



Durham Historic Preservation Program: Review and Recommendations



A Report Prepared for the
Southwest Bend Historic District Commission
By George Theborge AICP, Town Planner
August 2022

TOWN PLANNER RECOMMENDATIONS

1. Dissolve the Southwest Bend Historic District and its duplicative administrative process and complicated review standards and focus on the 10 historic properties throughout Town.
2. Reduce the jurisdiction of the Code Officer and Planning Board from review of projects within 1500 feet of the historic properties to directly abutting properties.
3. Revise the role of the Historic District Commission from a quasi-judicial authority like the Planning Board to an advisory Committee.
4. Simplify and clarify the standards to improve interpretation and application of historic preservation standards.
5. Tap into the expertise available to the Code Officer and Planning Board through the Maine Historic Preservation Commission staff.

COMMISSION REQUEST FOR TOWN PLANNER ASSISTANCE

In January of 2021, former Historic District Commission Chair Candy Decsipkes requested the assistance of the Town Planner in implementing recommendations of the 2018 Comprehensive Plan related to historic preservation. Over the past year the Planner met with the Commission on multiple occasions in honoring this request for assistance.

2018 COMPREHENSIVE PLAN RECOMMENDATIONS

The two recommendations of particular interest to the Commission were:

3.3 Develop or modify checklists for all permit application reviews (building, demolition, subdivision, conditional use) to address historic and/or archaeological preservation applicability and review criteria.

3.4 Improve coordination between the Code Officer, Planning Board, and Historic District Commission in incorporating information provided by the Maine Historic Preservation Commission into the permit review process.

KEY FINDINGS

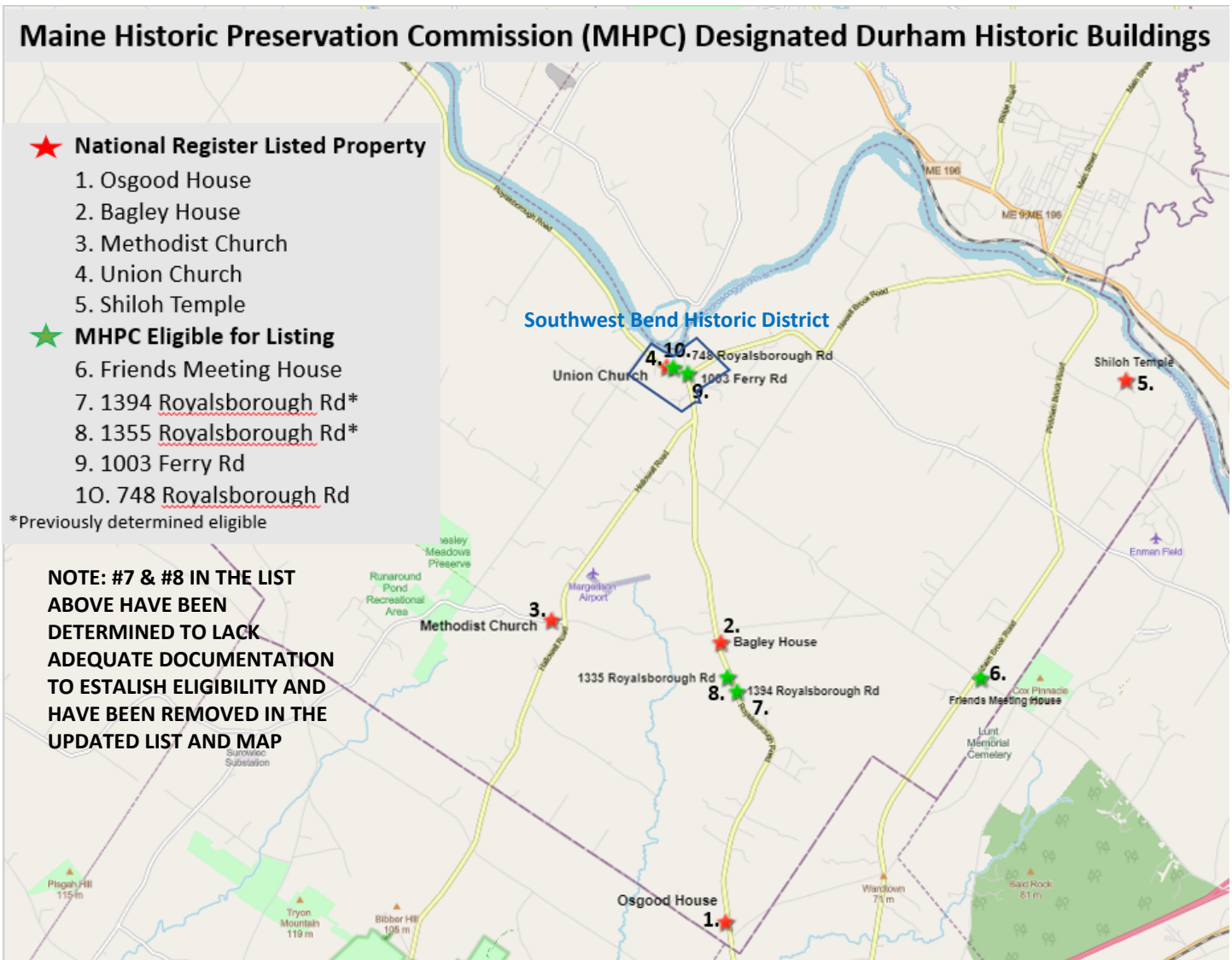
- ◆ The 2018 Comprehensive Plan called for improved coordination between the Code Officer, Planning Board, and Historic District Commission in incorporating information provided by the Maine Historic Preservation Commission into the permit review process.
- ◆ The Town's long-range Plan also recommended amending the Ordinance to make it apply to all listed structures in Durham, both those inside and outside the Historic District.
- ◆ There are two competing programs in the Land Use Ordinance, one administered by the Historic District Commission for properties in the District (Article 12), and another applied by the Code Officer and Planning Board to properties across Town (Sect. 5.14).
- ◆ Durham's Historic District program (Article 12) was copied and pasted from regulations in communities with large historic districts containing entire neighborhoods of historic structures.
- ◆ Durham has less than a dozen officially recognized historic properties that are scattered throughout the community. Only 3 are in the Historic District.
- ◆ Historic preservation is an extremely complicated and expensive program for the Town to administer and for property owners affected by the regulations to comply with.
- ◆ Durham lacks the necessary resources and technical expertise to effectively conduct a program based on historic districts.
- ◆ The review for compliance with Interior Department standards for historic preservation could be more effectively conducted by the Code Officer with input from the Maine Historic Preservation Commission, which has professional staff with specialized expertise.
- ◆ The Land Use Ordinance should be amended to reorganize the roles and responsibilities of the Commission and Code Officer and refocus the program from the Southwest Bend Historic District to the 10 individual historic properties across Town identified by the Maine Historic Preservation Commission and their abutting properties.
- ◆ The historic preservation standards should be simplified to make them easier to administer and comply with.

