

Section 5.7. BACK LOTS

Back lots may be developed although they lack the required frontage on a road if the development is in accordance with the following provisions:

- A. A back lot access may be used to create legal access without the required road frontage for one single back lot if the following conditions are met:
1. The access must be deeded in fee or by easement to the owner of the back lot and be a minimum of fifty (50') feet in width.
 2. Creation of the access to serve the back lot shall not be on a lot with less than three hundred and fifty (350') feet of road frontage nor create a nonconforming front lot by reducing the front lot's road frontage below the minimum. The land over which the back lot access is created by deed or by easement may not be counted toward meeting road frontage or area requirements for the front lot.
 3. No more than one back lot access may be created on any lot unless each subsequent access is created out of an additional three hundred and fifty (350') feet of road frontage, and the access entrances are at least six hundred (600') feet apart.
 4. The back lot shall have a minimum of five (5) acres.
 5. The back lot access driveway shall be required to be sixteen (16') feet wide with fifteen (15") inches of base gravel and three (3") inches of surface gravel. One driveway turnout shall be provided for every two hundred (200') feet of driveway length. The driveway shall have appropriate drainage, and a turnaround adequate to serve public safety vehicles shall be constructed at the end of the back lot driveway. Prior to the issuance of a building permit for any structure on the back lot, written approval of the Fire Chief shall be required verifying that the driveway has been constructed to provide adequate access by emergency vehicles.

NOTE: The proposed amendments clarify and simplify the requirements for creating a single back lot. A driveway will be allowed to serve the single back lot, rather than a road. The driveway will require review by the Fire Chief to ensure that it is accessible by public safety vehicles. The provisions for multiple lot private ways will be combined with Section 5.24.

Section 5.7. — BACK LOTS

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

- ~~A. If a back lot is accessible only by a legally enforceable right of way, it may be used for one single back lot dwelling if the following conditions are met:~~
- ~~1. The right of way must be deeded to the owner of the back lot and be a minimum of fifty (50') feet in width.~~
 - ~~2. Creation of the 50 foot right of way to serve the back lot shall not create a~~

~~nonconforming front lot by reducing such lot's road frontage below the minimum for that district, or, if the front lot is already nonconforming, reduce its road frontage at all. Where the right of way is given by easement or irrevocable license, or some grant less than a fee interest, the land over which such servitude is placed may not be counted toward meeting road frontage requirements for the front lot.~~

- ~~3. No more than one right of way for back lot development may be created out of any lot fronting on a Town and/or state maintained road unless each subsequent right of way is created out of at least an additional three hundred and fifty (350') feet of Town road frontage, and the road entrances to such Town road are at least six hundred (600') feet apart.~~
 - ~~4. The dimension of the back lot which borders upon the right of way shall be at least three hundred (300') feet in length and the depth of the lot perpendicular to said frontage shall be at least two hundred (200') feet for at least three hundred (300') feet along the right of way. The back lot shall have a minimum of five (5) acres not including any land constituting the right of way.~~
 - ~~5. The driveway shall be required to be twenty (20') feet wide with twelve (12") inches of aggregate sub base, six (6") inches of aggregate base, and drainage as shown in Appendix 1, Section 1.3, Figure 3 of this Ordinance, however no shoulders or pavement are required.~~
- ~~B. A legally enforceable right of way may be used for more than one backlot or single family dwelling if the following conditions are met:~~
- ~~1. A street plan shall be prepared by a professional engineer, along with a cross section and drainage plan. The plan shall be labeled "Plan of a Private Way" and shall provide an approval block for the signatures of the Code Enforcement Office and Road Commissioner. The Plan shall delineate the proposed way and each of the lots to be served by the private way. The plan shall be recorded in the Androscoggin Registry of Deeds prior to construction of the second or subsequent dwelling.
 - ~~a. The street plan shall bear notes: (1) The Town of Durham will not be responsible for the maintenance, repair, or plowing of the privately owned road and (2) Further lot divisions utilizing the privately owned road are prohibited without prior approval of the Planning Board. Nothing contained in this paragraph shall prevent a privately owned road from becoming a Town way pursuant to the state and local laws.~~~~
 - ~~2. A maintenance agreement as described in Section 5.22 of this Article shall be recorded in the Androscoggin County Registry of Deeds. The maintenance agreement shall specify the rights and responsibilities of each lot owner with respect to the maintenance, repair and plowing of the private way.~~
 - ~~3. No residential building permit for a dwelling shall be issued for second and subsequent Back Lots until the requirements of this Ordinance have been met.~~
 - ~~4. The right of way and road must be brought up to subdivision road standards as found in Appendix 1. Section 1.3 of this Ordinance, with the exception of~~

the paving requirement.

