

## PROPOSED ZONING AMENDMENTS FOR MARCH 2009

### PURPOSE: REPLACE EXISTING ARTICLE XVI CLUSTER DEVELOPMENT ORDINANCE WITH NEW ORDINANCE

## ARTICLE XVI CONSERVATION SUBDIVISION ORDINANCE

### I. PURPOSE

This Conservation Subdivision ordinance is intended to encourage environmentally sound planning to conserve open space, retain and protect important natural and cultural features, and provide for efficient use of land and community services to advance the goals stated in the master plan.

### II. OBJECTIVES

- To maintain rural character, preserving farmland, forests and maintaining rural viewscapes.
- To preserve those areas of the site that have the highest ecological value, including, for example, wildlife habitat, e.g., large unfragmented blocks of undeveloped land, areas of highest condition identified based on NH Fish and Game's Wildlife Action Plan, and water resources, e.g., drinking water supply areas and watersheds, wetlands, streams and rivers.
- To locate buildings and structures on those portions of the site that are the most appropriate for development and avoiding developing in areas ill-suited for development, including, for example, areas with poor soil conditions, a high water table, that are subject to frequent flooding or that have excessively steep slopes.
- To preserve historic, archeological, and cultural features located on the site.
- To create a contiguous network of open spaces or "greenways" by linking the common open spaces within the subdivision and to open space on adjoining lands wherever possible.
- To reduce the impacts on water resources by minimizing land disturbance and the creation of impervious surfaces and stormwater runoff.
- To reduce the amount of roads, sidewalks, and stormwater management structures that must be built and maintained.
- To minimize the impact of residential development on the municipality, neighboring properties, and the natural environment.

### III. DEFINITIONS

For the purpose of this chapter, the terms used herein are defined as follows:

**Applicant:** The owner of land proposed to be subdivided or his representative.

**Buffer:** Land area within which adequate vegetation is maintained or provided to visibly separate or screen one use from another and/or to minimize potentially negative impacts on surrounding areas, e.g., shield or block noise, light or other nuisances, reduce water pollution. Also known as a "vegetated buffer."

**Buildable Area:** Land area of a parcel excluding non-buildable area.

**Buildable Lot:** The smallest lot area established by the zoning ordinance on which a use or structure may be located in a particular district.

**Building Envelope:** Area of a building lot identified on a subdivision plan indicating the allowed limits of clearing and grading, and within which all structures, and, when applicable, the well and septic systems, including the tank and leach field, shall be located.

**Conservation Easement:** A permanent legal restriction against future development and other activities as specified in the conservation easement deed. An easement may be worded to permit or restrict public access, allow or disallow recreational uses, allow or disallow other uses, such as limited development, agriculture, or forestry. Easements are tied to the title of the land, regardless of subsequent ownership.

**Conservation Subdivision:** An alternative form of residential development where, instead of subdividing an entire tract into lots of conventional size, a similar number of housing units are arranged on lots of reduced dimensions, with the remaining area of the parcel permanently protected as designated open space. Also referred to as “open space subdivision.”

**Deed Restriction:** A restriction on the use of land usually set forth in the deed for the property. Also known as a “restrictive covenant.”

**Designated Open Space:** Reserved land that is permanently protected from further development and remains in a natural condition or is managed according to an approved management plan for natural resource functions, e.g., forestry, agriculture, habitat protection, passive recreation, or limited uses as approved by the planning board under this ordinance as part of a conservation subdivision.

**Easement:** The right or privilege that a person may have in another person’s property, often for the purposes of installing and maintaining utilities and drainage ways or allowing a right of passage.

**Homeowners Association:** A private corporation, association, or other legal entity organized in accordance with state law and established by the applicant or the member individuals for the benefit and enjoyment of its members, including oversight and management of common open space, designated open space, and/or shared facilities.

**Non-buildable Area:** Land area that cannot be counted toward the minimum lot size under a conventional subdivision, including areas with the following characteristics: wetlands or wetland soils as defined by RSA 482-A: 2, X; slopes greater than 25 percent; submerged areas; utility rights-of way; land area within the 100-year floodplain; or land that is restricted from development by covenant, easement or other restriction.

