

Cluster/Flexible Zoning

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

Issue Overview Under traditional “as-of-right” zoning, the municipality must grant permits for all proposed units that meet the lot area, frontage, setback and height requirements, have enough dry land and soil appropriate for a septic system (if no sewer option), and have adequate frontage on an access road that also meets municipal requirements. In addition to the traditional “as-of-right” option, municipalities can create more flexible zoning either “as-of-right” or requiring a “special permit.” The flexible zoning comes by many names, including open space residential design, cluster, planned unit development, or conservation subdivision. Under such a plan, the developer is excused from the rigid lot size, setback, and other requirements of the standard zoning plan. Flexible zoning may also allow types of units (townhouse, duplex, multi-family) not permitted through conventional zoning. Construction is usually concentrated or “clustered” on part of the land and the remainder is designated as permanent open space or for recreational use. Flexible zoning can allow the overall density of a project to remain the same (the same number of units permitted as through conventional zoning) or can allow for an increase in the number of units. Many of the flexible provisions allow for the municipality to grant the developer additional units (above the number allowed in conventional zoning) in exchange for inclusion of affordable units, designation of more open space, or fulfillment of other community goals.

The vast majority of flexible provisions require the developer to apply for a special permit, but a few municipalities allow the flexible option “as-of-right.” Where flexible provisions exist, the applicant can choose between a conventional subdivision or the alternative flexible subdivision.

The types of units allowed through these provisions vary. Some cluster bylaws/ordinances only allow single-family detached homes. Others allow also two-family homes, town houses, and multi-family units. Some of the flexible provisions, frequently planned unit development, allow for mixed use. This study did not qualify mixed-use provisions as a Yes answer to the question.

Minimum parcel size requirements for flexible zoning can limit the provision’s applicability to development. For example, it might be a challenge for a developer to assemble a 10- or 20-acre parcel in some municipalities. Also, some provisions for flexible development first require re-zoning by town meeting or board of selectmen or city council before the developer can apply for a permit (usually “special permit”).

Some flexible zoning provisions are intended to be used for large numbers of units and new subdivisions, while others can accommodate as few as three or four units.

Research Coding Flexible provisions come in many forms. Some are less than a page in length, while others are over thirty pages long. The researcher’s main criterion for including provisions under this heading was whether the provision allowed for flexibility in the placement and number of units. Researcher only included provisions that are primarily for residential uses. Mixed-use provisions and planned commercial development were not included in this answer. Many of the age-restricted provisions qualify as “flexible,” and some municipalities would only allow cluster development if it is age-restricted.

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Issue Overview When approval for a flexible development requires a special permit, the special permit granting authority has discretion to approve the development. Most municipalities require special permits for cluster/flexible development.

Research Coding

Which entity is the special permit granting authority for cluster/flexible zoning?

Issue Overview

Research Coding The designation of an entity as the special permit granting authority for cluster/flexible zoning is located in various sections of the zoning bylaws and ordinances. It can be listed in the table of uses, the section on flexible zoning, or a section on special permits.

Has any housing been built under the cluster/flexible provisions?

Issue Overview Municipal staff people, generally in the Planning Department, were asked in phone interviews, by email and in a mail survey whether any development has been done under the flexible development provisions. The answer is coded as Yes if they reported any development that has been permitted or constructed. These answers are self-reported and cannot be independently verified. Researchers located some of the answers in master plans and community development plans posted on the web.

Research Coding

Abington

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

No By special permit, Mixed Use Planned Development - residential can be no more than 20% of floor area. Therefore, researchers did not count this as a type of cluster development for the survey.

MUPDD (Multiple Use Planned Development District)

According to Article VII, Section 175-39, the purpose of the MUPDD is: "A. Purpose and intent. The purpose of the Multiple Use Planned Development District is to establish areas and standards for the overall planned development of land with mixed-uses. The District attempts to accommodate low-impact activities in an overall low density but with intensive use clusters, making use of natural features and vegetation, screening and setbacks to have minimal impact on surrounding land uses. The following regulations strive to allow a more flexible planned development process than is possible through strict conventional zoning regulations. For the purpose of this district and section the Planning Board shall be the special permit granting authority for special permit uses identified in § 175-21, Table of Uses."

"Residential uses (not including transient accommodations) may only allowed as part of a larger, mixed-use development and shall not exceed 20% of the gross floor area of the proposed development," Article VII, Section 175-39(C)(1).

§ 175-39. Multiple Use Planned Development District.

A. Purpose and intent. The purpose of the Multiple Use Planned Development District is to establish areas and standards for the overall planned development of land with mixed-uses. The District attempts to accommodate low-impact activities in an overall low density but with intensive use clusters, making use of natural features and vegetation, screening and setbacks to have minimal impact on surrounding land uses. The following regulations strive to allow a more flexible planned development process than is possible through strict conventional zoning regulations. For the purpose of this district and section the Planning Board shall be the special permit granting authority for special permit uses identified in § 175-21, Table of Uses.

B. Design considerations.

(1) Parking is prohibited in the front yard area and shall only be located in the side and/or rear yard. The number of parking spaces shall be provided according to the following requirements that supersede the requirements of Article VIII of this Zoning Bylaw.

(2) Common access driveways and shared parking shall be provided where possible.

(3) Pedestrian connection to adjacent building and properties shall be provided.

(4) Bicycle racks shall be provided as part of the parking plan.

(5) Landscaping and architectural elements of the proposed use(s) shall include features to minimize visual impacts on surrounding lands.

C. Uses. Uses including mixed-uses consistent with the § 175-21 may be permitted provided that:

(1) Residential uses (not including transient accommodations) may only allowed as part of a larger, mixed-use development and shall not exceed 20% of the gross floor area of the proposed development.

(2) Not more than 10% of the gross floor area may be devoted to retail use and commercial services for supporting the overall

development unless by special permit of the Planning Board.

D. Tract area and frontage. The tract shall be in single or consolidated ownership at the time of application and shall be at least 10 acres in size with a minimum of 200 feet of frontage. If proposed developments are to be subdivided under the Rules and Regulations Governing the Subdivision of Land each resulting lot shall comply with the requirements of this section. All internal driveways providing access to parking areas and buildings shall comply with the design and construction standards of the Rules and Regulations Governing the Subdivision of Land, as amended, whether or not the driveway network constitutes a subdivision.'

E. Parking. Developments shall be served by common parking areas with a common exit and entrance. A reduction in parking space requirements for common parking area shall not exceed more than 15% of those required under normal application of requirements for the particular uses proposed in Article VIII, § 175-52, unless a special permit is granted by the Planning Board in accordance with § 175-53. Applicants should note in particular the visual relief requirements in Article VII, § 175-50.

F. Drainage. See Article X, § 175-63.

G. Building design. Uses may be contained in one continuous building or groupings of buildings where such groupings are consistent with the safety of the users of the development and the intent of this section.

