planted a minimum of five feet from the end of parking lot islands.
 - [3] Where trees abut pedestrian walkways or places where people will be walking in parking lots, their lower branches shall be pruned to at least eight feet above the paved surface to avoid becoming an obstacle. Shrubs used in parking lot islands shall not exceed three feet in height to avoid blocking visibility.
 - [4] Landscaped areas used for separation between banks of parking stalls shall contain 50% vegetative cover.
 - [5] Landscaping materials surrounding parking lots and in islands shall be able to tolerate large quantities of snow stored during winter months. Delicate plant material shall not be used in areas where they are likely to be buried under snow.
- (c) Lighting.
- [1] Light fixtures used in driveways and parking lots shall be in scale with buildings on site. Maximum pole height along driveways shall not exceed 25 feet.
 - [2] Pedestrian-scaled lighting, less than 16 feet in height, shall be used to illuminate areas used for pedestrian circulation.
 - [3] All illumination shall be controlled with cutoffs that primarily direct light downward.
- (6) Access drive standards. Multifamily developments in which the property will be held in common ownership shall be served by an access drive. Access drives shall remain private and shall not be maintained or repaired by the Town. Access drives shall meet the following standards:
- (a) C1 and C2 Districts.
 - [1] Design standards. Access drives shall be designed to conform to the standards for

commercial street, curbed lane or residential street standards.

- [2] Rights-of-way. The minimum right-of-way width for a commercial street, curbed lane or residential street in Appendix B is not applicable to an access drive. When the Planning Board determines that a right-of-way is required to connect to a surrounding street, an existing right-of-way on an abutting property, or to provide continuation of the road to allow for connectivity with expected future development, a public access easement across the access drive shall be offered to the Town in order to comply with the Article 4, Block Standards.
 - [3] Setbacks. There shall be no required setback between an access drive and a structure.
- (b) Other districts.
- [1] Design standards. Access drives shall be designed to conform to the standards for "major private roads" in these regulations, including the standards contained in Table 3, Table 4, and the applicable cross sections in Appendix B Street Standards.
 - [2] Rights-of-way. The minimum right-of-way width for a "major private road" in Table 3 of Appendix B is not applicable to an access drive.
 - [3] Setbacks. There shall be no minimum setback required between an access drive and a structure.
- (c) Curb cuts on the access drive must be separated by a minimum of 75 feet where possible and aligned with curb cuts on the opposite side of the access drive to the greatest extent possible.
- (d) Access drives shall remain private and shall not be maintained or repaired by the Town. A note shall appear on the site plan: All internal access roads and driveways shall remain private and shall be maintained by the developer, lot owners, homeowners/condominium association, or road association and shall not be offered for acceptance, or maintained, by the Town of Windham unless they meet all municipal street design and construction standards at the time of offering.

§ 120-815. Post-approval activities. [Amended 1-22-2013 by Order 13-009; 1-22-2013 by Order 13-010; 2-28-2017 by Order 17-038]

- A. Limitation of approval. Construction of the improvements covered by any site plan approval shall commence within two years of the date upon which the approval was granted. If construction has not commenced, as determined by the Code Enforcement Officer, within the specified period, the approval shall be null and void. The time period does not run during any appeal of the project approval.
- (1) The applicant may request an extension of the approval deadline prior to the expiration of the period. Such request shall be in writing and shall be made to the Planning Board or Staff Review Committee.
 - (2) The Planning Board or Staff Review Committee may grant up to two one-year extensions to the periods if the approved plan conforms to the ordinances in effect at the time the extension is granted and any and all federal and state approvals and permits are current.
- B. Incorporation of approved plan. One copy of the approved and signed site plan shall be included with the application for the building permit for the project, and all construction activities shall conform to the approved plan, including any conditions of approval and minor changes approved by the Planner, Code Enforcement Officer or Town Engineer to address field conditions.

C. Improvement guarantees. [Amended 10-24-2023 by Order No. 23-193]

(1) Application.

- (a) Improvement guarantee. The Town shall require the posting of an improvement guarantee for an amount adequate to cover 110% of the total construction costs of all required off-site improvements and the following on-site improvements, taking into account the time span of the construction schedule and the inflation rate for construction costs. The amount will be based upon a schedule of values maintained by the Town and based on construction costs of similar projects.

- [1] Site preparation, including but not limited to clearing, grading, excavation, blasting, and parking area gravel material.
- [2] All stormwater management infrastructure and erosion control and drainage improvements.
- [3] Any public or private streets and associated sidewalks and any sidewalks providing access to the site from public or private streets.
- [4] Site lighting, landscaping, public amenities, and utilities.
- [5] Recreation and open space elements required as part of the approved site plan.
- [6] Construction of improvements covered by any site plan approval shall be completed within two years of the date upon which the performance guarantee is accepted by the Town Manager. The developer may request a one-year extension of the construction completion deadline prior to the expiration of the period. Such request shall be in writing and shall be made to the Planner. The Town Manager may require an update to the schedule of values and the amount of the guarantee when accepting an extension of the construction period. If construction has not been completed within the specified period, the Town shall, at the Town Manager's discretion, use the performance guarantee to either reclaim and stabilize the site or to complete the improvements as shown on the approved plan.

- (b) Upon substantial completion of all required improvements, the developer shall notify the Town Manager, Public Works Department, Code Enforcement Department and Planning Department of the completion or substantial completion of improvements and shall send a copy of such notice to the appropriate municipal officials. The respective municipal officials shall cause an inspection of all improvements and shall file a report indicating either approval, partial approval, or rejection of such improvements with a statement of reasons for any rejection.

- [1] If the improvements are approved, the guarantee shall be released by the Town Manager. Where partial approval is granted, the developer shall be released from liability only for that portion of the improvements approved.
- [2] Performance guarantees may be reduced periodically, but in no event more than one time per month. In no case shall the performance guarantee be reduced by less than \$10,000 at one time or in any line item where improvements remain to be completed. No performance guarantee shall be reduced to less than 10% of the performance guarantee. The remainder of the guarantee will be released upon completion of the improvements.

- (2) Form of guarantee. Performance guarantees may be provided by a variety of means, including, but not limited to, the following, which shall be approved as to form and enforceability by the Town Manager. A performance guarantee shall not expire until released by the Town Manager. The terms shall be for a maximum of two years and shall not expire between October 31 and April 15 of the following year. The Town Manager may approve an extension of up to one year.

The amount of the performance guarantee shall be reviewed for sufficiency at the time of the extension.

- (a) Security bond. The applicant may obtain a security bond from a surety bonding company authorized to do business in the state. The applicant shall provide evidence that the surety bonding company has a minimum A rating.
- (b) Letter of credit. The applicant may provide an irrevocable letter of credit from a bank or credit union. The letter of credit shall be provided in accordance with the Town of Windham's most current template.
- (c) Escrow account. A cash contribution to the establishment of an escrow account shall be made by either a certified check made out to the municipality, direct deposit into a savings account, or the purchase of a certificate of deposit. For any account opened by the applicant, the Town of Windham shall be named as owner, and the consent of the Town shall be required for any reduction in the amount of the escrow account.

D. Post-approval construction observations (see § 120-810, Fees).

- (1) At least 15 days prior to commencing construction of required improvements, the developer shall notify the Planner, in writing, of commencement of construction so that the planner can cause observations to be made to ensure that all specifications and requirements of the approved plans shall be met. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**
- (2) At least five days prior to commencing construction of required improvements, the developer shall pay the construction observation fees as required in § 120-810G. No building permits shall be issued on the project and no work, including site preparation, shall commence until the fee has been paid. A preconstruction meeting shall be held with Town staff prior to commencing construction.
- (3) If the observer finds that any of the required improvements have not been constructed in conformance with the plans and specifications approved by the Planning Board or Staff Review Committee, he shall so report to the Town Manager, Public Works Director, Code Enforcement Officer and Planner. The Planner shall notify the developer of the reviewer's findings and seek confirmation of the developer's intent and time line to remediate the deficiencies.
 - (a) If the developer is not capable, or refuses, to correct the identified deficiencies, the Town Planner or Town Manager shall notify the bonding company or bank and take all necessary steps to preserve the municipality's rights under the bond, letter of credit or escrow account
 - (b) No site plan amendments or new site plans submitted by said developer shall be approved by the Planning Board or Staff Review Committee as long as the developer is in default on a previously approved plan.
- (4) Prior to the Town issuing any certificates of occupancy, the observer shall find that all required boundary markers have been installed by a Maine licensed professional land surveyor according to the plans approved by the Planning Board or Staff Review Committee.

E. Submission of as-built plans. Any project involving the construction of more than 20,000 square feet of gross floor area or 50,000 square feet of impervious surface shall provide the Planning Department with a set of construction plans showing the building(s) and site improvements as actually constructed on the site. These "as-built" plans shall be submitted in both paper and electronic copies (including any revisions to the GIS information required in § 120-811, Submission requirements) prior to the issuance of a certificate of occupancy for the project or occupancy of the building.

F. Minor changes to approved plans. Minor changes in approved plans necessary to address field conditions may be approved by the Planner, provided that any such change does not affect compliance with the standards or alter the essential nature of the proposal. Any such change shall be approved, in

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writing, by the Planner. Copies of the approval letter shall be placed in the project file.

- G. Amendments to approved plans. Approvals of site plans are dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant and conditions, if any, imposed by the Planning Board or Staff Review Committee. Any variation from the plans, proposals, supporting documents, and representations, except minor changes that do not affect approval standards, is subject to review and approval by the Planning Board or Staff Review Committee, as appropriate.
- H. Change in ownership. Where there is a change in ownership of a project after approval has been granted, but prior to the release of the performance guarantee, the Town Manager may request new financial capability information, as well as other factors that the Town Manager deems necessary because of changing conditions.

§ 120-816. Appeals.

- A. Appeals of Staff Review Committee actions. Appeal of any actions taken by the Staff Review Committee with respect to this Article 8, Site Plan Review, shall be to the Planning Board in accordance with § 120-806E, Appeal to the Planning Board.
- B. Appeal of Planning Board actions. Appeal of any actions taken by the Planning Board with respect to this article shall be to the Superior Court in accordance with the Maine Rules of Civil Procedure, Rule 80B.

ARTICLE 9
Subdivision Review⁴³

§ 120-901. Purpose. [Amended 5-23-2023 by Order No. 23-092]

The purpose of these standards shall be to assure the comfort, convenience, safety, health and welfare of the people; to protect the environment and to promote the development of an economically sound and stable community. To this end, in approving subdivisions within the Town of Windham, Maine, the Planning Board shall evaluate the proposed subdivision, using the following criteria. The subdivision provisions set forth in these regulations are intended to protect the public health and safety, promote the general welfare of the community, and conserve the environment by assuring that residential and nonresidential construction is designed and developed in a manner that assures that adequate provisions are made for traffic safety and access; emergency access; water supply; sewage disposal; management of stormwater, erosion, and sedimentation; protection of groundwater; protection of the environment, wildlife habitat, fisheries, and unique natural areas; protection of historic and archaeological resources; minimizing the adverse impacts on adjacent properties; and fitting the project harmoniously into the fabric of the community.

§ 120-902. Statutory review criteria. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. D)]

When reviewing any application for a subdivision, as defined by Article 3, the review authority shall find that the criteria as found in 30-A M.R.S.A. § 4404 have been met, as well as all applicable provisions of this chapter and other sections of this Article 9, before granting approval (see § 120-911, Performance and design standards).

§ 120-903. Authority and administration.

- A. Authority; title. These standards have been prepared in accordance with the provisions of 30-A M.R.S.A. § 4401 et seq., and all amendments thereto.
- B. Subdivisions recorded prior to enactment. The provisions of these standards, not specifically required by 30-A M.R.S.A. § 4401 et seq., shall not apply to any subdivision which has been approved by the Board and recorded in the Registry of Deeds of Cumberland County prior to the Town's enactment of subdivision regulations that became effective on February 7, 1972.
- C. Administration. The Planning Board of the Town of Windham, hereinafter called the "Board," shall administer these standards. The Board shall contain seven members. In addition, said Board shall have one alternate member, who shall have all the rights of a full member except said alternate may vote only in the absence of a full member. A quorum of four members shall be necessary to conduct a meeting. A majority vote of the quorum is required for the passage or denial of any motion before the Board.
 - (1) The term of members shall be three years.
 - (2) A municipal officer or their spouse shall not be a member of the Board.
 - (3) When there is a vacancy, the municipal officers shall appoint a person to serve the remainder of the unexpired term.

43. Editor's Note: Article 9 was amended 3-11-2014 by Order 14-033 to delete provisions relating to subdivision impact analysis and fees and 8-26-2014 by Order 14-312 to delete building permit limits for subdivisions.

- (4) The Board shall elect a Chair and Vice Chair from its own membership.
- (5) Any questions 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 who has declared the conflict or who is challenged.
- (6) A member of the Board may be dismissed for cause by the municipal officers before the expiration of their term.
- (7) A Secretary to the Board shall be appointed by the appropriate Town officials.
- (8) The Board shall not review any subdivision application unless the applicant, or the applicant's duly authorized representative, attends the meetings for which the application has been placed on the agenda. Should the applicant or applicant's representative fail to attend, the Board shall reschedule the review of the application to its next available meeting.

(For additional information, see "Rules of the Planning Board" on file in Town Hall.)

§ 120-904. Joint application and hearing.

If an application requires any combination of site plan review, subdivision review, or conditional use approval, the procedures for all applicable application reviews must be met in order to initiate the fair hearing process. The procedures for the applicable reviews may occur simultaneously.

§ 120-905. Classification of subdivision.

- A. Classification. The Planner shall classify each project as a major or minor subdivision.
 - (1) Minor subdivisions shall involve: ~~the creation of four or fewer lot, the construction or conversion of a building with 5 dwelling units, or the placement of five dwelling units on a single lot within a 5-year period.~~
 - (2) Major subdivisions shall involve ~~with the creation of five or more lots, the construction or conversion of a building with six or more dwelling units, or the placement of six or more dwelling units on a single lot within a 5-year period,~~
 - (3) Nothing in this article shall be interpreted to require Planning Board review for projects involving the creation of four of fewer dwelling units within a single building.
 - (4) An applicant may request that the Planner classify an application prior to its submission. In this case, the applicant must make a written request for a classification. This request must include the following information:
 - (a) The names and addresses of the record owner and the applicant and the applicant's legal interest in the property.
 - (b) The location of the project, including the Tax Map and lot number.
 - (c) A brief description of the proposed activities in such detail as to allow a classification to be made.
- B. Notification. Within 10 working days of the receipt of a subdivision application, the Planner shall notify the applicant of the classification of the project, in writing. When the Planner has classified a project based upon a request for classification rather than an application, the subsequent application must be consistent with the activities described in the request for classification. The Planner shall review such application to determine if the classification is still correct and may reclassify the

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application if the scope of activities has been changed.

§ 120-906. Review procedures for minor subdivisions. [Amended 2-14-2012 by Order 12-016; 7-8-2014 by Order 14-223; 3-26-2019 by Order 19-020; 9-23-2025 by Order No. 25-126]

- A. Preapplication conference. Applicants for minor subdivision review shall meet with the Town development review staff for a preapplication conference at least seven calendar days prior to the submission of each application. The purpose of this meeting is to familiarize the applicant with the review procedures, submission requirements, and approval criteria, and to familiarize Town staff with the nature of the project. Such review shall not cause the plan to be a pending application or proceeding under 1 M.R.S.A. § 302. No decisions relating to the plan may be made at this meeting.
- (1) Such review shall not cause the plan to be a pending application or proceeding under 1 M.R.S.A. § 302. No decisions relative to the plan may be made at this meeting.
 - (2) Information required. To request a preapplication conference, the applicant shall submit, at a minimum, a brief narrative describing the project, the location of the project on a US Geologic Survey (USGS) topographic map, and a copy of the Tax Map showing the development parcel. The applicant should be prepared to discuss the following:
 - (a) The proposed site, including its location, size, and general characteristics;
 - (b) The layout of the proposed subdivision and potential constraints;
 - (c) Any issues or questions about existing municipal regulations and their applicability to the project; and
 - (d) Any requests for waivers from the submission requirements in § 120-910. (See § 120-908, Waivers.)
- B. Sketch plan.
- (1) The sketch plan must be completed prior to the preparation and submission of a final minor subdivision plan application and supporting documentation.
 - (2) The Board shall review the sketch plan with the applicant and shall authorize the submission of the final plan application when the sketch plan review is complete.
- C. Sketch plan review procedures.
- (1) All sketch plan review applications shall include all required submission materials and shall be submitted to the Planning Department. An application will not be placed on a Planning Board agenda until it has been determined complete by the Planning Department as specified in this article.
 - (2) Within 30 days of the receipt of a sketch plan submission for a minor subdivision, the Planner shall review the material to determine whether or not the submission is complete.
 - (3) Site walk. The Planning Board shall visit the site to observe existing conditions, generally confirm the information submitted and assess the development proposal. The site walk shall be scheduled by the Planner prior to the first regular meeting at which the application is reviewed by the Board.
 - (a) Procedures for the on-site inspection shall follow the requirements of the Town of Windham Planning Board Rules, as amended.
 - (b) The Board may decide not to hold, or postpone, a site walk when the site is snow-covered.
 - (c) Notice of the site walk shall be published in a newspaper of general circulation, mailed to

the applicant and property owners within 500 feet of the property under review. Notices must be published and/or sent at least seven days prior to the on-site inspection.

- (d) The applicant shall stake the center line of any proposed streets and the front corners of any proposed lots and provide a sketch plan (on a sheet 11 inches by 17 inches) of the project for each member of the Planning Board and staff.
- D. Review of the sketch plan. The review of the sketch plan shall be informational and shall not result in any formal approval or disapproval of the project by the Planning Board.
- (1) The applicant and property owners within 500 feet of the property under review shall be notified of the time, date, and place of the Board meeting at which the sketch plan will be reviewed.
 - (a) The meeting agenda may serve as notification.
 - (b) The notification shall inform the applicant and public that the Planning Board may accept public comment during the sketch plan review.
 - (2) The Board may choose to accept public comment on the application.
 - (3) The outcome of the review process shall be the identification by the Board of the issues and constraints that must be addressed in the final minor subdivision plan review application.
 - (4) The Board shall act on any requests for waivers from the final minor subdivision plan submission requirements.
- E. Final minor subdivision plan review procedures.
- (1) All final minor subdivision plan review applications shall include all required submission materials and shall be submitted to the Planning Department. Upon receipt of a formal subdivision review application, the Planner shall give a dated receipt to the applicant and shall notify by first-class mail all property owners within 500 feet of the parcel on which the proposed development is located. The notice shall specify the location of the proposed development and provide a general description of the project. An application will not be placed on a Planning Board agenda until it has been determined complete by the Planning Department as specified in this article.
 - (2) Within 30 days of the receipt of a formal subdivision review application, the Planner shall review the material and determine whether or not the submission is complete. The Planner shall notify the applicant, in writing, of this finding. If the Planner determines that the application is incomplete, the notice 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.
 - (3) When the Planner determines that the application is complete, the Planner shall:
 - (a) Notify the Planning Board that the application is complete.
 - (b) Notify the applicant, in writing, of this recommendation.
 - (c) Provide members of the Town's development review staff with the final plan application material.

- (4) A determination of completeness under this subsection does not preclude the Planning Board from requiring the submission of additional materials that it finds are necessary for review of the project.
- (5) Prior to consideration of the application by the Planning Board, the Town's development review staff may review the application and make recommendations to the Board.
- (6) The Planner shall give written notice of the date, time, and place of the meeting at which the application will be considered, to the applicant and all property owners within 500 feet of the property under review. The notice shall be mailed to the applicant and property owners within 500 feet of the property under review. Notices must be sent at least seven days prior to the meeting.
- (7) At the first meeting at which the final plan application is considered, the Planning Board shall determine whether to hold a public hearing on the application.
- (8) The Planner shall require qualified independent geotechnical, hydrogeologic, site evaluation, engineering, and similar professional consulting services to determine adherence to best practices in planning and engineering when any portion of the development is within the direct watershed of a lake most at risk from new development as designated in Chapter 502, Direct Watersheds of Lakes Most at Risk from New Development, and Urban Impaired Streams, of the Maine Department of Environmental Protection. The project shall be reviewed in compliance with the stormwater standards included in the Maine Department of Environmental Protection Chapter 500, including basic, general, phosphorus, flooding, and other standards.⁴⁴ The review shall also ensure compliance with performance standards contained in § 120-911C, D(2), H(1), and J of this chapter. The review shall include attendance at any scheduled Planning Board site walk.

F. Public hearing on minor subdivision applications.

- (1) If the Planning Board decides to hold a public hearing on an application for subdivision approval, it shall hold the hearing within 30 days after determining it has received a complete application, or within any other time limit that is mutually agreed upon by the Board and applicant.
- (2) 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 these regulations or other municipal ordinances.
- (3) The public hearing shall follow the procedures established in the Town of Windham's Planning Board Rules, as amended.

G. Final action on the application.

- (1) Within 30 days of the public hearing or within 60 days of determining a complete application has been received, 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 on the application and approve, approve with conditions, or deny the final plan application. The Board

⁴⁴. Editor's Note: See 06-096 CMR Chs. 500 and 502.

shall specify, in writing, its findings of fact and reasons for any conditions or denial.

- (2) The Board shall notify the applicant and abutters who requested to be notified of the action of the Board, including the findings of fact and any conditions of approval. This requirement can be met through the distribution of minutes of the meeting, or an approval letter, containing the findings of fact and decision of the Board.
- (3) All time limits provided for in this section may be extended by mutual agreement of the applicant and Board.

§ 120-907. Review procedures for major subdivisions. [Amended 2-14-2012 by Order 12-016; 7-8-2014 by Order 14-223; 3-26-2019 by Order 19-020; 6-16-2022 by Order No. 22-10810-24-2023 by Order No. 23-193; 4-29-2025 by Order No. 25-043; 9-23-2025 by Order No. 25-126]

A. Sketch plan.

- (1) Preapplication conference.
 - (a) Applicants for major subdivision review shall meet with the Town development review staff for a preapplication conference at least seven calendar days prior to the submission of each application. The purpose of this meeting is to familiarize the applicant with the review procedures, submission requirements, and approval criteria, and to familiarize Town staff with the nature of the project. Such review shall not cause the plan to be a pending application or proceeding under 1 M.R.S.A. § 302. No decisions relating to the plan may be made at this meeting.
 - (b) Information required. To request a preapplication conference, the applicant shall submit, at a minimum, a brief narrative describing the project, the location of the project on a US Geologic Survey (USGS) topographic map, and a copy of the Tax Map showing the development parcel. The applicant should be prepared to discuss the following:
 - [1] The proposed site, including its location, size, and general characteristics;
 - [2] The layout of the proposed subdivision and potential constraints;
 - [3] Any issues or questions about existing municipal regulations and their applicability to the project; and
 - [4] Any requests for waivers from the submission requirements in § 120-910. (See § 120-908, Waivers.)
- (2) Plan submission.
 - (a) General requirements.
 - [1] The sketch plan must be completed prior to the preparation and submission of a preliminary subdivision application and supporting documentation.
 - [2] The Board shall review the sketch plan with the applicant and shall authorize the submission of the preliminary plan application when the sketch plan review is complete.
 - (b) Review procedures.

