

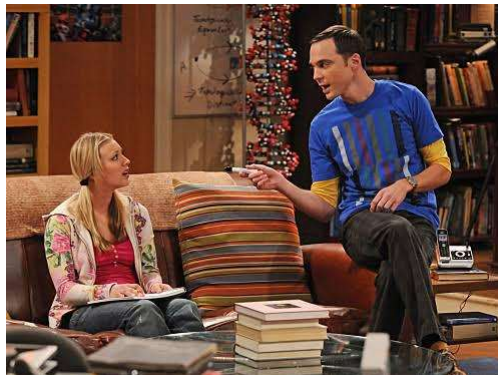
ZONING 101

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What is zoning?



It's a warm summer evening in Greece . . .

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Zoning is the foundation of land use

- At its most basic level, zoning separates uses so that compatible uses are grouped together, and incompatible uses are kept apart



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Statutory Authorization For Zoning

- RSA 674:16
- I. For the purpose of promoting the health, safety, or the general welfare of the community, the local legislative body of any city, town, or county in which there are located unincorporated towns or unorganized places is authorized to adopt or amend a zoning ordinance under the ordinance enactment procedures of RSA 675:2-5. The zoning ordinance shall be designed to regulate and restrict:

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- (a) The height, number of stories and size of buildings and other structures;
- (b) Lot sizes, the percentage of a lot that may be occupied, and the size of yards, courts and other open spaces;
- (c) The density of population in the municipality; and
- (d) The location and use of buildings, structures and land used for business, industrial, residential, or other purposes.

Source. 1983, 447:1.

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674:17 Purposes of Zoning Ordinances. –

I. Every zoning ordinance shall be adopted in accordance with the requirements of RSA 674:18. Zoning ordinances shall be designed:

- (a) To lessen congestion in the streets;
- (b) To secure safety from fires, panic and other dangers;
- (c) To promote health and the general welfare;
- (d) To provide adequate light and air;
- (e) To prevent the overcrowding of land;
- (f) To avoid undue concentration of population;
- (g) To facilitate the adequate provision of transportation, solid waste facilities, water, sewerage, schools, parks, child day care;
- (h) To assure proper use of natural resources and other public requirements;
- (i) To encourage the preservation of agricultural lands and buildings and the agricultural operations described in RSA 21:34-a supporting the agricultural lands and buildings; and
- (j) To encourage the installation and use of solar, wind, or other renewable energy systems and protect access to energy sources by the regulation of orientation of streets, lots, and buildings; establishment of maximum building height, minimum set back requirements, and limitations on type, height, and placement of vegetation; and encouragement of the use of solar skyspace easements under RSA 477. Zoning ordinances may establish buffer zones or additional districts which overlap existing districts and may further regulate the planting and trimming of vegetation on public and private property to protect access to renewable energy systems.

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Adoption of Zoning Ordinances

- RSA 675
- Planning Board initiated ordinances and amendments
- Selectboard initiated amendments
- Citizen initiated amendments

All require at least one public hearing before the planning board

All require town meeting votes to be adopted

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Drafting Zoning Ordinances

- Where do you start?
- Master Plan--cannot adopt zoning until you have adopted at least a vision section and a land use section of a master plan

Vision section -- serves to direct the other sections of the plan.

must contain a set of statements which articulate the desires of the citizens affected by the master plan, not only for their locality but for the region and the whole state AND a set of guiding principles and priorities to implement that vision.

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Land use section

must translate the vision statements into physical terms.

Based on a study of population, economic activity, and natural, historic, and cultural resources, it shall show existing conditions and the proposed location, extent, and intensity of future land use.

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2. COMMUNITY VISION

The community vision contained in the 2019 Dunbarton Master Plan begins with the preservation of the Town's small town and agricultural character, while at the same time meeting the needs of both current and future residents. Support for the rural atmosphere, with the accommodation of some level of commercial and housing growth and community services is apparent. At the same time, many are happy with the way that Dunbarton is now, and hope that the community retains its community feel and small town way of life well into the future.

FROM DUNBARTON TODAY TO DUNBARTON TOMORROW...

Throughout the development of the Master Plan, engaging residents and other community stakeholders was a key goal. A 34-question community survey was available to residents during the outreach process and a visioning session invited people to a discussion forum to tell the Town what was important to them. The visioning session and the community survey gave the Planning Board important information on resident opinions on many topics related to Dunbarton's land use, housing, transportation, natural resources, community facilities and regulations as well as other thoughts on priorities and concerns. Broad themes have been based on the public outreach and other stakeholder input, themes which often overlap one another in their identification of important ideas in Town.