H. Floor area and lot coverage. The total gross floor area of all buildings shall not exceed 50% of the total lot area except by special permit from the Planning Board. Gross floor area may be increased to 60% of the total lot area provided that a parking garage is provided for the use(s). Lot coverage shall not exceed 30% of the total lot area.

I. Dimensional requirements.

(1) Buildings shall be located a minimum of:

(a) Two hundred feet from any existing lot line or existing street line;

(b) Twenty-five feet from any proposed parking area; and

(c) Be not more than forty 40 feet in height except by special permit from the Planning Board.

(2) Parking areas shall be located a minimum of 100 feet from any existing lot line or existing street line.

Which entity is the special permit granting authority for cluster/flexible zoning?

Has any housing been built under the cluster/flexible provisions?

Acton

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes The 1998 Master Plan Update discusses the success of cluster and open space provisions for preserving open space. The cluster development and open space design were added to the zoning bylaw as the result of recommendations in the 1991 Master Plan.

The zoning regulations for (1) Open Space Development (Section 4.2); (2) Planned Unit Development (Section 8.9); and (3) Planned Residential Community (Section 9.0) follow the Master Plan sections (below.)

ACTON MASTER PLAN UPDATE
December 1998

"Open Space Preservation Zoning
Because the Town's character would be eroded if all the developable land were fully

built out in conventional subdivisions, and the trees and stone walls were stripped from Acton's scenic roads, the plan included several recommendations relating to open space preservation zoning.

· Density Incentives for Cluster Development

The Town provides an "Open Space Residential Development" option for subdivisions, which permits clustering of single-family homes on smaller lots than otherwise required, in return for the provision of large contiguous areas of common open land. The plan recommended that the R-8/4 and R-10/8 districts be established in order to permit as an incentive higher densities for open space developments than for conventional subdivisions. For example, in the R10/8 district, open space developments are allowed at a density of one house per 80,000 square feet of land area (the density that was allowed by the previous R8 zoning); but conventional subdivisions require lot sizes of at least 100,000 square feet. Thus, only four lots can be developed in a conventional subdivision for every five lots permitted under the open space development approach. The clear goal of these two districts is to preserve large tracts of open space by giving landowners a strong financial incentive to cluster development on smaller portions of their properties.

· Revisions to Open Space Development Standards

The plan also recommended amendments to the standards contained in the "Common Open Space" provision of the "Open Space Development" option to emphasize the importance of "large, contiguous parcels" and restrict the use of "strips or narrow parcels" of open space. The purpose was to reinforce the preservation of significant tracts of open space in such developments, to protect the rural character of existing undeveloped areas of Acton." (p. 57-58)

"· Planned Unit Development

The Master Plan recommended that Planned Unit Development (PUD) be established as an alternative option for non-residential parcels larger than 15 acres. The PUD provisions were to provide for master planned developments, incorporating both residential and non-residential uses. The objectives included designing an integrated site that included the uses otherwise permitted in such zoning districts, and also residential uses and common open space.

This recommendation was developed with the "Acorn Park" site in mind. Other parcels in Acton could also benefit from the PUD option. For example, large nonresidentially zoned parcels in both North and South Acton could be developed at a higher density than otherwise permitted if they comply with the mixed use and open space provisions of the PUD bylaw. The Town's principal objectives in reducing total industrial and commercial density—minimizing traffic impact on local roads—would still be served by PUD development at a higher density, since the inclusion of residential uses would mitigate the most serious peak-hour traffic impacts, and the developer would be able to maximize floor area within the performance standards established for traffic generation from the site." (p. 59-60)

"Open space zoning provisions

The Open Space Development (OSD) and the Planned Conservation Residential Community District (PCRC) options in the Bylaw allow clustering of homes to protect open space. These options also allow the developer to make use of density bonuses in return for conserving open space. Concern has been expressed that the Town's open space zoning provisions have not yielded the desired results and questions have been raised regarding the benefits of this type of development compared to standard large lot development.

Since the adoption of the open space zoning provisions, the number of dwelling units approved and built in these types of projects is slightly below the number that standard zoning would have allowed, and is far below what would have been possible with the full utilization of the cluster options (see). Thirteen residential developments have been created under the open space zoning provisions, three of which were approved prior to the density bonus option. In total, 406 units have been constructed on 668 acres of land when the maximum number of units under standard zoning would have allowed for the development of 417 units. Due to the option to cluster housing on smaller lots, 434 acres of open space have been preserved which would not have occurred under standard zoning (see).

If the three developments constructed prior to the density bonus provision disregarded, 176 units on 279 acres of land have been added using the open space zoning provision and density bonus offer. This has resulted in 37 more homes than possible under standard, large lot zoning. However, the full bonus potential of 75 additional units was not reached and 180 acres of open space have been preserved. Therefore, while there has been an addition in the number of homes, the goal of preserving open space has been accomplished.

The open space zoning provisions are beneficial to the town due to the amount of open

space preserved with no acquisition cost to the town and the reduction in maintenance costs associated with shorter road lengths from more compact development. The tradeoff is that the density bonus offer has increased the number of homes beyond what would have occurred under standard zoning. This leads to an increase in the cost of services to the town. However, the town has saved the cost of open space acquisition in the process.

Finally, it is important to note that minimum lot areas above two acres are uncommon in Massachusetts and are approved primarily where shown to be necessary for environmental protection—growth management has not generally been accepted as a valid reason for three-acre zoning. Acton's R-10 district, for example, was created to protect groundwater in North Acton, and was applied only to parcels immediately around Town wells. The R-10/8 district, in contrast, covered a much broader area to protect significant tracts of open space by encouraging cluster development; and it probably was approved by the Attorney General's office because the original density (one dwelling per 80,000 square feet) was preserved. Eliminating the cluster bonus would push the minimum lot area up to 100,000 square feet, and might not be approved without detailed environmental studies supporting the need for lower density. In short, the density increases available to cluster developments are valuable tools for preserving open space, while eliminating them would not clearly reduce the number of dwelling units or the rate of residential growth." (p. 81-82)

"Single Family Residential Subdivisions

In the 1990s the market for residential construction continued strong in Acton, despite slowdowns elsewhere. The strong market for single family homes resulted in relatively expensive single family subdivisions, some clustered. The following tables show that: (1) Acton has achieved significant conservation of open space through the Planned Conservation Residential Community [PCRC] District, and Open Space Development [OSD] provisions; and (2) that this conservation of open space has been accompanied by reduced numbers of residential units.

