

**Town of Durham  
Land Use Ordinance**

As Adopted at Town Meeting  
April 6, 2024

*Proposed Revisions  
For Town Meeting  
April 5, 2025*

***PART 3 – DRAFT AMENDMENTS TO  
REVISE THE PROCESS AND  
STANDARDS FOR PROJECTS  
INVOLVING HISTORIC PROPERTIES  
(Articles 5, 6, 8, 12, & Zoning Map)***

NOTE: Proposed changes are indicated with ~~strikethrough~~ text indicating language to be deleted and underlined text indicating language to be inserted. Explanatory notes are in ***(bold italic text enclosed by parentheses)***.

**DRAFT ARTICLE 2, SECTION 5.14, SECTION 6.21.B, SECTION 8.6.K, & ARTICLE 12  
HISTORIC PRESERVATION REVISIONS  
[DRAFT AMENDMENTS MARCH 2025]**

*NOTE: The Town Attorney has determined that the current historic preservation standards and procedures are not consistent with federal and state guidelines and must be brought into alignment to be enforceable. The Select Board has indicated that Durham's land use regulations for historic preservation should be streamlined to make the process easier and fairer to affected landowners. The proposed amendments will focus historic preservation requirements on individual properties that are listed or eligible for listing on the National Register of Historic Places. The Ordinance will require review of projects on these properties by the Historic Commission, but will assign regulatory authority for issuing permits to the Code Officer and Planning Board, both of which are required to follow legal requirements for fact finding to ensure that all decisions afford due process to applicants.*

**Section 2.2 – ZONING DISTRICTS**

A. **Primary Districts** - The Town shall be divided into two primary Districts as shown on the Official Zoning Map and shall also have ~~four~~ three overlay Districts that shall exist within the primary districts as set forth below. The two primary Districts shall be known as the:

1. Rural Residential & Agricultural District (RRA)
2. Resource Protection District (RP)

B. **Overlay Districts** - There are also ~~four~~ three overlay districts, which are imposed over certain sections of the above primary districts as shown on the Official Zoning Map. These are the:

1. Aquifer Protection Overlay District
- ~~2. Southwest Bend Historic Overlay District~~
2. Resource Protection (Shoreland Zoning) District
3. Limited Residential (Shoreland Zoning) District

The overlay districts are subject to additional performance standards contained in Article 9 (Shoreland Zoning), and Article 10 (Aquifer Protection) ~~and Article 12 (Historic Districts).~~

**Section 2.3(C)(3) is hereby repealed.**

**Section 5.14 – HISTORIC RESOURCES**

**The current version of Section 5.14 is hereby repealed and replaced with the following:**

- A. **Historic Resources.** The following structures and places (hereafter referred to as “historic resources” for the purposes of this section and Article 12) are deemed to have historic value, and shall be subject to further review as set forth in subsection B, below:
1. Stone walls, granite posts, abutments or markers that are known to be more than one hundred (100) years of age;
  2. Cemetery and grave markers;
  3. Any building constructed for the purpose of a church or school and that is more than one hundred (100) years old;
  4. Any structure or site listed on, or deemed eligible by the Maine Historic Preservation Commission for listing on the National Register of Historic Places.
- B. **Applicability.** Any application relating to a structure or place deemed by the applicable reviewing authority be a historic resource identified in subsection A above shall be subject to advisory review by the Historic Commission in accordance with Article 12 and final review by the permitting authority in accordance with the standards set forth in subsection C of this Section. The applicable reviewing authority for the project as set forth in the Table of Uses shall have the final determination as to compliance with the historic preservation standards set forth in this Section. This section shall not apply where the project does not involve a change in the design, material or appearance of the structure or the construction or alteration of another structure on the same lot as the historic resource.
- C. **Standards.** The standards and requirements contained in this subsection shall be reviewed in an advisory capacity by the Historic Commission and applied by the permitting authority in review of applications governed by this Section 5.14. Exterior design considerations and structural factors related to maintaining historic structures in good condition shall be the Commission's and reviewing authority’s primary areas of focus.
- 1. Construction, reconstruction, alterations and maintenance:** The exterior of a historic resource, or any appurtenance related to such structures, including but not limited to walls, fences, light fixtures, steps, paving and signs, shall not be reconstructed, altered or maintained, and no permit shall be issued for such actions, unless they will preserve or enhance its historical and architectural character.
- 2. Visual compatibility:** All new construction, renovations or improvements on, connected with, or on the same lot as a historic resource shall be visually related to the historic resource generally in terms of the following factors:
- a. **Height:** The height of proposed buildings shall be compatible with adjacent buildings.
  - b. **Proportion of building's front façade:** The relationship of the width of the building to the height of the front elevation shall be visually compatible with buildings, structures and open spaces where it is visually related.