Small town/rural atmosphere (89.1%), natural resources (80.2%), location (78.8%) and people/community spirit (78.1%) were rated in the community survey as the most important features in Dunbarton. Also highly ranked was historic character (70.4%), educational system (67.8%), and town services (57.6%). Also demonstrated in the Community Survey, support for development that maintains the Town's rural character, including agricultural-related businesses was given (55.2%), as well as support for a country convenience store (54.1%).

Regarding growth, the majority of survey results indicate that residential growth is growing at an acceptable rate (64.3%), while some said the Town was growing too fast (21.1%). Others said the Town was growing too slowly or had no opinion (14.6%). Accessory dwelling units were highly supported and desired, as well as senior housing. While most were not concerned about parking in the Town center, various opinions and locations were mentioned regarding the implantation of sidewalks and other accommodations for cyclists and pedestrians.

A total of 71% of survey responses indicated that preserving open space was important, and many indicated that they would like more conservation lands in Town, specifically available for recreation opportunities. There was a large amount of support for the development of a comprehensive trail network, particularly for non-motorized uses.

COMMUNITY VISION | DUNBARTON MASTER PLAN 2019 | 2.1

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REGIONAL CONCERNS

Housing growth, transportation improvements, and natural resource protection are all areas where working as part of a regional effort can have many benefits for a community like Dunbarton.

With regard to housing, the Regional Housing Needs Assessment notes that to assist in meeting the future need for housing in the region, Dunbarton would need about 218 additional housing units (including Accessory Dwelling Units or ADUs) between 2010 and 2040 – about seven per year, with less than one being rental. This suggests modest growth over a thirty-year period. Regionally speaking, these factors are consistent with regional trends: an aging population coupled with slower growth. Dunbarton is uniquely positioned between Manchester and Concord within the region and this will impact how it meets these changing trends. The Housing Chapter outlines that 1) Dunbarton's existing regulatory framework appears to be responding well to the current housing market demands; and 2) there may be a need for smaller homes to prevent future vacancy rates as demographic demands begin shifting to smaller homes rather than larger ones.

Key regional transportation issues include potential short and long-term safety improvements to the intersection of NH77 and NH13, or "Page's Corner," planned improvements to the I-89 Exit 2 NB and SB ramps slated for construction in 2023, and the continued support and enhancement of the regional volunteer driver program that provides essential social services and medical appointments related trips to the region's elderly and disabled populations.

Natural resource protection often benefits from a regional focus. Wildlife corridors, habitat ecosystems and trail systems don't stop at municipal borders and need a broader approach to be successful in protection efforts. The 2015 NH Wildlife Action Plan (WAP) mapped wildlife habitat areas in Dunbarton, with many areas of Town included in the State's highest ranked habitat for conservation. The WAP can be used as an informational tool to inform local efforts to identify wildlife habitats and educate residents on the importance of wildlife habitat and diversity.

Like many other small New Hampshire communities, Dunbarton residents expressed concern that the rural character often viewed as central to Dunbarton's identity may be lost due to additional residential growth over the next few decades. There are many types of "rural character" images that shape Dunbarton – traditional buildings, agricultural fields, protected lands, stone walls, natural forests, and many treasured scenic views. Often, it is the mix of landscapes that contributes to the concept of rural character, including current development patterns and the scenic vistas of hills, rivers, open space and forests. In Dunbarton, small-scale agriculture is a land use to highly encourage and support in the future to contribute to a strong local identity.

Respondents were asked what they saw as Dunbarton's strengths and what they would want the perception of Dunbarton to be. Responses related to Dunbarton's strengths were oriented towards location, rural setting and community spirit. Responses related to the future perception emphasized the Town's country feel, quiet and safe setting, and offering a high quality of life.

2.2 | DUNBARTON MASTER PLAN 2019 | COMMUNITY VISION

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A VISION BY CHAPTER

The Master Plan chapters, with their data analysis, community survey consideration, and recommendations for implementation, support the future vision of Dunbarton within their pages. The following are the individual vision statements from each of the plan's chapters.

HISTORIC AND CULTURAL RESOURCES

Continue to appreciate and preserve Dunbarton's historic character and cultural resources for current and future generations.