Table : Land Preserved Through PCRC or OSD Special Permits

Development Name

Total Acres

Acres Conserved Open Space

Ownership

Particular Benefits of Conserved Open Space

Audubon Hill PCRC

71

49

private

Abuts Town conservation land and provides 1 new public access to it from Brewster Lane

Bellows Farm PCRC

238

160

119 acres public, 41 acres private

Abuts Town conservation land and adds 2 new public access points to it from David Road & Wheeler Lane

Gregory Lane OSD

10

4

private

Abuts Town land. Buffers sensitive wetland areas from housing development

Handley Woods PCRC

29

19

17 acres public [proposed], 2 acres private

Abuts Town conservation land and provides 1 new public access to it from Harris Street. Also buffers sensitive wetland areas from housing development

Hearthstone Farm PCRC

42

32

public

Abuts Town conservation land and adds 1 new public access to it from Strawberry Hill Road/Jay Lane.

Lawsbrook Village PCRC

47

30

private
Creates buffers to abutting industrial site and to Fort Pond Brook. Also provides ball fields and playgrounds

Maple Creek Farm PCRC
46
33
private
Creates buffers and open space in densely settled area.

Marshall Crossing PCRC
41
25
13 acres public, 12 acres private
Abuts Town land, creates public access, planned as part of the Bay Circuit Trail

Mill Corner PCRC
18
11
private
Abuts Town conservation/recreation land and provides 1 public access to it

New View PCRC
22
11
private
Abuts Town land & existing open space. Provides 1 public access to it

Norton PCRC
13
8
private
Abuts Town land

Stonemyede Cluster
80
45
public
Abuts Concord conservation land, includes 1 new public access to it, maintains wooded buffer to Pope Road.

Tupelo Place OSD
11
7
public [proposed]
Abuts Town land and adds 1 public access to it.
Totals
668
434

In addition, Acorn Park, which was permitted through the Planned Unit Development provision, conserved 20.17 acres. These abut another privately owned conservation area, and thus extend a greenbelt and provide wildlife habitat benefits.

Table : Residential Units Permitted Under PCRC or OSD Special Permits

Development Name
Total acres
Actual # of units built
Max. # of units under standard zoning *
Max # of units under PCRC/OSD/previous cluster options

Audubon Hill PCRC	71	70	131**	71
Bellows Farm PCRC	238	117	110	237
Gregory Lane OSD	10	3	4	9
Handley Woods PCRC	29	15	11	15
Hearthstone Farm PCRC	42	8	16	23
Lawsbrook Village PCRC	47	51	22	51
Maple Creek Farm PCRC	46	15	21	50
Marshall Crossing PCRC	41	16	15	23
Mill Corner PCRC	18	34	33	39
New View PCRC	22	24***	8	23
Norton PCRC	13	3	4	6
Stonemyede Cluster	80	43	37	43

Tupelo Place OSD 11 7 5 12
Totals 668 406 417 602

Notes:

* Number of units calculated on 85% of total acres to account for street, septic limitations and other inefficiencies.

** Base zoning was R-2 (20,000 s.f. min. lot size); max. PCRC density was 1 unit/acre

*** Includes one affordable unit by way of bonus provision for affordable housing²⁶ (p. 114-116)

From the Code of The Town of Acton
MIDDLESEX COUNTY, MASSACHUSETTS
ZONING BY-LAW
Amended through January 2001

SECTION 4. OVERLAY DISTRICTS

4.2 Open Space Development

Open Space Development shall be the preferred method of land development in the Residential Districts. Open Space Development as set forth in this Section is authorized by The Zoning Act, M.G.L. Ch. 40A, Section 9, and is based on the general concept of "Cluster Development" described therein.

4.2.1 Purpose

The purpose of Open Space Development is to enhance the preservation of common land for conservation, OPEN SPACE, recreation, agriculture and forestry; to preserve unique and significant natural, historical and archeological resources, and to promote development in harmony with those resources; to protect scenic vistas from Acton's roadways and other places; to preserve and foster the rural character of the Town of Acton; to promote development of land that creates clusters and villages and, thereby, is in greater harmony with the historic and traditional landscape of the Town of Acton and New England as a whole; to protect existing and potential municipal water supplies; to promote better overall site planning and optimal siting of BUILDINGS, accessory STRUCTURES and wastewater disposal systems in relation to the resources of the development site; to reduce roadway maintenance cost and the cost of providing municipal services; and to enhance the general purpose of this Bylaw.

4.2.2 Special Permit from the Planning Board

The Planning Board shall grant a Special Permit for an Open Space Development in the R-2, R-4, R-8, R-8/4, R-10 and R-10/8 Districts, for single FAMILY detached dwellings and accessory STRUCTURES, subject to the following:

4.2.2.1 Contents of Applications for an Open Space Development Special Permit - The application for an Open Space Development Special Permit shall be accompanied by an "Open Space Development Site Plan", showing the information required by the Rules and Regulations for Open Space Development. The information shall include but not be limited to: the topography; soil characteristics as shown on the Soil Conservation Service Maps; wetlands as defined by M.G.L. Chapter 131, Section 40; Flood Plain boundary lines; existing types of vegetation; any other unique natural, historical, archeological, and aesthetic resources; the approximate layout of the LOTS without the benefit of Open Space Development standards and under given site limitations; the proposed layout of the LOTS and the Common Land in the Open Space Development; the proposed location of the dwellings, setback lines, garages, driveways, wells, septic systems; the proposed finished grades of the land; the proposed vegetation and landscaping including where existing vegetation is retained; the Land Use Plan for the Common Land; the proposed form of ownership of the Common Land including any improvements proposed thereon.

4.2.2.2 Procedural Requirements - If the Open Space Development requires approval under the Subdivision Control Law, M.G.L., Ch. 41, the "Open Space Development Site Plan" shall contain a plan in the form and with the contents required of a Definitive Subdivision Plan by the Acton Subdivision Rules and Regulations. The applications for an Open Space Development Special Permit and for approval of a Definitive Subdivision Plan shall be filed concurrently. To the extent permitted by law, the Planning Board shall consider both applications at the same time. If the Open Space Development contains a Common Driveway subject to Section 3.8.1.5 of the Bylaw, the applications for an Open Space Development Special Permit and a Common Driveway Special Permit shall be filed concurrently and the Planning Board shall, to the extent permitted by law, consider both applications at the same time.

4.2.2.3 Planning Board Action - In evaluating the proposed Open Space Development the Planning Board shall consider the general objectives of this Bylaw and of Open Space Development in particular; the existing and probable future development of surrounding areas; the appropriateness of the proposed layout of the LOTS and the proposed layout and USE of the Common Land in relation to the topography, soils and other characteristics and resources of the TRACT OF LAND in question. The Planning Board shall grant a Special Permit for Open Space Development if it finds that the Open Space Development and the proposed USES:

- a) comply in all respects to the requirements of the Bylaw and enhance the purpose and intent of Open Space Development,
- b) are in harmony with the existing and probable future USES of the area and with the character of the surrounding area and neighborhood, and
- c) comply with the requirements of Section 10.3.5.