- [1] Submission deadline. All sketch plan review applications shall include all required submission materials and shall be submitted to the Planning Department. An application will not be placed on a Planning Board agenda until it has been determined complete by the Planning Department as specified in this article. The Planning Department shall have up to 30 calendar days from the date of submission to determine completeness.
- [2] Site walk. The Planning Board may conduct a site walk for major subdivisions, in its sole and exclusive discretion, consistent with the provisions of §120-806C, as amended. The visit of the site is to observe existing conditions, generally confirm the information submitted and assess the development proposal. The site walk shall be scheduled by the Planner prior to the first regular meeting at which the application is reviewed by the Board.
 - [a] Procedures for the on-site inspection shall follow the requirements of the Town of Windham Planning Board Rules, as amended.
 - [b] The Board may decide not to hold, or postpone, an on-site inspection when the site is snow-covered.
 - [c] Notice of the on-site inspection shall be published in a newspaper of general circulation, mailed to the applicant and property owners within 500 feet of the property under review. Notices must be published and/or sent at least seven days prior to the on-site inspection.
 - [d] The applicant shall stake the center line of any proposed streets and the front corners of any proposed lots and provide a sketch plan (on a sheet 11 inches by 17 inches) of the project for each member of the Planning Board and staff present at the site visit.
- (3) Review of the sketch plan. The review of the sketch plan shall be informational and shall not result in any formal approval or disapproval of the project by the Planning Board.
 - (a) The applicant and property owners within 500 feet of the property under review shall be notified of the time, date, and place of the Board meeting at which the sketch plan will be reviewed.
 - [1] The meeting agenda may serve as notification.
 - [2] The notification shall inform the applicant and public that the Planning Board may accept public comment during the sketch plan review.
 - (b) The Board shall review the submission to determine if the information provides a clear understanding of the site and identifies opportunities and constraints that help determine how it should be used and developed.
 - (c) The Board may consider any input received from members of the Staff Review Committee.
 - (d) The Board may choose to accept public comment on the application.
 - (e) The outcome of the review process shall be the identification by the Board of the issues and constraints that must be addressed in the preliminary subdivision plan application.

- (f) The Board shall act on any requests for waivers from the preliminary subdivision plan submission requirements.

B. Preliminary plan.

- (1) Plan consistency. The preliminary plan shall approximate the layout shown on the sketch plan, plus any recommendations made by the Board.
- (2) Submission deadline. The applicant shall submit a preliminary plan within six months after the Board has authorized submission of said plan. The Board may, upon failure to meet the six-month deadline, require the application to return to the sketch plan review phase. Each time that an application is returned to the sketch plan review phase, the applicant shall pay the required application fees.
- (3) Submission of revisions. Once a formal preliminary subdivision submission is made to the Board, the applicant shall have six months to return to the Board with a revised preliminary plan. This six-month period shall recommence at each substantive review of the preliminary plan by the Planning Board.
 - (a) If a revised preliminary plan is not submitted to the Planning Board within six months of the last preliminary submission, the Board may require the application to return to the sketch plan review phase. Previously paid subdivision fees will not be refunded should a preliminary plan application fail to meet the above-specified deadline.
 - (b) Where the Planning Board finds that extraordinary circumstances make it impossible for the applicant to comply with this section, it may grant an extension, which shall not exceed an additional three months. Such extension must be requested by the applicant before the initial six-month period has expired.
- (4) Review procedures.
 - (a) All preliminary plan review applications shall include all required submission materials and shall be submitted to the Planning Department. Upon receipt of an application for a preliminary plan review, the Planner shall give the applicant a dated receipt. An application will not be placed on a Planning Board agenda until it has been determined complete by the Planning Department as specified in this article.
 - (b) Within 30 days of the receipt of a preliminary plan submission for a major subdivision, the Planner shall review the material to determine whether or not the submission is complete. The Planner shall notify the applicant, in writing, of this finding. If the Planner determines that the application is incomplete, the notice shall specify the additional material required to make the submission complete and shall advise the applicant that the application will not be considered by the Board until the additional information is submitted.
 - (c) When the submission is determined to be complete, the Planner shall:
 - [1] Notify the Planning Board that the application is complete;
 - [2] Place the item on the agenda for review by the Board;
 - [3] Provide members of the Town's development review staff with the preliminary plan application material; and
 - [4] Require qualified independent geotechnical, hydrogeologic, site evaluation,

engineering, and similar professional consulting services to determine adherence to best practices in planning and engineering when any portion of the development is within the direct watershed of a lake most at risk from new development as designated in Chapter 502, Direct Watersheds of Lakes Most at Risk from New Development, and Urban Impaired Streams, of the Maine Department of Environmental Protection. The project shall be reviewed in compliance with the stormwater standards included in the Maine Department of Environmental Protection Chapter 500, including basic, general, phosphorus, flooding, and other standards.⁴⁵ The review shall also ensure compliance with performance standards contained in the general standards of Chapter 500, § 4C, the basic standards described in Chapter 500, § 4B, and § 120-911C, D(2), H(1), and J of this chapter. The review shall include attendance at any scheduled Planning Board site walk.

- (d) At the first meeting at which the application is considered, the Planning Board shall determine whether to hold a public hearing on the preliminary plan application.
- (e) If the Board decides to hold a public hearing, it shall hold the hearing within 30 days of determining that it has received a complete application.
 - [1] Notice of the time, place and date of such hearing shall be sent not less than seven days before the hearing to the applicant and to owners of all properties within 500 feet of the properties involved. Owners of abutting properties shall be those listed in the most recent tax records of the Town of Windham. Failure to receive notice shall not invalidate the public hearing held.
 - [2] Notice shall also be published in a newspaper of general circulation in the Town of Windham at least two times, and the first date of publication shall be at least seven days prior to the public hearing.
- (f) Within 30 days of the public hearing or within 60 days of determining a complete application has been received, 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 on the application and approve, approve with conditions, or deny the preliminary plan application. The Board shall specify, in writing, its findings of fact and reasons for any conditions or denial.
- (g) When granting preliminary approval to a preliminary plan, the Board shall state the conditions of such approval, if any, with respect to:
 - [1] The specific changes which it will require in the final plan;
 - [2] The character and extent of the required improvements for which waivers may have been requested and which the Board finds may be waived without jeopardy to the public health, safety and general welfare; and
 - [3] The construction items for which cost estimates and performance guarantees will be required as prerequisite to the approval of the final plan.
- (h) Approval of a preliminary plan shall not constitute approval of the final plan or intent to approve the final plan, but rather it shall be deemed an expression of approval of the design

45. Editor's Note: See 06-096 CMR Chs. 500 and 502.

submitted on the preliminary plan as a guide to the preparation of the final plan. The final plan shall be submitted for approval of the Board upon fulfillment of the requirements of these regulations and the conditions of the preliminary approval, if any. Prior to approval of the final plan, the Board may require additional information be submitted and changes in the plan be made as a result of further study of the proposed subdivision or as a result of new information received. The applicant must provide such information at least seven days before the Board's scheduled meeting. If such information is not provided within the required time period, the application shall not be heard by the Board until it has been provided.

C. Final plan.

- (1) Plan consistency. The final plan shall approximate the layout shown on the preliminary plan, plus any recommendations made by the Board.
- (2) Submission deadline. The applicant shall, within six months after approval of the preliminary plan, submit a final plan application with the Board. If the final plan is not submitted to the Board within six months after the approval of the preliminary plan, the Board may require that the plan return to the preliminary plan review phase.
 - (a) Each time that an application is returned to a preliminary plan review phase, the applicant shall pay the required application fees.
 - (b) If an applicant cannot submit the final plan within six months, due to delays caused by other regulatory bodies, or other reasons, the applicant may request an extension. Such a request for an extension to the filing deadline shall be filed, in writing, with the Board prior to the expiration of the filing period. In considering the request for an extension, the Board shall make findings that the applicant has made due progress in preparation of the final plan and in pursuing approval of the plans before other agencies, and that municipal ordinances or regulations which may impact the proposed development have not been amended.
- (3) Submission of revisions. Once a formal final plan submission is made to the Board, the applicant shall have six months to return to the Board with a revised plan. This six-month period shall recommence at each substantive review of the final plan by the Planning Board.
 - (a) If a revised final plan is not submitted to the Planning Board within six months of the last final submission, the Board may require the application to return to the preliminary plan review phase. Previously paid subdivision fees will not be refunded should a final plan application fail to meet the above-specified deadline.
 - (b) If an applicant cannot comply with this section, the Planning Board may grant an extension in accordance with § 120-907C(2)(b), above. Such extension must be filed with the Planning Board before the six-month period has expired.
- (4) Review procedures.
 - (a) All final plan review applications shall include all required submission materials and shall be submitted to the Planning Department. Applications shall be submitted in both digital format and as a bound and tabbed hard copy. Within three days of the receipt of the final plan application, the Planner shall issue a dated receipt to the applicant. An application will not be placed on a Planning Board agenda until it has been determined complete by

the Planning Department as specified in this article.

- (b) Within 30 days of the receipt of a final plan submission for a major subdivision, the Planner shall review the material to determine whether or not the submission is complete. The Planner shall notify the applicant, in writing, of this finding. If the Planner determines that the application is incomplete, the notice shall specify the additional material required to make the submission complete and shall advise the applicant that the application will not be considered by the Board until the additional information is submitted.
- (c) When the submission is determined to be complete, the Planner shall:
 - [1] Notify the Planning Board that the application is complete;
 - [2] Place the item on the agenda for review by the Board; and
 - [3] Provide members of the Town's development review staff with the final plan application material.
- (d) A determination of completeness under this subsection does not preclude the Planning Board from requiring the submission of additional materials that it finds are necessary for review of the project.
- (e) At the first meeting at which the application is considered, the Planning Board shall determine whether to hold a public hearing on the final plan application.
- (f) If the Board decides to hold a public hearing, it shall hold the hearing within 30 days of determining it has received a complete application and shall publish a notice of the date, time and place of the hearing in a newspaper of local circulation at least two times, the date of the first publication to be at least seven days prior to the hearing. In addition, the notice of the hearing shall be posted in the Town Hall at least seven days prior to the hearing. A copy of the notice shall be sent by first-class mail to the owners of all properties within 500 feet of the property under review, and to the applicant, at least seven days prior to the hearing.
- (g) Prior to submittal of the final plan application, the following approvals shall be obtained in writing, where applicable. If the Board is unsure whether a permit or license from a federal, state or local agency is necessary, the applicant may be required to obtain a written opinion from the appropriate agency as to the applicability of its regulations.
 - [1] Maine Department of Environmental Protection, under the Site Location of Development Act.⁴⁶
 - [2] Maine Department of Environmental Protection, under the Natural Resources Protection Act⁴⁷ or Stormwater Law, or if an MEPDES wastewater discharge license is needed.
 - [3] Maine Department of Transportation, for a traffic movement permit, and/or highway entrance/driveway access management permit outside of the Urban Compact.
 - [4] Town of Windham Public Works Department for a curb cut permit inside the Urban

46. Editor's Note: See 38 M.R.S.A. § 481 et seq.

47. Editor's Note: See 38 M.R.S.A. § 480-A et seq.

Compact. (See curb cut standards in Article 5, Performance Standards.)

- [5] The Portland Water District if existing or proposed public water or sewer service is to be used.
 - [6] Maine Department of Health and Human Services if a central water supply system is to be used.
 - [7] A professional licensed in the State of Maine that a sufficient and healthful supply of water is available if individual wells serving each building site are to be used.
 - [8] Maine Department of Health and Human Services if a central sewage collection and treatment system is to be utilized.
 - [9] United States Army Corps of Engineers, if a permit under Section 404 of the Clean Water Act is required.⁴⁸
 - [10] Written approval of any proposed street names from the Town of Windham E911 Addressing Officer.
- (h) If the preliminary plan identified any areas listed on or eligible to be listed on the National Register of Historic Places, in accordance with § 120-910C(2)(w), the applicant shall submit a copy of the plan and a copy of any proposed mitigation measures to the Maine Historic Preservation Commission prior to submitting the final plan application.
- (i) Within 30 days of the public hearing, or within 60 days of determining a complete application has been received 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 on the application, and approve, approve with conditions, or deny the final plan application. The Board shall specify, in writing, its findings of facts and reasons for any conditions or denial.

§ 120-908. Waivers. [Amended 6-16-2022 by Order No. 22-108; 10-24-2023 by Order No. 23-193; 4-29-2025 by Order No. 25-043]

- A. Limitation of waivers. The granting of a submission requirement waiver or site waiver may not conflict with, nor negate, any state statutory requirements for the subdivision of land.
- B. Waiver of submission requirements. The Director of Planning or designee may waive the submission requirements identified in § 120-910 (Submission requirements) as being eligible for a waiver if it is determined that the information is not required to determine compliance with the standards and criteria of this chapter or that the information relates to a standard that is not applicable to the application.
- (1) A waiver from the submission requirements shall not require the applicant or the Director of Planning to follow the procedures and standards in Subsection C, below. A waiver from submission requirements shall not be considered a variance for purposes of 30-A M.R.S.A. § 4403(7).
 - (2) In accordance with § 120-910 (Submission requirements), the applicant shall submit a list of submission requirements for which a waiver is sought. The list shall include the reasons for

48. Editor's Note: See 33 U.S.C. § 1344.

which the waiver is sought. The Director of Planning is not required to use any criteria in making a determination on the granting of a waiver of the submission requirements.

- C. Waiver of subdivision performance standards. The Planning Board may waive the requirements of § 120-911, Performance and design standards, unless prohibited by Maine statutes, where it finds that there are special circumstances of a particular parcel proposed to be subdivided, or that the application is simple and minor in nature. The applicant must demonstrate that the performance standards of these regulations and the criteria of the subdivision statute have been or will be met and the public health, safety and welfare are protected, and provided the waivers do not have the effect of nullifying the intent and purpose of this chapter. With regard to applications for which the Board is performing delegated review authority for applicable permits (i.e., Site Law or Stormwater Law), the waiver shall not result in noncompliance with any provision of the Site Law, Stormwater Law, or DEP regulations adopted pursuant to those laws.
- (1) Procedure. The applicant shall submit a list of the requested waiver(s) in writing. For each waiver requested, the applicant shall submit answers to each of the criteria in Subsection C(2), Criteria, below.
 - (a) The process for requesting waivers shall be in accordance with the provisions for review procedures in §§ 120-906 and 120-907 and the provisions for submission requirements in § 120-910.
 - (b) The Planning Board may request additional information to make a determination on a waiver request.
 - (2) Criteria. In granting site waivers, the Planning Board shall utilize the following criteria:
 - (a) The waiver will improve the ability of the project to take the property's predevelopment natural features into consideration. Natural features include, but are not limited to, topography, location of water bodies, location of unique or valuable natural resources, and relation to abutting properties or land uses.
 - (b) The waiver will not result in the following:
 - [1] Undue water or air pollution.
 - [2] Undue light pollution or glare.
 - [3] An inadequate water supply.
 - [4] Unreasonable soil erosion.
 - [5] Unreasonable traffic congestion or safety risk.
 - [6] Decreased pedestrian safety or access.
 - [7] Inadequate supply of parking spaces.
 - [8] Inadequate sewage disposal capacity.
 - [9] Inadequate solid waste disposal capacity.
 - [10] An adverse impact on scenic or natural beauty, aesthetics, historic sites, or rare or irreplaceable natural areas.

[11] Flooding or adverse drainage impacts on abutting properties.

[12] An adverse impact on the Town's ability to provide the subdivision with public safety services.

- (c) Recording of waivers of subdivision performance standards. When the Board grants a site waiver to any of the improvements required by these regulations, the final plan, to be recorded at the Registry of Deeds, shall indicate the waivers granted. Waivers must be listed in a separate location from either the plan's general notes or any conditions of approval. Waivers of the required application submissions do not need to be listed.

§ 120-909. Fees.

- A. Sketch plan fee. Prior to submitting a sketch plan, the applicant must pay the application fee as set by the Town Council in the Windham Fee Schedule.
- B. Application fee. An application for subdivision review must be accompanied by the applicable fee in the Windham Fee Schedule. This fee is intended to cover the cost of administrative processing of the application, including notification, advertising, mailings, and similar costs. The fee shall not be refundable. This application fee must be paid to the municipality, and evidence of payment of the fee must be included with the application.
- C. Consulting, review and construction observation fees.
- (1) Applicability. Notwithstanding any other provision(s) of this chapter, Articles 1 through 12 (the "code"), to the contrary, and in addition to such fees as are otherwise specified by the code, the Town shall assess fees to cover 100% of its costs related to independent geotechnical, hydrologic, engineering, planning, legal, and similar professional consulting services incurred in the review and post-approval inspections of site plan applications. Such fees shall be subject to the following limitations:
- (a) Such fees shall only be as expressly provided by this § 120-909C;
- (b) Such consultation shall be limited to reasonable and necessary review, as allowed by the pertinent ordinance, which exceeds the expertise of Town staff or their ability to review the application materials within the time limits otherwise required by law or ordinance;
- (c) Such fees shall be assessed only to recover costs directly associated with review and post-approval inspection of the application submitted by the applicant to whom they are assessed;
- (d) Such fees shall be reasonable in amount, based upon the consulting time involved and the complexity of the review;
- (e) The results of the consultation for which such fees are assessed shall be available for public review, but such results shall be deemed to have been made solely for the benefit of the Town of Windham and shall remain its property; and
- (f) Such fees shall be assessed for the privilege of review and shall be payable without regard to consultation results or the outcome of the application.
- (2) Escrow account establishment and administration. An escrow account shall be established with the Town by the applicant to guarantee payment in advance of actual fees assessed pursuant to

this § 120-909C. The original deposit shall be an amount specific to the application, as accorded elsewhere in this code. If the balance in the escrow account shall be drawn down by 75%, the Town shall notify the applicant and require that an additional amount be deposited to cover the cost of remaining work before any such remaining work is undertaken. The Town shall continue to notify the applicant and require that any such additional amount(s) be deposited whenever the balance of the account is drawn down by 75% of the original deposit. Any excess amount deposited with the Town in advance shall be promptly refunded to the applicant after final action on the application.

- (3) Appeal. Any dispute regarding the application of this § 120-909C or the amount required to be paid, either in advance or upon completion, may be appealed, in writing, within 10 days to the Town Manager. The Town Manager, after due notice and investigation and for good cause shown, may affirm, modify, or reverse the disputed decision or reduce the amount assessed.
- (4) Limitations. In an effort to minimize the use of outside or independent consulting, the provisions of this § 120-909C shall be subject to the following additional limitations:
 - (a) The Planner, based on his/her work load and in his/her sole discretion, may immediately refer to outside or independent consulting any major subdivision plan. The Town shall charge for this review based on the billing rates of the retained consultant. The first four hours of the review shall be paid for with the project's application fee. Review work beyond the initial four hours shall be paid for with the escrow established in § 120-909C(2), above.
- (5) Construction observation fee. At least five days prior to the commencement of construction, the applicant shall pay to the Town a construction observation fee. The fee shall be calculated and administered as follows:
 - (a) The applicant's engineer/representative shall prepare a line-item cost estimate of all site improvements.
 - (b) The Town's consulting engineer shall review the cost estimate. This review shall be withdrawn from the escrow balance established in § 120-909C(2), above.
 - (c) The applicant shall post with the Town an amount equal to 3% of the cost estimate for site improvements. If, and when, a construction observation will result in the Town exceeding the 3% of site improvements amount, the Town's consulting engineer will submit a written notice stating the reasons why the estimate is to be exceeded, and by how much.
 - (d) If the balance in the observation fee account shall be drawn down by 75%, the Town shall notify the applicant and require that an additional amount be deposited to cover the cost of remaining work before any such remaining work is undertaken. The Town shall continue to notify the applicant and require that any such additional amount(s) be deposited whenever the balance of the account is drawn down by 75% of the original deposit.
 - (e) Any and all unused inspection fee funds shall be returned to the applicant.
- (6) This § 120-909C shall be administered by the Planning Director or other Town employee responsible for administering the ordinance under which review is sought. No building permit, commencement of any construction or site preparation, or certificate of occupancy may be issued or released until all fees assessed hereunder have been paid in full.

D. Establishment of fees. The municipal officers may, from time to time, establish the appropriate fees

following posting of the proposed schedule of fees and public hearing.

§ 120-910. Submission requirements. [Amended 11-28-2017 by Order 17-347; 6-9-2020 by Order 20-140; 6-16-2022 by Order No. 22-108; 5-23-2023 by Order No. 23-092; 4-29-2025 by Order No. 25-043]

A. Minor and major subdivision sketch plan.

- (1) A sketch plan shall be required for both minor and major subdivision applications. The sketch plan shall show, in simple form, the proposed layout of the subdivision. The sketch plan shall show site conditions and identify important or unique natural areas and site features. The intent of the sketch plan is to provide the applicant and the Planning Board with a flexible and low-cost means to understanding the site, and to create a development plan that reflects the site's opportunities and constraints.
- (2) The sketch plan submission shall contain five copies of the following information, including full size plan sets, along with one electronic version of the entire submission:
 - (a) A complete sketch plan application form.
 - (b) A narrative describing the existing conditions of the site, the number and size of lots, and the constraints and opportunities of the site. The narrative should outline any traffic studies, utility studies, market studies or other applicable work that will be conducted as part of the preliminary plan (major subdivision) or final plan (minor subdivision) application.
 - (c) Name, addresses, and phone numbers of the record owner and the applicant.
 - (d) Names and addresses of all consultants working on the project.
 - (e) Evidence of right, title, or interest in the property.
 - (f) Evidence of payment of the sketch plan application fee and escrow deposit.
 - (g) Any anticipated requests for waivers from the submission requirements for the preliminary plan (major subdivision) or final plan (minor subdivision) application (see § 120-908, Waivers).
 - (h) A copy of a portion of the USGS topographic map of the area showing the boundaries of the proposed subdivision.
 - (i) A copy of that portion of the Cumberland County Medium Intensity Soil Survey covering the proposed subdivision. The boundary of the proposed subdivision site must be shown.
 - (j) A plan of the parcel, with an accurate scale, showing at a minimum the information listed below:
 - [1] Name of the subdivision, North arrow, date and scale.
 - [2] Boundary and lot lines of the subdivision.
 - [3] Approximate location, width and purpose of easements or restrictions (if applicable).
 - [4] Streets on and adjacent to the tract.

- [5] Approximate location and size of existing utilities on and adjacent to the tract (if none, so state).
 - [6] Existing buildings, structures, or other improvements on the site (if none, so state).
 - [7] The major natural features of the site, approximated by the applicant, including wetlands, streams, ponds, floodplains, groundwater aquifers, tree lines, significant wildlife habitat and fisheries or other important natural features (if none, so state).
- (k) An existing resources inventory and site analysis sketch plan for conservation subdivisions as described in § 120-911K(3).
- (3) Note: Major subdivision applications. If the applicant decides to survey the property as part of the sketch plan submission, please refer to the GIS requirements for a major subdivision final plan review. It may be in the applicant's best interest to obtain the required GIS data while the surveyor is on-site.
- B. Minor subdivision final plan. The final plan submission shall include three copies of the following information, including full-size plan sets, along with one electronic version of the entire submission. The Board may waive the submission information that is listed in § 120-910B(1)(c). With regard to applications for which the Board is performing delegated review authority for applicable permits (i.e., Site Law or Stormwater Law), the waiver shall not result in noncompliance with any provision of the Site Law, Stormwater Law, or DEP regulations adopted pursuant to those laws.
- (1) Mandatory written information.
 - (a) A fully executed application form signed by a person with right, title, or interest in the property proposed for subdivision.
 - (b) Evidence of payment of the application and escrow fees as found on the Fee Schedule established by the Town Council.
 - (c) The name, registration number and seal of the Maine licensed professional land surveyor who conducted the survey.
 - (d) Name, registration number and seal of the licensed professional who prepared the plan (if applicable).
 - (e) Description of how solid waste generated from the proposed subdivision is to be collected and disposed of.
 - (f) A statement from the Maine Department of Inland Fisheries and Wildlife that no significant wildlife habitat exists on the site.
 - (g) Copies of existing or proposed deed restrictions or covenants.
 - (h) Copies of existing or proposed easements on the property.
 - (i) An acceptable title opinion proving right of access to the proposed subdivision or site for any property proposed for development on or off of a private way or private road.
 - (j) Financial capacity.
- [1] Estimated costs. Specify the estimated total cost of the development and itemize the estimated major expenses. The itemization of major costs may include, but not be

limited to, the cost of the following activities: land purchase, roads, sewers, structures, water supply, erosion control, pollution abatement and landscaping.