ROADS PRIVATE WAYS

NOTE: Section 5.24 is intended to provide a mechanism for the creation of private ways outside of subdivisions that serve multiple exempt lots. The provisions for approval of such roads are currently split between Section 5.7 for “back lots” and this section for “roads,” creating confusion on the approval process for both. The proposed revisions will consolidate the private way provisions in this section, and the standards will remain those that are currently in effect for such roads.

- A. The Town shall not accept ~~as a Town Road~~ for public maintenance any private road or way that is not built to ~~public road~~ the standards of Appendix 1. Acceptance of any private road ~~for public maintenance as a Town Road~~ requires a vote of approval at Town Meeting.
- B. ~~After March 6, 2004~~ any person or persons, prior to developing a private road or way to provide access to two or more lots that are not part of a legal subdivision or extending an existing private road or way which will thereafter serve two or more lots that are not part of a legal subdivision
- ~~B. After March 6, 2004~~ any person or persons, prior to
- ~~1. Developing a private road or way developed to provide access to two or more dwelling units or a structure intended for commercial, industrial or light industrial uses; or,~~
 - ~~2. Extending an existing private road or way which will thereafter serve two or more dwelling units, or a structure intended for commercial, industrial or light industrial uses; or,~~
 - ~~3. Putting to use for the first time an existing private road or way to serve two or more dwelling units or a structure intended for commercial, industrial or light industrial uses,~~
- ~~shall be required to seek and obtain approval for a private way plan meeting the requirements of this Section. submit for the approval of the Planning Board a maintenance agreement or escrow agreement executed by the owners of the lots containing the dwelling units or structures which shall be using the private road or way, in registry recordable form, which agreement provides for the obligations of each owner of the lots on which such dwelling units or structures are located with respect to the maintenance, repair and snow plowing of such road or way. The applicant shall prepare and submit for approval of the Planning Board a maintenance agreement which shall specify the rights and responsibilities of the owners of the lots on the road or way in question among themselves with respect to responsibility for the costs of construction, maintenance, repair, and plowing.~~
- C. A street plan of the private way shall be prepared by a surveyor along with a cross section and drainage plan prepared by an engineer. The plan shall be labeled “Plan of Private Way” and shall provide an approval block for the signatures of the Planning Board. The plan shall delineate the proposed private way and each of the lots to be served by the private way. The plan shall be recorded in the Androscoggin Registry of Deeds.

1. The private way plan shall bear notes:
 - a. The Town of Durham will not be responsible for the maintenance, repair, or plowing of the private way; and,
 - b. Further lot divisions utilizing the private way are prohibited without prior approval of the Planning Board.
 2. A maintenance agreement meeting the requirements of subsections D. and E. below shall be recorded in the Androscoggin County Registry of Deeds. The maintenance agreement shall specify the rights and responsibilities of each lot owner with respect to the maintenance, repair, and plowing of the private way.
 3. No building permit for new lots served by the private way shall be issued until the requirements of this Ordinance have been met.
 4. The right-of-way and road must be built or brought up to subdivision road standards as found in Appendix 1, Section 1.3 of this Ordinance with the exception of paving.
- D. Applicants for private way approval shall submit for the approval of the Planning Board a maintenance agreement or ~~escrow agreement to be~~ executed by the owners of the lots containing the dwelling units or structures which shall be using the private road or way, in registry recordable form, which agreement provides for the obligations of each lot owner of the lots on which such dwelling units or structures are located with respect to the maintenance, repair and snow plowing of such road or private way. ~~The applicant shall prepare and submit for approval of the Planning Board a maintenance agreement which shall specify the rights and responsibilities of the owners of the lots on the road or way in question among themselves with respect to responsibility for the costs of construction, maintenance, repair, and plowing.~~
- E. The maintenance agreement shall also include:
1. A detailed statement of how the ownership interests in the private way will be structured (i.e., whether ownership will be single or joint, whether lot owners will own the fee or have easements, etc.).
 2. A statement that in the event any of the lots shown on the plan are divided or in the event any remaining land of the declarant is subsequently divided into lots which are served by the private way, then such resulting lot or lots shall become subject to the maintenance agreement and to any modifications to the maintenance agreement advisable to adjust the duties and responsibilities equitably among the owners of all the lots served by the private way.
 3. An acknowledgment by the declarant and any other persons signing the maintenance agreement that the Town of Durham is not responsible for the construction, maintenance, repair or plowing of the private way.
 4. A statement that the duties and obligations imposed by the maintenance agreement run with the land and shall be transferred to purchasers or other transferees of any portion of the real estate subject to the maintenance agreement and that, upon such transfer, the Planning Board shall be notified in writing and

Durham Land use Ordinance Adopted 4-2-2005, updated, 2006, 2007, 2008, 2009, 2016, 2019, 2020, 2021, 2022, 2023, 2024, 2025

provided with a copy of any changes or amendments to the maintenance agreement.

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