

Section 619 Workforce Housing Overlay District

619.1 Purpose

In accordance with NH State Law, RSA 674:59, the purpose of this ordinance is to provide “reasonable and realistic opportunities for the development of workforce housing” within the Town of Windham. The intent is to encourage a balance of housing types for people of a wide range of incomes to help foster community development, a self-reliant workforce, and support community engagement.

619.2 Authority

This Ordinance is created in accordance with the provisions of RSA 674:58-674:61 and consistent with RSA 672:1 (III-e). In addition, this innovative land use Ordinance is adopted under the authority of NH RSA 674:21 and is intended as an “Inclusionary Zoning” provision, as defined in NH RSA 674:21 (I)(k) and 674:21 (IV)(a).

619.3 Applicability

619.3.1 Developments under this ordinance are allowed in the Residential B District, Residential C District, Rural District, and Village Center District.

619.3.2 Dwelling types allowed in the Residential B District, Residential C District, and Village Center District are single family (attached or detached), duplex, and multi-family units.

619.3.3 Dwelling types allowed in the Rural District are limited to one single family (detached) or one duplex per lot unless otherwise permitted by Conditional Use Permit.

619.4 Definitions

For the purposes of this Workforce Housing Overlay Zoning Ordinance, the following definitions apply:

Affordable: As defined in RSA 674:58, “housing with combined rental and utility costs or combined mortgage loan debt services, property taxes, and required insurance that do not exceed 30 percent of a household's gross annual income.”

Collector Roads: As defined in Section 300 of the Subdivision Control Regulations

Conditional Use Permit (CUP): a Conditional Use Permit (CUP) is administered by the Planning Board and may authorize development which would otherwise not be allowed on a particular site as required under the Zoning Ordinance, Subdivision Regulations, or Site Plan Review regulations.

A CUP may not be granted by the Planning Board to relieve the applicant from the provisions of the Wetlands and Watershed Protection District (WWPD)(Section 601), Flood Plain District (Section 607), the Aquifer Protection District (Section 609), Cobbett’s Pond Watershed Protection Ordinance (Section 616), or Historic Demolition Delay Ordinance (Section 719).

Duplex Dwelling Units: A building containing two independent dwelling units of nearly equal size and composition.

Multi-Family Dwelling Unit: “A building or structure containing 5 or more dwelling units, each designed for occupancy by an individual household”, as defined in NH RSA 674:58(II).

Residential – 1 Roads: As defined in Section 300 of the Subdivision Control Regulations

Residential – 2 Roads: As defined in Section 300 of the Subdivision Control Regulations

Single Family (Attached) Dwelling Unit: Single-family dwelling that is attached to at least one but no more than three other single-family dwelling. These are typically called townhouses or row houses.

Single Family (Detached) Dwelling Unit: A free-standing residential building for occupancy by one household.

Workforce Housing: As defined in RSA 674:58(IV), “housing which is intended for sale and which is affordable to a household with an income of no more than 100 percent of the median income for a 4-person household for the metropolitan area or county in which the housing is located as published annually by the United States Department of Housing and Urban Development. Workforce housing also means rental housing which is affordable to a household with an income of no more than 60 percent of the median income for a 3-person household” for the same area as defined above. “Housing development that exclude minor children from more than 20% of the units, or in which more than 50% of the dwelling units have fewer than 2 bedrooms, shall not constitute workforce housing” for the purposes of NH RSA 674:58 or this Ordinance.

619.5 Procedure

619.5.1 Conceptual Consultation

All Workforce Housing project applications must come before the Planning Board for a Conceptual Consultation, as outlined in NH RSA 676:4 (II) (a) & (c). An applicant applying for a development that is intended to qualify as Workforce Housing under this ordinance shall file a written statement of such intent as part of their initial application, as outlined in NH RSA 674:60(I).

619.5.2 Design Review

619.5.2.1 Subsequent to the Conceptual Consultation, all Workforce Housing project applications shall include a Design Review submission and consultation with the Planning Board, as outlined under NH RSA 676:4 (II) (b) & (c).

619.5.2.2 An application for a development that is intended to qualify as Workforce Housing under this ordinance shall file a written statement of such intent as part of their initial application per NH RSA 674:60(I).