- [2] Financing. Provide one of the following unless otherwise approved by the Town:
- [a] Letter of commitment to fund. A letter of commitment, acceptable to the Town, from a financial institution, governmental agency, or other funding agency, indicating a commitment to provide a specified amount of funds, and specifying how those funds will be used.
 - [b] Self-financing.
 - [i] Annual report. The most recent corporate annual report indicating availability of liquid assets to finance the development, together with explanatory material interpreting the report; or
 - [ii] Bank statement. Copies of bank statements or other evidence indicating availability of funds if the applicant will personally finance the development.
 - [c] Other. If 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, provide the following:
 - [i] Cash equity commitment. Cash equity commitment to the development sufficient to demonstrate the applicant's ability to go forward. The Town will consider 20% equity of the total cost of a development as the normal equity commitment but reserves the right to lower or raise this amount if special circumstances of an individual development warrant it.
 - [ii] Financial plan. Financial plan for the remaining financing.
 - [iii] Letter. Letter acceptable to the Town from an appropriate financial institution, indicating an intention to provide financing subject to reasonable conditions of acceptance.
- [3] Certificate of good standing. If the applicant is a registered corporation, provide either a certificate of good standing (available from the Secretary of State) or a statement signed by a corporate officer affirming that the corporation is in good standing.
- (k) Technical capacity. Describe the technical ability of the applicant and consultant(s) to undertake the development. Include the following information:
- [1] Prior experience. A statement of the applicant's prior experience and appropriate training relating to the nature of the development. Specify prior experience relating to developments that have received permits from the Town.
 - [2] Personnel. Resumes or similar documents detailing the experience and qualifications of full-time, permanent or temporary staff contracted with or employed by the applicant who will design the development.
- (l) The name and contact information for the road association whose private way or road is used to access the subdivision (if applicable).

- (m) Draft homeowners' association documents and draft deed as per the requirements of § 120-91N.
- (2) Mandatory plan information. The maps or drawings must be at a scale sufficient to allow review of the items listed under the approval criteria, but in no case shall be more than 100 feet to the inch.
 - (a) Name of the subdivision, date and scale.
 - (b) Stamp of the Maine licensed professional land surveyor that conducted the survey. At least one copy shall include an original stamped seal that is embossed and signed.
 - (c) Stamp, with date and signature, of the Maine licensed professional engineer that prepared the plans.
 - (d) A North arrow identifying all of the following: grid north, magnetic north with the declination between grid and magnetic; and whether magnetic or grid bearings were used in the plan design.
 - (e) Location map. The location map shall be drawn at a size and scale adequate to allow the Board to locate the subdivision within the municipality.
 - (f) Vicinity plan. A plan drawn at a scale of not over 400 feet to the inch to show the area within 250 feet of the property line of the proposed subdivision. The vicinity plan shall show the following:
 - [1] The approximate location of all property lines and acreage of parcels.
 - [2] Locations, widths and names of existing, filed or proposed streets, easements, or building footprints.
 - [3] The location and designations of any public spaces.
 - [4] An outline of the proposed subdivision, together with its street system and an indication of the future probable street system of the remaining portion of the tract, if the proposed subdivision plan encompasses only part of the applicant's entire property holding.
 - (g) A standard boundary survey of the parcel, giving complete descriptive data by bearings and distances, made and certified by a Maine licensed professional land surveyor. The corners of the parcel shall be located on the ground and marked by monuments. The entire parcel or tract shall be shown, including all contiguous land in common ownership within the last five years, as required by 30-A M.R.S.A. § 4401. The survey shall include the bearings and lengths of every street line, lot line, and boundary line. For curve lines, at least three elements shall be provided. These include the arc length, the radius and one of the following: the central angle, the tangent length with bearings, or the chord distance with bearings.
 - (h) Existing and proposed street names, pedestrianways, lot easements, and areas to be reserved for or dedicated to public use.
 - (i) All lots within the subdivision, including numbers to identify each lot and the map and lot number assigned by the Town of Windham Assessing Department.

- (j) Location of all monuments as required by this section.
 - (k) The location of any important or unique natural and site features, including, but not limited to, wetlands, water bodies, streams, scenic areas, sand and gravel aquifers, significant wildlife habitats, significant fisheries, tree lines, and historic and/or archaeological resources.
 - (l) Location of all yard setback lines.
 - (m) A medium intensity soils map that encompasses the area to be subdivided. The Planning Board may require submission of an appropriate class high-intensity soils map in instances where poor soils are evident.
 - (n) If subsurface wastewater disposal systems (septic) are proposed, the location and results of test pits performed by a Maine licensed site evaluator or certified soil scientist. At least one test pit shall be shown per lot.
 - (o) Written offers of cession to the Town of Windham of all public open space shown on the plan.
 - (p) All conditions of approval and/or waivers required or granted by the Planning Board shall appear on the final plan. Waivers of the submission requirements do not have to be included on the plans.
 - (q) 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 Town's Flood Insurance Rate Map, shall be delineated on the plan.
 - (r) For conservation subdivisions that are proposed that do not maximize the development potential of the property being subdivided, a conceptual master plan for the remaining land shall be submitted. The conceptual master plan will show future road, open space, and lot layout consistent with the requirements of § 120-911K, Conservation subdivisions.
- (3) Submission information for which a waiver may be granted. The following items shall be submitted as part of the final plan application, unless the applicant submits, and is granted by the Planning Board, a written waiver request as part of the sketch plan application review (see § 120-908, Waivers):
- (a) Contour lines at intervals of five feet, or at lesser intervals as the Planning Board may require.
 - (b) Description of how stumps and demolition debris will be disposed of.
 - (c) A surface drainage plan or stormwater management plan with profiles and cross sections, showing the design of all facilities and conveyances necessary to meet the stormwater management standards set forth in Article 9 (Subdivision Review). The plan shall be drawn by a Maine licensed professional civil engineer and shall include a written statement indicating that the proposed subdivision will not create erosion, drainage or runoff problems either in the subdivision or on adjacent properties. Changes in runoff shall be calculated by using the TR-55 or TR-20 method or subsequent revisions and comply with Maine DEP Chapter 500 Stormwater Law § 4F flooding standards.
 - (d) A soil erosion and sedimentation control plan prepared by a Maine licensed professional

engineer or a certified professional in erosion and sediment control (CPESC) consistent with the requirements of § 120-911C, Erosion and sedimentation control, and which demonstrates that the erosion and sedimentation control, inspection and maintenance, and housekeeping standards specified in Maine DEP Chapter 500 Stormwater Rules, Appendices A, B, and C, respectively, are met, and that the grading or other construction activity will not impede or otherwise alter drainageways so as to have an unreasonable adverse impact on a wetland or water body, or an adjacent downslope parcel.

- (e) If subsurface wastewater disposal systems (septic) are proposed, a hydrogeologic assessment prepared by a Maine licensed site evaluator or certified geologist regarding the ability of the site to meet the performance standards and approval criteria for subsurface wastewater disposal.
 - (f) The location of driveways, if requested by the Planning Board.
- C. Major subdivision preliminary plan. The preliminary plan submission shall include five copies of the following information, including full-size plan sets, along with one electronic version of the entire submission. The Board may waive the submission information that is listed in § 120-910C(1)(c). All dimensions shown in feet or decimals of a foot, drawn to a scale of not more than 100 feet to the inch showing or accompanied by the following information:
- (1) Mandatory written information.
 - (a) A fully executed and signed application form.
 - (b) Evidence of payment of the application and escrow fees as found on the Fee Schedule established by the Town Council.
 - (c) Proposed name of the subdivision and the name of the municipality in which it is located.
 - (d) Verification of right, title or interest in the property, or any abutting property, by deed, purchase and sales agreement, option to purchase, or some other proof of interest.
 - (e) A copy of the most recently recorded deed for the parcel. A copy of all existing deed restrictions, easements, rights-of-way, or other encumbrances currently affecting the property.
 - (f) A copy of any existing or proposed covenants or deed restrictions intended to cover all or part of the lots or dwellings in the subdivision.
 - (g) A copy of any proposed easements on the property.
 - (h) The name, registration number and seal of the Maine licensed professional land surveyor who conducted the survey.
 - (i) Name, registration number and seal of any other licensed professional in the State of Maine who prepared the plan (if applicable).
 - (j) An indication of the type of sewage disposal to be used in the subdivision.
- [1] When sewage disposal is to be accomplished by connection to the public sewer, a letter from the Portland Water District stating the district has the capacity to collect and treat the wastewater shall be provided.

- [2] When sewage disposal is to be accomplished by subsurface wastewater disposal systems, test pit analyses, prepared by a Maine licensed site evaluator or certified soil scientist, shall be provided. A map showing the location of all test pits dug on the site shall be submitted.
- (k) An indication of the type of water supply system(s) to be used in the subdivision.
- (l) When water is to be supplied by public water supply, a written statement from the Portland Water District shall be submitted, indicating there is adequate supply and pressure for the subdivision.
- (m) The names and addresses of the record owner, applicant, and adjoining property owners.
- (n) An acceptable title opinion proving right of access to the proposed subdivision or site for any property proposed for development on or off of a private way or private road.
- (o) The name and contact information for the road association whose private way or road is used to access the subdivision (if applicable).
- (p) Financial capacity.
- [1] Estimated costs. Specify the estimated total cost of the development and itemize the estimated major expenses. The itemization of major costs may include, but not be limited to, the cost of the following activities: land purchase, roads, sewers, structures, water supply, erosion control, pollution abatement and landscaping.
- [2] Financing. Provide one of the following unless otherwise approved by the Town:
- [a] Letter of commitment to fund. A letter of commitment, acceptable to the Town, from a financial institution, governmental agency, or other funding agency, indicating a commitment to provide a specified amount of funds, and specifying how those funds will be used.
- [b] Self-financing.
- [i] Annual report. The most recent corporate annual report indicating availability of liquid assets to finance the development, together with explanatory material interpreting the report; or
- [ii] Bank statement. Copies of bank statements or other evidence indicating availability of funds if the applicant will personally finance the development.
- [c] Other. If 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, provide the following:
- [i] Cash equity commitment. Cash equity commitment to the development sufficient to demonstrate the applicant's ability to go forward. The Town will consider 20% equity of the total cost of a development as the normal equity commitment but reserves the right to lower or raise this amount if special circumstances of an individual development warrant it.
- [ii] Financial plan. Financial plan for the remaining financing.

- [iii] Letter. Letter acceptable to the Town from an appropriate financial institution, indicating an intention to provide financing subject to reasonable conditions of acceptance.
- [3] Certificate of good standing. If the applicant is a registered corporation, provide either a certificate of good standing (available from the Secretary of State) or a statement signed by a corporate officer affirming that the corporation is in good standing.
- (q) Technical capacity. Describe the technical ability of the applicant and consultant(s) to undertake the development. Include the following information:
 - [1] Prior experience. A statement of the applicant's prior experience and appropriate training relating to the nature of the development. Specify prior experience relating to developments that have received permits from the Town.
 - [2] Personnel. Resumes or similar documents detailing the experience and qualifications of full-time, permanent or temporary staff contracted with or employed by the applicant who will design the development.
- (r) For conservation subdivisions that are proposed that do not maximize the development potential of the property being subdivided, a conceptual master plan for the remaining land shall be submitted. The conceptual master plan will show future road, open space and lot layout consistent with the requirements of § 120-911K, Conservation subdivisions.
- (2) Mandatory plan information. The maps or drawings must be at a scale sufficient to allow review of the items listed under the approval criteria, but in no case shall be more than 100 feet to the inch.
 - (a) Name of the subdivision, date and scale.
 - (b) Stamp, with date and signature, of the Maine licensed professional land surveyor that conducted the survey.
 - (c) Stamp, with date and signature, of any other professional licensed in the State of Maine that prepared the plans.
 - (d) A North arrow identifying all of the following: grid north, magnetic north with the declination between grid and magnetic; and whether magnetic or grid bearings were used in the plan design.
 - (e) Location map. The location map shall be drawn at a size and scale adequate to allow the Board to locate the subdivision within the municipality.
 - (f) Vicinity plan. A plan drawn at a scale of not over 400 feet to the inch to show the area within 250 feet of the property boundary of the proposed subdivision. The vicinity plan shall show the following:
 - [1] The approximate location of all property lines and acreage of parcels.
 - [2] Locations, widths and names of existing, filed or proposed streets, easements, or building footprints.
 - [3] The location and designations of any public spaces.

- [4] An outline of the proposed subdivision, together with its street system and an indication of the future probable street system of the remaining portion of the tract, if the proposed subdivision plan encompasses only part of the applicant's entire property holding.
- (g) A standard boundary survey of the parcel, giving complete descriptive data by bearings and distances, made and certified by a Maine licensed professional land surveyor. The corners of the parcel shall be located on the ground and marked by monuments. The entire parcel or tract shall be shown, including all contiguous land in common ownership within the last five years, as required by 30-A M.R.S.A. § 4401. The survey shall include the bearings and lengths of every street line, lot line, and boundary line. For curve lines, at least three elements shall be provided. These include the arc length, the radius and one of the following: the central angle, the tangent length with bearings, or the chord distance with bearings.
 - (h) The proposed lot lines with approximate dimensions and the area of each lot.
 - (i) Contour lines at two-foot intervals, or at intervals required by the Board, showing elevations in relation to the required datum.
 - (j) Typical cross sections of the proposed grading for roadways, sidewalks, etc., including width, type of pavement, elevations and grades.
 - (k) Wetland areas shall be delineated on the survey.
 - (l) The number of acres within the proposed subdivision, location of property lines, existing buildings, vegetative cover type, specimen trees, if present, and other essential existing physical features.
 - (m) The location of all rivers, streams and brooks within or adjacent to the proposed subdivision. If any portion of the proposed subdivision is located in the direct watershed of a great pond, the application shall indicate which great pond.
 - (n) The zoning district in which the proposed subdivision is located and the location of any zoning boundaries affecting the subdivision.
 - (o) The location, size of existing and proposed sewers, water mains, culverts, bridges and drainageways on or adjacent to the property to be subdivided. The Board may required this information to be depicted via a cross section, or plan and profile view.
 - (p) The location, names, and present widths of existing streets, highways, easements, building lines, parks and other open spaces on or adjacent to the subdivision.
 - (q) 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.
 - (r) All parcels of land proposed to be dedicated to public use and the conditions of such dedication.
 - (s) The location of any open space to be preserved or common areas to be created, and a general description of proposed ownership, improvement and management.
 - (t) The approximate location of the tree line after development has been completed.

- (u) 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 Town's Flood Insurance Rate Map, shall be delineated on the plan.
 - (v) Areas within or adjacent to the proposed subdivision which have been identified by the Maine Department of Inland Fisheries and Wildlife "Beginning with Habitat Project" or within the Comprehensive Plan. (Copies of the Beginning with Habitat Project maps and the Comprehensive Plan are available in Town Hall.)
 - (w) All areas within or adjacent to the proposed subdivision which are either listed on or eligible to be listed on the National Register of Historic Places, or have been identified in the Comprehensive Plan or by the Maine Historic Preservation Commission as sensitive or likely to contain such sites.
 - (x) An erosion and sedimentation control plan prepared in accordance with the requirements of § 120-911C, Erosion and sedimentation control and in compliance with Maine DEP Chapter 500 Stormwater Rules, § 4B (Basic standards), as amended from time to time.
 - (y) A stormwater management plan, prepared by a Maine licensed professional engineer in accordance with the most recent edition of Stormwater Management for Maine: Best Management Practices Manual and Maine DEP Chapter 500 Stormwater Rules, § 4C (General standards), § 4D (Phosphorus standard)s and § 4F (Flooding standard), as amended from time to time.
 - (z) For conservation subdivisions that are proposed that do not maximize the development potential of the property being subdivided, a master plan for the remaining land shall be submitted. The master plan will show future roads, open space and lot layouts consistent with the requirements of § 120-911K, Conservation subdivisions.
- (3) Submission information for which a waiver may be granted. The following items shall be submitted as part of the preliminary plan application, unless the applicant submits, and is granted by the Planning Board, a written waiver request as part of the sketch plan application review (see § 120-908, Waivers). The Board may require additional information to be submitted, as necessary, in order to determine whether the criteria of 30-A M.R.S.A. § 4404 are met.
- (a) A high-intensity soil survey by a certified soil scientist.
 - (b) A landscape plan, including a list of proposed plant species and their size at the time of installation and maturity.
 - (c) Hydrogeologic assessment.
 - [1] A hydrogeologic assessment prepared by a certified geologist or Maine licensed professional engineer, experienced in hydrogeology, when the subdivision is not served by public sewer and:
 - [a] Any part of the subdivision is located over a sand and gravel aquifer, as shown on a map entitled "Hydrogeologic Data for Significant Sand and Gravel Aquifers," by the Maine Geological Survey, 1998, File No. 98-138, 144 and 147; or
 - [b] The subdivision has an average density of more than one dwelling unit per

100,000 square feet.

- [2] The Board may also require a hydrogeologic assessment in cases where site considerations or development design indicate greater potential of adverse impacts on groundwater quality. The hydrogeologic assessment shall be conducted in accordance with the provisions of § 120-911H, Impact on groundwater quality or quantity, below.
- [3] If a hydrogeologic assessment is submitted, the assessment shall contain at least the following information:
- [a] A map showing the basic soils types.
 - [b] The depth to the water table at representative points throughout the subdivision.
 - [c] Drainage conditions throughout the subdivision.
 - [d] Data on the existing groundwater quality, either from test wells in the subdivision or from existing wells on neighboring properties.
 - [e] An analysis and evaluation of the effect of the subdivision on groundwater resources. In the case of residential developments, the evaluation shall, at a minimum, include a projection of post-development nitrate-nitrogen concentrations at any wells within the subdivision, or at the subdivision boundaries, or at a distance of 1,000 feet from potential contamination sources, whichever is a shortest distance.
 - [f] A map showing the location of any subsurface wastewater disposal systems and drinking water wells within the subdivision and within 200 feet of the subdivision boundaries.
- (d) 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 the most recent available edition of the Trip Generation Manual, 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.
- (e) Traffic impact analysis. For subdivisions involving 28 or more parking spaces or projected to generate more than 140 vehicle trips per day, a traffic impact analysis, prepared by a Maine licensed professional engineer with experience in traffic engineering, shall be submitted. The analysis shall indicate the expected average daily vehicular trips, peak-hour volumes, access conditions at the site, distribution of traffic, types of vehicles expected, effect upon the level of service of the street giving access to the site and neighboring streets which may be affected, and recommended improvements to maintain the desired level of service on the affected streets.
- (f) If any portion of the proposed subdivision is in the direct watershed of a great pond, and meets the criteria of § 120-911J, Stormwater management, the following shall be submitted or indicated on the plan:
- [1] A phosphorus impact analysis and control plan conducted in compliance with the procedures and requirements set forth in Maine DEP Chapter 500 Stormwater Rules. The analysis and control plan shall include all worksheets, engineering calculations,

and construction specifications and diagrams for control measures, as required by Maine DEP Chapter 500 Stormwater Rules and the Phosphorus Control Manual (March 2016), as amended from time to time.

- [2] A long-term maintenance plan for all phosphorus control measures.
- [3] Contour lines at an interval consistent with § 120-910C(2)(i) above. Off-site areas draining onto the development site may use the best available data from aerial topographic mapping or USGS topographic maps.
- [4] Areas with sustained slopes greater than 25% covering more than one acre shall be delineated.

D. Major subdivision final plan. The final plan submission shall include five copies of the following information, including full-size plan sets, along with one electronic version of the entire submission.

(1) Mandatory written information.

- (a) A fully executed and signed final plan application form.
- (b) Evidence that the escrow account balance is greater than 25% of the initial preliminary plan deposit.
- (c) If public open space is to be provided, written offers of cession to the Town of Windham shall be provided.
- (d) Copies of agreements or other documents showing the manner in which spaces, title to which is reserved by the subdivider, are to be submitted.
- (e) Copies of any approvals from outside agencies per the requirements of § 120-907C(4)(f), review procedures for major subdivisions.
- (f) Assessor's proposed Map and Lot numbers.
- (g) Digital transfer of any subdivision plan data on the Town's Horizontal Datum: Maine State Plane Coordinate System: Maine West Zone FIPS Zone 1802, North American Datum 1983; Units: US Survey Feet.

[1] The preferable vertical datum is North American Vertical Datum 1988 (NAVD88). However, if only National Geodetic Vertical Datum 1929 (NGVD29) is possible, this is permissible. The choice of vertical datum must be indicated on the digital submission. The Ellipsoid is GRS 80 (Geodetic Reference System 1980).

[2] Data shall have survey-grade positional accuracy. Data could be developed using either real time kinematic (RTK) GPS, survey-grade static GPS data collection or traditional methods of occupying known, high-precision surveyed monuments. The datum, survey methods, and type of survey equipment used shall be identified.

- (h) Draft homeowners' association documents and a draft lot deep as per the requirements of § 120-911N.

(2) Mandatory plan information.

- (a) All of the information presented on the preliminary plan, and any amendments thereto suggested or required by the Board.

- (b) Map and lot numbers for all lots as assigned by the Town of Windham Assessing Department.
- (c) The seal of the Maine licensed professional who prepared the plan.
- (d) By proper designation, all public open space for which offers of cession are made by the subdivider and those spaces to which title is reserved by him.
- (e) The location of all permanent monuments.

§ 120-911. Performance and design standards. [Amended 4-27-2010 by Order 10-075; 5-10-2011 by Order 11-070; 7-24-2012 by Order 12-091; 12-16-2014 by Order 14-491; 2-28-2017 by Order 17-038; 10-10-2017 by Order 17-161; 5-22-2018 by Order 18-905; 1-15-2019 by Order 18-257; 6-9-2020 by Order 20-140; 6-16-2022 by Order No. 22-108; 7-12-2022 by Order No. 22-127; 3-28-2023 by Order No. 23-041; 5-23-2023 by Order No. 23-092; 4-29-2025 by Order No. 25-043]

The performance and design standards in this section are intended to clarify and expand upon the statutory review criteria found in § 120-902. In reviewing a proposed subdivision, the Board shall review the application for conformance with the following performance and design standards. In all instances, the burden of proof shall be upon the applicant to present adequate information to indicate all performance and design standards and statutory criteria for approval have been or will be met.

A. Basic subdivision layout.

- (1) Lots.
 - (a) Calculation of density. See § 120-541, Net residential area or acreage, in Article 5, Performance Standards.
 - (b) Wherever possible, side lot lines shall be perpendicular to the street.
 - (c) The subdivision of tracts into parcels with more than twice the required minimum lot size shall be laid out in such a manner as either to provide for or preclude future division. Deed restrictions or notes on the plan shall either prohibit future divisions of the lots or specify that any future division shall constitute a revision to the plan and shall require approval from the Board, subject to the criteria of the subdivision statute, the standards of these regulations and conditions placed on the original approval.
 - (d) If a lot on one side of a public street fails to meet the minimum requirements for lot size, it may not be combined with a lot on the other side of the public street to meet the minimum lot size.
 - (e) Lot numbering. Even numbers shall be assigned to lots on one side of the street, and odd numbers on the opposite side. Where the proposed subdivision contains the extension of an existing street or street approved by the Board, but not yet constructed, the lot numbers shall correspond with the existing lot numbers. The lot numbering shall be reviewed by the E-911 Addressing Officer and the comments shall be considered by the Board.
- (2) Utilities. The size, type and location of public utilities, such as sewers, water lines, storm drains, streetlights, electric lines, telephones lines, fire hydrants, etc., shall be approved by the Board and installed in accordance with the requirements of the Board and these standards.
 - (a) Utilities shall be installed underground.

- (b) All public utilities and facilities, such as sewer, gas, electrical and water systems, shall be located and constructed to minimize or eliminate flood damage.

(3) Monuments.

- (a) Street line monuments. Monuments shall be set at all street intersections and points of curvature, but no further than 750 feet apart along street lines without curves or intersections. Street line monuments shall be granite and have minimum dimensions of four inches square at the top and four feet in length. The monuments shall be set in the ground with the top of the monuments no more than six inches above the final grade level. A drill hole at least 0.5 inch deep shall locate the point or points described above and include the registration number of the Maine licensed professional land surveyor that set the monuments. Monuments shall be capable of being detected by commonly used magnetic or electronic equipment, as required by the Maine Board of Licensure for Professional Land Surveyors.
- (b) Other monuments. All other subdivision boundary corners and angle points, as well as all lot boundary corners and angle points, shall be marked by suitable permanent monumentation solidly embedded in the ground and capable of being detected by commonly used magnetic or electronic equipment, as required by the Maine Board of Licensure for Professional Land Surveyors. The monument shall clearly show the registration number or temporary certificate number of the Maine licensed professional land surveyor responsible for the survey. Where the placement of a required monument at its proper location is impractical, it shall be permissible to set a reference monument close to that point.

