

Dalton NH Zoning Ordinance-Draft 6/2020

ARTICLE I PREAMBLE

These are the key principles for the future development of Dalton, as spelled out in the Master Plan (2011):

Dalton is a rural, residential community and should remain so in the future.

Dalton's essential rural character and quality of life are defined by the town's natural environment (rivers, forests, fields and ridges). Future development should be consistent with and seek to protect Dalton's natural environment.

Dalton is largely a community of single-family homes and this should be the core of our future development pattern.

Dalton should continue to encourage forestry, agriculture and recreation/tourist-related activities and businesses. Home-based cottage industries are part of Dalton's heritage and should continue to be encouraged.

Commercial and industrial development may be good for the town, in order to diversify the tax base and reduce taxes on homeowners.

Dalton's town center – the municipal building, town hall, fire station, church and surrounding area – has the potential to become more active and vibrant. It may be appropriate to encourage the development of businesses which preserve and enhance Dalton's New England small town character.

Dalton property owners must be able to count on full protection of their property rights. Any future land use regulations must fully respect and protect how Dalton's residents and property owners are currently using their land, subject to health and safety considerations.

ARTICLE II
PURPOSE

In accordance with the provisions of NH RSA 674:16, this Ordinance is designed to guide and protect the development of Dalton in a manner consistent with the wishes of its citizens and in accordance with the Master Plan. The town is described by two districts, Rural Residential and Floodplain.

The provisions of this ordinance are intended to regulate the use of land for the purpose of protecting the public health, safety, convenience and general well-being of the residents of Dalton. This ordinance is adopted in order to implement the Master Plan and other policies designed to promote the orderly growth of the Town of Dalton. Among other purposes, this ordinance is specifically adopted to:

Ensure Life Safety Standards of the state of NH are maintained;

Preserve Air and Water Quality;

Protect Life and Property from Flooding and other Natural Hazards;

Conserve Open Space and Agricultural Resources;

Protect Natural and Scenic Resources from Degradation;

Provide for Recreational Needs;

Preserve Historic Sites and Structures; and

Ensure that Development is Commensurate with the Character and Physical Limitations of the Land.

ARTICLE III
DEFINITIONS

- Abutter:** See RSA 672:3.
- Accessory Dwelling Unit:** A subordinate dwelling residence with complete and independent living facilities on the same lot attached to or detached from an existing single-family dwelling is allowable by a Special Exception.
- Barn:** A building used exclusively for sheltering of livestock and/or farm equipment, storage of grain, hay, and other farm related products.
- Building:** Shall mean any combination of materials, whether portable, moveable or fixed, having a roof and enclosed with exterior walls, built to form a structure for shelter.
- Building Site:** Shall mean that portion of a lot, tract or parcel of land upon which a single building is placed or is to be placed.
- Driveway:** A private access from a public or private way to a lot and/or building.
- Dwelling:** Shall mean any building used for or intended to be used for living, sleeping, cooking, eating and having sanitation interior or exterior. This excludes recreation vehicles.
- Dwelling Unit:** Shall mean any room or rooms used for or intended to be used for living, sleeping, cooking, eating and having sanitation interior or exterior. This excludes recreation vehicles.
- Frontage:** That portion of a lot bordering on a highway, street, or right-of-way.
- Rental Occupancy:** Non-ownership including long-term lease ownership.
- Setback:**
The approved distance from property lines for the construction of any structure whether permanent or temporary.
- Storage Unit:** Shall mean a non-livable unit with no septic or sewage hook up, made of various materials, with or without wheels used for the storage of various items.

Structure: Anything constructed or erected, including, but not limited to, buildings, mobile homes, communication towers, windmills, sheds and storage bins or tanks, decks, portable car ports, swimming pools, tennis courts and parking lots.

Temporary: Not to be permanent, lasting no more than 120 days.

ARTICLE IV
RESIDENTIAL DISTRICT

Use Regulations

The following uses are permitted in the Rural Residential District:

Single Family Homes

Manufactured Homes, both in parks and on individual lots

Duplexes

Garage/Barn/Shed/Outbuildings

Temporary carport, portable shelter or “hoop house” greenhouse

Home based businesses under the following conditions:

The business should clearly be secondary to the use of the property as a residence.