619.5.2.3 Proposed preliminary architectural designs, site, and access layouts must be submitted as part of this review.

619.5.2.4 The application must include the rationale and approach to meeting Workforce Housing per NH RSA and these Ordinance requirements.

619.5.2.5 The application must include a list of potentially known conditional use permits (CUP), waivers, and variances needed, including justification of their necessity and effectiveness for the project and contributing to affordability as it applies to the Statute and Ordinance.

619.5.3 Final Application

619.5.3.1 The application shall include the statutory intent statement filing per NH RSA 674:60(I).

619.5.3.2 Conditional Use Permits (CUP)

619.5.3.2.1 The applicant must submit a list of requested conditional use permits (CUP) needed, including justification of their necessity and effectiveness in contributing to affordability.

619.5.3.2.2 A CUP may not be granted by the Planning Board to relieve the applicant from the provisions of the Wetlands and Watershed Protection District (WWPD)(Section 601), Flood Plain District (Section 607), the Aquifer Protection District (Section 609), the Cobbett's Pond Watershed Protection Ordinance (Section 616), or Historic Demolition Delay Ordinance (Section 719).

619.5.3.2.3 Conditional Use Permits may be granted by the Planning Board if all of the following criteria are met:

- a) The Conditional Use Permit is necessary in ensuring that the Workforce Housing proposal is affordable;
- b) The granting of the Conditional Use Permit will not cause negative public health or safety impacts;
- c) The granting of the Conditional Use Permit will not harm the natural resources of the area;
- d) Realistic and reasonable measures to prevent the loss of those historic resources defined in 719.2.3;
- e) The granting of the Conditional Use Permit will not substantially limit the reasonable use of adjacent property; or adversely affect the adjacent property values and
- f) The Development Standards outlined in Section 619.7 are met.

619.5.3.3 Any variances required must be obtained prior to final application.

619.5.3.4 If Variances from Section 601, 607, 609, 616, or 719 of the Zoning Ordinance are required, the applicant can request and be granted a joint hearing of the Planning Board and Zoning Board of Adjustment.

619.5.3.5 If review and approval from Section 719 of the Zoning Ordinance is required, the applicant can request and be granted a joint hearing of the Planning Board and the Historic District Commission, per NH RSA 676:2.

619.5.3.6 The application must include the rationale and approach to meeting the definition of Workforce Housing per the State requirements and this Ordinance.

- 619.5.3.7** The Planning Board may request, at the expense of the applicant, review of project materials by development professionals that are selected and contracted by the Planning Board. These reviews may include (but not be limited to) subjects of traffic, drainage, density calculations, septic and water systems, fiscal analysis, legal, landscaping, architecture, as well as others.
- 619.5.3.8** Assurance of continued affordability shall be provided for at least 30 years from the date of Planning Board final approval, or in accordance with State law, whichever is more restrictive. Assurances may include but are not limited to deed restrictions, restrictive covenants, and association documents. Drafts of all documents will be required for review at the time of final application.
- 619.5.3.9** The responsibility for monitoring the compliance with the resale and rental restrictions on workforce housing units shall be the responsibility of a third party, as referenced in the NH Housing Finance Authority publication (June 2010 or as may be amended) “Meeting the Workforce Housing Challenge: A Guidebook for NH Municipalities”.

619.6 Conditions of Approval

- 619.6.1** Deed restrictions, restrictive covenants, association documents, and other required legal work related to dwelling units established under this ordinance shall be reviewed by Town Counsel to ensure legal form, ownership and enforceability.
- 619.6.2** Deed restrictions, restrictive covenants, association documents, and other legal work related to dwelling units established under this ordinance shall be properly referenced on all plans filed with the Windham Planning Board and the Registry of Deeds.
- 619.6.3** Workforce Housing Units developed under this ordinance are to remain affordable for a time period no less than 30 years from the date of final Planning Board approval, or in accordance with State law, whichever is more restrictive.
- 619.6.4** In a Workforce Housing Development where there are both market-rate and workforce housing units, the dwellings qualifying as Workforce Housing shall be made available for occupancy on approximately the same schedule as a project’s market-rate units. A schedule setting forth the phasing of the total number of units shall be established prior to final approval by the Planning Board. Said schedule shall be filed at the Registry of Deeds, and be properly updated with the Town and Registry as a condition of release of building permits.
- 619.6.5** Other reasonable conditions or restrictions may be placed on the application as determined by the Planning Board. All conditions and restrictions of approval will be provided in compliance with NH RSA 674:60(II).
- 619.6.6** The procedures and criteria outlined in NH RSA 674:60(III) regarding conditions and restrictions of the approval will be followed.

