

PLANNING BOARD PROPOSED AMENDMENT NO. 3

Rationale:

Since 1983, state law (RSA 674:41) has forbidden development on property that fronts only on Class VI roads, unless certain criteria are met, and a town sets up a process to evaluate requests. This law stipulates that the Planning Board be involved in this process. Class VI roads are town roads, but state law forbids towns from maintaining them. The proposed amendment provides an avenue to objectively allow agricultural and single-family development on a Class VI road by Special Exception.

Section XVI

Building on Class VI Highways

A **building lot bordering on a Class VI highway**, as defined in the New Hampshire Revised Statutes Annotated 229:5; or on a right-of-way shown on a subdivision or plat approved by the Planning Board, may be permitted provided that:

- ~~1. The Selectmen, after review and comment by the Planning Board, vote to authorize such permit with the condition that the Town neither assumes responsibility for maintenance of any portion of said public way or highway, nor liability for any damages resulting from the use thereof, and~~
- ~~2. The applicant, prior to the issuance of a certificate of zoning compliance, produces evidence that appropriate notice of the limits of municipal responsibility and liability has been recorded in the county registry of deeds.~~
- ~~3. Development on any lot on a Class VI road will require upgrade of the road to Class V specifications prior to the issuance of a certificate of zoning compliance.~~

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Section V Uses

This section describes the **uses that are permitted** in a given Zoning District. A building or structure may be erected, altered or used, and a lot may be used or occupied only as described. All terms are defined in Article XIII: Definitions. All uses must comply with Article III: General Regulations, All Districts.

i. Uses Permitted in All Districts

A. The following uses shall be permitted on Class V or higher roads in all districts:

1. **Single-family dwellings and two-family dwellings**, including manufactured homes, and structures associated with the residential use.
2. **Accessory dwelling units**, per the provisions of Article XVII: Accessory Dwelling Units.
3. **Agriculture and forestry**, and structures associated with the agricultural use.
4. **Home occupations and cottage industries**, per the provisions of Article XIV: Home Occupation/Cottage Industry Ordinance.
5. **Bed and breakfasts**.
6. **Day-care facilities**.
7. **Short-term Rentals**

All these uses are subject to Site Plan Review by the Planning Board, except 1, 2, 3, 7 and a Home Occupation, if it is deemed not to be a Cottage Industry.

Cluster subdivisions shall be permitted in all districts subject to a **Special Use Permit** by the Planning Board, per the provisions of Article VII: Cluster Subdivisions.

B. Structures on Class VI roads in all districts shall require a Special Exception be granted by the Zoning Board of Adjustment. (1), (2) and (3) above are permitted uses by Special Exception for lots with frontage only on Class VI roads in all districts.

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Article III, Section XVI

Development on Class VI Roads

Sub-Section I. PURPOSE

In compliance with NH RSA 674:41; and in accordance with the Town Master Plan, the Town shall allow new residential and agricultural development on any Class VI roads, as defined in RSA 229:5, only by Special Exception. This process is invoked to encourage development that

1. is not scattered and premature;
2. doesn't endanger emergency response personnel; and
3. does not cause danger or injury to the public health, safety and welfare due to the lack of access to emergency services or necessitate an excessive expenditure of public funds to secure and maintain such access.

All requests for residential and agricultural development (e.g., certificates of zoning compliance [CZCs]) submitted to the Board of Selectmen on Class VI roads shall be sent to the Zoning Board of Adjustment (ZBA) for a Special Exception hearing and decision. The ZBA will assess these proposed developments on a case-by-case basis and return their decision to the Select Board. If all criteria in Subsection II have been met, then the Special Exception will be granted.

In the event the Zoning Board of Adjustment grants a special exception, the Town will ensure that all approved structures on Class VI roads in the Town of Wilmot are accessible to police, fire, and emergency medical response personnel by requiring that property owners

1. bring the road up to Class V specifications (see Town of Wilmot Subdivision regulations, Appendix A and table below);
2. maintain it at that standard while built structures are in use; and
3. complete the road upgrade before the start of proposed structure construction.