The business is carried on by an occupant of the dwelling, usually the owner or a member of the occupant’s family.

The business shall not substantially alter the outside appearance of the property.

No objectionable effects result from a Home-Based Business, such as, but not limited to, excessive noise, traffic, dust.

The following uses are permitted by special exception in the Rural Residential District:

Small Business/Cottage Industry under the following conditions:

Business limited to 25 employees or fewer;

No objectionable effects shall result from the business, such as, but not limited to traffic, dust and noise;

A Small Business does not create a big business atmosphere; and

A Small Business may include but not be restricted to, a woodworking shop, machine shop, assembly shop, office work, research and development, warehousing.

Accessory Dwelling Unit (ADU)--See Article V for requirements.

A special exception shall only be granted by the Zoning Board of Adjustment if the following criteria are all met:

The proposed use shall be one permitted by this Ordinance as a special exception;

The specific site is an appropriate location and of adequate size for such use;

This use will not adversely affect the adjacent properties; and

The proposed use will be in keeping with the stated purpose of this Ordinance.

Any use not specifically described above is not permitted other than upon the issuance of a variance by the zoning board of adjustment.

Dimensional Requirements

Lot Size

Each dwelling unit (full time residence, camp or vacation home) shall be placed on a lot of 2 acres or more in area.

Manufactured homes shall be considered as single-family dwellings and shall conform to the same lot size.

Only one dwelling per lot shall be permitted unless an ADU or multi-unit development has been approved.

Setbacks

Primary structures shall be 50ft back from the edge of the right of way, 20ft from the side property lines and 30ft from the rear property line.

No structure or any portion thereof, including any septic system, leach field or paved area shall be located within 75 feet of a year-round stream or body of water. The 75 feet shall be measured from the near bank of such stream or body of water. In addition, any such area where there is the possibility of any petrochemical or pollutant runoff, shall be provided with adequate safeguards to ensure that no such runoff will enter said streams or bodies of water. Such safeguards may be, but are not limited to, holding tanks or filters approved for such use.

Frontage

All lots shall have a minimum frontage of 200 feet on a Class V or better road, or on a private road built to Class V road standards.

Height

No structure erected on any lot shall exceed 35 feet or 2 ½ stories in height (measured from the horizontal grade line), whichever is less; except that this restriction shall not apply to farm buildings.

Site Considerations

In the interest of public health, safety, and welfare, all construction shall ensure the following:

Soil conditions of floodplain, wet soil, seasonal wet soil, or of other unstable nature are compatible with the intended use of the land.

The slope of the site when cleared and graded may not alter the natural drainage and will not promote flooding of neighboring land.

Septic system effluent or other pollutants may not leach through non-filtering soil into a known aquifer, water supply or stream.

Multi-unit developments

All multi-dwelling developments including manufactured housing parks are subject to all applicable provisions under this Ordinance, including all area regulations. The developer (original or subsequent) or the homeowner's association of any cluster development shall have the responsibility to develop, maintain and repair all utilities, streets, recreational areas and amenities until and unless the Town has properly received and accepted the responsibility.

ARTICLE V
ACCESSORY DWELLING UNITS (ADU)

In order to expand the mix of affordable housing opportunities throughout the Town one Accessory Dwelling Unit (ADU) shall be permitted by special exception on parcels which, in addition to the special exception criteria, must meet the following conditions:

Is a legally created lot of record;

Contains only one existing single-family detached dwelling; and

Contains no other accessory dwelling unit.

Accessory dwelling units shall comply with all the development standards for a single-family detached dwelling including, but not limited to, setbacks and height limits and shall not increase any nonconforming aspect of any existing structure unless otherwise addressed by this article.

The maximum size of an ADU shall not exceed 1000 sq. ft. area.

Both the ADU and the primary residence shall comply with the state Building Code and Fire Code regulations for constructions minimum living space, fire exits, and smoke alarms.

If the ADU is attached to the single-family dwelling, an interior door shall be provided between the principal dwelling unit and accessory dwelling unit. There is no requirement for said interior door to remain unlocked.