B. Sufficient water; water supply.

- (1) A subdivision shall connect to the public water system if the closest water main is within a distance equal to 100 feet multiplied by number of lots in the subdivision. A proposed subdivision shall not generate a demand on the source, treatment facilities or distribution system of the Portland Water District beyond the capacity of those system components, considering improvements that are planned to be in place prior to occupancy of the subdivision. The applicant shall be responsible for paying the costs of system improvements to the Portland Water District's system as necessary in order to facilitate connection.
 - (2) When a subdivision is to be served by a public water system, the complete supply system within the subdivision, including fire hydrants, shall be installed at the expense of the applicant. The size and location of mains, gate valves, hydrants, and service connections shall be reviewed and approved, in writing, by the Portland Water District and the Windham Fire-Rescue Chief.
 - (3) When a proposed subdivision is not within a distance required for connection to the public water system, water supply shall be from individual wells or a private community water system. The following standards shall apply to individual wells or private community water systems:
 - (a) Individual wells shall be sited and constructed to prevent infiltration of surface water, and contamination from subsurface wastewater disposal systems and other sources of potential contamination.
- [1] Due to the increased chance of contamination from surface water, dug wells shall be prohibited on lots of smaller than one acre. On lots of one acre or smaller, the applicant shall prohibit dug wells by deed restrictions and a note on the plan.

- [2] On lots greater than one acre, dug wells may only be installed where it is not possible to utilize another well system.
 - [3] Wells shall not be constructed within 100 feet of the traveled way of any street if located downhill from the street, or within 50 feet of the traveled way of any street if located uphill of the street. This restriction shall be included as a deed restriction to the affected lots.
- (b) Lot design shall permit placement of wells, subsurface wastewater disposal areas, and reserve sites for subsurface wastewater disposal areas in compliance with the Maine Subsurface Waste Water Disposal Rules and the Well Drillers and Pump Installers Rules.⁴⁹
- (c) If a central water supply system is provided by the applicant, the location and protection of the source and the design, construction and operation of the system shall conform to the standards of the Maine Rules Relating to Drinking Water (10-144 CMR 231).
- (d) In residential subdivisions where the Fire-Rescue Department identifies the need for additional water storage capacity for firefighting purposes, the applicant shall provide adequate water storage facilities.
- [1] Facilities may be ponds with dry hydrants, underground storage reservoirs or other methods acceptable to the Fire-Rescue Chief.
 - [2] A minimum storage capacity shall meet the requirements of the National Fire Protection Association Life Safety Code (NFPA 101). The Board may require additional storage capacity upon a recommendation from the Fire-Rescue Chief.
 - [3] Where surface ponds are proposed for water storage, the capacity of the pond shall be calculated based on the lowest water level less an equivalent of three feet of ice. An easement shall be granted to the municipality, granting access to and maintenance of dry hydrants or reservoirs where necessary.
 - [4] Hydrants or other provisions for drafting water shall be provided to the specifications of the Fire-Rescue Department. Minimum pipe size connecting dry hydrants to ponds or storage vaults shall be six inches. A suitable accessway to the hydrant or other water source shall be constructed.
 - [5] The Board may waive the requirement for water storage only upon submittal of evidence that the soil types in the subdivision will not permit their construction or installation and/or that the Fire-Rescue Chief has indicated, in writing, that alternate methods of fire protection are available and incorporated into the subdivision plan.
- C. Erosion and sedimentation control.
- (1) An erosion control plan showing the use of erosion and sediment control best management practices (BMPs) at the construction site consistent with the minimum standards outlined in the Maine DEP Stormwater Rule Chapter 500 Appendix A – Erosion and Sediment Control, Appendix B – Inspections and Maintenance, Appendix C – Housekeeping. . BMPs shall be designed, installed and maintained in accordance with the standards contained in Maine DEP Chapter 500 Stormwater Rules, § 4B (basic standard), as amended from time to time, and the

49. Editor's Note: See 10-144 CMR Ch. 241, Maine Subsurface Waste Water Disposal Rules, and Ch. 232, Well Drillers and Pump Installers Rules.

following documents:

- (a) Maine DEP Erosion and Sediment Control Best Management Practices (BMPs) Manual for Designers and Engineers.
 - (b) Maine Erosion and Sediment Control Practices Field Guide for Contractors.
 - (c) Applicants are required to utilize contractors who are certified in erosion control through the Maine DEP's Voluntary Contractor Certification Program.
- (2) The developer shall provide a statement from a Maine licensed professional civil engineer that the plan shall prevent soil erosion and sedimentation from entering water bodies, wetlands and adjacent properties.
 - (3) Topsoil shall be considered part of the subdivision. Except for surplus topsoil for roads, parking areas and building excavations, it is not to be removed from the site.
 - (4) Except for normal thinning and landscaping, existing vegetation shall be left intact to prevent soil erosion. The Board may require a developer to take measures to correct and prevent soil erosion in the proposed subdivision.

D. Sewage disposal.

- (1) Public sewer system. Where an existing or proposed public sanitary gravity sewer main is located within 1,500 feet of a proposed subdivision at its nearest point, the applicant shall provide, at his expense, a connection to, or extension of, the public gravity sewer main.
 - (a) The Portland Water District shall certify that providing service to the proposed subdivision is within the capacity of the system's existing collection and treatment system or improvements planned to be complete prior to the construction of the subdivision.
 - (b) The Portland Water District shall review and approve, in writing, the construction drawings for the public sewerage system. This includes, but is not limited to, the size and location of laterals, collectors, manholes, and pump stations.
- (2) Private systems. When a proposed subdivision is not within a distance required for public sewage disposal service, sewage disposal shall be private subsurface wastewater disposal systems. The subdivision may be served by a private central sewage system in accordance with the provisions for central sewage systems in Article 5, Performance Standards. The applicant shall submit evidence of site suitability for subsurface sewage disposal prepared by a Maine licensed site evaluator in full compliance with the requirements of the State of Maine Subsurface Waste Water Disposal Rules.⁵⁰ The site evaluator shall certify, in writing, that all test pits which meet the requirements for a new system represent an area large enough to provide a disposal area on soils which meet the Disposal Rules.

E. Impact on natural beauty, aesthetics, historic sites, wildlife habitat, rare natural areas or public access to the shoreline.

- (1) Preservation of natural beauty and aesthetics.
 - (a) The plan shall, by notes on the final plan and/or deed restrictions, not allow the clearing of trees in areas where tree cover is depicted on the plan for a period of at least five years

⁵⁰. Editor's Note: See 10-144 CMR Ch. 241, Maine Subsurface Waste Water Disposal Rules.

from the date of Planning Board approval. Mandatory buffers for stormwater or other reasons depicted on the plan shall not be cleared of vegetation unless the Planning Board grants an amendment to the subdivision or for maintenance that does not alter the purpose for which the buffer was required.

- (b) The plan shall include the planting of street trees. Street trees shall be of a variety capable of withstanding winter street maintenance and planted no more than 50 feet apart.
- (2) Reservation or dedication and maintenance of open space and common land, facilities and services.
- (a) All open space common land, facilities and property shall be owned by:
 - [1] The owners of the lots or dwelling units by means of a lot owners' association;
 - [2] An association which has as its principal purpose the conservation or preservation of land in essentially its natural condition; or
 - [3] The Town of Windham, subject to the approval of the Windham Town Council.
 - (b) Further subdivision of the common land or open space and its use for other than noncommercial recreation, agriculture, or conservation purposes, except for easements for underground utilities, shall be prohibited. Structures and buildings accessory to noncommercial recreational or conservation uses may be erected on the common land.
 - (c) The common land or open space shall be shown on the final plan with appropriate notations on the plan to indicate:
 - [1] It shall not be used for future building lots; and
 - [2] Which portions of the open space, if any, may be dedicated for acceptance by the municipality.
- F. Conformance with land use ordinances. All lots shall meet the dimensional requirements of the zoning district in which they are located. The proposed subdivision shall meet all applicable performance standards or design criteria of this chapter. Note: See § 120-533, Lot, backlot, in Article 5, Performance Standards, for additional standards regarding backlots in subdivisions.
- G. Financial and technical capacity.
- (1) Financial capacity. The applicant shall have adequate financial resources to construct the proposed improvements and meet the criteria of the standards of these regulations. In making its determination, the Planning Board shall consider all relevant evidence to the effect that the developer has the financial capacity to construct, operate, and maintain all aspects of the development. The Board shall also consider the proposed time frame for construction and the effects of inflation.
 - (2) Technical ability.
 - (a) The applicant shall retain qualified contractors and consultants to supervise, construct and inspect the required improvements in the proposed subdivision.
 - (b) In determining the applicant's technical ability, the Board shall consider the applicant's previous experience, the experience and training of the applicant's consultants and

contractors, and the existence of violations of previous approvals granted to the applicant.

H. Impact on groundwater quality or quantity.

(1) Groundwater quality.

- (a) Projections of groundwater quality shall be based on the assumption of drought conditions (assuming 60% of annual average precipitation). See § 120-910C(1)(c)[3] for hydrogeologic assessment submission requirements.
- (b) No subdivision shall increase any contaminant concentration in the groundwater at any subdivision water supply well or any project boundary to more than the primary drinking water standards. No subdivision shall increase any contaminant concentration in the groundwater at said locations to more than the secondary drinking water standards. A hydrogeological evaluation shall demonstrate that the groundwater concentrations of nitrate as nitrogen meet the maximum contaminant level standard of 10 mg/L of the EPA's National Primary Drinking Water Regulations at the project boundaries. Where past land activities, such as agriculture, indicate the potential for high background levels of nitrate nitrogen or other groundwater contaminants, the Planning Board may require testing to determine background levels and may place limitations on total groundwater discharges to ensure safe drinking water supplies for existing and/or proposed households.
- (c) If groundwater is to be used for potable purposes and contains contaminants in excess of the primary standards, and the subdivision is to be served by on-site groundwater supplies, the applicant shall demonstrate how water quality will be improved or treated.
- (d) If groundwater contains contaminants in excess of the secondary standards, the subdivision shall not cause the concentration of the parameters in question to exceed 150% of the ambient concentration.
- (e) Subsurface wastewater disposal systems and drinking water wells shall be constructed as shown on the map submitted with the assessment. If construction standards for drinking water wells or other measures to reduce groundwater contamination and protect drinking water supplies are recommended in the assessment, such as required well-exclusion zones, those standards shall be included as a note on the final plan, and as restrictions in the deeds to the affected lots.
- (f) Whenever the Board determines that there is a potential that some lots in the proposed subdivision may have difficulty obtaining a well with adequate quantity and quality for potable water, the developer shall be required to drill wells and verify the water supply before the lot is sold.

(2) Groundwater quantity.

- (a) Any water table drawdowns beyond the subdivision boundaries, due to groundwater withdrawals by the proposed subdivision, shall not adversely impact groundwater supply availability to existing wells nor cause structural damage (e.g., settlement).
- (b) A proposed subdivision shall not result in a lowering of the water table at the subdivision boundary by increasing runoff with a corresponding decrease in infiltration of precipitation. This standard shall be met by one of the following measures:

[1] Limiting the impervious surfaces within the project site to no more than 10% of the

land surface.

- [2] Providing analysis by a hydrogeologist or qualified engineer that soil and substrate conditions are such that a groundwater drawdown due to increased runoff will not significantly reduce infiltration or cause long-term settlements in clay that could result in structural damage. Upon recommendation of peer review consultants engaged by the Town, the Board may require test borings to verify assumptions made by the hydrologist or engineer.
- [3] Installation of groundwater infiltration measures to ensure that water table recharge is not depleted by more than 10%.

I. Floodplain management. When any part of a subdivision is located in a special flood hazard area as identified by the Federal Emergency Management Agency:

- (1) All public utilities and facilities, such as sewer, gas, electrical and water systems, shall be located and constructed to minimize or eliminate flood damages.
- (2) Adequate drainage shall be provided so as to reduce exposure to flood hazards.
- (3) The plan shall include the finished floor elevation of all proposed structures within the flood hazard area.
- (4) The plan shall meet the requirements of Chapter 82, Floodplain Management.

J. Stormwater management.

- (1) Stormwater management for subdivisions shall incorporate appropriate treatment measures for water quantity and quality to meet the requirements specified below for development of the lots as well as the infrastructure to support the project. Each application shall include, for each lot, maximum developed area, disturbed area, and impervious area, as those terms are defined in DEP Chapter 500, Stormwater Management, § 3.⁵¹
- (2) For subdivisions that are subject to review under the Site Law, a stormwater management plan shall be submitted which complies with the Site Law permit and the requirements of Maine DEP Chapter 500, Stormwater Management.
- (3) For subdivisions that do not require a Site Law permit but require a permit under the Stormwater Law, a stormwater management plan shall be submitted which complies with the requirements of DEP Chapter 500, Stormwater Management.
- (4) For subdivisions outside of the watershed of a great pond that require neither a SLDA permit nor a DEP stormwater permit, a stormwater management plan shall be submitted that complies with Sections 4B, Basic Standards, and 4C, General Standards, of the DEP Chapter 500, Stormwater Management.
- (5) For subdivisions within the watershed of a great pond that require neither a Site Law permit nor a stormwater permit, a stormwater management plan shall be submitted that complies with Section 4B, Basic Standards, of DEP Chapter 500, Stormwater Management. In addition, the stormwater management plan shall comply with Section 4D, Phosphorous Standards, of DEP Chapter 500, Stormwater Management.

51. Editor's Note: See 06-096 CMR Ch. 500.

- (6) For all subdivisions, regardless of size, a stormwater management plan shall be submitted that complies with Section 4E, Flooding Standard, of the DEP Chapter 500, Stormwater Management, as amended.
- (7) For all subdivisions, regardless of size, located in the Highland Lake watershed, the following additional standards shall be met:
 - (a) Projects in the Highland Lake watershed shall not be allowed to pay the compensation fee for exceeding the project's phosphorus allocation. Notwithstanding 1 M.R.S.A. § 302, this amendment shall be applicable to and shall govern any application for subdivision plan approval that did not receive lawful final approval by, and so was pending on or at any time after, September 5, 2017, regardless of whether that application was a pending proceeding under 1 M.R.S.A. § 302.

K. Conservation subdivisions.

(1) Purpose.

- (a) This subsection establishes standards and procedures for developing conservation subdivisions that set aside a significant portion of the site as open space that is permanently protected while allowing the homes to be grouped on smaller lots on the portions of the site that have the least natural, cultural, or historical resource value for conservation purposes. The standards are intended to ensure that those areas of the site that are not developable or that have natural resource value are included in the open space.
- (b) Development under this provision is intended to promote imaginative, well-designed subdivisions which preserve open space, forests and agricultural uses, and an overall rural character. Additionally, conservation subdivisions should provide public access to land for passive and active recreation; protect natural features, environmentally sensitive areas and wildlife cover; respect the physical qualities of the land; and, in some instances, reduce the overall development costs of a subdivision. The standards for conservation subdivisions allow for the creation of lots that are smaller than those that would otherwise be required by the applicable zoning district regulations and in some cases can be combined with density bonuses to allow additional lots, in return for setting aside the balance of the property as permanent open space.
- (c) These provisions are designed to ensure that conservation subdivisions developed in the Town:
 - [1] Preserve those areas of the site that have the highest natural resource value for conservation purposes (refer to the primary and secondary listed below);
 - [2] Preserve rural character and functions in rural portions of Windham;
 - [3] Provide a well-designed approach to the overall roadway and site layout that results in a landscape that provides a sense of a unique and appealing place;
 - [4] Preserve identified historic, archaeological, and cultural features located on the site;
 - [5] Locate the buildings and structures on those portions of the site that are most appropriate for development;
 - [6] Create continuous open spaces, or "greenways," by linking the open spaces in

adjoining subdivisions wherever possible; and

- [7] Minimize the impact of residential development on the Town, neighboring properties, and the natural environment.
- (d) In addition to all applicable standards of this chapter, the Planning Board may approve a single-family conservation subdivision, provided the following conditions are met:
 - (2) Applicability.
 - (a) All submissions for single-family subdivisions in the Farm Zoning District and Farm-Residential Zoning District that meet the space and bulk requirements listed in the appropriate zoning district must be designed as a conservation subdivision or a country subdivision.
 - (b) All submissions for subdivisions in all other zoning districts that meet the space and bulk requirements listed in the appropriate zoning district may be designed as a conservation subdivision or a traditional subdivision.
 - (c) Property located within more than one residential zoning district. The overall density of the subdivision shall not exceed the combination of the density requirements of the districts in which the subdivision is located, before density bonuses are applied.
 - (3) Procedure for conservation subdivisions; design process for conservation subdivision open space.
 - (a) Delineation of open space. The area to be designated as open space or otherwise preserved as part of the development shall be delineated based upon the primary and secondary conservation areas. The proposed open space in conservation subdivisions shall be identified in accordance with the following:
 - [1] The minimum percentage and acreage of required open space shall be calculated by the applicant and submitted in accordance with the provisions of § 120-911K and of this chapter.
 - [2] The proposed open space shall be designated using an existing resources inventory and site analysis sketch plan as a base. This plan shall describe the property proposed to be subdivided and analyze the opportunities and constraints for open space preservation and development. This should be submitted for preapplication review with planning staff prior to submitting a formal application for subdivision approval.
 - [3] The primary conservation areas on the site shall be delineated and shall be incorporated into the open space. The primary conservation areas shall include floodplains, wetlands, and areas with sustained slopes over 25%.
 - [4] The secondary conservation areas on the site shall then be delineated. In delineating secondary conservation areas, the applicant shall prioritize natural and cultural resources on the tract in terms of their highest to lowest suitability for inclusion in the proposed open space based upon the priorities set forth in § 120-911K(6)(c).
 - [5] On the basis of those priorities and practical considerations related to the tract's configuration, its context in relation to resource areas on adjoining and neighboring properties, and the applicant's subdivision objectives, sufficient secondary

conservation areas shall be identified to be included in the open space to meet at least the minimum area percentage requirement for open space. This delineation shall clearly indicate the boundaries as well as the types of resources included within them.

- [6] The proposed open space shall include all primary conservation areas and the secondary conservation areas with the highest resource significance as identified. For subdivisions that are not conservation subdivisions, the primary and secondary conservation areas shall be identified using the existing resources inventory and site analysis sketch plan as a base. The layout of the subdivision shall consider these resources and shall preserve them to the extent reasonable.
- (b) Open space design.
- [1] All open space areas shall be part of a larger continuous and integrated open space system within the parcel being developed. At least 75% of the open space shall be contiguous to another open space area. For the purposes of this subsection, areas shall be considered contiguous if they are within 100 feet of each other and there are no impediments to access between the areas.
 - [2] Open space shall, to the greatest extent possible, protect site features identified in the existing resources inventory and site analysis sketch plan.
 - [3] Natural features shall generally be maintained in their natural condition but may be modified to improve their appearance or to restore their overall condition and natural processes.
 - [4] No area of open space shall be less than 50 feet in its smallest dimension and less than 10,000 square feet in area. Open space not meeting this standard is allowed as an added project enhancement but shall not be counted toward the required project open space.
 - [5] The boundaries of open spaces shall be marked by natural features wherever possible, such as hedgerows, stone walls, edges of woodlands, streams, or individual large trees. Where no such existing demarcations are present, additional plantings, fences, or other landscape features shall be added to enable residents or the public, if applicable, to distinguish where the open space ends and private lot areas begin. Where structural demarcations such as fences are used, they shall be the minimum needed to accomplish this objective.
 - [6] Open space shall include lands located along existing public streets in order to preserve existing rural landscape character as seen from these streets and shall, in no case, contain less than the required buffer, setback area, or separation distance.
- (c) Location of building sites. Potential building sites shall be tentatively located taking into consideration the proposed open space and/or the primary and secondary conservation areas identified in § 120-911K(6)(c), as well as other relevant data from the existing resources inventory and site analysis sketch plan, such as topography and soils.
- [1] Building envelopes should generally be located at least 100 feet from primary conservation areas and at least 50 feet from secondary conservation areas, taking into consideration the potential negative impacts of development on such areas as well as the potential positive benefits of such locations to provide attractive views and visual

settings for residences and other uses.

- [2] Buildings shall be set back at least 100 feet from existing public and private streets. This buffer may be part of the conservation subdivision open space. When buildings will be visible from the existing streets, the applicant shall minimize the visual impact of new development through larger setbacks or screening with elements such as low walls, split-rail fencing, trees or other plantings.
 - [3] Buildings shall be set back at least 50 feet from the external perimeter of the property line of the conservation subdivision, with the exception of property lines along public or private streets. The buffer strip shall be naturally vegetated or landscaped. This buffer may only be part of the open space if the area is a primary or secondary conservation area delineated in accordance with § 120-911K(3)(a).
- (d) Alignment of streets and ways and creation of a trail system. Based upon the designated building sites, a circulation plan shall be designed to provide vehicular and pedestrian access to each site. The street layout shall bear a logical relationship to topographic conditions. Impacts of the street plan on proposed conservation lands shall be minimized, particularly with respect to crossing environmentally sensitive areas such as wetlands and minimizing cut and fill. Street connections shall generally be encouraged to minimize the number of new culs-de-sac and to facilitate access to and from buildings in different parts of the subdivision. A trail system shall be created within the open space to provide access from the subdivision homes to the open space network created by the subdivision.
- (e) Drawing in the lot lines. Upon completion of the preceding steps in § 120-911K(3)(a) through (d), lot lines shall be drawn as required to delineate the boundaries of individual lots. Lots shall be designed in keeping with the standards for individual lots found in Article 4 and shall be further designed to provide each residence with a clear delineation of its property bounds and with usable yard spaces.
- (4) Basic standards for conservation subdivisions.
- (a) Conservation subdivisions shall meet all applicable requirements of this chapter.
 - (b) The Planning Board shall allow lots within conservation subdivisions to be reduced from standard subdivision standards as specified in the applicable zoning district. In return for the reduction in the requirements for lot area, frontage, and structure setbacks, the applicant shall provide common open space.
 - (c) In order to determine the maximum number of dwelling units permitted on a tract of land, the net residential acreage of the parcel shall be divided by the net residential density standard of the applicable zoning district. Density bonuses are applicable, per the appropriate zoning district standards (see Article 4).
 - (d) A landowner may choose not to maximize the development potential of a tract of land in the first subdivision application and reserve remaining development rights for a future subdivision application. In this instance, a conceptual master plan showing the location of future lots must be submitted. The conceptual master plan shall include the minimum information required for a sketch plan submission.
- [1] The subdivider may retain ownership of the remaining land from which the subdivision lots are to be created, provided the portion of the remaining land counted

toward the subdivision open space is subject to a permanent conservation or agricultural easement, or the subdivider may transfer ownership of the open space to a third party per § 120-911E(2).

- [2] The land remaining will be a numbered lot within the subdivision.
- [3] The open space standards in § 120-911K(5) shall apply.
- (e) Each building envelope shall be an element of an overall subdivision plan for site development. Only developments having a total site plan for structures will be considered. The application shall illustrate the placement of building envelopes and the treatment of spaces, paths, roads, service and parking and in so doing shall take into consideration all requirements of § 120-911K and of other relevant sections of these regulations.
- (f) For conservation subdivisions that are not served by a public water supply, the applicant must demonstrate on the plan that it is possible to locate a subsurface wastewater disposal field and a well on each lot. When determined that it is necessary for specific lots, by the Planning Board, as a condition of approval, the location of these elements shall be elements of the subdivision plan, and any future changes to the location of these elements will require an amended subdivision plan review.
- (g) Up to 30% of individual lots or dwelling units may have direct vehicular access onto a public street existing at the time of development.
 - [1] Driveways may cross the buffer and must run essentially perpendicular to the street.
 - [2] Driveways serving individual lots in a conservation subdivision on an existing public street must be separated from new driveways and street intersections by 300 feet.
- (5) Arrangement of lots.
 - (a) Diversity and originality in lot layout and individual building site design shall be encouraged to achieve the best possible relationship between the proposed development and the land under consideration.
 - (b) Factors considered by the Planning Board when evaluating the proposed arrangement of lots shall include, but not be limited to:
 - [1] Arrangement of roads, stormwater facilities, wastewater and other utilities in conformance with the natural features of the parcel, minimizing changes to the topography.
 - [2] Minimization of impervious cover.
 - [3] Protection of stream corridors and other important habitat areas.
 - [4] Protection of wetlands.
 - [5] Feasibility of continued or future agricultural use.
 - [6] Feasibility of continued or future forest management.
 - [7] Relationship to neighboring property, including conservation easements or natural, cultural, recreational or scenic features.