Specifications	Service	Local
Average Daily Vehicular Traffic	1-40	41-240
Number of Housing Units	1-5	6-30
Min. Traveled Surface Width (ft)	14	18
Min. Shoulder Width (ft) Each Side	2	2
Min. Distance between Shoulder Break Points (ft)	18	22
Base Courses (in)		
-Gravel (in)	14	18
-Crushed Gravel (in)	4	4
Total Depth of Base Courses (in)	18	22
Pavement Surface Material	Bit. Con.	Bit. Con.
Ditch Line to Ditch Line (ft)	26	33
Min. Right-of-Way (ft)	40	50
Design Speed for Road (MPH)	20	30
Crest Vertical Curve "K" Factor	10	30
Sag Vertical Curve "K" Factor	18	35
Min. Vertical Curve Length (ft)	60	100
Min. Horizontal Curve Radii to Centerline of rd. (ft)	140	250
Max. Curve Banking Cross Slope	4%	4%
Max. Profile Grade	10%	10%
Max. Profile Grade	0.50%	0.50%

Above table is from Town of Wilmot Subdivision Regulations, Appendix A

When a case is referred by the Select Board to the Zoning Board of Adjustment for a Special Exception, the case shall also be forwarded to the Conservation Commission, Road Agent, and the Police and Fire Departments for any recommendations they may have.

Sub-Section II. CRITERIA FOR SPECIAL EXCEPTION

The Zoning Board of Adjustment will evaluate the Special Exception request based on the following criteria:

1. The proposed development is either a single-family residential or agricultural use.
2. Road conditions can be improved to meet the specifications for a Class V road as described in Section 11 of Town of Wilmot Subdivision regulations, Appendix A. Vulnerability to

flooding and muddying and any other conditions identified by the Road Agent will also be considered.

3. The proposed driveway is a reasonable distance from a town-maintained road. Whether the distance is deemed reasonable will be based on an assessment of the characteristics of the particular road (e.g., grade). Per town subdivision regulations, in the case of dead-end roads the distance from the town-maintained road is not to exceed 1500 feet.
4. Topography or other circumstances (e.g., protected wetlands) must allow for construction of a hammerhead turnaround (85' x 20') with the necessary easement.
5. If agricultural uses are planned, such as maple sugaring and crop farming, which use heavy equipment, roads leading to the Class VI road must be adequate to handle increased traffic and/or gross vehicle weight without damage resulting from proposed development.
6. The proposed project complies with the spirit of the zoning ordinance and the current Town of Wilmot Master Plan.

Definitions

Development: Any man-made change to improved or unimproved real estate, including buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

Class VI road: By statute (RSA 231:93), a public highway that the town shall not maintain. The town holds the easement, and the public is permitted to use the road. Specifically, Class VI roads include those public ways that have been discontinued subject to gates and bars, as well as those that have “not been maintained and repaired by the town in suitable condition for travel” for five successive years or more. (See RSA 229:5, VII.)

Emergency vehicles: Includes but not limited to police, fire, and medical vehicles.

Turnaround: A wide area in the road that will allow an emergency vehicle to change direction without backing all the way down the road.

Sub-Section III. SELECT BOARD FINAL REVIEW AND DECISION

If the Special Exception is granted by the Zoning Board of Adjustments, the Select Board may proceed with its consideration of the Certificate of Zoning Compliance, with the following stipulations regarding the Class VI road:

1. The Town neither assumes responsibility for maintenance of any portion of said public way or highway, nor liability for any damages resulting from the use thereof. (RSA 674:41, I (c) (2))
2. Prior to final approval of the proposed development by the Select Board, town officials will file the Town of Wilmot Agreement and Release, which defines of the limits of municipal responsibility and liability and also delineates the responsibilities of the landowners with respect to road upgrading and maintenance, at the Merrimack County Registry of Deeds, (RSA 674:41, I (c) (3)). The agreement, signed by the landowner, will be submitted to the select board with the CZC application. The select board will sign it and file it with the Registry of Deeds with the fee paid by the applicant. A copy of the recorded agreement will be given to the property owner when the CZC application is approved.
3. The applicant agrees to any conditions specified by the ZBA in the special exception decision.

Sub-Section IV. MAINTENANCE

It is understood that while a structure is in active use landowners who have been granted permission to build on a Class VI road and their successors and heirs will maintain the portion of the road needed to access their property.

It shall not be the responsibility of the Town to allocate, mediate or arbitrate differences among property owners on Class VI roads regarding maintenance and maintenance responsibilities.

Except in the event of an emergency (e.g., washout by a storm), maintenance carried out by a property owner (or property owners) along a Class VI road must be preceded by a submission to the Town Road Agent of a detailed plan of the proposed work (as established by the Agreement

and Release). No work shall be started until a written approval for such maintenance work is granted in writing by the Town Road Agent.