There shall be no more than two bedrooms in the accessory dwelling unit.

The applicant shall make adequate provisions for water supply and sewage disposal in accordance with NH RSA 485-A:38, which says requirements for septic loading shall be met. However, separate utility connections to the ADU are not required.

Only one accessory dwelling unit shall be permitted per primary residence.

Sale or ownership of such a unit separate from the primary residence is prohibited.

The occupant of either the accessory dwelling unit or the primary residence shall be the owner of the entire property. Only one unit shall be used for rental occupancy.

No more than four persons shall occupy an accessory dwelling unit.

ARTICLE VI
EXISTING USES

All uses and structures legally existing as of the date of the adoption of this Ordinance may continue despite nonconformity with the requirements of this Ordinance.

No nonconforming use may be changed to another unpermitted use without a variance from the Zoning Board of Adjustment.

No nonconforming structure may be expanded in such a way as to increase the nonconformity without a variance from the Zoning Board of Adjustment.

Existing lots of record must meet all dimensional requirements other than minimum lot size in order to be developed.

ARTICLE VII
(STATE/FEMA MANDATED FLOODPLAIN REQUIREMENTS)

FLOODPLAIN DISTRICT

Certain parts of Dalton are subject to periodic flooding. Relief is available in the form of flood insurance as authorized by the National Flood Insurance Act of 1968. The town of Dalton is a participating community in the National Flood Insurance Program and agrees to comply with the requirements of the National Flood Insurance Act of 1968 (P.L. 90-488, as amended, 42 USC 4001 et seq.) as detailed in this Ordinance.

The regulations in this ordinance shall apply to all lands designated as special flood hazard areas by the Federal Emergency Management Agency (FEMA) in its "Flood Insurance Study for the County of Coos, NH" dated February 20, 2013 (or more current map), together with the associated Flood Insurance Rate Maps dated February 20, 2013 (or more current map), which are declared to be part of this ordinance and are hereby incorporated by reference

Definition of Terms

The following definitions shall apply only to properties in the Floodplain and shall not be affected by the provisions of any other ordinance of the Town of Dalton.

“Area of special flood hazard” is the land in the floodplain within the Town of Dalton subject to a one percent or greater possibility of flooding in any given year. The area is designated on the FIRM as Zone(s) A, AO, AH, A1-30 and AE. “Base flood” means the flood having a one-percent possibility of being equaled or exceeded in any given year.

“Basement” means any area of a building having its floor subgrade on all sides.

“Building” - see “Structure”

“Development” means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operation or storage of equipment or materials.

“FEMA” means the Federal Emergency Management Agency.

“Flood” or “Flooding” means a general and temporary condition of partial or complete inundation of normally dry land areas from:

The overflow of inland or tidal waters.

The unusual and rapid accumulation or runoff of surface waters from any source.

“Flood Insurance Rate Map” (FIRM) means an official map incorporated with this ordinance, on which FEMA has delineated both the special flood hazard areas and the risk premium zones applicable to the Town of Dalton.

“Flood Insurance Study” (FIS) means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e. mudflow) and/or flood related erosion hazards.

“Floodplain” or “Flood-prone area” means any land area susceptible to being inundated by water from any source. (see definition of “Flooding”).

“Floodproofing” means any combination of structural and non-structural additions, changes, or adjustments to structures, which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures and their contents

“Floodway” - see “Regulatory Floodway”

“Functionally dependent use” means a use, which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking and port facilities that are necessary for the

loading/unloading of cargo or passengers, and ship building/repair facilities but does not include long-term storage or related manufacturing facilities.

“Highest adjacent grade”. Means the highest natural elevation of the ground surface prior to construction adjacent to the proposed walls of a structure.

“Historic Structure” means any structure that is:

(A) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

(B) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

(C) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or

(D) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

- 1) By an approved state program as determined by the Secretary of the Interior, or
- 2) Directly by the Secretary of the Interior in states without approved programs.

“Lowest floor” means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building’s lowest floor.

“Manufactured home” means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term “manufactured home” includes park trailers, travel trailers, and other similar vehicles placed on site for greater than 180 days. This includes manufactured homes located in a manufactured home park or subdivision.