- (6) Open space requirements for conservation subdivisions.
- (a) The open space provided by the conservation subdivision shall be identified on the recorded subdivision plan as "Open Space — Reserved for Recreation, Agricultural and/or Conservation Purposes."
- (b) Minimum amount required. The amount of open space provided within the subdivision shall be equal to or greater than the sum of the following:
- [1] All of the areas of the parcel that are deducted from the gross area of the site to determine the net residential area (see § 120-541, Net residential area or acreage); plus
- [2] At least 50% of the remaining land that is not deducted from the calculated net residential area (see § 120-541, Net residential area or acreage).
- (c) Priorities for land included in open space. The land set aside in the open space shall be selected based upon the following priorities:
- [1] Primary conservation priorities.
- [a] Streams, wetlands, floodplains, vernal pools, and areas with a slope in excess of 25%. Buffers that are required by ordinance along these protected resources shall also be considered primary conservation areas.
- [b] Areas that maintain the rural character of roadsides.
- [c] Scenic resources, including viewsheds and agricultural fields, along with the forested margin adjacent to these resources.
- [d] Areas that are adjacent to other protected open space.
- [2] Secondary conservation priorities.
- [a] Areas that provide protection for unique or irreplaceable resources, including the habitat of rare, significant, or endangered species, archaeological or historic sites, landmarks, and cemeteries.
- [b] Areas that provide for the continuation of resource systems into or through the site such as shorelands, river or stream corridors, wildlife travel corridors, trails, and unfragmented habitat blocks. The width of such corridors shall be as follows:
- [i] Shorelands, river or stream corridors: 100% of the width of any required vegetative buffer, in addition to the required buffer.
- [ii] Wildlife travel corridors: 300 feet.
- [iii] Recreational trail corridors: 25 feet on either side of the trail. Unfragmented habitat blocks shall have a minimum contiguous area of 150 acres.
- [c] Areas that encompass groups of small wetlands not included in primary conservation areas, as well as streams or ponds in a continuously forested area.

- [d] Other secondary conservation areas, including fields, aquifer recharge areas, deer yards, and other identified habitat.
- (d) For open space not retained by the subdivider, one principal access point having a minimum width of 20 feet shall be provided from the road network within the conservation subdivision. Additional, secondary points of access having a minimum width of 10 feet may be provided from individual lots when these lots abut or are located within a portion of the open space area.
 - [1] The size and location of the principal and secondary access points shall be reviewed and approved by the Planning Board as part of the Board's review of the conservation subdivision.
 - [2] In order to be eligible for any density bonus described in the applicable zoning district standards, the following conditions must be met: the open space must be open for general public use, not just homeowners within the subdivision or the subdivider; and the open space must either be accessed from an existing public street, or access is from an abutting property that is public, permanent open space or recreation land; or access must be formalized in easement language if access is to be provided over the new subdivision street or streets until such time as the subdivision street or streets are adopted by the Town. Access easements for the open space must be recorded at the registry prior to the issuance of building permits.
- (e) The required open space shall not be used for commercial recreation or for private clubs whose membership is different from the homeowners' association.
- (f) The proposed location of open space areas should also be considered in relation to other open space areas on abutting properties, and logical connections to and from open space areas on abutting properties should be given consideration by the Planning Board.
- (7) Country subdivisions. As an alternative to conservation subdivision design in the Farm Zoning District and the Farm-Residential Zoning District, an applicant may choose a country subdivision design. This alternative does not include the reservation of open space or the level of site analysis and design required by a conservation subdivision. As a result, large residential lots are required in order to meet Town goals of protecting water quality and wildlife habitats and preserving rural character.
 - (a) Layout and design of the development.
 - [1] Minimum property line setbacks. All principal buildings shall be set back a minimum of 75 feet from any property line. Accessory buildings and structures with less than 200 square feet of footprint area shall be set back a minimum of 50 feet from any property line. Any other accessory buildings and structures shall be set back a minimum of 75 feet from any property line.
 - [2] Streetscape buffers. A vegetated buffer strip shall be maintained on any country lot that fronts on or otherwise abuts any existing public and private street to minimize the visual impact of the development on the streetscape. The depth of the buffer strip shall be at least 50 feet. The buffer strip may be crossed by driveways or access drives that run essentially perpendicular to the street. The buffer strip shall be naturally vegetated or landscaped in a manner appropriate to the existing site conditions and the secondary conservation value of the strip.

[3] Perimeter buffers. A vegetated buffer strip shall be maintained along the external perimeter or property line of the country subdivision, with the exception of property lines along public or private streets, to minimize the impact of the country subdivision on abutting properties. The width of the buffer strip shall be at least 50 feet. The buffer strip shall be naturally vegetated or landscaped.

- (b) Conceptual master plan. A landowner may choose not to maximize the development potential of a tract of land in the first subdivision application and reserve remaining development rights for a future subdivision application. In this instance, a conceptual master plan showing the location of future lots must be submitted. The conceptual master plan shall include the minimum information required for a sketch plan submission.

L. Compliance with timber harvesting rules.

- (1) The Board shall ascertain that any timber harvested on the parcel being subdivided has been harvested in compliance with rules adopted pursuant to 12 M.R.S.A. § 8869, Subsection 14. If a violation of rules adopted by the Maine Forest Service to substantially eliminate liquidation harvesting has occurred, the Planning Board must determine prior to granting approval for the subdivision that five years have elapsed from the date the landowner under whose ownership the harvest occurred acquired the parcel.
- (2) For the purposes of this subsection, "liquidation harvesting" has the same meaning as in 12 M.R.S.A. § 8868, Subsection 6, and "parcel" means a contiguous area within one municipality, township or plantation owned by one person or a group of persons in common or joint ownership.
- (3) The Planning Board may request technical assistance from the Department of Agriculture, Conservation and Forestry, Bureau of Forestry, to determine whether a rule violation has occurred, or the Board may accept a determination certified by a forester licensed pursuant to 32 M.R.S.A. Ch. 76.
 - (a) If the Bureau agrees to provide assistance, it shall make a finding and determination as to whether a rule violation has occurred.
 - (b) If the Bureau notifies the Planning Board that it will not provide assistance, the Board may require a subdivision applicant to provide a determination certified by a licensed forester.

M. Traffic conditions and streets.

- (1) General standards. The proposed subdivision shall meet the following general transportation performance standards:
 - (a) The subdivision transportation system shall provide safeguards against hazards to vehicles, bicyclists and pedestrians in interior subdivision streets and access connections to external streets;
 - (b) The subdivision transportation system shall have design standards that avoid traffic congestion on any street;
 - (c) The subdivision transportation system shall provide safe and convenient circulation for vehicles, bicyclists and pedestrians on interior subdivision streets and access connections to external streets;

- (d) The subdivision transportation system shall have design standards that are compatible with the estimated average annual daily traffic of the street, the land uses accommodated by the street, and the lot density of the street; and
 - (e) The subdivision transportation system shall have a positive relationship to the natural setting of the proposed subdivision site.
- (2) General access standards. All subdivision accesses connecting with external streets shall meet the following standards (see § 120-522, Curb cuts and driveway openings, in Article 5, 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" predevelopment, 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 nonresidential 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.
- (3) General internal subdivision street standards. All internal subdivision streets shall meet the following minimum standards:
- (a) The public street or public street system of the proposed subdivision shall be designed to coordinate with existing, proposed, and planned streets. Where a proposed development abuts unplatted land, or a future development phase of the same development, the Board may require the dedication of a right-of-way equal to the right-of-way width of the internal subdivision street to provide continuation of the road where future development is possible.

- [1] The Planning Board may require the construction of the dedicated right-of-way connection to the abutting property.
 - [2] All dead-end streets or street connection rights-of-way shall be provided with a hammerhead turnaround unless specifically exempted by the Planning Board. The hammerhead shall meet the standards in § 120-911M(5)(b)[5], Dead-end streets.
 - [3] The land area outside of the public street's fifty-foot right-of-way that is necessary for the hammerhead may be in the form of an easement given by the property owner(s) to the Town of Windham and may provide that the easement shall be extinguished upon removal of the hammerhead in the event that the street is extended and the Town Council approves the removal of the hammerhead and extinguishing of the easement. The area of any hammerhead easement shall not be used for purposes of satisfying the frontage requirement of the applicable zoning district.
 - [4] The Planning Board may require a developer to connect to an existing street connection right-of-way on an abutting property. The developer that connects to the street connection right-of-way shall be responsible for any required repair or expansion of the existing public street.
 - [5] Collector and local public streets shall connect with surrounding streets to permit convenient movement of traffic or facilitate emergency access and evacuation.
- (b) Where necessary to safeguard against hazards to vehicle drivers, bicyclists and pedestrians and/or to avoid traffic congestion, provision shall be made for turning lanes, traffic directional islands, frontage roads, sidewalks, bicycle lanes or paths, transportation demand management techniques, and traffic controls within existing public streets.
 - (c) Street names and signs. Streets shall be named, signed and addressed in accordance with the Code of the Town of Windham, Chapter 204, Article II, Street Naming and Addressing. In addition, streets which join and are in alignment with streets of abutting or neighboring properties shall bear the same name. The developer shall either install street name, traffic safety and control signs meeting municipal specifications or reimburse the municipality for the costs of their installation.
 - (d) Streetlights. Streetlights may be required at intersections with existing public streets. The use of additional streetlights shall be discouraged to avoid excessive light pollution.
 - (e) During street construction, the entire right-of-way shall not be cleared unless clearing is necessary for utilities, drainage or other infrastructure necessities beyond the clear zone. If on-site disposal of the stumps and debris is proposed, the site shall be indicated on the plan and be suitably covered with fill and topsoil, limed, fertilized, and seeded.
- (4) Specific access standards; access control.
 - (a) To the maximum extent practical, all subdivision accesses shall be constructed perpendicular to the external street providing access to the subdivision. The minimum intersection angle shall meet the requirements of Table 3 in Appendix B (see Appendix B, Street Design and Construction Standards).⁵²
 - (b) Where a subdivision abuts or contains an existing or proposed arterial street, no lot may

52. Editor's Note: Appendix B is included as an attachment to this chapter.

have vehicular access directly to the arterial street.

- (c) Where a lot has frontage on two or more streets, the access to the lot shall be provided to the lot across the frontage and to the street where there is lesser potential for traffic congestion and for hazards to traffic and pedestrians. This restriction shall appear as a deed restriction to the affected lots. In cases where creating an access to a lesser traveled way is problematical, the Board may allow an access on the higher volume street if the access does not significantly detract from public safety.
- (d) The subdivision access, including all radii, must be paved from the edge of pavement of the existing external street to a distance in accordance with the criteria in § 120-911M(5)(a)[5][e][iii], unless the external street is not paved (see Table 3 in Appendix B, Street Design and Construction Standards⁵³).
- (e) Minimum sight distance standards. Minimum sight distance requirements for all subdivision accesses connecting to external streets shall be contingent on the posted speed of the external street connecting to the subdivision access.
 - [1] For accesses that are expected to carry primarily passenger vehicles, the standards in Table 2 in Appendix B, Street Design and Construction Standards, shall apply.
 - [2] For accesses that are estimated to carry more than 30% of their traffic in vehicles larger than standard passenger vehicles, the standards in Table 2 in Appendix B, Street Design and Construction Standards, shall apply.
 - [3] On roads that are designated by the Maine Department of Transportation as mobility or retrograde arterials, the standards in Table 2 in Appendix B, Street Design and Construction Standards, shall apply (see Appendix C for the list of state highways⁵⁴).
- (f) Access design shall be based on the traffic volume estimates anticipated to be carried by the internal subdivision street. Traffic volume estimates shall be defined by the latest edition of the Trip Generation Manual published by the Institute of Transportation Engineers. The following traffic volume standards shall apply to the design of subdivision accesses connecting to external streets:
 - [1] Low-volume access. An access with 50 or fewer passenger-car-equivalent trips per day.
 - [2] Medium-volume access. Any access with more than 50 passenger-car-equivalent trips per day but fewer than 100 passenger-car-equivalent trips during the peak hour.
 - [3] High volume access. Any access with 100 or more passenger car equivalent trips during the peak hour.
- (g) Basic access design standards for low- and medium-volume accesses. The minimum access design standards in Table 2 in Appendix B, Street Design and Construction Standards,⁵⁵ shall apply to all low- and medium-volume street and private road accesses connecting to external streets.

53. Editor's Note: Appendix B is included as an attachment to this chapter.

54. Editor's Note: Appendix C is included as an attachment to this chapter.

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- (h) Additional access requirements for medium-volume accesses. In addition to the basic access standards outlined in Table 2 in Appendix B, Street Design and Construction Standards, medium-volume accesses on state or state aid highways designated by the Maine Department of Transportation as major collectors or arterials shall also comply with the following standards (see Appendix C for the list of state highways⁵⁶):
- [1] The Planning Board may require the minimum curb radius on the edge of the access to exceed the minimum curb radius standard in Table 3 if a larger design radius is needed to accommodate a larger design vehicle (see Table 3 in Appendix B⁵⁷).
 - [2] A throat shall be constructed around the access in order to store vehicles waiting to exit the access. The throat shall be of sufficient length to prevent incoming vehicles from queuing back into the highway. Access from the throat to parking or other areas shall be prohibited.
 - [3] A separator strip, or strip of land that separates the roadway from the throat or parking area, shall be constructed. The access separator strips shall be installed between the parking area and the roadway and along the throat. The Board shall determine if the separator strip shall include curbing, walkways, ditching, and/or vegetation. The separator strip shall extend away from the traveled way of the external road at a minimum of the greater of nine feet or the required landscaped buffer distance of the applicable zoning district.
- (i) All high-volume accesses shall meet the requirements of the Maine Department of Transportation's "Rules and Regulations Pertaining to Traffic Movement Permits." A copy of the Maine Department of Transportation's required traffic study shall be submitted to the Board. The design standards shall be compatible with the performance standards cited in § 120-911M(2) of this chapter.
- (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.⁵⁸ 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 § 120-911M(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 50 feet. The vertical scale of the profile shall be one inch equals no more than five feet. The plans shall include the following information:
 - [a] Date, scale, and North point (as required in § 120-910, Submission requirements).

56. Editor's Note: Appendix C is included as an attachment to this chapter.

57. Editor's Note: Appendix B is included as an attachment to this chapter.

58. Editor's Note: Appendix B is included as an attachment to this chapter.

- [b] Intersections of the proposed street with existing streets.
 - [c] Roadway and right-of-way limits, including edge of pavement or aggregate base, edge of shoulder, clear zone, 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 drainageways.
 - [e] Complete curve data shall be indicated for all horizontal and vertical curves.
 - [f] Turning radii at all intersections.
 - [g] Center line gradients.
 - [h] 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.
 - [i] 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. 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 Tables 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 and 4 in Appendix B⁵⁹). Note: For additional standards for private roads that are not part of a subdivision application, see § 120-555, Streets, in Article 5, Performance Standards).
- [a] 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.
 - [b] Each lot having access from an approved private road may be improved with no more than two dwelling units.
 - [c] 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.
 - [d] 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

59. Editor's Note: Appendix B is included as an attachment to this chapter.

existing and proposed private roads in the road network back to the closest public street shall meet the applicable private road standard.

- [e] 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."
 - [f] 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 chapter.
 - [g] 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 Standards⁶⁰).
 - [h] Private roads shall be designed to conform with the appropriate standards presented in Tables 1, 2, 3 and 4 and the applicable cross sections in Appendix B.⁶¹
 - [i] Notwithstanding other provisions of this chapter to the contrary, no gravel-surfaced private road shall provide access to or serve in any way to provide compliance with the requirements of this chapter for more than the greater of 10 lots or 10 dwelling units. A private road providing access to or serving in any way to provide compliance with the requirements of this chapter for more than 10 lots or 10 dwelling units shall meet all design and construction standards for a major private road, as defined. Nothing in this subsection shall serve to limit the use of a private road for occasional use by and for agricultural purposes.
- (b) Street design standards.
- [1] These design guidelines shall control the roadway, shoulders, clear zones, curbs, sidewalks, drainage systems, culverts, and other appurtenances associated with the street, and shall be met by all streets within a subdivision, unless the applicant can provide clear and convincing evidence that an alternate design will meet good engineering practice and will meet the performance standards of § 120-911.
 - [2] Reserve strips controlling access to streets shall be prohibited except where their

60. Editor's Note: Appendix B is included as an attachment to this chapter.

61. Editor's Note: Appendix B is included as an attachment to this chapter.

control is definitely placed with the municipality.

- [3] Curbs.
 - [a] Curbs shall be installed for stormwater management purposes, to protect the pavement edge from unraveling along parking lanes, in developments where heavy use may erode the planted area at the edge of the pavement, in areas where the street passes through a cut of land, or on public streets where the average lot frontage is 100 feet or less. The Board may require curbs based on the unique conditions of the site.
 - [i] Curbs for stormwater management shall be contingent on the stormwater design standards specified in § 120-911J.
 - [ii] Catch basins or other methods of directing stormwater acceptable to the Board shall be required on the sides of streets on which a curb is installed. The maximum distance between catch basins or drainage control shall be 300 feet. The Planning Board may require additional catch basins or drainage control measures at specific locations due to site conditions, such as, but not limited to, slopes and soil conditions.
 - [b] Minimum shoulders for curbed streets. Standards shall be in accordance with Table 3 in Appendix B.⁶²
 - [c] Construction standards. Curbs shall be constructed of either vertical granite, sloped granite, sloped cape cod bituminous, or Type 2 bituminous where a sidewalk is adjacent to a street.
 - [i] Curb radii at all intersections on a public street shall be constructed of granite.
 - [ii] Granite curb radii shall be installed in such a manner as to match the height of any existing curbing on a public street.
 - [iii] Granite curb radii shall be tipped down to match the grade of any existing external public street that is not curbed at the time of construction.
 - [iv] Granite curbing shall be installed in accordance with Maine DOT Section 609 Specifications.
- [4] Shoulders. See Subsection M(5)(b)[6], Sidewalks or shoulders, below.
- [5] Dead-end streets.
 - [a] Maximum length. Dead-end streets, as defined, shall meet the following standards:
 - [i] Streets and roads served by public water. There is no maximum length limit for streets 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 M(5)(b)[7], Street connection requirements, below, shall apply.

62. Editor's Note: Appendix B is included as an attachment to this chapter.

- [ii] Streets and roads not served by public water. Dead-end streets 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-Rescue Chief and hammerhead turnarounds installed every 1,000 linear feet. The street connectivity standards of Subsection M(5)(b)[7], Street connection requirements, below, shall apply.
 - [A] 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.
 - [B] A private road constructed within an existing right-of-way which does not contain an existing private way constructed on, or before, October 22, 2009, shall meet the design and construction standards for private roads contained in this Article 9 to the greatest extent practical. (See definition of "street classification: private way and private road" in Article 3.)
- [iii] Industrial/commercial streets. There is no maximum length limit for a dead-end industrial or commercial street, as defined in Article 3.
- [b] Cul-de-sac requirement. Except for the standards in § 120-911M(5)(b)[5][d], below, dead-end streets shall be constructed to provide a cul-de-sac turnaround. The following standards shall be used in the design of culs-de-sac:
 - [i] Width. A single travel lane and width equal to the minimum width required for the internal subdivision street.
 - [ii] Radius. For all residential culs-de-sac, the minimum radius shall be 42 feet. For commercial/industrial culs-de-sac, the minimum radius shall be 55 feet.
 - [iii] Drainage. The center of the cul-de-sac must reserve area for snow storage and provide adequate drainage that does not result in ice formation on the travel way.
 - [iv] Center area. The center of the cul-de-sac may include natural ground cover and vegetation.
 - [v] Pedestrian and utility easement. The Board may require the reservation of a minimum twenty-foot easement in line with the street to provide continuation of pedestrian traffic to the next street, or a thirty-foot-wide utility easement to provide continuation of utilities.
- [c] Street connectivity. The Board may require the reservation of a right-of-way easement equal to the right-of-way width of the internal subdivision street in line with the street to provide continuation of the road where future development is possible.
- [d] Hammerhead requirement. A hammerhead turnaround is permissible on all

private roads, or on public streets at which the Planning Board has required an extension of a right-of-way to provide access to undeveloped land. [See § 120-911M(3) for additional street connectivity standards.]

- [e] A hammerhead turnaround shall meet the following standards:
 - [i] The right-of-way or easement area of the turnaround side branch shall be at least 50 feet by 50 feet.
 - [ii] The paved surface shall extend at least 50 feet from the center line of the adjacent roadway.
 - [iii] The width of the paved surface shall be equal to the street width.
 - [iv] The hammerhead shall have a minimum twenty-five-foot turning radius.
 - [v] Larger dimensions may be required to accommodate larger design vehicles anticipated to use the turnaround.
 - [vi] No driveway shall be located at the end of the street or off of the turnaround side branch.
 - [vii] The turnaround side branch shall be located on the right side of the street.
- [6] Sidewalks or shoulders. The applicant shall provide either a sidewalk or a paved shoulder as follows:
 - [a] Commercial/industrial streets.
 - [i] Sidewalks shall be required on all new commercial and industrial streets.
 - [ii] Connections to existing sidewalks. The Planning Board may require the construction of sidewalks on existing roads on which the property being subdivided fronts if a connection to an existing sidewalk can be made.
 - [b] Major local streets and minor local streets. To provide for safe pedestrian or bicycle travel, the applicant shall provide either a shoulder or a sidewalk in accordance with the following standards:
 - [i] Sidewalk required. Major and minor local streets in subdivisions located 1,000 linear feet or less from an existing convenience store or public building shall be required to construct a sidewalk in all zoning districts except the Farm District. The Board may also require a sidewalk in locations where the vehicular trips generated by the subdivision will create unsafe pedestrian conditions.
 - [ii] Connections to existing sidewalks. The Planning Board may require the construction of sidewalks on existing roads on which the property being subdivided fronts if a connection to an existing sidewalk can be made.
 - [iii] Sidewalk optional. If a sidewalk is not required in accordance with Subsection M(5)(b)[6][b][i], above, the applicant shall construct either a sidewalk or a street with a widened shoulder. At a minimum, an additional one foot of paved shoulder, on each side of the street, shall be added to

the required minimum shoulder width. The applicable design and construction standards for shoulders or sidewalks are located in Appendix B, Table 3 and Table 4.⁶³

- [c] Location. Sidewalks shall be located as follows:
 - [i] Major local streets and minor local streets. The sidewalk shall be set back from the curb or shoulder a minimum of seven feet from the curb facing or edge of shoulder if the street is not curbed. The Planning Board may reduce the seven-foot-setback requirement due to a condition that is unique to the site, or due to the location of an adjacent steep slope.
 - [ii] All other streets. The sidewalk may be located adjacent to the curb or shoulder or, if set back from the street, a minimum of seven feet from the curb facing or edge of shoulder if the street is not curbed. The Planning Board may reduce the seven-foot-setback requirement due to a condition that is unique to the site, or due to the location of an adjacent steep slope.
 - [iii] The Planning Board shall determine if sidewalks will be installed on one side or both sides of the street.
- [7] Street connection requirements. The following standards determine the number of connections a residential subdivision street must have with an existing public 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.

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

- [a] Street connection separation requirements. Subdivisions with two or more connections to an existing public street shall be separated according to the standards in Table 2 [see Table 2 in § 120-911M(4)⁶⁴].
- [8] Street construction practices. Streets shall be designed and constructed to conform to the standards presented in Table 4, the typical cross sections diagrams in Appendix B,⁶⁵ Maine DOT Standard Specifications, latest revision (as applicable), and the following:
 - [a] Preparation.
 - [i] Before any clearing has started on the right-of-way, the center line and side lines of the new road shall be staked or flagged at fifty-foot intervals.