HOUSING

Continue to preserve and enhance Dunbarton's rural character and protect existing residential neighborhoods while at the same time providing for a variety of housing types to meet current and future needs.

NATURAL FEATURES

Promote good stewardship of our natural resources and continue working to preserve Dunbarton's high quality of life and rural character by supporting open space, agriculture, forestry, wildlife, outdoor recreation, clean water, and wetlands.

COMMUNITY FACILITIES

Continue to provide delivery of quality Town Services to the residents of Dunbarton that meet future facility and service needs and will continue to serve the greater community over the coming years.

TRANSPORTATION

Promote the improvement of public roads in Dunbarton; encourage a system of transportation that will meet the mobility needs of all local residents by providing for the efficient movement of people, goods, and services within Dunbarton and throughout the region; maintain a commitment to the rural and historical character of the

MAINTAINING A SMALL TOWN WAY OF LIFE

When asked what residents would like to see done in Dunbarton, many noted how they want it to stay the same, while at the same time some expressed an interest in the promotion of agriculture and light commercial uses that grows in a slow and steady way.

Support for the preservation of open spaces and retention of the town's rural character were described, while at the same time there was interest in improvements and the development of small retail shops or services to the Village District in an effort to bring more activity to the area.

community; and provide a well-maintained and safe transportation system that meets the functional and aesthetic needs of the community, in a cost-effective manner.

ENERGY

Protect and maintain Dunbarton's rural character while looking for opportunities to pursue energy efficiency that will generate reduction in municipal expenditures and promote efficient development that supports the concept of energy conservation, efficiency and renewable energy generation. The development of Dunbarton's energy policies as they relate to energy generation, building standards, transportation and land use development patterns can have a direct impact on the community's vitality and long term sustainability.

EXISTING AND FUTURE LAND USE

Preserve and enhance Dunbarton's rural character. The community continues to value the protection of residential neighborhoods, forest lands and open space, yet equally values the continuation of traditional types of agriculture and the further development of low impact commercial activities.

COMMUNITY VISION | DUNBARTON MASTER PLAN 2019 | 2.5

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10. EXISTING AND FUTURE LAND USE

Land use in Dunbarton has been strongly influenced by the Town's location (close to Concord and Manchester), topography, soils, and limited water resources. In addition, land use within Dunbarton has been influenced by the Everett Dam and flood control reservoir, as well as the large number of small ponds, brooks and associated wetlands. The Town has transitioned over time from a rural farming community to a rural residential community with most residents commuting for employment, shopping, health care and for other services.

The community values the protection of existing forest lands and open space, yet equally values the continuation of traditional types of farming. Only a few commercial businesses or service establishments are located in the community. Like many New Hampshire communities, a desire exists for tax base development to lower the property taxes for residents. In addition, there is some interest for more commercial uses such as agricultural-related businesses, small scale retail and restaurants (see survey results beginning on the following page) to meet the needs of Dunbarton residents.

The current zoning structure requires both a Special Exception from the Zoning Board of Adjustment and Site Plan Review from the Planning Board before a commercial use or business can be developed. This regulatory structure has generally served the community well in the past. Almost all commercial, institutional, or industrial use can be approved almost anywhere within the community, with only certain residential uses being allowed by

right. With this structure comes the concern that this zoning system will not continue to adequately protect existing residential areas from the impact of intensive commercial and industrial operations, and while discouraging poorly conceived and incompatible new development, can also act to discourage desirable new development.

This Chapter reviews the public input received during the Master Plan process related to land use, summarizes existing uses and patterns of uses in Dunbarton, describes the current zoning structure and related regulations, and provides an overview of recommendations related to agricultural uses, a proposed change in where commercial uses are permitted and by what mechanism (permitted by right, special exception or conditional use permit), and a discussion of potential changes to the Village District.

VISION STATEMENT

Preserve and enhance Dunbarton's rural character. The community continues to value the protection of residential neighborhoods, forest lands and open space, yet equally values the continuation of traditional types of agriculture and the further development of low impact commercial activities.

EXISTING AND FUTURE LAND USE | DUNBARTON MASTER PLAN 2019 | 10.1

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suitable for farming. The abandonment of most of these "hill" farms cleared in the 18th and early 19th century allowed the regrowth of forests and created the community we know today. Today, only 2.6% of the community consists of open farmland, and only a few individuals are able to earn a living in farm occupations.