The Planning Board may require changes to the "Open Space Development Site Plan" and impose additional conditions, safeguards and limitations as it deems necessary to secure the objectives of this Bylaw, including without limitation, any conditions, safeguards or limitations listed in Section 10.3.6.:

4.2.2.4 Revisions and Amendments of "Open Space Development Site Plans" Any change in the layout of STREETS; in the configuration of the Common Land; in the ownership or USE of the Common Land; or any other change which, in the opinion of the Building Commissioner, would significantly alter the character of the Open Space Development, shall require the written approval of the Planning Board. The Planning Board may, upon its own determination, require a new special permit and hold a public hearing pursuant to Section 10.3 of this Bylaw, if it finds that the proposed changes are substantial in nature and of public concern.

4.2.3 Open Space Development Standards - The following standards shall apply to all Open Space Developments:

4.2.3.1 Minimum Tract Size - Open Space Developments shall be located upon a TRACT OF LAND which has an area of at least 6 acres in the R-2 District, or 8 acres in the RA R-8, R-8/4, R-10 and R-10/8 Districts.

a) The Planning Board may permit LOTS on directly opposite sides of a STREET to qualify as a single TRACT OF LAND. To permit such division of a TRACT OF LAND by a STREET, the Planning Board must find that this would enhance the purposes of Open Space Development and not result in any more DWELLING UNITS than would be possible in accordance with the provisions of this Bylaw if the LOTS on either side of the STREET were developed separately. If the Board approves a TRACT OF LAND divided by a STREET, it may permit the total number of permitted DWELLING UNITS to be constructed on either side of the STREET.

AFFORDABLE DWELLING UNITS generated on the TRACT OF LAND under the provisions of Section 4.4.3 may be sited along with the other DWELLING UNITS whether or not the location of the AFFORDABLE DWELLINGS UNITS is within the AFFORDABLE Housing Overlay District. The DWELLING UNITS shall be constructed in accordance with the applicable dimensional requirements in Open Space Developments, and the required Common Land may consist of land located on either side of the STREET.

b) Where a TRACT OF LAND is divided by a zoning district boundary between any of the R-2, RA R-8/4, R-10 or R-10/8 districts and the TRACT OF LAND meets the largest of the size requirements for any of the involved districts, the total number of DWELLING UNITS permitted shall not exceed the number permitted in each district considered separately. AFFORDABLE DWELLING UNITS generated on the TRACT OF LAND under the provisions of Section 4.4.3 may be sited along with the other DWELLING UNITS whether or not the location of the AFFORDABLE DWELLING UNITS is within the AFFORDABLE Housing Overlay District. The DWELLING UNITS may be located in either district but shall be constructed in accordance with the dimensional requirements for LOTS and BUILDINGS in Open Space Developments for the district in which the DWELLINGS UNITS are located. The required Common Land shall be large enough to meet the largest of the requirements of the involved zoning districts.

4.2.3.2 Maximum Number of BUILDING LOTS Permitted - The total number of BUILDING LOTS in an Open Space Development shall not exceed the number of BUILDING LOTS that could be developed without the benefit of Open Space Development standards in the District in which the TRACT OF LAND is located. Provided however, that the number of allowable BUILDING LOTS in the R-8/4 District shall be based on the dimensional requirements applicable in the K-4 District, and the number of allowable BUILDING LOTS in the R-10/8 District shall be based on the dimensional requirements applicable in the R-8 District. In making the determination of the number of allowable BUILDING LOTS, the Planning Board shall require that the applicant provide a plan demonstrating evidence that, if such TRACT OF LAND were to be developed under the standard requirements applicable for the underlying or otherwise applicable zoning district

a) the development would comply with all requirements of Bylaw;

b) the development would comply with the Massachusetts Wetlands Protection Act and the Acton Wetlands Bylaw. The Planning Board shall consider the recommendations of the Board of Health, the Conservation Commission and the Engineering Department the Town of Acton in making said determination.

4.2.3.3 Dimensional Requirements for LOTS and BUILDINGS - Where the requirements of the Open Space Development differ from or conflict with the requirement of Section 5 of this Bylaw, the requirements established for Open Space Developments shall prevail. The following requirements shall be observed in all Open Space Developments. Where appropriate, the Planning Board may impose additional requirements upon the TRACT OF LAND or on any parts thereof as a condition to the granting of a special permit:

a) Average LOT Area: The minimum average LOT area for all BUILDING LOTS in an Open Space Development in the R-2 District shall not be less than 10,000 square feet; in the R-4 and R-8/4 Districts not less than 20,000 square feet; and in the R-8, R-10, and R-10/8 Districts not less than 30,000 square feet.

b) Minimum LOT Area: In the R-2 District not less than 8,000 square feet; in the R-4 and R-8/4 Districts not less than 10,000 square feet; and in the R-8, R-10 and R-10/8 Districts not less than 20,000 square feet.

c) Minimum FRONTAGE: Not less than 50 feet.

d) Minimum LOT Width: Not less than 50 feet.

e) Minimum Front Yard: 45 feet from a pre-existing STREET. The minimum front yard measured from a new STREET within the Open Space Development shall be 15 feet in the R-2 District and 20 feet in the R-4, R-8, R-8/4, R-10 and R-10/8 Districts.

f) Minimum Side and Rear Yard: In the R-2 District not less than 10 feet. In the R-4, R-8, R-8/4, R-10, and R-10/8 Districts not less than 20 feet.

g) Minimum Yard Area: Not less than 70% of the LOT.

4.2.3.4 Dimensional Requirements for the Common Land - Not less than 30% in the R-2 District, 40% in the R-4 and R-8/4 Districts, and 50% in the R-8, R-10 and R-10/8 Districts of the total area of the TRACT OF LAND to be developed as an Open Space Development shall be dedicated as Common Land. The following additional requirements shall apply:

a) The minimum required area of the Common Land shall not contain a greater percentage of wetlands, as defined in M.G.L. Ch. 131, Section 40, than the percentage of wetlands found in the overall TRACT OF LAND.

b) The minimum Common Land shall be laid out as one or more large, contiguous parcels that are distinct from parcels dedicated for other purposes and USES. Each Common Land parcel shall contain at least one access corridor to a STREET or way that shall be not less than 40 feet wide.

c) If the TRACT OF LAND of the Open Space Development abuts adjacent Common Land or undeveloped LOTS, the Common Land shall be laid out to abut the adjacent Common Land or undeveloped LOTS.

4.2.3.5 USE of the Common Land - The Common Land shall be dedicated and used for conservation, historic preservation and education, outdoor education, recreation, park purposes, agriculture, horticulture, forestry, or for a combination of those USES. No other USES shall be allowed in the Common Land, except as provided for herein: a) The proposed USE of the Common Land shall

be specified on a Land Use Plan and appropriate dedications and restrictions shall be part of the deed to the Common Land. The Planning Board shall have the authority to approve or disapprove particular USES proposed for the Common Land in order to enhance the specific purposes of Open Space Development. b) The Common Land shall remain unbuilt upon, provided that an overall maximum of five (5) percent of such land may be subject to pavement and STRUCTURES accessory to the dedicated USE or USES of the Common Land, and provided that the Common Land may be subject to temporary easements for the construction, maintenance, and repair of roads, utilities, and sewer or drainage facilities serving the Open Space Development or adjacent land. c) In addition, a portion of the Common Land may also be used for the construction of leaching areas, if associated with septic disposal systems serving the Open Space Development, and if such USE, in the opinion of the Planning Board, enhances the specific purpose of Open Space Development to promote better overall site planning.