63. Editor's Note: Appendix B is included as an attachment to this chapter.

64. Editor's Note: See Table 2 in Appendix B, Street Design and Construction Standards, included as an attachment to this chapter.

65. Editor's Note: Appendix B is included as an attachment to this chapter.

- [ii] Before grading is started, the entire area within the right-of-way necessary for traveled way, shoulders, clear zones, sidewalks, drainageways, and utilities shall be cleared of all stumps, roots, brush, and other objectionable material. All shallow ledge, large boulders and tree stumps shall be removed from the cleared area.
 - [iii] All roadway excavation and embankment construction shall comply with Maine DOT Specification Section 203, Excavation and Embankment.
 - [iv] Except in a ledge cut, side slopes shall be no steeper than a slope of three feet horizontal to one foot vertical, and shall be graded, loamed, limed, fertilized, and seeded according to the specifications of the erosion and sedimentation control plan. Where a cut results in exposed ledge, a side slope no steeper than four feet vertical to one foot horizontal is permitted.
 - [v] All underground utilities shall be installed prior to paving to avoid cuts in the pavement. Sewer and/or water service connections shall be installed at least two feet beyond the edge of the right-of-way prior to paving. Temporary markers shall be placed to aid in the location of service stubs until connection is made to the building.
- [b] Bases and pavement.
- [i] Subbase and base courses. The aggregate subbase course and base course shall meet the specifications of Table 4 in Appendix B (see Appendix B, Street Design and Construction Standards⁶⁶). All aggregate base and subbase construction shall comply with Maine DOT Specification Section 304, Aggregate Base and Subbase Course.
 - [ii] Pavements. The base layer and surface layer shall meet the specifications of Table 4 in Appendix B (see Appendix B, Street Design and Construction Standards⁶⁷). All paving work shall comply with Maine DOT Specification Section 401, Hot Mix Asphalt Pavements.
- [c] Pavement joints. Where pavement joins an existing pavement, the existing pavement shall be cut along a smooth line and form a neat, even, vertical joint. A twelve-inch ship lap shall be required where the surface course overlays the base course.
- [d] Subsurface roadway drainage.
- [i] Geotextile fabric. The Planning Board or Director of Public Works, or his designee, may require the use of geotextile fabric on a case-by-case basis due to poor soil conditions or the height of the water table.
 - [ii] Underdrain. The Planning Board or Director of Public Works, or his designee, may require the installation of underdrain and catch basins on the curbed side of a street. The required use of underdrain shall be made on a case-by-case basis due to poor soil conditions, the height of the water

66. Editor's Note: Appendix B is included as an attachment to this chapter.

67. Editor's Note: Appendix B is included as an attachment to this chapter.

table, or where the bottom of drainage ditches is above the lowest point of the roadway subbase layer.

[iii] Drainage ditches. Drainage ditches must be at least as deep as the lowest point of the road subbase.

- (6) Process for Town acceptance of streets. A street constructed on private lands by the owner, developer, or association thereof and not dedicated for public travel prior to October 22, 2009, may be laid out and offered for acceptance as a public street by the Town Council. For the Town Council to accept a public street, the procedures and conditions of this section must be met. In the event that all procedures and conditions are met, the Town Council reserves the right to reject any street offered for public acceptance.
- (a) The street proposed for acceptance shall be constructed, or improved, to the standards for the construction of a public street.
- (b) The owner(s) shall give the Town a deed to the property within the boundaries of the right-of-way at the time of its acceptance by the Town, a separate deed to areas reserved for the future development of streets, and separate easements for the provision of street stub hammerheads. [See § 120-911M(3), General internal subdivision street standards.]
- (c) A plan of said street or way shall be recorded in the Cumberland County Registry of Deeds at the time of its acceptance.
- (d) A petition for the acceptance of said street shall be submitted to the Town Council upon a form to be prescribed by the Town Attorney. Said petition shall be accompanied by a plan, profile and cross section of said street as follows:
- [1] A plan drawn when practical to a scale of 50 feet to one inch, and to be on one or more sheets of paper not exceeding 24 inches by 36 inches in size. Said plan shall show the North point, the location and ownership of all adjoining lots of land, underground utilities, passageways, streetlights and electric lines, boundary monuments, waterways, topography and natural drainage courses with contours at two-foot intervals (or lesser intervals approved by the Planning Board), all angles, bearing and radii necessary for the plotting of said street and lots and their reproduction on the ground.
- [2] A profile of said street or way drawn to a horizontal scale of 50 feet to one inch, and a vertical scale of five feet to one inch, or other suitable engineering scale as required by the Town's consulting engineer.
- [3] Said profile shall show the profile of the center line of said street and the proposed grades thereof. Specific cross sections shall be submitted as required by the Town's Engineer. Any buildings abutting on said street shall be shown on said profile.
- [4] A typical cross section of said street drawn to a horizontal scale of five feet to one inch and a vertical scale of five feet to one inch.
- [5] The location and size of the proposed water and/or sewer mains in accordance with these regulations.
- [6] The location and size of all culverts, storm drains, catch basins and manholes.

(c) Streets offered for acceptance.

- [1] Streets to be offered to the Town for acceptance must have a written report of investigation prepared by the Town's Engineer after completion of construction based on review and observation of construction by the Town's Engineer.
- [2] The owner shall warranty all public improvements for a period of one year from the date of acceptance and post a maintenance guarantee per the subdivision regulations. This maintenance guarantee shall ensure the workmanship and the durability of all materials used in the construction of the roadways, curbing, esplanades, sidewalks, sanitary sewerage systems, storm drainage systems, streetlighting, tree planting, and other public improvements located within the right-of-way which may become defective within the one-year period, all as determined by the Public Works Director or Town Engineer in accordance with § 120-911M(6). The amount of the maintenance guarantee shall be 10% of the total construction costs of all required improvements.
- [3] At the conclusion of the one-year warranty period, the owner shall request the Town's Engineer to prepare a second written report of investigation prior to the release of the improvements guarantee.
- [4] No street shall be placed on the Town Council's agenda for consideration or accepted by the Town Council until the following tasks have been completed:
 - [a] The applicant shall submit a complete set of as-built plans of the street proposed for acceptance showing all works of man.
 - [b] The Town's consulting Engineer shall have made an investigation thereof and shall have reported to the Planning Department their recommendations, in writing, with respect thereto. Such investigation may include a minimum of the results of at least one core sample and may include more than one core sample for each road proposed for acceptance as a public way with the core sample and reports paid for by the applicant.
- [5] The surface pavement shall not be placed until the base paving has gone through at least one complete winter. The application of a tack coat and/or shim coat to the base may be required by the Town, when necessary, to ensure the appropriate bonding between base and final surface coats of pavement.
- [6] Notwithstanding the provisions of any other section thereof, the Town may at any time lay out and accept any street or way in the Town of Windham, Maine, as a public street of said Town whenever the general public interest so requires. The cost of said street or way may be borne by said Town or may be borne by another party.

N. Maintenance of common elements.

- (1) Any subdivision application must provide draft homeowner's association documents. The final plan application shall include the following:
 - (a) Covenants for mandatory membership in the homeowners' association setting forth the owner's rights, interests, and privileges in the association and the common property and facilities, to be included in the deed for each lot or dwelling.

- (b) Draft articles of incorporation of the proposed homeowners' association as a not-for-profit corporation; and
 - (c) Draft bylaws of the proposed homeowners' association, specifying the responsibilities and authority of the association, the operating procedures of the association, including an inspection and maintenance schedule, and providing for proper capitalization of the association to cover the costs of inspection, maintenance, repair and replacement of common facilities.
- (2) In addition, the documents referenced in § 120-911N(1), above, shall provide for the following:
- (a) The homeowners' association shall have the responsibility of maintaining the common property or facilities, including any required stormwater improvements.
 - (b) The system by which the association shall levy annual charges against all owners of lots or dwelling units to defray the expenses connected with the inspection, maintenance, repair and replacement of common property and facilities and tax assessments.
 - (c) The association shall have the power to place a lien on the property of members who fail to pay dues or assessments.
- (3) The developer or subdivider shall maintain control of the common property and be responsible for its maintenance, including snow plowing, until either of the following has occurred:
- (a) The legislative body accepts said improvements; or
 - (b) The developer or subdivider has transferred responsibility for ongoing maintenance of the improvements to the homeowners' association.
- (4) The homeowners' association shall be in a form acceptable to the Town Attorney.
- (5) The homeowners' association documents shall be recorded in the Cumberland County Registry of Deeds within 90 days of the date that the subdivision plan is recorded in the Cumberland County Registry of Deeds. Evidence of such recording shall be provided to the Code Enforcement Office. No lots shall be sold in the subdivision prior to recording and all deeds shall reference the declaration establishing the homeowners' association.

§ 120-912. Final approval and filing.

- A. Upon findings of fact and determination that all standards in 30-A M.R.S.A. § 4404 and Article 9 of this chapter 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 fact and reasons for any conditions or denial.
- B. The applicant shall record and file the plan as follows:
 - (1) The Mylar(s) of an approved subdivision shall include the signed stamp of the licensed professional who prepared the plans.
 - (2) Major subdivisions must resubmit the application's GIS data if revisions have been made during the preliminary plan or final plan review phase. The revised data must in the format required for preliminary plan submissions and all revisions made to the plan following the preliminary plan submission must be included. The Planning Board shall not sign any Mylars until the GIS data has been resubmitted.

- (3) One original Mylar of the signed plan shall be retained by the Board as part of its permanent records.
- (4) One original Mylar of the signed plan shall be recorded in the Registry of Deeds.
- (5) Within seven days of recording, the applicant shall provide the Town with a copy of the recorded plan. No site work shall commence, or building permits issued, prior to the Town's receipt of a copy of the recorded plan.
- (6) One complete, full-sized paper set of the approved plans shall be filed with the Planning Department, plus one full-size paper copy of the plan sheet containing the signature block, and one electronic copy of the subdivision plan in a format acceptable to the Town.
- (7) Documentation shall be submitted to the Town confirming that all required open-space-related deeds, covenants, or legal agreements have been filed with the Registry of Deeds.

C. Plan sections.

- (1) 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.
- (2) If any Town or quasi-municipal department head 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.

D. 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 a revised final plan is first submitted and the Board approves any modifications, in accordance with § 120-914, Post-approval activities. The Board shall make findings that the revised plan meets the criteria of 30-A M.R.S.A. § 4404 and the standards of Article 9 of this chapter.

E. 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 Windham 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 Windham of such areas.

- (1) The Board shall require the plan to contain appropriate notes to this effect.
- (2) 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.

F. Filing of as-built plans. All subdivisions that include streets proposed for acceptance by the Town of Windham shall submit as-built plans as required in § 120-911M(6)(e)[5]. Any field changes that affect the accuracy of the project's GIS data require the revision and resubmission of said data.

- G. No subdivision plan shall be released for recording at the Registry of Deeds until the required performance guarantee has been posted. If an approved plan is not recorded in the Registry of Deeds within three years of the original approval, it shall become null and void. If a plan has received a phased approval, the first phase shall be recorded within three years of the original approval and subsequent phases shall be recorded within five years of the original approval. If a phased plan is not recorded within those time periods, the phases that have not been recorded shall become null and void.

§ 120-913. Revisions to approved plans. [Amended 9-23-2025 by Order No. 25-126]

- A. Authority. 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. In reviewing such an application, the Planning Board shall make findings of fact establishing that the proposed revisions do or do not meet the criteria of 30-A M.R.S.A. § 4404.
- B. Procedure.
- (1) All plan revision applications shall include all required submission materials and shall be submitted to the Planning Department. An application will not be placed on a Planning Board agenda until it has been determined complete by the Planning Department as specified in this article. The Planning Department shall have up to 30 calendar days from the date of submission to determine completeness.
 - (2) If the revision involves the creation of additional lots or dwelling units, the procedures for preliminary plan approval shall be followed. If the revision involves only modifications of the approved plan, without the creation of additional lots or dwelling units, the procedures for final plan approval shall be followed.
 - (3) The applicant shall submit the following information:
 - (a) Ten copies of the approved plan.
 - (b) Ten copies of the proposed revisions.
 - (c) The application shall also include enough supporting information to allow the Board to make a determination that the proposed revisions meet the standards of Article 9 and the criteria of the state statute.
 - (d) The revised plan shall indicate that it is the revision of a previously approved and recorded plan and shall show the title of the subdivision and the book and page or cabinet and sheet on which the original plan is recorded at the Registry of Deeds.
 - (4) The Board's scope of review shall be limited to those portions of the plan which are proposed to be changed.

§ 120-914. Post-approval activities. [Amended 2-28-2017 by Order 17-038]

- A. Performance guarantees.
- (1) Types of guarantees. The applicant shall provide one of the following performance guarantees for an amount adequate to cover 110% of the total construction costs of all required improvements, taking into account the time span of the construction schedule and the inflation

rate for construction costs. A performance guarantee shall not expire until released by the Town Manager. The terms shall be for a maximum of two years and shall not expire between October 31 and April 15 of the following year. The Town Manager may approve an extension of up to one year. The amount of the performance guarantee shall be reviewed for sufficiency at the time of the extension. **[Amended 10-24-2023 by Order No. 23-193]**

- (a) Either a certified check payable to the municipality or a savings account or certificate of deposit naming the municipality as owner, for the establishment of an escrow account; or
 - (b) A performance bond payable to the municipality issued by a surety company licensed to do business in the State of Maine, approved by the municipal officers, or Town Manager; or
 - (c) An irrevocable letter of credit, from a bank or credit union establishing funding for the construction of the subdivision, from which the municipality may draw if construction is inadequate, approved by the Town Manager.
 - (d) In lieu of the furnishing of a performance guarantee before the recording of the final plan, the Planning Board may accept the agreement of the subdivider that no lot or parcel of land shall be conveyed, and no building permit for any building or portion of the development shall be issued by the Code Enforcement Officer, until the completion of required improvements. Such agreement shall be acknowledged by a note on the final subdivision plan that provides as follows: "In lieu of a performance guarantee for the construction of the project improvements, no lot or parcel of land may be conveyed, and no building permit for any building or any portion of the development shall be issued by the Code Enforcement Officer, until the completion of all streets, utilities and other required improvements in accordance with this plan and all applicable laws, ordinances and standards. If the applicant wishes to convey a lot prior to all project improvements being completed in accordance with this plan and all applicable laws, ordinances and standards, a performance guarantee equal to the cost of the remaining improvements shall first be approved by the Town Manager, in consultation with the Planning Director, and submitted to the Town." This provision shall only apply to private streets with a subdivision and shall not apply to anything proposed as a public street.
- (2) Contents of guarantee. The performance guarantee shall contain the following:
- (a) Construction schedule.
 - (b) Cost estimates for each major phase of construction taking into account inflation, provisions for inspections of each phase of construction, provisions for the release of part or all of the performance guarantee to the developer, and a date after which the applicant will be in default and the municipality shall have access to the funds to finish construction. The amount will be based upon a schedule of values maintained by the Town and based on construction costs of similar projects. The cost estimate shall be submitted in a format containing a schedule of values for each construction item. The acceptable format is available from the Town Engineer and on the Town's website.
- (3) Escrow account. A cash contribution to the establishment of an escrow account shall be made by either a certified check made out to the municipality, the direct deposit into a savings account, or the purchase of a certificate of deposit. For any account opened by the applicant, the Town of Windham shall be named as owner, and the consent of the Town shall be required for any reduction in the amount of the escrow account. **[Amended 10-24-2023 by Order No.**

23-193]

- (4) Performance bond. A performance bond shall detail the conditions of the bond, the method for release of the bond or portions of the bond to the applicant, and the procedures for collection by the municipality. The bond documents shall specifically reference the subdivision for which approval is sought. The applicant shall provide evidence that the surety bonding company has a minimum A rating. **[Amended 10-24-2023 by Order No. 23-193]**
- (5) Letter of credit. An irrevocable letter of credit from a bank or credit union with offices in the region shall indicate that funds have been set aside for the construction of the subdivision for the duration of the project and may not be used for any other project or loan. The form of the letter of credit must be approved by the Town Manager and the Town Attorney. **[Amended 10-24-2023 by Order No. 23-193]**
- (6) Phasing of development. The Board may approve plans to develop a major subdivision in separate and distinct phases. This may be accomplished by limiting final approval to those lots abutting that section of the proposed subdivision street which is covered by a performance guarantee.
 - (a) When development is phased, road construction shall commence from an existing public way, when available.
 - (b) The Board shall grant final approval of lots in subsequent phases only upon satisfactory completion of all requirements pertaining to previous phases. Evidence of satisfactory completion shall be a report from the Code Enforcement Officer or consulting engineer retained by the Town of Windham.
- (7) Release of guarantee. Prior to the release of any part of the performance guarantee, the Town Manager shall determine to his/her satisfaction, in part upon the report of the Town's Engineer or other qualified individual retained by the municipality and any other agencies and departments which may be involved, that the proposed improvements meet or exceed the design and construction requirements for that portion or phase of the subdivision for which the release is requested. **[Amended 10-24-2023 by Order No. 23-193]**
 - (a) Performance guarantees may be reduced periodically, but in no event more than one time per month. In no case shall the performance guarantee be reduced by less than \$10,000 at one time or in any line item where improvements remain to be completed. No performance guarantee shall be reduced to less than 10% of the initial performance guarantee amount. The remainder of the guarantee will be released upon satisfactory completion of the improvements.
 - (b) Prior to the final release of any performance guarantee, the developer shall provide to the Town of Windham a 10% as a maintenance guarantee to be held for a period of one year from the date of final paving for any streets to be offered to the Town Council for acceptance. This guarantee shall ensure the workmanship and the durability of all materials used in the construction of the roadways, curbing, esplanades, sidewalks, sanitary sewerage systems, storm drainage systems, streetlighting, tree planting, and other public improvements located within the right-of-way which may become defective within the one-year period, all as determined by the Public Works Director or Town Engineer in accordance with § 120-911M(6).
- (8) Default. If, upon investigation, the Town's Engineer or other qualified individual retained by the

Town finds that any of the required improvements have not been constructed in general conformance with the plans and specifications filed as part of the application, he or she shall so report, in writing, to the Code Enforcement Officer, the Town Manager, the Board, the Planner, and the applicant or builder. The Town Manager, or his designee, shall take any steps necessary to preserve the municipality's rights.

- (9) Improvements guaranteed. Performance guarantees shall be tendered for all improvements required to meet the standards of these regulations and for the construction of the streets, stormwater management facilities, public or private sewage collection or disposal facilities, public water systems, and erosion and sedimentation control measures.

B. Investigation of required improvements.

- (1) Notice of construction. At least 15 days prior to commencing construction of required improvements, the subdivider shall notify, in writing, the Town Planner of the time when he proposes to commence construction of such improvements so that the Town Manager and Town Planner can cause investigation to be made to observe construction of required improvements to confirm general conformance to the approved plans and specifications, and to confirm satisfactory completion of improvements and utilities required by the Board. Investigation shall be made of all required public improvements, including, but not limited to, public streets or private roads, drainage structures and ditches, erosion control measures, utilities, landscaping and recreation facilities and of all survey monuments as required by § 120-911A(3) of this chapter to ensure they have been placed.
- (2) Construction observation fee. At least five days prior to commencing construction of required improvements, the subdivider shall pay a construction observation fee in accordance with the requirements of § 120-909, Fees. No building permits shall be issued on the project and no work begun until the inspection fee has been paid. A preconstruction meeting shall be held with Town staff prior to commencing construction.
- (3) Improvements not constructed to plan. If the Town's representative shall find, upon investigation of the improvements performed before the expiration date of the performance bond, that any of the required improvements have not been constructed in general conformance with plans and specifications filed by the subdivider, he shall so report to the Town Manager, Public Works Director, Code Enforcement Officer, and Town Planner. The Town Planner shall then notify the subdivider and, if necessary, the bonding company or bank, and take all necessary steps to preserve the municipality's rights under the bond or letter of credit. **[Amended 6-16-2022 by Order No. 22-108]**
- (4) Modifications to required improvements. If at any time before or during the construction of the required improvements it is demonstrated to the satisfaction of the Town Engineer that unforeseen conditions, such as encountering hidden outcrops of bedrock, natural springs, etc., make it necessary or preferable to modify the location or design of any required improvement, the Town Engineer may, upon approval of the Town Planner, authorize modifications. The modifications must be within the spirit and intent of the Board's approval and do not extend to the waiver or substantial alteration of the function of any improvements required by the Board. The Town Engineer shall issue and transmit a written authorization under this section to the Town Planner.
- (5) Completion of construction of required improvements. Construction of improvements covered by any subdivision plan approval shall be completed within two years of the date upon which the performance guarantee is accepted by the Town Manager. The developer may request a one-

year extension of the construction completion deadline prior to the expiration of the period. Such request shall be in writing and shall be made to the Planner. The Town Manager may require an update to the schedule of values and the amount of the guarantee when accepting an extension of the construction period. If construction has not been completed within the specified period, the Town shall, at the Town Manger's discretion, use the performance guarantee to either reclaim and stabilize or to complete the improvements as shown on the approved plan. **[Amended 10-24-2023 by Order No. 23-193]**

- C. Maintenance of all improvements. The applicant shall be required to maintain all improvements and provide for snow removal on streets and sidewalks until either of the following has occurred:
- (1) The legislative body accepts said improvements; or
 - (2) The applicant has transferred responsibility for ongoing maintenance of the improvements to a homeowners' association.

§ 120-915. Violations and penalties. [Amended 6-16-2022 by Order No. 22-108; 8-20-2024 by Order No. 24-165; 8-12-2025 by Order No. 25-110]

- A. Approval required before filing. No plan of a subdivision of land within the boundaries of the Town of Windham which would constitute a subdivision as defined herein shall hereafter be filed or recorded in the Cumberland County Registry of Deeds until a final plan thereof shall have been approved by the Board in accordance with all of the requirements, design standards and construction specifications set forth elsewhere in these standards, nor until such approval shall have been entered on such final plan by the Board.
- B. Approval required before conveyance. No person, firm, corporation or other legal entity may convey, offer or agree to convey any land in a subdivision which does not meet the following requirements:
- (1) The subdivision has been approved by the Board and recorded in the Cumberland County Registry of Deeds;
 - (2) The street upon which the lot fronts is completed in accordance with these regulations, up to and including the entire frontage of the lot.
- C. Occupancy of dwellings.
- (1) Paved Streets. No dwelling unit accessed on streets and access drives designed with a paved surface shall be occupied until the street upon which the unit is accessed is completed at least with the base course of pavement. (Table 4 in Appendix B — Street Design and Construction Standards.)
 - (2) Gravel streets. No dwelling unit accessed on streets and access drives designed with a gravel surface shall be occupied until the street upon which the unit is accessed is completed at least with the base course of crushed aggregate. (Table 4 in Appendix B — Street Design and Construction Standards.)
- D. No vote if violation exists. No plan shall be approved by the Board as long as the applicant is in violation of the provisions of a previously approved site plan, subdivision plan, building permit, Shoreland Zoning permit or other approval, applicable storm drainage system requirement, stormwater management permit or Board of Appeals approval or has been found in violation due to the applicant's failure to get any required approvals under any of these ordinances or requirements within the municipality.

- E. Commencement of site work. It is a violation under this Article 9 to commence any site work in a subdivision, including but not limited to: land preparation, such as tree clearing, grubbing, grading, and filling; installation of streets and walkways; any excavation of any kind (exempt for test-pits); or construction of buildings until such time as a final plan of such subdivision has been duly prepared, submitted, approved and endorsed as provided in these standards, and until the original copy of the final plan so approved and endorsed has been duly recorded in the Cumberland County Registry of Deeds in accordance with § 120-912.
- F. Utility service connections. No public utility, water district, sanitary district or any utility company of any kind shall serve any lot in a subdivision for which a final plan has not been approved by the Board.
- G. Nuisance. Violations of the above provisions of this section are a nuisance and shall be punished in accordance with the provisions of 30-A M.R.S.A. § 4452.

§ 120-916. Appeals.

An appeal of any order, relief or denial made by the Board may be taken by any aggrieved party to the Superior Court within 30 days pursuant to Maine Rules of Civil Procedure 80-B.

**ARTICLE 10
Administration**

§ 120-1001. Duty of Code Enforcement Officer.