Dunbarton is fortunate to retain large contiguous areas of open space in and around the US Army Corps of Engineers Everett Lake Reservoir/Stark Brook, Gorham Pond, Kimball Pond, Bela Brook, Black Brook, Harry Brook, and Purgatory Brook among other areas of open space.

A VISION FOR DUNBARTON'S FUTURE LAND USE

The dominant themes identified in the Community Visioning Session process were the desire to maintain the high quality of the natural environment in Dunbarton and to ensure the rural character of Dunbarton is not jeopardized by future growth and development.

Over 78% of the residents surveyed wanted to maintain agriculture as an economically viable land use in Dunbarton. Only a rural convenience store received more than 50% support from the residents. Only a few uses received greater than 30% support from the community such as a bed & breakfast, restaurant, small scale retail, gas sales and daycare centers.

The Town does not have central potable water or sanitary sewer services and there is no expectation that these services will be provided in the foreseeable future, especially considering the Town's lack of available water resources.

The following outlines some potential measures related to Dunbarton's Future Land Use. Please also refer to the *Conceptual Future Land Use Map*.

REGULATORY RECOMMENDATIONS

The following recommendations can have positive impacts on the future land use development of the Town. These recommendations specifically focus on regulatory controls and changes the Town can implement to meet the future land use vision.

CHANGES TO ALLOWABLE PERMITTED AND SPECIAL EXCEPTION USES

A modification to the existing zoning process that regulates commercial uses through the Special Exception process with a range of uses more in keeping with the community would act to preserve and enhance residential property values in the Low and Medium Density Zoning Districts. At the same time allowing certain non-residential uses along NH 13 and NH 77 by right or by Conditional Use Permit, subject to Site Plan Approval by the Planning Board, could serve to act to encourage desirable development in these corridors.

AGRICULTURAL USES

Merrimack County typically has the highest agricultural sales in New Hampshire. A top commodity in the County is ornamental horticulture. Merrimack County also leads the State of New Hampshire related to nurseries, greenhouses, floriculture and sod. Dairy also plays a large role in the farming landscape and Merrimack County is the third highest dairy producing county in the state. Farming has evolved in the region, with fewer dairy farms, but with growth in the size of some of the dairy farms that have continued in production. These farms typically have excellent soils, land base, and younger generations dedicated to farming. Diversification and number of vegetable, fruit and other livestock farms have increased in the Region. Ornamental horticulture operations have flourished, contributing significantly to the local economy and jobs. This category includes two of the nation's top

10.12 | DUNBARTON MASTER PLAN 2019 | EXISTING AND FUTURE LAND USE

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- Once you have your Master Plan, you can adopt a Zoning Ordinance
- 19 towns in New Hampshire without a “Zoning Ordinance”
 - This does not mean they have no zoning regulations
- Example—Town of Woodstock
 - Building Height Ordinance
 - Floodplain Management Ordinance
 - Setback Ordinance
 - Telecommunications Ordinance
- Which is another way of saying—Zoning Ordinances can be as complicated or as simple as the town wants or needs them to be

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- With a Zoning Ordinance, you are not just limited to regulating uses and dimensions—
- Innovative Land Use Controls
 - (a) Timing incentives.
 - (b) Phased development.
 - (c) Intensity and use incentive.
 - (d) Transfer of density and development rights.
 - (e) Planned unit development.
 - (f) Cluster development.
 - (g) Impact zoning.
 - (h) Performance standards.
 - (i) Flexible and discretionary zoning.
 - (j) Environmental characteristics zoning.
 - (k) Inclusionary zoning.
 - (l) Impact fees.
 - (m) Village plan alternative subdivision.
 - (n) Integrated land development permit option.

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- Regulate and control the timing of development
 - Need a capital improvement plan in addition to a master plan
 - Can only do this if there is a demonstrated need to regulate the timing of development, based upon the municipality's lack of capacity to accommodate anticipated growth in the absence of such an ordinance which is demonstrated by a study based on competent evidence that considers the municipality's projected growth rate and its need for additional services to accommodate such growth.
 - The ordinance must include a termination date and restrict projected normal growth no more than is necessary to allow for orderly and good-faith development of municipal services. The planning board must promptly undertake development of a plan for the orderly and rational development of municipal services needed to accommodate anticipated normal growth and both the ordinance and the plan shall be evaluated by the planning board at least annually, to confirm that reasonable progress is being made to carry out the plan.