“Manufactured Home Park or Subdivision” means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

“Mean sea level” means the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, or other datum, to which base

flood elevations shown on a community's Flood Insurance Rate Map are referenced.

"New construction" means, for the purposes of determining insurance rates, structures for which the start of construction commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, new construction means structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

"100-year flood" - see "base flood".

"Recreational vehicle" means a vehicle which is (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) designed to be self-propelled or permanently towable by a light duty truck; and (d) designed primarily not for use as a permanent dwelling but as a temporary living quarters for recreational, camping, travel or seasonal use.

"Regulatory floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without increasing the water surface elevation more than a designated height. "Special flood hazard area" (See - "Area of Special Flood Hazard")

"Structure" means for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

"Start of construction" includes substantial improvements, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or part of the main structure.

"Substantial damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its undamaged condition would

equal or exceed 50 percent of the market value of the structure before the damage occurred.

“Substantial improvement” means any combination of repairs, reconstruction, alteration, or improvements to a structure in which the cumulative cost equals or exceeds fifty percent of the market value of the structure. The market value of the structure should equal: (1) the appraised value prior to the start of the initial repair or improvement, or (2) in the case of damage, the value of the structure prior to the damage occurring. For the purposes of this definition, “substantial improvement” is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. This term includes structures, which have incurred substantial damage, regardless of actual repair work performed. The term does not, however, include any project for improvement of a structure required to comply with existing health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions or any alteration of a “historic structure”, provided that the alteration will not preclude the structure’s continued designation as a “historic structure”

"Violation" means the failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required under Item V or Item VIII(2)(b) of this ordinance is presumed to be in violation until such time as that documentation is provided.

“Water surface elevation” means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988 or other datum (as specified) of floods of various magnitudes and frequencies in the floodplains.

Permit Required

All proposed development in any special flood hazard areas shall require a permit.

The board of selectmen shall review all building permit applications for new construction or substantial improvements to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is located in a special flood hazard area, all new construction or substantial improvements shall:

Be designed (or modified) and adequately anchored to prevent floatation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;

Be constructed with materials resistant to flood damage;

Be constructed by methods and practices that minimize flood damages;
and

Be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

Where new or replacement water and sewer systems (including on-site systems) are proposed in a special flood hazard area the applicant shall provide the board of selectmen with assurance that these systems will be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and onsite waste disposal systems will be located to avoid impairment to them or contamination from them during periods of flooding.

For all new or substantially improved structures located in special flood hazard areas, the applicant shall furnish the following information to the board of selectmen:

The as-built elevation (in relation to NGVD) of the lowest floor (including basement) and include whether or not such structures contain a basement;

If the structure has been floodproofed, the as-built elevation (in relation to NGVD) to which the structure was floodproofed;

Any certification of floodproofing; and

The board of selectmen shall maintain for public inspection and shall furnish such information upon request.

The Dalton Board of Selectmen shall not grant a building permit until the applicant certifies that all necessary permits have been received from those governmental agencies from which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. §1334.

Relocation of alteration of watercourses

In riverine situations, prior to the alteration or relocation of a watercourse, the applicant for such authorization shall notify the Wetlands Bureau of the New Hampshire Department of Environmental Services and submit copies of such notification to the Board of Selectmen, in addition to the copies required by the RSA 482-A:3. Further, the applicant shall be required to submit copies of said

notification to those adjacent communities as determined by the Board of Selectmen, including notice of all scheduled hearings before the Wetlands Bureau.

The applicant shall submit to the Board of Selectmen certification provided by a professional engineer, assuring that the flood carrying capacity of an altered or relocated watercourse can and will be maintained.

The Board of Selectmen shall obtain, review, and reasonably utilize any floodway data available from Federal, State, or other sources as criteria for requiring that all development located in Zone A meet the following floodway requirement:

“No encroachments, including fill, new construction, substantial improvements, and other development are allowed within the floodway that would result in any increase in flood levels within the community during the base flood discharge.”

Zone A

In unnumbered A zones the Board of Selectmen shall obtain, review, and reasonably utilize any 100-year flood elevation data available from any federal, state or other source including data submitted for development proposals submitted to the community (i.e. subdivisions, site approvals).