- c. **Proportion of openings within the façade:** The relationship of the width of the windows to the height of windows and doors in a building shall be visually compatible with that of windows and doors of buildings to which the building is visually related. The window proportions (height versus width) shall be visually compatible with those of other windows in the same building and in other adjacent historic buildings of the same period. In the case of large plate glass display windows on a ground floor, the large surface of glass can be divided into a number of smaller panes consistent with shop front windows of the historical period which the building represents or, in the case of new buildings, compatible with the window size of adjacent historic buildings, where appropriate. Also, the ratio of window area to solid wall shall be similar to those on surrounding facades. Rhythms which carry throughout the block should be incorporated into new facades. Windowpane sizes and proportions should be contemporary with the building.
- d. **Rhythm of solids to voids in front facades:** The relationship of solids to voids in the front facade of a building shall be visually compatible with that of the buildings to which it is visually related.
- e. **Rhythm of spacing of buildings on streets:** The relationship of the building to the open space between it and adjoining buildings shall be visually compatible with that prevailing in the area to which it is visually related.
- f. **Rhythm of entrance and/or porch projection:** The relationship of entrances and porch projections to sidewalks of a building shall be visually compatible with that of buildings to which it is visually related.
- g. **Roof shapes:** The roof shape of a building shall be visually compatible with that of the buildings to which it is visually related. The roof pitch employed on new buildings shall be similar to those found on adjacent buildings. If a gable-type roof, its orientation to the street shall be the same as in neighboring buildings. Roofing materials shall be consistent with that of adjacent structures in color, type, material or a compatible substitute which is historically accurate.
- h. **Directional expression of front elevation:** A building shall be visually compatible with the building, squares and places to which it is visually related in its directional character, whether this shall be vertical character, horizontal character or non-directional character.
- i. **Details:** All existing architectural details shall be maintained to the fullest extent practicable. When removal is unavoidable, replacement with similar features shall be encouraged. Although exact replication is often not possible or economically feasible, a simpler feature made of traditional materials can be appropriate. Poor or cheap imitations made of synthetic material shall be avoided, especially when not in scale or in the same architectural tradition. Details may include cornices;

frames and moldings around windows, doors and building comers; lintels; arches; wrought iron work; chimneys, etc.

**3. Additional Standards:** In addition to the criteria set forth in subsections C(1) and (2). above, the following standards shall be adhered to for all construction, renovations, alterations of a historic resource:

- a. Every reasonable effort shall be made to provide a compatible use which will require minimum alteration to the structure and its environment.
- b. Rehabilitation work shall not destroy the distinguishing qualities nor character of the structure and its environment. The removal or alteration of any historic material or architectural features should be held to a minimum.
- c. Deteriorated architectural features which are deemed to be historically appropriate should be repaired rather than replaced, wherever possible. In the event that replacement is necessary, the new material should match the material being replaced in composition, design, texture and other visual qualities. Repair or replacement of missing architectural features should be based on physical or pictorial evidence rather than on conjectural designs or the availability of different architectural features from other buildings.
- d. Distinctive stylistic features or examples of skilled craftsmanship which characterize historic structures and often predate the mass production of building materials shall be treated with sensitivity.
- e. Changes which may have taken place in the course of time are evidence of the history and development of the structure and its environment, and these changes shall be recognized and respected.
- f. All structures shall be recognized as products of their own time. Alterations to create an earlier appearance shall be discouraged.
- g. Contemporary design for additions to existing structures shall be encouraged if such design is compatible with the size, scale, material and character of the neighborhood, structures or its environment.
- h. Wherever possible, new additions or alterations to structures shall be done in such a manner that if they were to be removed in the future the essential form and integrity of the original structure would be unimpaired.

**4. Standards for demolition or relocation of a historic resource:**

- a. Any historic resource shall not be moved unless the property owner can demonstrate that it is incapable of earning an economic return on its value in its present location.