619.7 Development Standards

Unless otherwise outlined herein, developments shall meet the requirements of the Town of Windham Subdivision and Site Plan Regulations, as applicable.

619.7.1 Density:

619.7.1.1 Density shall be determined in accordance with the requirements of Appendix A-1 of the Windham Zoning Ordinance.

619.7.2 Minimum Acreage and size limitations

619.7.2.1 A minimum of 5 acres is required for a Workforce Housing project.

619.7.2.2 Workforce Housing units shall contain no more than 3 bedrooms.

619.7.3 Dwelling units:

619.7.3.1 The architecture should be complimentary and harmonious with abutting developments.

619.7.3.2 In a Workforce Housing Development, the dwellings qualifying as Workforce Housing shall be compatible in architectural style and appearance with the market rate dwellings within the proposed development.

619.7.3.3 In a Workforce Housing Development where there are both market-rate and workforce housing units, a minimum of 50% of the dwellings must qualify as workforce housing. The Workforce Housing units should be interspersed throughout the overall development. If this percentage creates a financial burden and makes the development not financially viable, a waiver can be sought from the Planning Board to reduce this percentage. The request for a waiver must be accompanied by financial documentation justifying such waiver request

619.7.4 Frontage, Setbacks and Yard Regulations:

619.7.4.1 Structures may be located in any manner on the site that meet this Ordinance's requirements and objectives, and provided that the following dimensional standards are met:

619.7.4.1.1 Proposed dwelling units that have their frontage on existing public & private roads shall have frontages and front yard setbacks as required in the underlying zoning district.

619.7.4.1.2 Proposed dwelling units shall have the required building setbacks for the underlying zoning district along the abutting property lines.

619.7.4.2 There shall be a minimal horizontal separation between all structures: single family (detached) 20 feet, single family (attached) 35 feet, duplex 20 feet, and multi-family 35 feet.

619.7.5 Layout

619.7.5.1 The proposed plans shall show the location of all buildings, amenities, and common facilities on the property, as well as those other development abutting the property.

619.7.5.2 Representative floor plans, elevations, driveway locations (etc.) must be submitted for the entire project as part of the application.

619.7.5.3 The plans shall indicate the natural features such as open fields, water features, woodlands, wetlands, trails, stonewalls, and known historic features.

619.7.5.4 All utilities and municipal/private infrastructure (existing and proposed) shall be shown.

619.7.6 Roads

619.7.6.1 All proposed Town roads within a Workforce Housing development shall be constructed to Town standards. Alternatively, development accesses can be provided by private roads and/or drives and shall meet all applicable standards for development and be privately owned and maintained.

619.7.6.2 Collector roads shall have a minimum right-of-way and road width in accordance with current subdivision regulations. However, collector road widths should not exceed the width of the existing road if it is a continuation of that road.

619.7.6.3 Residential-1 and Residential-2 roads may be ended in a turnaround or turning stub, with maximum road length in accordance with current subdivision regulations. The minimal geometry allowed for the end configuration shall meet minimum emergency access vehicle criteria. The minimum paved width for a secondary road shall be twenty-two feet (22 ft).

619.7.6.4 All Roads and access ways shall be designed to meet current AASHTO (American Association of State Highway and Transportation Officials) standards.

619.7.7 Water and Waste Treatment Systems

619.7.7.1 The development may be served by common water and waste water systems and/or individual systems, either off site or onsite, and include applicable easements and service intents as required by State Permitting.

619.7.7.2 Wells and waste water systems shall have a protective radii and nitrate setbacks as required by the State of New Hampshire and the Town of Windham NH and/or evidence of approvable waivers as may be required by jurisdictional authorities.

619.7.7.3 Any wastewater treatment system or backup system shall have appropriate state approval.

619.8 Appeals

An applicant who has filed a Workforce Housing proposal that is denied or is approved with conditions or restrictions which have a substantial adverse effect on the viability of the proposed development may appeal the action to the Superior Court as outlined in NH RSA 674:61