In addition to these important administrative issues, the Town’s long range plan also observed that the majority of official historic properties are located outside the Southwest Bend Historic District, something that had been discussed by the Commission for several years. The Comprehensive Plan recommends the following action to address this disconnect between the locations of the Town’s historic properties outside the limited Historic District and the regulations:

4.1 Amend the Historic District Ordinance to make it a Historic Protection Ordinance that applies to all listed structures in Durham, both those inside and outside of the current Historic Preservation District.

CURRENT HISTORIC PRESERVATION REGULATIONS

Per the request of the Historic District Commission, the Town Planner conducted research on the current Durham Land Use Ordinance provisions for historic preservation. He identified two separate and overlapping programs contained in Article 5 of the Land Use Ordinance and in Article 12. Section 5.14 of Article 5 applies to all properties within Durham and requires all properties that are listed on the National Register of Historic Places or are considered eligible for listing to be reviewed for compliance with Interior Department preservation standards. These eligibility determinations are made by staff at the Maine Historic Preservation Commission in Augusta (shown in diagram below).



Section 5.14 is administered by the Code Enforcement Officer and states that no structure listed on the National Register or eligible for listing will be torn down or its exterior façade altered except to restore it in accordance with standards of the Secretary of the Interior. The current regulations also require any project within 1500 feet of these officially designated properties to be “compatible with such historic properties in terms of mass, scale, design, building materials, and height.”

The Town Planner sought and received confirmation from Maine Municipal Association legal staff that the Code Officer has authority and responsibility to apply the Secretary of Interior standards to all projects within 1500 feet of officially designated properties. He also contacted the Maine Historic Preservation Commission staff to get a list of the properties in Durham that are currently listed or determined by the Commission to be eligible for listing.