**Open Space Common:** Land within or related to a development, exclusive of land dedicated as designated open space, not individually owned, which is designed and intended for the common use or enjoyment of the residents of the development and/or the town and may include such complementary structures and improvements as are necessary, appropriate and approved by the planning board.

**Restrictive Covenant:** A restriction on the use of land usually set forth in the deed for the property.

**Sketch Plan:** A preparatory sketch of the preliminary subdivision layout that does not include engineering details, which is used to support a general discussion with the planning board as to the form of the plat and the objectives of the zoning ordinance and applicable subdivision or site plan regulations.

#### IV. AUTHORITY AND APPLICABILITY

A. To facilitate the implementation of the goals of the master plan, all subdivisions for residential use shall use a conservation subdivision design approach, unless exempted under Section IV.B or granted a special use permit under Section IV.C.

B. **Exemptions:** Subdivisions meeting any one of the following criteria shall be exempt from the requirements of this section, unless a landowner elects to follow the standards of this sections.

1. The subdivision creates lots that are, on average, equal to or greater than 479,160 square feet (11 acres) in size and provided the deed for each lot created contains a restriction prohibiting the further subdivision of the lot;
2. The parent parcel is nine acres or less in total size and the subdivision does not require a new road;  
or
3. The subdivision creates five or fewer dwelling units and does not require a new road.

C. **Authorization to Issue a Special Use Permit:** Notwithstanding other provisions of (municipality)'s zoning ordinance, authority is hereby granted to the planning board, as allowed under RSA 674:21, II, to issue a special use permit to modify the requirements of this section as follows:

1. The planning board may issue a special use permit for the parcel to be developed as a conventional subdivision when it finds that:
  - a. The parcel is ill-suited for development using conservation subdivision design, or a conventional design provides greater or equal benefits to the community; and
  - b. The conventional subdivision design retains and protects important natural and/or cultural features identified by the planning board and/or the site inventory.
2. The planning board may issue a special use permit for a modified conservation subdivision design to allow for variations from certain requirements of this section as specified herein. Such modifications shall be consistent with the purposes and standards of this section, fall within the guidelines contained herein, and shall not be detrimental to public health, safety or welfare.

D. **Sequential Subdivisions:** The provisions of this ordinance shall apply to the sequenced development of a parent parcel over time through separate successive applications. When a subdivision is proposed that involves part of a larger parcel or includes lots that are capable of further subdivisions, the planning board may require that a site inventory and a conceptual (non-binding) long-range plan be submitted for the entire parcel and used to evaluate the proposed subdivision.

E. **Review Process:** A subdivision application under this sections shall comply with the application and review process specified in the subdivision regulations, except the sections of the subdivision regulations that are clearly not applicable to a conservation subdivision design shall not be imposed on the applicant by the planning board.

F. **Legal Review:** Prior to final approval by the planning board, the applicant shall submit for review by the town counsel any restrictive covenants, condominium or cooperative agreements, conservation easement, deed restrictions, or other legal agreements proposed for use in the conservation subdivision. The town counsel shall advise the planning board of the adequacy of such legal provisions. The applicant shall pay all associated costs of the legal review.

## V. MAXIMUM DEVELOPMENT DENSITY

A. **Base Number of Development Units:** The applicant shall choose one of the following methods for calculating the base number of dwelling units that may be constructed on the property:

1. **Formula Approach:** Under the formula approach, the base number of dwelling units is determined by the following formula:

Base Number Dwelling Units =

$$\frac{[(\text{Net Area}) \times (\text{Factor}) \div \text{Conventional Minimum Lot Size (\# Dwelling Units/Lot)}]$$

Where Net Area =

$$\text{Total Area of Parcel (sq. ft.)} - \text{“Non-Buildable Area” on the Parcel (sq. ft.)}$$

**Conventional Minimum Lot Size** = lot size determined for a single-family building, two-family building, or multi-family building (or combination of the above as permitted) based on the conventional zoning requirements.

**Non-Buildable Area** = any area that cannot be counted toward the minimum lot size under a conventional subdivision or is restricted from development by covenant, easement or other restriction (see definition).