The Board of Selectmen’s 100-year flood elevation determination will be used as criteria for requiring in zone A that:

All new construction or substantial improvement of residential structures have the lowest floor (including basement) elevated to or above the 100-year flood elevation;

That all new construction or substantial improvements of non-residential structures have the lowest floor (including basement) elevated to or above the 100-year flood level; or together with attendant utility and sanitary facilities, shall:

be floodproofed so that below the 100-year flood elevation the structure is watertight with walls substantially impermeable to the passage of water;

have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and

be certified by a registered professional engineer or architect that the design and method of construction are in accordance with accepted standards of practice for meeting the provisions of this section.

Recreational vehicles placed on sites within Zone A shall either (i) be on the site for fewer than 180 days; (ii) be fully licensed and ready for highway use, or (iii) meet all standards of Section 60.3 (b) (1) of the National Flood Insurance Program Regulations and the elevation and anchoring requirements for “manufactured homes” in Paragraph (c) (6) of Section 60.3. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions.

Manufactured Homes

All manufactured homes to be placed or substantially improved within special flood hazard areas shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the 100-year flood elevation; and be securely anchored to resist floatation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces; for all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding are permitted provided they meet the following requirements:

the enclosed area is unfinished or flood resistant, usable solely for the parking of vehicles, building access or storage;

the area is not a basement; and

shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater.

Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria: A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwater.

Variances and Appeals

Any order, requirement, decision or determination of the Board of Selectmen made under this ordinance may be appealed to the Zoning Board of Adjustment as set forth in RSA 676:5.

If the applicant, upon appeal, requests a variance as authorized by RSA 674:33, 1(b), the applicant shall have the burden of showing in addition to the usual variance standards under state law:

That the variance will not result in increased flood heights, additional threats to public safety or extraordinary public expense.

that if the requested variance is for activity within a designated regulatory floodway, no increase in flood levels during the base flood discharge will result.

That the variance is necessary, considering the flood hazard, to afford relief.

The Zoning Board of Appeals shall notify the applicant in writing that: (a) the issuance of a variance to construct below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and (b) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions.

The community shall (a) maintain a record of all variance actions, including their justification for their issuance, and (b) report such variances issued in its annual or biennial report submitted to FEMA's Federal Insurance Administrator.

ARTICLE VIII **ADMINISTRATION AND ENFORCEMENT**

Building Permits

To assure compliance with this ordinance, all new construction must obtain a building permit from the Board of Selectmen prior to construction. Building permit applications shall include a site plan with contours and elevations, as well as the payment of an application fee.

No building permit shall be required for any repairing, renovation or rebuilding of any existing structure which does not, and will not, violate this Ordinance.

No building permit shall be required for fences under 8 feet tall, outbuildings of less than 120 square feet with no poured concrete foundation, decks, or temporary structures. Although a building permit is not required for these structures, they must comply with all requirements of this ordinance, including setbacks (except that fences need not comply with setback requirements).

Enforcement

This Ordinance shall be administered and enforced by the Board of Selectmen or its designee.

The Board of Selectmen or its designee shall administer this Ordinance and shall not have the power to permit any use of land or buildings which is not in conformance with this ordinance.

If any violation of this ordinance occurs, the Dalton Select Board may institute in the name of the Town of Dalton, any appropriate action, injunction or other proceeding to prevent, restrain, correct or abate such violation.

Penalties

Any person who violates any provision of this Ordinance shall be subject to a fine of \$275.00 for each day such violation may exist.

ARTICLE IX
ZONING BOARD OF APPEALS

Board of Adjustment

A five-person Board of Adjustment and up to 5 alternate members will be appointed by the Dalton Select Board as provided by NH RSA 673:3 and 674:29, who may upon application take any action authorized by RSA 674:33.

ARTICLE X
AMENDMENTS, SAVING CLAUSE & EFFECTIVE DATE

This Ordinance may be amended with the provisions of NH RSA 674 as it is or may be amended.

The invalidity of any provision of this ordinance shall not affect the validity of any other provision.

This ordinance shall become effective immediately upon its passage.