Septic disposal easements shall be no larger than reasonably necessary. If any portion of the Common Land is used for the purpose of such leaching areas, the Planning Board shall require adequate assurances and covenants that such facilities shall be maintained by the LOT owners within the Open Space Development. d) In addition, a portion of the Common Land may also be used for ways serving as pedestrian walks, bicycle paths, and ACCESS or egress to the Open Space Development or adjacent land, if such a USE, in the opinion of the Planning Board, enhances the general purpose of this Bylaw and enhances better site and community planning, and if the Planning Board finds that adequate assurances and covenants exist, to ensure proper maintenance of such facilities by the owner of the Common Land. e) Portions of the Common Land that are in excess of the minimum Common Land total area and upland area as calculated in accordance with section 4.2.3.4, including its subsection a), may be used for storm water detention and retention facilities serving the LOTS, STREETS and ways in the Open Space Development, including infrastructure such as pipes, swales, catch basins, and manholes, and parcels and easements associated with such facilities.

4.2.3.6 Ownership of the Common Land - The Common Land shall be conveyed in whole or in part to the Town of Acton and accepted by it, or to a non-profit organization, the principal purpose of which is the conservation of OPEN SPACE and/or any of the purposes and USES to which the Common Land may be dedicated. The Common Land may also be conveyed to a corporation or trust owned or to be owned by the owners of LOTS within the Open Space Development. If the Common Land or any portion thereof is not conveyed to the Town of Acton, a perpetual restriction, approved by the Planning Board and enforceable by the Town of Acton, shall be imposed on the USE such land, providing in substance that the land be kept in its open or natural state and that the land shall not be built upon or developed or used except in accordance with the provisions of Open Space Development as set forth herein and, if applicable, further specified in the decision of the Planning Board governing the individual Open Space Development. The proposed ownership of all Common Land shall be shown on the Land Use Plan for the Open Space Development. At the time of its conveyance, the Common Land shall be free of all encumbrances, mortgages or other claims, except as to easements, restrictions and encumbrances required permitted by this Bylaw.

SECTION 8. NONCONFORMING LOTS, USES, STRUCTURES AND PARKING; EXEMPTIONS

8.9 Planned Unit Developments (PUD)

Notwithstanding the repeal of Section 9A of this Bylaw, any TRACT OF LAND for which a special permit for a Planned Unit Development (PUD) has been granted shall continue to be governed by such special permit and the provisions of Section 9A which were applicable to such special permit as of the date of issuance of such special permit.

In addition, the following minimum setbacks to the PUD boundary line shall apply to Single FAMILY Dwellings with or without one apartment within a PUD, including accessory STRUCTURES and facilities thereto:

8.9.1 30 feet where the PUD boundary line coincides with a STREET sideline.

8.9.2 20 feet to any other PUD boundary line.

****Webmasters Note:** The previous section, 8.9, has been added as per an amendment approved at a town meeting held on 4/1/02.

SECTION 9. PLANNED CONSERVATION RESIDENTIAL COMMUNITY (PCRC)

9.1 Purpose

The primary purpose of the Planned Conservation Residential Community (PCRC) is to allow residential development that encourages the preservation of open space, and thus allows within it the preservation of significant land, water, historic, archeological and natural resources, in a manner consistent with the goals of the Master Plan and the Open Space and Recreation Plan, as amended from time to time.

The secondary purpose is to facilitate and encourage the construction and maintenance of streets, utilities, and public services in a more economical and efficient manner than in a standard subdivision.

9.2 Special Permit

The Planning Board may grant a special permit for the development and construction of a PCRC on all land and parcels previously incorporated into a PCRC zoning district, as well as in the R-2, R-4, R-8/4, R-8, R-10/8 and R-10 Districts in accordance with this Section and M.G.L., ch. 40A, s.9.

9.3 Contents of Application for a PCRC Special Permit

The application for a PCRC Special Permit shall be accompanied by a "PCRC Site Plan", showing the information required by the Rules and Regulations for PCRCs. The information shall include but not be limited to: the topography; soil characteristics as shown on the Soil Conservation Service Maps; wetlands as defined by M.G.L. Chapter 131, Section 40; vernal pools, riverfront areas,

buffer zones and setbacks as defined in Chapter F of the Bylaws of the Town of Acton - Wetland Protection; Flood Plain boundary lines; existing types of vegetation; any other unique natural, historical, archeological, and aesthetic resources; the proposed layout of the LOTS; proposed locations of DWELLING UNITS and accessory BUILDINGS; the proposed diversity and cost range for the DWELLING UNITS; dimensions, STREETS, garages, driveways, wells, utilities, wastewater disposal systems; the proposed finished grades of the land; the proposed vegetation and landscaping including where existing vegetation is retained; proposed features designed for energy and water conservation and pollution control; the proposed layout and land use plan of the Common Land in the PCRC; the proposed form of ownership of the Common Land and any improvements proposed thereon.

9.4 Procedural Requirements

If the PCRC requires approval under the Subdivision Control Law, M.G.L., Chapter 41, the "PCRC Site Plan" shall contain a plan in the form and with the contents required of a Definitive Subdivision Plan by the Acton Subdivision Rules and Regulations. The applications for a PCRC Special Permit and for approval of a Definitive Subdivision Plan shall be filed concurrently. To the extent permitted by law, the Planning Board shall consider both applications at the same time.

9.5 Planning Board Action

In evaluating the proposed PCRC, the Planning Board shall consider the general purpose and objectives of this Bylaw; the existing and probable future development of surrounding areas; the appropriateness of the proposed layout of STREETS, ways, LOTS, and STRUCTURES; the proposed layout and USE of the Common Land; the topography; soil; and other characteristics and resources of the TRACT OF LAND in question. The Planning Board may grant a special permit for a PCRC if it finds that the PCRC:

- a) complies in all respects with the applicable requirements of this Bylaw;
- b) enhances the purpose and intent of PCRC Development;
- c) enhances the goals of the Open Space and Recreation Plan;
- d) is in harmony with the character of the surrounding area and neighborhood; and
- e) complies with the requirements of Section 10.3.5.

9.5.1 The Planning Board shall consider the recommendations, if any, of the Board of Health, the Conservation Commission, and other town boards and staff in making said findings.

9.5.2 The Planning Board may require changes to the "PCRC Site Plan" and impose additional conditions, safeguards and limitations as it deems necessary to secure the objectives of this Bylaw, including without limitation; any conditions, safeguards or limitations listed in Section 10.3.6.