Factor = number determined by the following:

Percentage of Parcel that is Wetlands and/or Steep Slopes*	Factor
0-<10%	0.75
10-<20%	0.70
20-<30%	0.65
30% or more	Use Yield Plan Approach

\* Steep slopes are those greater than 25%

The number of allowable dwelling units is determined based on the allowable number of units per building under the conventional zoning, where the result is rounded up for single family homes and down to the next whole number for buildings containing more than one dwelling unit.

If the subdivision involves only part of a parcel, the buildable area shall be calculated for that portion of the parcel proposed to be included in the subdivision. If a parcel is located in more than one district, the base number of allowable dwelling units will be determined for each portion of the parcel separately and added together and then rounded to the next whole number.

2. **Yield Plan Approach:** Under this approach, the applicant presents a yield plan to the planning board to determine the number of allowable buildings and dwelling units permitted within the conservation subdivision. The yield plan is a sketch plan for a conventional subdivision development that fully complies with the requirements for a conventional subdivision.

3. **Exceptions**

- a. If more than 30 percent of the area of the parcel consists of wetlands or steep slopes, then the

applicant shall use the yield plan approach to determine the allowable number of buildings and dwelling units.

b. The planning board may require the preparation of a yield plan if the subdivision creates 20 or more dwelling units as determined by the Formula Approach. The planning board may require the use of the yield plan for determining the permitted number of dwelling units if it finds, upon review of the yield plan, that the characteristics of the site, e.g., soil types, arrangement of wetlands and steep slopes, support fewer than 90 percent of the number of dwelling units permitted by using the formula approach.

- B. **Incentives:** Additional dwelling units and/or lots, not to exceed 20 percent over and above the base number of dwelling units permitted, may be awarded at the discretion of the planning board for any of the following:
1. Conservation of greater than 40 percent of the buildable area of the parcel within the designated open space shall receive a 5 percent increase in the number of dwelling units allowed for every additional 10 percent of open space protected up to a maximum increase of 15 percent over the base number of dwelling units allowed.
  2. Developments that grant public access, i.e., not limited to residents of the subdivision, to the designated open space shall be eligible for up to a 10 percent increase in the number of dwelling units allowed.
  3. Developments that provide for a permanent conservation easement and that include a stewardship fund payment, acceptable to the planning board and held by the town, a recognized conservation organization, or land trust, shall be eligible for a 10 percent increase in the number of dwelling units allowed.

## VI. DIMENSIONAL REQUIREMENTS

### A. Lot Size Requirements

1. Buildings in a conservation subdivision may be located on individual residential lots, on common lots, or a combination thereof. If more than one dwelling unit will be located on a lot, the ownership and management arrangements for that lot, and the units thereon, shall be included in the subdivision application. The arrangements shall be subject to approval by the planning board in accordance with the subdivision regulations.

### 2. Minimum Lot Size

- a. If public wastewater treatment is not available, the minimum lot size permitted shall be based on soil-based lot sizing requirements for wastewater management as specified by the New Hampshire Department of Environmental Services. Developments may utilize individual or community wells and/or septic systems.
- b. The planning board may require lot sizes to be larger than the minimum required under soil-based lot sizing to comply with other requirements of this section, particularly the dimensional and design standards of this section, or to protect human health, welfare and public safety.
- c. The size of the individual lots shall be shown on the subdivision plan and shall be subject to planning board approval based upon its finding that the lot sizes will allow for the creation of a high-quality living environment for the residents of the subdivision and the abutting property owners.

3. **Alternative Lot Sizing:** The planning board may authorize variations from the minimum lot sizes specified above by special use permit, provided the planning board determines that the following conditions are met:
  - a. All lots comply with the New Hampshire Department of Environmental Services requirements for subsurface wastewater management (developments may utilize individual or community wells and/or septic systems); and
  - b. The goals and design specifications of this section are otherwise achieved.

**B. Specifications for Individual Lots**

1. A building envelope shall be identified for each new lot in compliance with the standards in Table 1 to ensure an adequate separation between new primary structures on the subdivided parcel and between new primary structures and existing structures on adjacent lots. For new lots, the standard is applied to the *average* distance between building envelopes on adjacent new lots, i.e., the actual distance of separation may vary and be less than the minimum specified for some lots, provided that, on average, the minimum distance of separation is achieved across all new lots created. Variations from this standard may be granted by the planning board under special permit provided that the intent of this section is met and an adequate vegetated buffer is maintained or provided between new structures.