- b. A historic resource shall not be demolished unless it is deemed to be structurally unsound by a licensed structural engineer or the Code Enforcement Officer.
- c. Presentation of the application to the Historic Commission shall be delayed to allow additional posting and notice as follows:
  - i. The applicant shall post prominent notices on or around the structure, legible from a passing automobile, with the words “To be [Demolished or Moved]” legible from a passing automobile.
  - ii. In addition, notice shall be published in a newspaper of general local circulation not less than twelve (12) days prior to the date upon which the Historic Commission will consider the application.
  - iii. The applicant shall bear the responsibility and cost of posting and publishing notice as required.
- d. Relocation or demolition of a historic resource shall be approved only if the reviewing authority finds that there are no reasonable alternatives to the proposed relocation or demolition that would preserve the historic resource to a greater extent. These alternatives may include but are not limited to sale to a historic preservation organization, if the organization has expressed interest in buying the property at a reasonable price.
- e. Where relocation or demolition of the historic resource is permitted by the reviewing authority, the Commission shall make a photographic survey of the structure(s) to be relocated or demolished for inclusion into the historical record.

**5. Waiver in exceptional circumstances:**

- a. The standards set forth in this section may be waived if the reviewing authority determines that strict compliance with the standards would result in undue hardship to the owner of the property. Before the reviewing authority may issue a waiver, the reviewing authority must find as follows:
  - i. The property cannot yield a reasonable economic return or the owner cannot make any reasonable use of the property;
  - ii. The plight of the owner is due to exceptional or unique circumstances and not to the general applicability of this chapter; and
  - iii. The conditions or circumstances which constitute the hardship were not caused or created simply by the structure’s designation as a historic resource in accordance with this section.

For purposes of this subsection C.5, inability to yield a "reasonable economic return" shall not be construed to mean a "maximum reasonable use" and shall not be construed to mean the highest and best use. mean that the cost of compliance with this Article will exceed the amount by which the work is anticipated to increase the value of the property.

**Section 6.21. IMPACT ON NATURAL BEAUTY, AESTHETICS, HISTORIC SITES, WILDLIFE HABITAT, RARE NATURAL AREAS OR PUBLIC ACCESS TO THE SHORELINE STANDARDS**

**B. Retention of Open Spaces and Natural or Historic Features**

1. If any portion of the subdivision is located within an area designated as a unique natural area by the comprehensive plan or the Maine Natural Areas Program the plan shall indicate appropriate measures for the preservation of the values which qualify the site for such designation.
2. If any portion of the subdivision is in or abutting to any designated a site of historic or prehistoric importance by identified in the Comprehensive Plan or designated as a historic resource as set forth in Section 5.14 the comprehensive plan, the National Register of Historic Places, or the Maine Historic Preservation Commission, the project shall be subject to advisory review by the Historic Commission in accordance with Article 12. ~~Appropriate measures for the protection of the historic or prehistoric resources shall be included in the plan. When the historic features to be protected include buildings, the placement and the architectural design of new structures in the subdivision shall be similar to the historic structures.~~ The Board ~~shall~~ may seek the advice of the Maine Historic Preservation Commission in reviewing such plans.

**Section 8.6. SITE PLAN REVIEW APPROVAL CRITERIA & DESIGN STANDARDS**

- K. Historic & Archaeological Resources:** If any portion of the site is in or abutting to a property that has been identified in the Comprehensive Plan as containing historic or archaeological resources or designated as a historic resource as set forth in Section 5.14 ~~identified as containing historic or archaeological resources,~~ the development shall be subject to advisory review by the Historic Commission in accordance with Article 12 and must 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.