9.6 Standards for PCRCs

9.6.1 Permitted USES - Permitted USES in a PCRC shall be any USE permitted in the underlying Zoning District, as well as ACCESSORY USES typically associated with residential USES, owned and operated by the owner of the PCRC or the residents within the PCRC, such as building and grounds maintenance facilities, wastewater disposal facilities, recreation facilities, or club houses.

9.6.2 Area and Dimensional Regulations:

9.6.2.1 PCRC Site Area - The TRACT OF LAND for a PCRC must contain a minimum area of 8 acres.

a) The Planning Board may permit LOTS on directly opposite sides of a STREET to qualify as a single TRACT OF LAND. To permit such division of a TRACT OF LAND by a STREET, the Planning Board must find that this would enhance the purposes of PCRC and not result in any more DWELLING UNITS than would be possible in accordance with the provisions of this Bylaw if the LOTS on either side of the STREET were developed separately. If the Board approves a TRACT OF LAND divided by a STREET, it may permit the total number of permitted DWELLING UNITS to be constructed on either side of the STREET. AFFORDABLE DWELLING UNITS generated on the TRACT OF LAND under the provisions of Section 4.4.3 may be sited along with the other DWELLING UNITS whether or not the location of the AFFORDABLE DWELLINGS UNITS is within the AFFORDABLE Housing Overlay District. The DWELLING UNITS shall be constructed in accordance with the applicable PCRC requirements and the required Common Land may consist of land located on either side of the STREET.

b) Where a TRACT OF LAND is divided by a zoning district boundary between any of the R-2, R-4, R-8/4, R-10 or R-10/8 districts the total number of DWELLING UNITS permitted shall not exceed the number permitted in each district considered separately. AFFORDABLE DWELLING UNITS generated on the TRACT OF LAND under the provisions of Section 4.4.3 may be sited along with the other DWELLING UNITS whether or not the location of the AFFORDABLE DWELLINGS UNITS is within the AFFORDABLE Housing Overlay District. The DWELLING UNITS may be located in either district and shall be constructed in accordance with PCRC requirements.

9.6.2.2 Dimensional Requirements for BUILDINGS - There shall be no minimum LOT area, FRONTAGE, LOT width, or yard requirements within a PCRC, except as follows:

- a) No BUILDINGS or STRUCTURES shall be located within 45 feet of a pre-existing STREET, or within 15 feet of a new STREET, way, or common drive within the PCRC.
- b) No BUILDINGS or STRUCTURES shall be located within 30 feet of the boundary line of the PCRC or the Common Land.
- c) The minimum distance between residential BUILDINGS shall be 20 feet.
- d) Where a residential BUILDING measures more than 3000 square feet of GROSS FLOOR AREA per DWELLING UNIT, including any attached garages, the minimum setback from a street, way, or common drive within the PCRC shall be 30 feet, and the minimum separation to the next residential BUILDING shall be 40 feet.

e) The Planning Board may impose other conditions on the locations of BUILDINGS and STRUCTURES, as it deems appropriate to enhance the purpose and intent of PCRC.

9.6.2.3 Maximum Number of DWELLING UNITS Permitted - The total number of DWELLING UNITS in a PCRC shall not exceed the number of DWELLING UNITS that could be developed without the benefit of the PCRC standards in the District in which the TRACT OF LAND is located. Provided however, that the number of allowable DWELLING UNITS in the R-8/4 District shall be based on the dimensional requirements applicable in the R-4 District, and the number of allowable DWELLING UNITS in the R-10/8 District shall be based on the dimensional requirements applicable in the R-8 District. In making the determination of the number of allowable DWELLING UNITS; the Planning Board shall require that the applicant provide a plan demonstrating evidence that, if such TRACT OF LAND were to be developed under the standard requirements applicable for the underlying or otherwise applicable zoning district,

- a) the development would comply with all applicable requirements of this Bylaw;
- b) The development would comply with the Massachusetts Wetland Protection Act and the Acton Wetland Protection Bylaw.

In the AFFORDABLE Housing Overlay District - Sub-District A and B: The number of DWELLING UNITS may be increased pursuant to the formulas provided in Section 4.4.3.1 and subject to the requirements of Sections 4.4.5, 4.4.6, 4.4.7, 4.4.8 and 4.4.9. The inclusion of AFFORDABLE DWELLING UNITS in compliance with the above referenced Sections of the Bylaw shall be authorized under a Special permit for a PCRC.

9.6.2.4 BUILDING Requirements - There shall be no more than four DWELLING UNITS in any residential BUILDING. Except in the case of detached single family dwellings, there shall be not more than two garage spaces per DWELLING UNIT in any residential BUILDING. The overall length of any residential BUILDING shall not exceed 200 feet. Each DWELLING UNIT shall have two separate exterior entrances at ground level.

9.6.2.5 Parking Requirements - A minimum of 2 parking spaces per DWELLING UNIT including garages shall be provided.

9.6.2.6 Storm Water Runoff - The peak rate of storm water runoff from a PCRC shall not exceed the rate existing prior to the new construction based on a 10-year design storm.

9.6.3 Common Land Standards:

9.6.3.1 Dimensional Requirements for the Common Land - In a PCRC, at least sixty percent (60%) of the land shall be set aside as Common Land for the use of the PCRC residents or the general public. The following additional requirements shall apply:

- a) The minimum required area of the Common Land shall not contain a greater percentage of wetlands, as defined in M.G.L: Chapter 131, Section 40, than the percentage of wetlands found in the overall TRACT OF LAND on which the PCRC is located.
- b) The minimum Common Land shall be laid out as one or more large; contiguous parcels that are distinct from parcels dedicated for other purposes and USES. Each Common Land parcel shall contain at least one access corridor to a STREET or way that shall be not less than 40 feet wide.
- c) If the TRACT OF LAND of the PCRC abuts adjacent Common Land or undeveloped LOTS, the Common Land shall be laid out to abut.. the adjacent Common Land or undeveloped LOTS.