Table 1.4.1 Specifications of Minimum Separation Distances Between Building Envelopes

District	Minimum Separation Distance of Building Envelopes for New Lots From Existing Structures on Adjacent Parcels	Minimum Average Separation Distance Between Building Envelopes for New Lots
Residential/Agricultural (2 acre lots)	75 feet	50 feet

2. Principal structures located on a common lot (and within a common building envelope) shall be no less than 15 feet apart and shall conform to the requirements of the town’s building code and the NFPA fire protection codes based upon the type of construction and proposed use.
3. Height limits for structures shall be determined by the underlying zoning for the parcel, unless variations are granted by special permit.
4. Building envelopes shall provide for a minimum setback of at least 15 feet from the lot boundaries.
5. Building envelopes shall be delineated to ensure that no structures shall be less than 25 feet from the edge of pavement of the roadway.
6. Building envelopes shall be setback a minimum of 75 feet from wetlands and shorelines. No structures or supporting utilities may be constructed on wetland.
7. Lots may be irregular in size and shape provided they conform to the natural topography and features of the parcel (e.g., the lot lines follow an existing stone wall, stream, or other natural dividing feature).
8. The planning board may authorize variations from the above standards, except for provision (6) pertaining to the setback from a wetland/shoreline or any requirement covered by state regulation or addressed elsewhere in this ordinance, by up to 50 percent by special use permit issued pursuant

to Section IV.C.2, for the purpose of providing flexibility in the design of the subdivision to meet the objectives of this section or to support the creation or continuation of a traditional village-style development pattern.

- C. **Design Standards for Developed Areas:** Subdivision plans shall comply with any additional applicable standards governing the location and layout of lots and structures found elsewhere in this ordinance and as set forth in the Subdivision Regulations.

## VII. OPEN SPACE REQUIREMENTS

- A. At least 40 percent of the buildable area and 80 percent of the non-buildable area of the parcel shall be permanently protected as designated open space subject to the additional conditions below. The planning board may authorize a slight reduction in the area of designated open space by special use permit, when it finds that (1) the reduction is necessary to enable the use of the conservation subdivision approach based on the characteristics of the parcel, and (2) the proposed subdivision adequately meets all other requirements of this ordinance. In no case, shall the designated open space represent less than 40 percent of the total area of the parcel.
- B. Portions of the parcel that comprise part of an individual house lot, roadway, driveway, access road, roadway right-of-way, other new or existing right-of-way, utility easement, private or community leachfields or other components of a wastewater management system, stormwater management structures, or are part of a required buffer between any new structure and an existing right-of-way, or any area that is less than 100 feet wide shall not count toward the calculation of the designated open space.
- C. The location, layout, and management of the designated open space shall conform to the standards and process set forth in the Subdivision Regulations.
- D. Any use of the designated open space is subject to approval of the planning board and conservation commission and shall demonstrate that such uses shall not negatively impact the natural and/or cultural amenities preserved through the conservation subdivision design.
- E. The following uses generally are permitted in the designated open space, unless specifically prohibited or restricted as a condition of subdivision approval for the purposes of protecting important natural features or characteristics of the parcel:
  - 1. Forest management.
  - 2. Agricultural cultivation and pastures.
  - 3. Passive (non-motorized) trails and recreational uses.
- F. Up to 50 percent of the designated open space may be permitted by special permit to be used for the following. The planning board may impose specific criteria or restrictions on such uses as deemed necessary to support the goals of this section:
  - 1. Agriculture involving animal husbandry and/or boarding.
  - 2. Active outdoor recreation uses, including formal playgrounds and fields.
  - 3. Parking areas for access to the designated open space.

4. Individual or community wells provided that this use was approved as part of the subdivision plan and that appropriate legal arrangements are established and approved by the planning board for the maintenance and operation of these facilities.
- G. The removal of soil, trees and other natural features from the designated open space is prohibited, except as consistent with conservation objectives or permitted uses as provided above.
- H. The designated open space shall be retained in a natural, undisturbed state, except for those activities permitted and approved as provided above, or as required for active management according to a conservation agreement and management plan written by a qualified natural resource professional.