- A. It shall be the duty of the Code Enforcement Officer to enforce the provisions of this chapter. The Code Enforcement Officer, with the advice and consent of the Town Manager, is authorized to institute or cause to be instituted by the Town Council, in the name of the Town of Windham, any and all actions, legal or equitable, that may be appropriate or necessary for the enforcement of this chapter; provided, however, that this section shall not prevent any person entitled to equitable relief from enjoining any act contrary to the provisions of this chapter.
- B. The Code Enforcement Officer shall be authorized to grant the following:
 - (1) Building permits.
 - (2) Certificates of occupancy (see current Building Code).

§ 120-1002. Building permit. [Amended 8-26-2014 by Order 14-312]

- A. Building permit. The Code Enforcement Officer shall not issue a building permit for the construction, alteration, enlargement, or moving of any building, structure or part thereof unless the plans and intended use indicate that the building, structure, or premises are to conform in all respects with the provisions of this chapter. Applications for building permits required by the Building Code shall also serve as applications for permits required by this chapter.
- B. Submission requirements. A plan of the lot containing the following information shall be submitted to the Code Enforcement Department to obtain a building permit:
 - (1) Building permit application form.
 - (2) Dimensions of the lot.
 - (3) Location of all existing and proposed buildings or structures.
 - (4) Location of all required yards for setback purposes.
 - (5) Location and dimensions of all existing and proposed parking spaces.
 - (6) Location and dimensions of all existing and proposed loading areas.
 - (7) Location of all exterior storage areas.
 - (8) Base flood elevation data.

§ 120-1003. Certificate of occupancy.

- A. A certificate of occupancy shall be obtained from the Code Enforcement Officer after the building, structure, or part thereof has been completed, altered, enlarged or moved, and before the same may be occupied or used.
- B. Certificate required. A certificate of occupancy shall be required for the following:
 - (1) An increase in the number of dwelling units in a building.

- (2) Establishment of a home occupation.
- (3) Change of a nonconforming use, per § 120-203C.
- (4) Occupancy, use, or change of use of vacant land, except for raising of crops.
- (5) Change of use of an existing building, whether or not alterations are involved, from any use in the following list to any of the uses on said list:
 - (a) Business and professional office.
 - (b) Distribution center.
 - (c) Dwelling.
 - (d) Industry, heavy.
 - (e) Industry, light.
 - (f) Retail sales.
 - (g) Service business.
 - (h) Truck terminal.
 - (i) Warehousing, private.
 - (j) Warehousing, public.

§ 120-1004. Violations and penalties.

Any person, firm or corporation, being the owner or occupant of or having control of or the use of any building or premises, or part thereof, who violates any of the provisions of this chapter shall be subject to the laws and liability of 30-A M.R.S.A. § 4452.

ARTICLE 11
Board of Appeals

§ 120-1101. Establishment.

The Board of Appeals of the Town of Windham is established pursuant to the authority of 30-A M.R.S.A. § 2691.

§ 120-1102. Organization.

- A. The members of the Board shall be residents of the Town.
- B. The Board shall consist of five members. In addition, said Board shall have one alternate member who shall have all the rights of a full member, except said alternate may vote only in the absence of a full member.
- C. The term of each member shall be three years, except that initial appointment of members shall be made for one year, two years and three years respectively. In the event that a member is replaced prior to the expiration of his/her term, the replacement member shall commence a new three-year term.
- D. A member of the municipal officers, or his spouse, shall not be a member of the Board.
- E. When there is a vacancy, the municipal officers shall appoint a person to serve for the unexpired term.
- F. The Board shall elect a Chair and Vice Chair from its own membership. Elections shall be governed by the Board of Appeals bylaws.
- G. Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting on that issue shall be decided by a majority vote of the Board members, excluding the member who is being challenged.
- H. The municipal officers may dismiss a member of the Board for cause before the member's term expires.
- I. A Secretary to the Board shall be appointed by the appropriate Town officials.

§ 120-1103. Procedure.

- A. Meetings.
 - (1) Regular meetings. The Board of Appeals shall meet at least once a month, unless no applications are pending.
 - (2) Special meetings. The Chair shall also call meetings of the Board when requested to do so by a majority of the members or by the municipal officers, and at other times as called by the Chair.
 - (3) Quorum. A quorum of the Board necessary to conduct an official Board meeting shall consist of at least three members.
 - (4) Voting. A majority vote of the quorum is required to constitute an action (passage or denial) on any motion before the Board. Should a Board of Appeals member need to be recused due to a conflict once a quorum is established and a meeting is in session, the meeting may proceed and the Board of Appeals may take action on any motion before the Board with fewer than three voting members present. In this event, the applicant shall have the right to have a vote postponed

to the next Board of Appeals meeting.

- (5) Evidence. The Board may receive any oral or documentary evidence but shall provide as a matter of policy for the exclusion of irrelevant, immaterial or unduly repetitious evidence. Every party has the right to present the party's case or defense by oral or documentary evidence, to submit rebuttal evidence and to conduct any cross-examination that is required for a full and true disclosure of the facts. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**

- (6) All Board of Appeals meetings are public hearings.

B. Records.

- (1) The Secretary shall maintain a permanent record of all Board meetings and all correspondence of the Board.
- (2) The Secretary is responsible for maintaining those records which are required as part of the various proceedings which may be brought before the Board. Required records shall include the following:
 - (a) Transcript of testimony, if any, and exhibits, together with all papers and requests filed in the proceeding.
 - (b) All decisions of the Board. Decisions shall include a statement of findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law or discretion presented and the appropriate order, relief or denial thereof.
- (3) All records to be maintained or prepared by the Secretary are public records.
- (4) The records shall be filed in the municipal Clerk's office and may be inspected at reasonable times.
- (5) Notice of any decision shall be mailed or hand delivered to the petitioner, his representative or agent within seven days of the Board's decision.

C. Consulting and review fees.

- (1) If the Code Enforcement Officer determines that ordinary and customary expenses associated with review of the application are higher than the application fee set by the Town Council, then the applicant shall be billed and shall pay to the Town prior to final approval said expenses, including but not limited to costs associated with notification of abutters, advertising of public meetings, and staff time dedicated to review of the development.
- (2) Consulting and review fees. Notwithstanding any other provision(s) of this chapter, Articles 1 through 12 (the "code"), to the contrary, and in addition to such fees as are otherwise specified by the code, the Town shall assess fees to cover 100% of its costs related to independent geotechnical, hydrologic, engineering, legal, and similar professional consulting services incurred in the review and post-approval inspections of site plan applications. Such fees shall be subject to the following limitations:
 - (a) Such fees shall only be as expressly provided by this § 120-1103C(2);
 - (b) The Board of Appeals or Code Enforcement Officer may request consulting services. Such consultation shall be limited to reasonable and necessary review, as allowed by the

pertinent ordinance, which exceeds the expertise of Town staff or their ability to review the application materials within the time limits otherwise required by law or ordinance. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**

- (c) Such fees shall be assessed only to recover costs directly associated with review of the application submitted by the applicant to whom they are assessed.
- (d) Such fees shall be reasonable in amount, based upon the consulting time involved and the complexity of the review.
- (e) The results of the consultation for which such fees are assessed shall be available for public review, but such results shall be deemed to have been made solely for the benefit of the Town of Windham and shall remain its property, and such fees shall be assessed for the privilege of review and shall be payable without regard to consultation results or the outcome of the application.
- (f) An escrow account shall be established with the Town by the applicant to guarantee payment if required by the Code Enforcement Officer or Board of Appeals pursuant to this § 120-1103C(2). The original deposit shall be an amount specific to the application, as accorded in the Town's Fee Schedule.⁶⁸ If the balance in the escrow account shall be drawn down by 75%, the Town shall notify the applicant and require that an additional amount be deposited to cover the cost of remaining work before any such remaining work is undertaken. The Town shall continue to notify the applicant and require that any such additional amount(s) be deposited whenever the balance of the account is drawn down by 75% of the original deposit. Any excess amount deposited with the Town in advance shall be promptly refunded to the applicant after final action on the application.
- (g) Any dispute regarding the application of this § 120-1103C(2) or the amount required to be paid, either in advance or upon completion, may be appealed, in writing, within 10 days to the Town Manager. The Town Manager, after due notice and investigation and for good cause shown, may affirm, modify, or reverse the disputed decision or reduce the amount assessed.
- (h) In an effort to minimize the use of outside or independent consulting, the provisions of this § 120-1103C(2) shall be subject to the following additional limitations:
 - [1] The Code Enforcement Officer, based on his/her workload and in his/her sole discretion, may immediately refer to outside or independent consulting any major site plan. The Town shall charge for this review based on the billing rates of the retained consultant. The first four hours of the review shall be paid for with the project's application fee. Review work beyond the initial four hours shall be paid for with the escrow established in § 120-1103C(2)(f) above.

D. Public hearings.

- (1) The Board shall hold a public hearing for all appeals as prescribed herein.
 - (a) At least seven days before the hearing, the Code Enforcement Officer or his assistant shall notify, by mail, the owners of properties abutting the property for which the appeal or application is made. The owners of properties shall be considered to be the parties listed

⁶⁸. Editor's Note: The current Fee Schedule established by the Town Council is on file at the Town Clerk's office and available on the Town website.

by the Assessor or those against whom those taxes are assessed.

- (b) At least seven days prior to the hearing, notice of the hearing shall be placed at least twice in a newspaper of general circulation.
 - (c) Failure to receive this notice shall not invalidate the proceedings herein prescribed.
 - (2) The applicant or his representative must appear before the Board to present the proposal and to answer questions.
 - (3) Interested parties, such as adjacent property owners, will also be permitted to speak for or against the appeal.
 - (4) The Code Enforcement Officer or his assistant shall attend all hearings and shall present to the Board all plans, photographs or other factual materials which are appropriate to an understanding of the case.
- E. Reconsideration. The Board may reconsider a decision if the following regulations are met:
- (1) A request to the Board to reconsider a decision must be filed within 10 days of the decision that is to be reconsidered.
 - (2) A vote to reconsider and the action taken on that reconsideration must occur and be completed within 45 days of the date of the vote on the original decision.
 - (3) The Board may conduct additional hearings and receive additional evidence and testimony.
 - (4) Notwithstanding this § 120-1103E, appeal of a reconsidered decision must be made within 15 days after the decision on reconsideration.
- F. Reapplication. After a decision has been made by the Board of Appeals, a new appeal of similar import shall not be entertained by the Board until one year shall have elapsed from the date of said decision, except that the Board may entertain a new appeal if the Board believes that, owing to a mistake of law or misunderstanding of fact, an injustice was done or it finds that a change has taken place in some essential aspect of the case sufficient to warrant a reconsideration of the appeal.
- G. Appeals of a Board decision. Any party may take an appeal, within 45 days of the date of the vote on the original decision, to Superior Court from any order, relief or denial in accordance with Maine Rules of Civil Procedure Rule 80B.

§ 120-1104. Jurisdiction.

In addition to the power granted by 30-A M.R.S.A. § 4353, the Board of Appeals shall have the following authority:

- A. Administrative appeal. Subject to the provisions of this chapter, to hear and decide appeals from orders, decisions, determinations or interpretations made by the Code Enforcement Officer. The hearing on all administrative appeals shall be de novo.
- B. Variance. Subject to the provisions of this chapter, to hear and grant or deny applications for variances from the terms of this chapter.
- C. Conditional use. To hear and grant or deny applications for conditional use permits in accordance with the provisions of § 120-516, Conditional use. (See Article 5, Performance Standards.)

- D. Nonconforming use. To hear and grant or deny the following applications:
 - (1) The expansion of a nonconforming nonresidential use in accordance with the provisions of § 120-203A(1).
 - (2) The change of a nonconforming use in accordance with the provisions of § 120-203C.
- E. Home occupation. To hear and grant or deny applications for a home occupation 2 use in accordance with the provisions of § 120-528.

§ 120-1105. Administrative appeal.

- A. Any person and any municipal official or board of officials aggrieved by a decision of the Code Enforcement Officer may file an application with the Board of Appeals.
- B. Appeal deadline. An appeal of a decision made by the Code Enforcement Officer must be filed within 30 days of the date of the decision.
- C. Submission requirements:
 - (1) A complete application form.
 - (2) An application fee as established by the Town Council in the Town of Windham Fee Schedule.
 - (3) Location plan and site plan, if required by the Code Enforcement Officer or Board of Appeals.
 - (4) All required information must be submitted to the Town of Windham at least 14 days prior to the Board meeting at which the applicant wishes to be heard.

§ 120-1106. Variance.

- A. Standards applicable to all variances.
 - (1) Succession. Approved variances shall run with the land and thus pass from the owner of a property to the next owner of said property.
 - (2) Submission requirements:
 - (a) A complete application form.
 - (b) An application fee as established by the Town Council in the Town of Windham Fee Schedule.
 - (c) Location plan and site plan, if required by the Code Enforcement Officer or Board of Appeals.
 - (d) All required information must be submitted to the Town of Windham at least 14 days prior to the Board meeting at which the applicant wishes to be heard.
 - (3) The Board of Appeals shall require that attention be given to the following, wherever applicable:
 - (a) Location, character and natural features.
 - (b) Fencing and screening.
 - (c) Landscaping, topography and natural drainage.

- (d) Vehicular access, circulation and parking.
 - (e) Pedestrian circulation.
 - (f) Signs and lighting.
 - (4) Prohibited variances. A use variance shall not be granted to permit a use or structure not specifically allowed as either a permitted use or conditional use in the applicable zoning district.
 - (5) Conditions of approval. In granting a variance under this section, the Board of Appeals may impose such conditions as it deems necessary in furtherance of the intent and purpose of this chapter. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**
 - (6) (Reserved)⁶⁹
 - (7) Recording. If the Board grants a variance under this section, a certificate indicating the name of the current property owner, identifying the property by reference to the last recorded deed in its chain of title and indicating the fact that a variance, including any conditions on the variance, has been granted, and the date of the granting, shall be prepared in recordable form.
 - (a) The applicant shall record this certificate in the Cumberland County Registry of Deeds within 90 days of the date of the final written approval of the variance, or the variance is void.
 - (b) A receipt from the Registry of Deeds containing the recording number must be provided to the Code Enforcement Department prior to the issuance of any building permits.
 - (c) For the purpose of this subsection, the date of the final written approval shall be the date stated on the written approval.
- B. Variance. Except as provided in § 120-1106C (Disability variance) or D (Variance from dimensional standards), the Board may grant a variance only when strict application of this chapter to the petitioner and the petitioner's property would cause undue hardship. The term "undue hardship," as used in this subsection, means:
- (1) That the land in question cannot yield a reasonable return unless the variance is granted;
 - (2) That the need for a variance is because of unique circumstances of the property (such as location of existing structures, topographical features, etc.) and not the general conditions of the neighborhood;
 - (3) That the granting of a variance will not change the essential character of the locality; and
 - (4) That the hardship is not the result of action taken by the current owner or a prior owner.
- C. Disability variance. The Board of Appeals 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.
- (1) The Board shall restrict any variance granted under this subsection 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.

69. Editor's Note: Former § 120-1106A(6), Sunset provision, was repealed 2-28-2023 by Order No. 23-035. This order also provided an effective date of March 30, 2023.

- (2) The Board may impose conditions on the variance, including, but not limited to:
 - (a) Limiting the variance to the duration of the disability; or
 - (b) Limiting the variance to the time that the person with the disability lives in the dwelling.
- (3) For the purposes of this subsection, a "disability" has the same meaning as a physical or mental disability under 5 M.R.S.A. § 4553, and 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. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**

D. Variance from dimensional standards.

- (1) The Board of Appeals may grant a variance from the dimensional standards of this chapter when strict application of this chapter to the petitioner and the petitioner's property would cause a practical difficulty and when the following conditions exist:
 - (a) The need for a variance is due to the unique circumstances of the property and not the general condition of the neighborhood;
 - (b) The granting of a variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally affect the use or market value of abutting properties;
 - (c) The practical difficulty is not the result of action taken by the petitioner or a prior owner;
 - (d) No other feasible alternative to a variance is available to the petitioner;
 - (e) The granting of a variance will not unreasonably adversely affect the natural environment;
 - (f) The property is not located in whole or in part within shoreland areas as described in 38 M.R.S.A. § 435; and
 - (g) The dimensional standard for which the variance is granted is limited to ordinance provisions relating to lot area, lot coverage, frontage or setback requirements.
- (2) As used in this subsection, "dimensional standards" means and is limited to ordinance provisions relating to lot area, lot coverage, frontage and setback requirements.
- (3) As used in this subsection, "practical difficulty" means that the strict application of this chapter to the property precludes the ability of the petitioner to pursue a use permitted in the zoning district in which the property is located and results in significant economic injury to the petitioner.⁷⁰

⁷⁰ Editor's Note: Original Sec. 1106D7, third paragraph, regarding the authority of municipalities to adopt additional limitations on the granting of variances, of the 1991 Code, which immediately followed this subsection, was repealed at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

ARTICLE 12
Impact Fees⁷¹

§ 120-1201. General. [Amended 7-28-2020 by Order 20-115; 6-16-2022 by Order No. 22-108; 10-14-2025 by Order No. 25-145⁷²]

- A. Purpose. The purpose of these impact fee provisions is to ensure that new development in Windham will be accomplished in a safe and healthful manner and that such development will bear a proportional or reasonably related share of the cost of new, expanded, or modified infrastructure necessary to service the development through:
- (1) The payment of impact fees that shall be dedicated to paying for the needed improvements; or
 - (2) The construction of appropriate improvements as provided for herein.
- B. Authority. These impact fee provisions are adopted by the Town under the authority of 30-A M.R.S.A. § 4354 and its statutory and constitutional home rule provisions.
- C. Payment of impact fees. The impact fees provided for under this chapter shall be determined in accordance with the provisions for calculation of each impact fee as established by the Town Council and set forth below. Where there is uncertainty as to the amount of the impact fee required to be paid by any development, that amount of the fee shall be determined by the Planning Board based upon the fee calculation methodology for that fee and the recommendation of the Planner. The impact fee shall be paid to the Town of Windham in care of the Planning Department. The fee shall be paid prior to the issuance of any building, plumbing, or other permit for the development subject to the fee. The Town Council may approve the payment of impact fees over time in accordance with an approved payment schedule, provided that appropriate arrangements are in place to guarantee collection of the fees.
- D. Impact fee accounts. All impact fees collected under the provisions of this chapter shall be segregated and accounted for in separate impact fee accounts designated for the particular improvements in question. The impact fee accounts are as follows:
- (1) Sidewalk impact fee.
 - (2) Recreation impact fee.
 - (3) North Route 302 road improvements impact fee.
 - (4) Open space impact fee.
 - (5) Public safety impact fee.
 - (6) Municipal office impact fee.
- E. Use of impact fees. Impact fees collected under the provisions of this chapter shall be used only to pay for the capital cost of the infrastructure improvements specifically associated with each impact fee as described below. No portion of the fee shall be used for routine maintenance or operation activities. The following costs may be included in the capital cost of the infrastructure improvement:
- (1) Acquisition of land or easements including conservation easements;

71. Editor's Note: Article 12 was amended 12-16-2014 by Order 14-502 to correct typos and errors of omission.

72. Editor's Note: This ordinance has an effective date of 11-13-2025.

- (2) Engineering, surveying, and environmental assessment services directly related to the design, construction, and oversight of the improvement;
- (3) The actual construction of the improvement, including, without limitation, property acquisition costs, demolition costs, clearing and grading of the land, and necessary capital equipment;
- (4) Mitigation costs;
- (5) Legal and administrative costs associated with construction of the improvement including any borrowing necessary to finance the project;
- (6) Debt service costs including interest if the Town borrows for the construction of the improvement;
- (7) Relocation costs; and
- (8) Similar costs that are directly related to the project.

F. Refund of impact fees.

- (1) If a building permit is surrendered or lapses without commencement of construction, the owner of the property at the time the refund is due shall be entitled to a refund, without interest, of any impact fee paid in conjunction with that project. In the case of a refund, the Town shall retain 4% of the impact fee paid to offset a portion of the administrative cost of collection. A request for a refund shall be made, in writing, to the Town Planner and shall occur within 90 days of the lapse or expiration of the permit.
- (2) Any fees that are not spent or obligated by contract for the specified improvement by the end of the calendar quarter immediately following 10 years after the date the fee is paid shall be returned to the owner of the property at the time the refund is due or its designee without interest.
- (3) The Town shall refund impact fees, or portions of those impact fees, that exceed the Town's actual costs of providing the capital improvement or facility for which the fees were paid.

G. Waiver of impact fees. The Town Council may, by formal vote following a public hearing, waive the payment of a required impact fee, in whole or in part, if it finds that:

- (1) The developer voluntarily agrees to construct the improvement for which the impact fee would be collected; or
- (2) The developer is required, as part of a development approval by the Town or a state or federal agency, to make or to pay for infrastructure improvements that are of the same nature as the improvement to be funded by the impact fee; or
- (3) The infrastructure that the impact fee relates to has been created to attract industry and the fee would be charged to an industrial use; or
- (4) The developer provides publicly accessible open space that, in addition to the open space requirements in § 120-911K, also:
 - (a) Designates a land area at least the minimum square footage of land per anticipated residents of the development based upon the occupancy rates set forth in the open space impact fee in § 120-1205; or

- (b) Is conservation land identified as a priority for open space preservation in the Comprehensive Plan or other studies; or
 - (c) Is rare, threatened, or endangered plant or animal habitat as defined by the Maine Natural Areas Program (MNAP); or
 - (d) Enhances required buffers to significant wildlife habitat; or
 - (e) Protects archaeological resources.
- H. Review and revision. The Town Council shall periodically review each impact fee established under this chapter at least once every five years. If the Council finds that the anticipated cost of the improvement has changed or that the identification of developments subject to the fee is no longer appropriate, the Council may propose changes in the impact fee. Any changes adopted as a result of such review shall apply to all future development but shall not be applied retroactively to projects that have already paid an impact fee.

§ 120-1202. North Windham sidewalk impact fee. [Added 5-14-2013 by Order 13-071; 6-16-2022 by Order No. 22-108; 10-14-2025 by Order No. 25-145⁷³]

- A. Description of the improvements. A sidewalk impact fee will be used to partially fund the construction of public sidewalks to accommodate pedestrian movement in the various sidewalk impact fee areas established under this § 120-1202. The sidewalk impact fee areas are as follows:
- (1) The North Windham Sidewalk Impact Fee Area. This area includes all properties within the Commercial I (C-1), Commercial II (C-2) and Commercial I North (C1N) Zoning Districts and includes sidewalk improvements to Roosevelt Trail (Route 302), Tandberg Trail (Route 35 and 115), River Road, and Manchester Drive.
 - (2) (Reserved)
- B. Need for improvements.
- (1) North Windham sidewalk impact fee area. The road network in the North Windham mixed-use zoning districts serves a large volume of vehicular traffic. The roads in this area also provide mobility throughout the region and local access to commercial, establishments and residential developments. In addition, the public road network in this area provides pedestrian movement between local commercial businesses and residences. Many sections of the public road system in North Windham either lack sidewalks entirely or provide them only on one side of the road. Growth in this area creates more pedestrian movements that increase conflicts between bicyclists and motor vehicles on the primary road network. This results in increased safety concerns. To address these concerns, the Town's 21st Century Downtown Plan recommends the expansion of sidewalks along major roads in the North Windham Sidewalk Impact Fee Area.
 - (2) (Reserved)
- C. Applicability. The following development activities commenced on or after June 14, 2013, on properties that do not have an existing sidewalk along the entirety of their frontage shall be subject to the impact fee:
- (1) The construction, erection, or placement of new buildings with a gross area that is greater than,

73. Editor's Note: This ordinance has an effective date of 11-13-2025.

or equal to, 500 square feet;

- (2) The expansion of existing buildings by 500 square feet or more; or
- (3) As otherwise required by the Planning Board as part of a site plan approved in accordance with Article 8 of this chapter.