9.6.3.2 USE of the Common Land - The Common Land shall be dedicated and used for conservation, historic preservation and education, outdoor education, recreation, park purposes, agriculture, horticulture, forestry, or for a combination of those USES. No other USES shall be allowed in the Common Land, except as provided for herein:

- a) The proposed USE of the Common Land shall be specified on a Land Use Plan and appropriate dedications and restrictions shall be part of the deed to the Common Land. The Planning Board shall have the authority to approve or disapprove particular USES proposed for - the Common Land in accordance with the purposes of this bylaw.
- b) The Common Land shall remain unbuilt upon, except that the Planning Board may approve as part of the special permit the location and area of pavement or STRUCTURES accessory to the approved USE or USES of the Common Land.
- c) A portion of the Common Land may also be used for the construction of leaching areas, if associated with septic disposal systems serving the PCRC, and if such USE, in the opinion of the Planning Board, enhances the specific purpose of PCRC Development and promotes better overall site planning. Septic disposal easements shall be no larger than reasonably necessary. If any portion of the Common Land is used for the purpose of such leaching areas, the Planning Board shall require adequate assurances and covenants that such facilities shall be maintained by the LOT owners within the PCRC.
- d) A portion of the Common Land may also be used for ways serving as pedestrian walks, bicycle paths, and emergency access or egress to the PCRC or adjacent land, if such a USE, in the opinion of the Planning Board, enhances the general purpose of this Bylaw and enhances better site and community planning, and if the Planning Board finds that adequate assurances and covenants exist, to ensure proper maintenance of such facilities by the owner of the Common Land.
- e) Portions of the Common Land that are in excess of the minimum Common Land total area and upland area as calculated in accordance with section 9.6.3.1, including its subsection a), may be used for storm water detention and retention facilities serving the LOTS, STREETS and ways in the PCRC, including infrastructure such as pipes, swales, catch basins, and manholes, and parcels and easements associated with such facilities.
- f) No portion of the common land as shown on the approved PCRC Site Plan, including any portion that exceeds minimum zoning requirements, shall be used to meet area, setback, or any other zoning requirements for any development or improvement that is not shown on the approved PCRC Site Plan. No portion of the common land shall be used to meet minimum common land requirements in any adjacent or expanded PCRC.

9.6.3.3 Ownership of the Common Land - The Common Land shall be conveyed in whole or in part to the Town of Acton and accepted by it, or to a non-profit organization, the principal purpose of which is the conservation of open space and/or any of the purposes and USES to which the Common Land may be dedicated. The Common Land may also be conveyed to a corporation or trust owned or to be owned by the owners of DWELLING UNITS within the PCRC. The Planning Board shall approve the form of ownership of the Common Land. If the Common Land or any portion thereof is not conveyed to the Town of Acton, a perpetual restriction, approved by the Planning Board and enforceable by the Town of Acton, shall be imposed on the USE of such land, providing in substance that the land be kept in its open or natural state and that the land shall not be built upon or developed or used except in accordance with the provisions of a PCRC as set forth herein and, if applicable, as further specified in the decision of the Planning Board governing the individual PCRC. The proposed ownership of all Common Land shall be shown on the Land Use Plan for the PCRC. At the time of its conveyance, the Common Land shall be free of all encumbrances, mortgages, tax liens or other claims, except as to easements, restrictions and encumbrances required or permitted by this Bylaw:

9.7 STREETS, Utilities and Lighting

Whether or not the Planned Conservation Residential Community is a subdivision, all STREETS and ways whether public or private, wastewater disposal and drainage facilities and utilities shall be designed and constructed in compliance with the Town of Acton Subdivision Rules and Regulations, as amended. Special exception(s) to the Subdivision Rules and Regulations may be authorized by the Planning Board in granting a special permit hereunder provided the Board determines such exception(s) is in the public interest and is not inconsistent with the purposes of Section 9.1. The Planning Board may impose appropriate standards for all outdoor lighting within a PCRC.

9.8 Revisions and Amendments of "PCRC Site Plans"

Any change in the layout of STREETS and ways, in the configuration of the Common Land, in the ownership or USE of the Common Land, or any other change which, in the opinion of the Building Commissioner, would significantly alter the character of the PCRC, shall require the written approval of the Planning Board. The Planning Board may, upon its own determination, require a new special permit and hold a public hearing pursuant to Section 10.3 of this Bylaw, if it finds that the proposed changes are substantial in nature and of public concern.

9.9 Previously Approved PCRC Developments

Nothing herein shall be construed to prevent the orderly completion of any previously approved PCRC development. Any previously approved PCRC development shall be subject to the Zoning Bylaw in effect at the time when it was approved. However, the Planning Board may authorize BUILDING setbacks, BUILDING dimensions, and arrangement of garages in accordance with Sections 9.6.2.2 and 9.6.2.4 of this Bylaw.

****Webmasters Note:** The previous Section has been amended as per an update approved at a town meeting held on 4/7/03.

The senior residence provisions are also a type of flexible zoning.

SECTION 9B. SENIOR RESIDENCE

Also see Appendix on PUD:

Appendix SECTION 9A. PLANNED UNIT DEVELOPMENT (PUD)

Notes on density:

Open Space Developments:

minimum tract size: 6 acres (R-2), 8 acres (RA, R-8, R-8/4, R-10, and R-10/8); average lot area: 10,000 sq ft (R-2), 20,000 sq ft (R-4 and R-8/4), 30,000 (R-8, R-10, and R-10/8); minimum lot area: 8,000 sq ft (R-2), 10,000 sq ft (R-4 and R-8/4), and 20,000 sq ft (R-8, R-10, and R-10/8)

Planned Unit Developments:

nothing stated

Planned Conservation Residential Community (PCRC):

minimum tract of land: 8 acres; dwelling units: no more than 4 units in any residential building

Note: It is marked in the survey received from Acton on 3/23/05 that the first provisions for flexible zoning were adopted in 1981. The last year the municipality amended the provisions was 2003.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board From the Code of The Town of Acton
MIDDLESEX COUNTY, MASSACHUSETTS
ZONING BY-LAW
Amended through January 2001

SECTION 4. OVERLAY DISTRICTS
4.2 Open Space Development

4.2.2 Special Permit from the Planning Board

The Planning Board shall grant a Special Permit for an Open Space Development in the R-2, R-4, R-8, R-8/4, R-10 and R-10/8 Districts, for single FAMILY detached dwellings and accessory STRUCTURES, subject to the following:

SECTION 8. NONCONFORMING LOTS, USES, STRUCTURES AND PARKING; EXEMPTIONS

8.9 Planned Unit Developments (PUD)

Notwithstanding the repeal of Section 9A of this Bylaw, any TRACT OF LAND for which a special permit for a Planned Unit Development (PUD) has been granted shall continue to be governed by such special permit and the provisions of Section 9A which were applicable to such special permit as of the date of issuance of such special permit.

SECTION 9. PLANNED CONSERVATION RESIDENTIAL COMMUNITY (PCRC)

9.1 Purpose

The primary purpose of the Planned Conservation Residential Community (PCRC) is to allow residential development that encourages the preservation of open space, and thus allows within it the preservation of significant land, water, historic, archeological and natural resources, in a manner consistent with the goals of the Master Plan and the Open Space and Recreation Plan, as amended from time to time.

The secondary purpose is to facilitate and encourage the construction and maintenance of streets, utilities, and public services in a more economical and efficient manner than in a standard subdivision.

9.2 Special Permit

The Planning Board may grant a special permit for the development and construction of a PCRC on all land and parcels previously incorporated into a PCRC zoning district, as well as in the R-2, R-4, R-8/4, R-8, R-10/8 and R-10 Districts in accordance with this Section and M.G.L., ch. 40A, s.9.