**Article 12 – HISTORIC DISTRICTS**

**Article 12 is hereby repealed in its entirety and replaced with the following:**

**Section 12.1 HISTORIC COMMISSION**

- A. Establishment; membership; terms; bylaws; expenditures:**

1. There is hereby established a Historic Commission, to replace the previously existing Historic District Commission, whose members shall be appointed by the Board of Selectmen. Any members of the previously existing Historic District Commission shall automatically become members of the Historic Commission as of the effective date of this section and shall serve the remainder of their terms.
  2. The Commission shall consist of five (5) members and up to four (4) alternate members, who shall be residents of the Town. Appointments shall be made on the basis of demonstrated interest, ability, experience and desire to promote historic preservation in the Town. The Select Board may require that an appointee complete training in historic preservation as a condition of any appointment
  3. Appointments to the Historic Commission shall be for terms of three (3) years, except in those instances in which the appointment is made to fill a vacancy in an unexpired term, in which case the appointment shall be for the remainder of the unexpired term.
  4. The Commission shall elect a Chair, Vice Chair and Secretary annually from among its membership.
  5. The Commission may adopt bylaws or additional operating procedures consistent with the intent of this Article. Said bylaws shall be submitted to the Board of Selectmen for review and comment prior to adoption.
  6. The Commission may expend funds as allocated in the annual town budget. The Commission may, with the approval of the Board of Selectmen, accept grants, donations or gifts of services and may hold or expend the same as approved by the Selectmen.
- B. The Commission shall have the following duties which shall be exercised in accordance with this Article and any other provisions of the Town of Durham ordinances.**
1. Review all applications for permits pertaining to Historic Resources as required by Section 5.14 and provide an advisory opinion to the permitting authority in accordance with this Article.
  2. Review all proposed National Register nominations for properties within the Town's borders.
  3. Serve in an advisory role to Town government officials regarding local historical and cultural resources and act as a liaison between local government and those persons and organizations concerned with historic preservation.
  4. Conduct or initiate a continuing survey of local historic and cultural resources, in accordance with Maine Historic Preservation Commission guidelines.
  5. Work to provide continuing education on historic preservation issues to local citizens.



6. Review and advise on the acceptance, administration and enforcement of any easements or restrictive covenants granted to the Town to protect Historic interests in the Town.

**C. Advisory Opinions:**

1. **Applicability.** An advisory opinion shall be obtained from the Historic Commission as required by Section 5.14.
2. **Vote.** Any motion by the Historic Commission to recommend in favor, in favor with conditions, or against an application shall be taken in a public meeting, after opportunity for comment from the applicant and members of the public. Following the vote, the Historic Commission shall send a summary of its findings and recommendation, along with the final results of its vote.
3. **Standards.** In making its recommendations regarding an application under Section 5.14, the Historic Commission shall consider and apply the standards set forth in that section.
4. **Process.** Where review by the Historic Commission is required, the Code Enforcement Officer shall forward the land use application and any required additional materials to the Commission for its review prior to any further action by the reviewing authority. The materials submitted to the Commission shall contain at least the following information or documentation unless any items are waived by the Commission:
  - i. The applicant's name, address and interest in the property, such as owner or lessor
  - ii. The owner's name and address, if different from the applicant's
  - iii. The address or location of the property.
  - iv. The present use and zoning classification of the property.
  - v. A brief description of the construction, reconstruction, remodeling, alteration, maintenance, demolition or moving, requiring the issuance of a certificate of appropriateness.
  - vi. A drawing or drawings indicating the design, texture, color (example: shingles) and the location of any proposed alteration or new construction for which the certificate is required. As used herein, "drawings" shall mean plans and exterior elevations drawn to scale, with sufficient detail to show, as far as they relate to exterior appearances, the architectural design of the buildings, including materials and textures, including samples of any brick, shingles or siding proposed to be used. Drawings shall be clear and drawn to scale.
  - vii. Photographs of the structures involved and of immediately adjacent buildings.