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The legislature can also use the zoning enabling statute to promote its policy agenda

- no town shall adopt or amend a zoning ordinance or regulation with respect to antennas used exclusively in the amateur radio services that fails to conform to the limited federal preemption entitled Amateur Radio Preemption, 101 FCC 2nd 952 (1985) issued by the Federal Communications Commission.
- Unless specifically proscribed by local land use regulation, aircraft take offs and landings on private land by the owner of such land or by a person who resides on such land shall be considered a valid and permitted accessory use.

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- Towns shall allow home-based care (family care and group family care) by right or pursuant to a conditional use permit as long as all requirements for such programs adopted in rules of the department of health and human services (He-C 4002) are met. Family or group family child care shall be allowed as an accessory use to any primary residential use and shall not be subject to local site plan review in any zone where a primary residential use is permitted. If all requirements of the department of health and human services are met, but an application for a conditional use permit is pending with the municipality in which the home-based child care facility is located, an applicant may begin operation during such time until the permit is granted or denied.

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- Towns may regulate accessory parking for vehicles, but shall not require more than 1.5 residential parking spaces per unit for studio and one bedroom units under 1000 square feet that meet the requirements for workforce housing under RSA 674:58, IV, and shall not require more than 1.5 residential parking spaces per unit for multi-family developments of 10 units or more.

RSA 674:16

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RSA 672:1

- the installation of solar, wind, or other renewable energy systems or the building of structures that facilitate the collection of renewable energy shall not be unreasonably limited by use of municipal zoning powers or by the unreasonable interpretation of such powers except where necessary to protect the public health, safety, and welfare;
- Agricultural activities and agritourism shall not be unreasonably limited by use of municipal planning and zoning powers or by the unreasonable interpretation of such powers;

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- forestry activities, including the harvest and transport of forest products, shall not be unreasonably limited by use of municipal planning and zoning powers or by the unreasonable interpretation of such powers;
- "unreasonable interpretation" includes the failure of local land use authorities to recognize that agriculture and agritourism operations or activities as defined in RSA 21:34-a, forestry, renewable energy systems, and commercial and recreational fisheries, when practiced in accordance with applicable laws and regulations, are traditional, fundamental and accessory uses of land throughout New Hampshire, and that a prohibition upon these uses cannot necessarily be inferred from the failure of an ordinance or regulation to address them;

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- All citizens of the state benefit from a balanced supply of housing which is affordable to persons and families of low and moderate income. Establishment of housing which is decent, safe, sanitary and affordable to low and moderate income persons and families is in the best interests of each community and the state of New Hampshire, and serves a vital public need. Opportunity for development of such housing shall not be prohibited or unreasonably discouraged by use of municipal planning and zoning powers or by unreasonable interpretation of such powers;
- New Hampshire commercial and recreational fisheries make vital and significant contributions to the food supply, the economy, the environment, and the aesthetic features of the state of New Hampshire, and the tradition of using marine resources for fisheries production is an essential factor in providing for economic stability and a favorable quality of life in the state. Many traditional commercial and recreational fisheries in New Hampshire's rivers and estuarine systems are located in close proximity to coastal development. Such fisheries are a beneficial and worthwhile feature of the New Hampshire landscape and tradition and should not be discouraged or eliminated by use of municipal planning and zoning powers or the unreasonable interpretation of such powers.

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And it sometimes does so without considering the practical concerns of those towns and their citizens:

[Paragraph III-g effective July 1, 2025.]

III-g. The state receives many economic and social benefits from its post-secondary educational institutions. Post-secondary students rely on a balanced and diverse supply of housing in settings conducive to each student's needs. Establishment of student housing which is safe and affordable is in the best interests of certain communities and the state of New Hampshire.

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Or considering other potential issues:

674:76 Religious Use of Land and Structures. – No zoning ordinance or site plan review regulation shall prohibit, regulate, or restrict the use of land or structures primarily used for religious purposes; provided, however, that such land or structures may be subject to objective and definite regulations concerning the height of structures, yard sizes, lot area, setbacks, open space, and building coverage requirements as long as said requirements are applicable regardless of the religious or non-religious nature of the use of the property and do not substantially burden religious exercise.

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Thus endth the rant

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In Summary:

Zoning is an incredibly useful and flexible land use tool to assist towns in addressing a wide array of issues, and it opens the door to other even more useful tools like Site Plan Review—but that, is an entirely other session.