Under Article 6 and Article 7 of the Land Use Ordinance, the Planning Board also must consider compliance with all Durham regulations in issuing conditional use or subdivision approvals, including the provisions of Section 5.14 for historic preservation and must require applicants for Planning Board permits to inventory any historic resources on properties proposed for development.

A third potentially competing authority on historic preservation is vested by Article 12 with the Southwest Bend Historic District, which contains 3 of the 10 designated historic places in Durham. Under Article 12, the Historic District Commission must review all permits issued by the Code Officer for demolition, alteration, or construction on any property within the District and issue a “certificate of appropriateness.”

VAGUENESS & NEED FOR TECHNICAL EXPERTISE

Another problem with administration of the Durham historic preservation standards is their vagueness and difficulty of achieving consistency in the treatment of all applicants, a legal requirement of land use regulation. The Secretary of Interior standards that must be applied by the Code Officer and

Planning Board for “compatibility” of development within 1500 feet of a designated historic property and by the Historic District Commission for “appropriateness” of any construction activity within the Southwest Bend District are similarly vague and subject to broad interpretation:

- 1. A property will be used as it was historically, or be given a new use that maximizes the retention of distinctive materials, features, spaces and spatial relationships. Where a treatment and use have not been identified, a property will be protected and, if necessary, stabilized until additional work may be undertaken.*
- 2. The historic character of a property will be retained and preserved. The replacement of intact or repairable historic materials or alteration of features, spaces and spatial relationships that characterize a property will be avoided.*
- 3. Each property will be recognized as a physical record of its time, place and use. Work needed to stabilize, consolidate and conserve existing historic materials and features will be physically and visually compatible, identifiable upon close inspection and properly documented for future research.*
- 4. Changes to a property that have acquired historic significance in their own right will be retained and preserved.*
- 5. Distinctive materials, features, finishes and construction techniques or examples of craftsmanship that characterize a property will be preserved.*
- 6. The existing condition of historic features will be evaluated to determine the appropriate level of intervention needed. Where the severity of deterioration requires repair or limited replacement of a distinctive feature, the new material will match the old in composition, design, color and texture.*
- 7. Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.*
- 8. Archeological resources will be protected and pre-*

served in place. If such resources must be disturbed, mitigation measures will be undertaken.

Regulation of historic properties involves highly technical understanding and expertise in multiple disciplines. That is why Section 12.2 A.2 indicates that the Historic District Commission “should include professionals in the disciplines of architecture, history, architectural history, planning, archaeology, urban design or other related fields as well as a builder and two owners of property within the Historic District.” Historically, the only Commission members meeting any of the stated qualifications have been owners of property in the District.

If the Town cannot find citizens in the requisite fields willing to volunteer to serve on the Commission, it should consider hiring professional historic preservation staff to provide technical assistance. The other option is to engage a consultant, such as an architect or engineer with historic preservation expertise.

TOWN PLANNER RECOMMENDATIONS

Both the limited number of historic properties in Durham and its limited financial resources may warrant an alternative approach to implementing the Town’s historic preservation goals. Following the Comprehensive recommendation to expand and refocus the Town’s regulatory program away from the Southwest Bend District toward the 10 individual listed or eligible properties while simplifying and clarifying the requirements would better match the Town’s capacity to do effective historic preservation.

Over the past year, the Town Planner has met on multiple occasions with the Historic District Commission to outline the existing weaknesses of the program and to offer suggestions for improvement. Those recommendations included:

1. Dissolve the overlapping Southwest Bend Historic District and its duplicative administrative process and needlessly complicated review criteria and standards.
2. Revise Section 5.14 to reduce the jurisdiction of the Code Officer and Planning Board from review

of projects within 1500 feet of historic properties to those that directly abut listed or eligible for listing properties identified by the Maine Historic Preservation Commission.

3. Revise the role of the Historic District Commission from a quasi-judicial authority with responsibility to issue certificates of appropriateness to an advisory Committee offering support to the Code Officer and Planning Board in their regulatory functions that affect historic properties.
4. Simplify and clarify the standards in Section 5.14 to improve interpretation and application of historic preservation standards to development activities affecting the Town’s historic properties.
5. Tap into the expertise available to the Code Officer and Planning Board through the Maine Historic Preservation Commission staff.