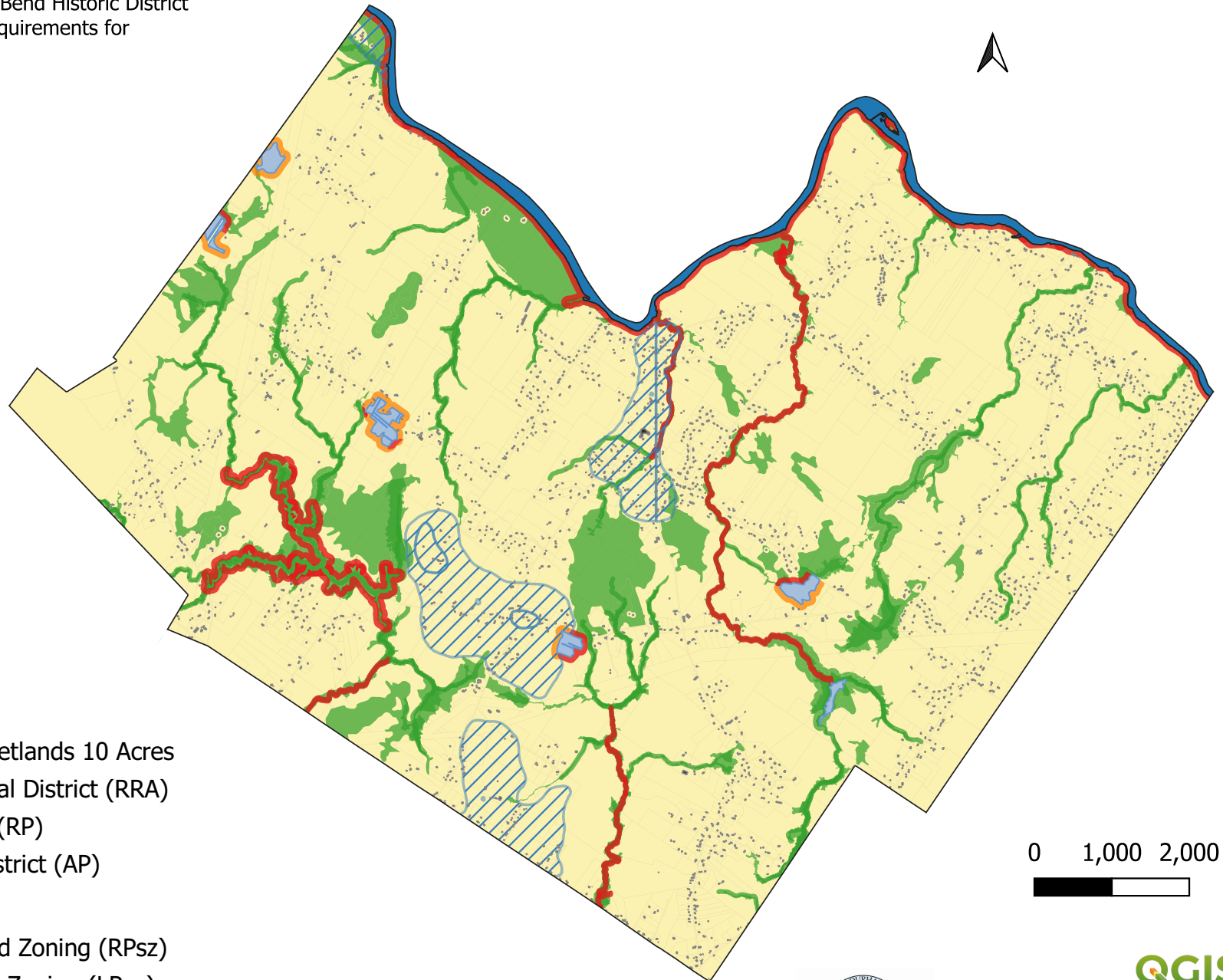
- viii. A site plan indicating any proposed changes involving walls, walks, access to buildings, signs and outdoor light fixtures, including all exterior equipment and appurtenances located on the roof, in the walls and on the ground.
- ix. If the proposal is to relocate or demolish a structure, a statement as to why the demolition or relocation is sought instead of preservation in place.

**D. Administrative Procedures:**

1. Notice to owner: Within fifteen (15) days after submission of the application to the Commission, the Commission or Code Enforcement Officer shall inform the following persons by mail of the application and meeting date: the applicant, owners of abutting property, the Durham Historical Society and the Commission's consultants and professional advisors, if any. For purposes of this notice, the owners of property shall be considered to be those against whom taxes were assessed on the prior April 1. Failure of any person to receive notices shall not necessitate another hearing or invalidate any action by the Commission.
2. The Commission shall make adequate provision for public comment, giving precedence to owners of abutting property. The Commission shall also review any submitted written comments.
3. The Commission shall make its recommendations on the project within forty-five (45) days of the receipt of the completed application, unless the applicant has agreed to waive that deadline.
4. The Commission's recommendation on an application shall not be considered a final decision and there shall be no means of appealing such recommendation. Only the reviewing authority's final decision may be appealed.

# DRAFT ZONING MAP 2025

Amendments to remove the Southwest Bend Historic District that does not meet federal and state requirements for designation as a historic district



## MAP LEGEND

-  Durham Ponds & Rivers
  -  NWI Freshwater Emergent Wetlands 10 Acres
  -  Rural Residential & Agricultural District (RRA)
  -  Durham Resource Protection (RP)
  -  Aquifer Protection Overlay District (AP)
- Durham Shoreland Zoning**
-  Resource Protection Shoreland Zoning (RPsZ)
  -  Limited Residential Shoreland Zoning (LRsz)