D. Amount of the fee.

- (1) The base impact fee for the sidewalk improvements shall be the cost of constructing five linear feet of sidewalk per 100 square feet or fraction thereof of the gross area to be constructed, erected, enlarged, extended, or relocated on the site multiplied by the per-linear-foot-of-sidewalk fee as set by the Town Council in the Master Fee Schedule. The formula described above shall be calculated as follows:

Base impact fee = (five linear feet) × [(Total gross square footage of building)/(100 square feet (linear foot sidewalk fee \$))

- (a) For impact fees assessed to properties within the North Windham Sidewalk Impact Fee Area, the amount of the base fee is based upon the North Windham Sidewalk Impact Fee Methodology dated May 14, 2013 (see Appendix E⁷⁴). The fee is based on the average estimated construction costs of sidewalks in North Windham based on the following conditions:
 - (b) (Reserved)
- (2) The base impact fee shall be adjusted consistent with any change in the ENR Construction Cost Index between June 2013 and the month in which the impact fee is paid, as determined by the Town Manager or their designee. The amount of the fee shall be calculated as follows:

Impact fee to be paid = Base impact fee × (ENRCCI for the month in which fee is paid/ ENRCCI for June 2013) where ENRCCI is the national construction cost index published by ENR (Engineering News Record)
- (3) Impact fee maximum. The maximum sidewalk fee required for any property will be equal to the property's frontage at the time of the application, multiplied by the base impact fee, as adjusted subject to §120-1202D(2). If the calculated fee is less than the maximum, future development of the same property that meets the criteria of § 120-1202C will be assessed an additional impact fee, up to the maximum amount for the property. Should a property expand its frontage after the assessment of an impact fee, the impact fee maximum may be adjusted upward, allowing the assessment of an additional impact fee in conjunction with further development of that property.
- (4) Impact fee reduction. Properties with an existing sidewalk on a portion of their frontage at the time of application shall pay a maximum fee equal to the length of lot frontage on which sidewalk does not exist at the time of application.
- (5) Impact fee refund. To the extent the impact fee collected is not expended by the Town in accordance with the time frames established by 30-A M.R.S.A. § 4354, as may be amended or recodified, the unused balance shall be refunded to the payor.

E. Expenditure of funds. Impact fees shall be collected and expended on sidewalk construction within

74. Editor's Note: Appendix E is included as an attachment to this chapter.

the areas from which they are collected, within the time frames imposed by statute. The areas are as follows:

- (1) North Windham sidewalk impact fee area: Roadways within the C-1 C-2 and the C-1N Districts: Roosevelt Trail (Route 302), Tandberg Trail (Route 35 and 115), River Road, and Manchester Drive.
- (2) (Reserved)

F. Sunset provision. This § 120-1202, as it pertains only to the North Windham sidewalk impact fee area, shall remain in effect until the Town has collected \$3,000,000 in impact fees related to the development of properties in said area, as adjusted for construction cost inflation, or until July 1, 2036, whichever comes first, unless such time is extended by vote of the Town Council.

§ 120-1203. Recreation impact fee. [Added 3-11-2014 by Order 14-033]

- A. Description of improvements. The recreation impact fee will be used to partially fund the acquisition and development of land for recreation fields and facilities throughout the Town as set forth in the Town's Parks and Recreation Facilities Capital Investment Plan, adopted by the Town Council on October 8, 2013, and attached in Appendix F.⁷⁵
- B. Need for improvements. Existing municipal and school district recreational facilities, including rectangular playing fields, diamond-shaped fields, and hard-court facilities, are in high demand, and conflicts regarding scheduling and access to facilities among user groups occur throughout the sports seasons. New residential growth creates additional demand for recreation facilities, which can result in a loss of access to recreational activities and facilities. The Parks and Recreation Facilities Capital Investment Plan outlines the how the Town maintain the existing levels of service for recreational facilities faced with demand driven by a growing population.
- C. Applicability. All new residential development activities commenced on or after April 10, 2014, shall be subject to the recreation impact fee. This includes:
 - (1) Dwelling, single-family detached.
 - (2) Dwelling, duplex.
 - ~~(3)~~ Dwelling, triplex.
 - ~~(3)(4)~~ Dwelling, quadplex.
 - ~~(4)(5)~~ Accessory apartment.
 - ~~(5)(6)~~ Manufactured housing.
- D. Amount of the fee.
 - (1) The amount of the impact fee will be based on the cost of land acquisition and development costs, calculated on a per capita basis, multiplied by the average household size for the type of dwelling unit being constructed. The formula for this shall be calculated as follows:

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⁷⁵ Editor's Note: Appendix F is included as an attachment to this chapter.

Recreation Impact Fee = $\frac{\{[(\text{Land Acquisition Costs}) + (\text{Facility Development Costs})] / [(\text{2030 Projected Population}) - (\text{2010 Baseline Population})]\} \times (\text{Average Household Size for Dwelling Unit Category})}{1}$

- (2) The amount of the fee is based on "Recreation Impact Fee: Basis of Assessment, Windham, Maine," dated September 27, 2013.
- E. Expenditure of funds. Fees will be collected on a Town-wide basis for the acquisition and development of recreation facilities anywhere in Town.
- F. Sunset provision. The fee shall remain in effect until July 1, 2030, unless such time is extended by vote of the Town Council.

§ 120-1204. North Route 302 road improvements impact fee. [Added 4-8-2014 by Order 14-093]

A. Purpose.

- (1) Roosevelt Trail/Route 302 is part of the National Highway System. It is the most significant highway corridor in the Town of Windham and is critical to the current and future mobility of local and regional motorists. This corridor provides important connections to Route 202 and State Routes 115, 35, and 4, as well as River Road, a major state collector highway. In addition, Route 302 is vital to the accommodation of future growth and development on land served by this corridor.
- (2) In order for Route 302 to continue to adequately serve local and regional transportation needs, while also providing additional capacity to support future development and accompanying traffic generation and demands, roadway infrastructure improvements are warranted. These improvements are highlighted in the Town of Windham "North Route 302 Corridor Plan, Windham, Maine," adopted by the Town Council in March 2011.
- (3) The Town has identified in the Corridor Plan roadway infrastructure improvements that will accommodate traffic growth projected for the next 10 years, and will establish the additional vehicular capacity and adequate levels of service necessary to serve, accommodate, and benefit new development. The purpose of the North Route 302 Capital Improvement District is to reimburse the portion of the Town's cost of constructing these roadway infrastructure improvements that benefit new development by providing additional vehicular capacity.

B. Applicability.

- (1) This impact fee shall commence upon the earliest of either January 1, 2015, or upon the Town of Windham's commitment of funds to complete the infrastructure projects stated in Subsection H, below. The impact fee shall apply to any of the activities listed in this section that are located within the fee collection areas identified in Appendix J, North Route 302 Road Improvements Impact Fee Collection Areas Map,⁷⁶ that generate additional traffic within the North Route 302 Capital Improvement District. (Note: For existing uses, the impact fee shall only apply to activities or uses that generate new trips above their existing levels.)
 - (a) New development;
 - (b) Change in or expansion of an existing development;

⁷⁶. Editor's Note: Appendix J is included as an attachment to this chapter.

- (c) All new development seeking subdivision or site plan approval;
 - (d) The expansion of previously approved subdivisions or site plans;
 - (e) New development enabled by land divisions exempted from subdivision review as per 30-A M.R.S.A. § 4401(4);
 - (f) All new extractive industry operations;
 - (g) Any change in use, when such change results in a reclassification from one land use to another in accordance with the uses listed in Article 3, Definitions, and/or Article 4, Zoning Districts; and
 - (h) The location, or relocation, of any land use that requires a certificate of occupancy from the Code Enforcement Department.
- (2) The following development and construction shall be exempt from this section:
- (a) Alterations or expansions of an existing building which do not result in the generation of additional vehicle trips.
 - (b) Construction of accessory buildings or structures which do not generate additional vehicle trips.
 - (c) The replacement of a building or structure destroyed or damaged by fire, flood or natural disaster with a new building or structure of the same size or use which does not generate additional vehicle trips.
 - (d) The location, or relocation, of a land use which does not generate additional vehicle trips.
- C. Impact fee procedures.
- (1) Any person who seeks a permit or approval for any development, activity or use described in Subsection B(1), above, is hereby required to pay a road impact fee in the manner and amount set forth in this section.
 - (2) Preliminary determinations regarding whether a proposed development will generate traffic within the North Route 302 Capital Improvement District shall be made by the Town Planner and the Town's consulting traffic engineer. Actual traffic generation, impacts, and the corresponding fee, shall be determined in accordance with the procedures in Subsection D, below.
- D. Impact fee calculations. An impact fee shall be applied to development projects in the Town of Windham that generate additional traffic within the North Route 302 Capital Improvement District. This impact fee is structured to be in proportion to the development project's share of infrastructure costs necessitated by the development and as enabled by 30-A M.R.S.A. § 4354. The process for this impact calculation is as follows:
- (1) For projects that do not require subdivision approval, site plan approval, or as determined by the Town Planner as not requiring a traffic analysis:
 - (a) The Town Planner shall determine the fee in accordance with the amounts stated in Subsection L, Table 1, North Route 302 Road Improvement Impact Fee, Windham, Maine, and Appendix J, North Route 302 Road Improvement Impact Fee Collection Areas Map.⁷⁷

- (b) The applicant may request that the fee be calculated by either the Town's consulting engineer, or by hiring a registered professional engineer with significant experience in traffic engineering. The analysis shall be conducted in accordance with § 120-1204D(2), below. All costs incurred as a result of said analysis shall be the responsibility of the applicant. A building permit or certificate of occupancy, whichever applies, shall not be issued by the Code Enforcement Officer prior to the payment of any costs incurred by the Town's consulting engineer.
- (2) For projects that require subdivision approval, site plan approval, or as determined by the Town Planner as being required to conduct a traffic analysis:
- (a) A traffic analysis shall be conducted by a registered professional engineer with significant experience in traffic engineering in order to determine the traffic impact, and requisite impact fee total, as measured by additional vehicle trips to be generated by a development project that pass through the North Route 302 Capital Improvement District in the peak commuter hour (whether a.m. or p.m., whichever is greater).
- (b) The impact fee calculation for individual development projects shall use generally accepted standards, such as the Maine Department of Transportation's currently adopted edition of the Institute of Transportation Engineers Trip Generation Handbook or traffic generation data or estimates from field measurements or data collected at similar development types, and shall be based on the peak commuter hour of traffic in the a.m. or p.m., whichever is greater.
- (c) The costs assigned to trips shall be based upon a fee per new trip ("primary trip") to be generated by a development project that passes through the North Route 302 Capital Improvement District within the peak commuter hour. All new trips that pass through the district shall be counted as new trips. Other types of traffic associated with a development project, such as the capture of trips passing a site ("pass-by trips") or trips in the area that are rerouted ("diverted trips"), shall not be utilized in the assessment.
- (d) The fee determination shall be based on the following formula with the fee amounts stated in the Fee Schedule, as set by the Town Council:
- [1] The Town's cost of realigning Anglers Road with White's Bridge Road as stated in the North 302 Corridor Plan for roadway infrastructure improvements in the North Route 302 Capital Improvement District amounts to \$300,000, less any state and federal funding contributions. The Town cost is to be funded in whole or in part from this impact fee.
- [2] The total additional (bidirectional) vehicular capacity to be fostered by the roadway infrastructure improvements will equal approximately 392 trip ends in the peak commuter hour of traffic.
- [3] Each additional trip generated by the new development will benefit from the 392 trip ends of capacity and will utilize one trip end of that additional capacity.
- [4] The Town will finance 1/2 of the cost of the improvements through the North Route 302 Road improvements impact fee, and the fee per trip, therefore, shall be \$382.65. This fee per trip equals \$150,000/392 trip ends.

77. Editor's Note: Appendix J is included as an attachment to this chapter.

- (c) The Planning Board or Town Planner shall establish a payment schedule which apportions the impact fee to component parts of the development based on the estimated trip generation for each component part. Depending on the nature of the development, a component part may be a lot, building, dwelling unit (as defined in § 120-301), unit of occupancy or some combination thereof. The payment schedule shall specify the portion of the impact fee attributable to each component part and the point during the construction of the development at which the impact fee for each component part must be paid. The payment schedule shall be incorporated into the Planning Board's written approval document and endorsed on any final plan for the development. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**
- (3) If, after a development has been approved, changes are proposed which would change the trip generation for the development or a component part of the development, then on the initiative of the Town or the developer, the impact fee and payment schedule may be recalculated, and such recalculated impact fee and payment schedule shall apply to all subsequent permits issued within the development.
- (4) The Town Planner or Planning Board, as appropriate, may reduce the amount of the impact fee for projects that are required as part of their approval to construct all or a portion of the infrastructure improvements stated in § 120-1204H(1), below. The amount of the fee reduction shall be the difference between the cost of the impact fee and the applicant's cost to construct the improvements.
- E. Impact fee payment. See § 120-1201C for general payment information. The impact fee amount, as determined in accordance with this section, shall be paid to the Town according to the payment schedule established under Subsection D, except as follows:
- (1) For an extractive industry project, the impact fee amount shall be paid prior to the release of the attested final plan to the developer for recording at the Cumberland County Registry of Deeds.
- (2) For a new residential dwelling(s) proposed on a lot(s) created by a land division(s) exempted from subdivision review as per 30-A M.R.S.A. § 4401(4), the impact fee amount shall be paid prior to the issuance of a building permit for construction.
- F. North Route 302 Capital Improvement District. The North Route 302 Capital Improvement District is depicted on the map attached to this chapter as Appendix J and generally conforms with the North 302 Corridor Plan study area.
- G. Impact fee trust fund.
- (1) There is hereby established a North Route 302 Capital Improvement District Fund to segregate the impact fee revenues generated by this section from the Town's general revenues.
- (2) Funds withdrawn from this trust fund account shall be used in accordance with Subsection H of this section.
- H. Use of impact fee funds.
- (1) Funds generated by this section shall be used for the purpose of financing the capital improvements to realign Anglers Road with White's Bridge Road as stated in the North 302 Corridor Plan for roadway infrastructure improvements within the North Route 302 Capital Improvement District. See § 120-1201E for a list of items which may be included in the capital costs of the project.

- (2) No funds shall be used for periodic or routine maintenance.
- (3) Given that bonds or loans may be issued to finance the implementation of the capital improvements identified in the plan for roadway infrastructure improvements within the North Route 302 Capital Improvement District, impact fee funds may be used to pay debt service on such bonds or loans to the extent that the improvements provided are a component of the plan for roadway infrastructure improvements, as per Subsection H(1) of this section.
- (4) Funds may be used to provide refunds in accordance with Subsection I.
- (5) Funds shall not be used to pay for any site-specific road improvements, such as right-turn entry lanes, site driveway islands, etc., that are required of a development project that is proposed and constructed on any lot abutting a roadway section within the North Route 302 Capital Improvement District. Such project and site-specific improvements shall be the responsibility of the developer. Nothing in this section shall limit the Town from providing economic development incentives for site specific improvements at the Town's sole discretion.

I. Refund of impact fees.

- (1) If a development permit expires such that there is no activity that will generate additional traffic covered by this section, the developer may apply for a refund. The refund request must be consistent with § 120-1201F(1).
- (2) Any funds not expended or obligated by contract by the end of the calendar quarter immediately following 10 years from the date the fee was paid shall be returned consistent with § 120-1201F(2).

J. Roadway infrastructure improvements.

- (1) As per Subsection H(1) of this section, the funds generated by this impact fee will be used to accomplish improvements to realign Anglers Road with White's Bridge Road as stated in the North 302 Corridor Plan, Windham, Maine, prepared by Gorrill-Palmer Consulting Engineers, Inc., and adopted by the Windham Town Council in March 2011.
- (2) The above-cited plan may be amended by the Town Council, in accordance with the Windham Town Charter, if the amendments to the plan are consistent with and further the purpose of this section.

K. Sunset provision. The fee shall remain in effect until the Town has collected \$150,000 in fees (as adjusted for construction cost inflation) or until July 1, 2026, whichever comes first, unless such dollar amount is increased or time limit is extended by vote of the Town Council.

L. Table 1. North Route 302 Road Improvement Impact Fee, Windham, Maine.

Use	Trip Rate*	% Primary	Cost Per Primary			
			Trip	Fee Area 1**	Fee Area 2**	Fee Area 3**
Quality restaurant	7.49	40	\$382.65	\$1,146.42	\$286.61	\$116.64
High-turnover restaurant	11.15	37	\$382.65	\$1,578.62	\$394.66	\$157.86
Fast-food restaurant	33.84	30	\$382.65	\$3,884.66	\$971.17	\$388.47

Use	Trip Rate*	% Primary	Cost Per Primary Trip	Fee Area 1**	Fee Area 2**	Fee Area 3**
24-hour conv. market***	52.41	25	\$382.65	\$5,013.67	\$1,253.42	\$501.37
Quick lube****	5.19	50	\$382.65	\$992.98	\$248.25	\$99.30
Auto care	3.38	50	\$382.65	\$646.68	\$161.67	\$64.67
Self-serve car wash*****	5.54	50	\$382.65	\$1,059.94	\$264.99	\$105.99
General office	1.73	100	\$382.65	\$661.98	\$165.50	\$66.20
Medical office	3.46	100	\$382.65	\$1,323.97	\$330.99	\$132.40
Veterinary clinic	4.72	100	\$382.65	\$1,806.11	\$451.53	\$180.61
Retail	2.71	35	\$382.65	\$362.94	\$90.74	\$36.29
Bank	25.82	27	\$382.65	\$2,667.60	\$666.90	\$266.76
Light industry	0.97	100	\$382.65	\$371.17	\$92.79	\$37.12
Dwelling unit*****	1.01	100	\$382.65	\$386.48	\$96.62	\$38.65

- * PM peak hour trips per 1,000 square feet for uses not exceeding 2,000 square feet unless otherwise noted under use
- ** Fee cost per 1,000 square feet.
- *** Convenience market without gas pumps
- **** Trip rate per service positions
- ***** Trip rate per wash stall
- ***** Trip rate per dwelling unit

§ 120-1205. Open space impact fee. [Added 1-28-2020 by Order 20-028]

- A. Description of improvements. The Town is planning to expand the publicly owned open space in the community to serve the needs of a growing population. The Town will use the revenue generated from the open space impact fee to acquire land or easements, including conservation easements, and improve conservation land to expand the supply of open space available for community use as set forth in the Comprehensive Plan and other studies of priorities for open space preservation.
- B. Need for improvements.
 - (1) The need for publicly owned open space is a function of the size of the community's population and the supply of private open space. As the community grows and develops, it needs more preserved open space that is available to the public. The Town's adopted Comprehensive Plan identifies the need to invest in rural Windham to keep it rural. The plan proposes creating a Land for Windham's Future program that would acquire and preserve open space and that would be funded in part with an impact fee.
 - (2) The supply of approximately 48 acres of Town-owned open space per thousand residents in 2019 is adequate for current needs. As the Town grows, this ratio of open space per capita will

need to be maintained and serves as the basis for the open space impact fee.

- C. **Applicability.** All new residential development activities commenced on or after February 28, 2020, shall be subject to the open space impact fee. Any residential construction that creates one or more new dwelling units shall pay this impact fee based upon the expected population of the project, considering typical occupancy rates. This includes single-family homes that are not part of a subdivision, conversions of nonresidential buildings to residential use, and modifications to existing buildings that increase the number of dwelling units. In the case of an activity that increases the number of dwelling units in a building, the impact fee shall apply only to the new dwelling units.
- D. **Amount of the fee.** The open space impact fee shall be the adjusted per capita cost of providing additional open space as determined in the Open Space Impact Fee Methodology, dated October 3, 2019 and revised March 17, 2023, multiplied by the anticipated number of residents in the unit. Based upon national studies of occupancy levels of various types of housing in the northeast and the Maine State Planning Office's Impact Fee Handbook (2003), the following occupancy factors are applied to determine the impact fee per unit. The type of units and the typical occupancy of that type of unit includes: **[Amended 5-23-2023 by Order No. 23-093]**

Type of Housing	Occupancy (per DU)
Single-family home	
2 or fewer bedrooms	1.58
3 bedrooms	2.57
4 or more bedrooms	3.02
Attached or multifamily housing or accessory apartment	
1 bedroom	1.17
2 bedrooms	1.85
3 or more bedrooms	2.14
Mobile homes in MH park	
1 bedroom	1.39
2 bedrooms	1.93
3 or more bedrooms	3.29

- E. **Expenditure of funds.** Fees will be collected on a Town-wide basis for the acquisition of publicly accessible open space anywhere in Town.
- F. **Sunset provision.** The fee shall remain in effect until July 1, 2035, unless such time is extended by vote of the Town Council.

§ 120-1206. Public safety impact fee. [Added 7-28-2020 by Order 20-115]

- A. **Description of improvements.** The public safety impact fee will be used to partially fund the construction of an expansion of the Public Safety Building, which is shared by the Fire-Rescue and Police Departments. The Police Department occupies 7,218 square feet and the Fire-Rescue Department occupies 5,287 square feet. There is an additional 4,377 square feet of shared and circulation spaces within the building. The expansion and renovation planned for the Public Safety

Building would bring the floor area available to the Fire-Rescue Department to 15,500 square feet and the Police Department to over 16,000 square feet.

- B. Need for improvements. The Town's long-term planning for public buildings has been guided by a Municipal Facilities Space Needs Study and Master Plan (September 5, 2014, SMRT, Inc.). That study reviewed, in consultation with affected municipal departments, total space needs anticipated for a period of 20 years. Demands for public safety services are expected to increase as a result of Windham's growing population and commercial and industrial uses.
- C. Applicability. All new residential and commercial development activities commenced on or after August 28, 2020, shall be subject to the public safety impact fee. Any residential structure constructed that creates one or more new dwelling units shall pay this impact fee based upon relative estimated household size. Special adjustments are made for the higher response rates identified for senior apartments and licensed care facilities. New commercial construction shall pay this impact fee based on the cost per square foot relative to response rates for the subcategory of uses.
- D. Amount of the fee. The public safety impact fee shall be the adjusted per capita cost of providing additional public safety services as determined in the Impact Fees for Public Safety and Town Office Facilities, Basis for Assessment and Fee Schedules, dated July 17, 2020, prepared by BCM Planning LLC.
- E. Expenditure of funds. Fees will be collected on a Town-wide basis for the acquisition of public safety equipment and facilities anywhere in Town.
- F. Sunset provision. Construction of the facility is intended to start in 2020. Debt service will start at the same time and be retired 20 years later. Therefore, the fee shall remain in effect until July 1, 2040, unless such time is extended by vote of the Town Council.

§ 120-1207. Municipal office impact fee. [Added 7-28-2020 by]

- A. Description of improvements. The municipal office impact fee will be used to partially fund the construction of an expansion of the Town Hall and Community Center, which is shared by all Town of Windham administrative departments and provides office space for the Town Manager, Town Clerk, Tax Collection, Code Enforcement, Planning, Economic Development, Assessing, Information Technology, and Parks and Recreation. The facility contains approximately 23,155 gross square feet. The expansion and renovation planned for the Town Hall is projected to provide 30,000 square feet of space.
- B. Need for improvements. The Town's long-term planning for public buildings has been guided by a Municipal Facilities Space Needs Study and Master Plan (September 5, 2014, SMRT, Inc.) That study reviewed, in consultation with affected municipal departments, total space needs anticipated for a period of 20 years. Demands for municipal services are expected to increase as a result of Windham's growing population and commercial and industrial uses.
- C. Applicability. All new residential and commercial development activities commenced on or after August 28, 2020, shall be subject to the municipal office impact fee. Any residential structure constructed that creates one or more new dwelling units shall pay this impact fee based upon relative estimated household size. New commercial construction shall pay this impact based on the cost per square foot.
- D. Amount of the fee. The municipal office impact fee shall be the adjusted per capita cost of providing additional municipal administrative services as determined in the Impact Fees for Public Safety and

Town Office Facilities, Basis for Assessment and Fee Schedules, dated July 17, 2020, prepared by BCM Planning LLC.

- E. Expenditure of funds. Fees will be collected on a Town-wide basis for capital improvements at the Town Hall and Community Center.
- F. Sunset provision. Construction of the facility is intended to start in 2020. Debt service will start at the same time and be retired 20 years later. Therefore, the fee shall remain in effect until July 1, 2040, unless such time is extended by vote of the Town Council.