Has any housing been built under the cluster/flexible provisions?

Yes Table : Land Preserved Through PCRC or OSD Special Permits
Development Name
Total Acres
Acres Conserved Open Space
Ownership
Particular Benefits of Conserved Open Space

Audubon Hill PCRC
71
49
private
Abuts Town conservation land and provides 1 new public access to it from Brewster Lane

Bellows Farm PCRC
238
160
119 acres public, 41 acres private
Abuts Town conservation land and adds 2 new public access points to it from David Road & Wheeler Lane

Gregory Lane OSD
10
4
private
Abuts Town land. Buffers sensitive wetland areas from housing development

Handley Woods PCRC

29

19

17 acres public [proposed], 2 acres private

Abuts Town conservation land and provides 1 new public access to it from Harris Street. Also buffers sensitive wetland areas from housing development

Hearthstone Farm PCRC

42

32

public

Abuts Town conservation land and adds 1 new public access to it from Strawberry Hill Road/Jay Lane.

Lawsbrook Village PCRC

47

30

private

Creates buffers to abutting industrial site and to Fort Pond Brook. Also provides ball fields and playgrounds

Maple Creek Farm PCRC

46

33

private

Creates buffers and open space in densely settled area.

Marshall Crossing PCRC

41

25

13 acres public, 12 acres private

Abuts Town land, creates public access, planned as part of the Bay Circuit Trail

Mill Corner PCRC

18

11

private

Abuts Town conservation/recreation land and provides 1 public access to it

New View PCRC

22

11

private

Abuts Town land & existing open space. Provides 1 public access to it

Norton PCRC

13

8

private

Abuts Town land

Stonemyede Cluster

80

45

public

Abuts Concord conservation land, includes 1 new public access to it, maintains wooded buffer to Pope Road.

Tupelo Place OSD

11

7

public [proposed]

Abuts Town land and adds 1 public access to it.

Totals

668

434

In addition, Acorn Park, which was permitted through the Planned Unit Development provision, conserved 20.17 acres. These abut another privately owned conservation area, and thus extend a greenbelt and provide wildlife habitat benefits.

Table : Residential Units Permitted Under PCRC or OSD Special Permits
Development Name

Total acres
Actual # of units built
Max. # of units under standard zoning *
Max # of units under PCRC/OSD/previous cluster options

Audubon Hill PCRC 71 70 131** 71
Bellows Farm PCRC 238 117 110 237
Gregory Lane OSD 10 3 4 9
Handley Woods PCRC 29 15 11 15
Hearthstone Farm PCRC 42 8 16 23
Lawsbrook Village PCRC 47 51 22 51
Maple Creek Farm PCRC 46 15 21 50
Marshall Crossing PCRC 41 16 15 23
Mill Corner PCRC 18 34 33 39
New View PCRC 22 24*** 8 23
Norton PCRC 13 3 4 6
Stoneymeade Cluster 80 43 37 43
Tupelo Place OSD 11 7 5 12
Totals 668 406 417 602

Notes:

* Number of units calculated on 85% of total acres to account for street, septic limitations and other inefficiencies.

** Base zoning was R-2 (20,000 s.f. min. lot size); max. PCRC density was 1 unit/acre

*** Includes one affordable unit by way of bonus provision for affordable housing²⁶ (p. 114-116)

Note: Marked on survey received 3/23/05 to question "Has any housing been built under the cluster/flexible provisions? (none, 1-8 projects, more than 8)" -- "More than 8"

Amesbury

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No "XI.L. Planned Unit Development (PUD) Districts:

1. Permitted Uses: In Planned Unit Development (PUD) Districts shown on the Zoning Map, the following uses are permitted as of right:
 - a. Multi-family dwellings and attached dwellings of all types; provided, however, that except for preexisting buildings or structures on a lot, all multifamily dwellings and attached dwelling units shall be limited to four (4) dwelling units for each building or structure
 - b. All other uses, including mixed uses, permitted in Section V.D., Table of Use Regulations.
2. Applicability of Section XI: In addition to special conditions set forth in other sections of this Bylaw, in Planned Unit Development (PUD) Districts shown on the Zoning Map, only the provisions of Section X.B, C., G., H.16, H.18, and H.19 shall be applicable."

AND:

Density Regulations Table footnotes:

- "2. In the Planned Unit Development (PUD) Districts shown on the Zoning Map the minimum lot area required by Section VI, Table of Dimensional and Density Regulations may be satisfied by combining lots in such districts in common ownership on separate parcels, separated by existing public or private ways, up to but not exceeding the minimum lot area required in a PUD district shown on the Zoning Map, provided, however, that any such separate lot or portion of a lot used in satisfying the minimum lot area requirement is within 300 feet of the property line of the largest lot used to calculate the minimum lot area and further provided that existing public and private ways need not constitute boundaries of a lot for purposes of calculating minimum lot area.
3. Where a PUD abuts a residential zone the side yard setback shall be 50 feet.
4. In Planned Unit Development (PUD) Districts where the building area of preexisting structures or buildings on a lot exceeds 35% of lot area, the allowable maximum building area shall be increased by 10% of the building area of such preexisting structures or buildings, up to a maximum of 40%.
5. The required minimum open space for the PUD District shall be subject to all the requirements set forth for usable open space, Section XI.H.16 of this Bylaw."

"XI.H.16. Usable Open Space: a. Usable open space shall be defined as a part or parts of land or structure with a PUD which are reserved for permanent active or passive recreation use. This space shall exclude parking areas, but include required setbacks, waterways, walkway, and be open and unobstructed to the sky. Trees, planting, arbors, flagpoles, sculpture, fountains, swimming pools, atriums, open-air recreation facilities, and similar objects shall not be considered "obstructions." b. In all PUDs that are new construction, at least 30% of the land shall be set aside as permanent usable open space, for the use of the PUD occupants, or for

the community. The required open space may be conveyed to the Amesbury Conservation Commission, to a nonprofit conservation organization, or to a corporation or trust representing the ownership of the PUD and shall be protected by the conservation restriction as required in Chapter 40A, Section 9, General Laws, for common open space in cluster developments. A covenant shall be placed on the land such that no part of the PUD can be built, sold or occupied until such time as a satisfactory written agreement has been executed for protection of the open space. c. Open space requirements do not apply for PUD projects which are expansions of existing buildings or are major internal renovations. It shall be the objective of this section in cases where private open space has been traditionally utilized by the public; and where the public has been allowed the use of the area as open space, that said open space should not be included as part of the building expansion and is subject under this section of the Bylaw."

- Amesbury Zoning Bylaw and Map, Adopted April 12, 1971 with Revisions Through October 14, 2003. XI.

Created 1985 (E-mial communication with Town Planner Nipun Jain, 1/06/05)

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Two cluster zoning provisions by Special Permit:
1. Planned Unit Development, by Special Permit.
2. Cluster Residential by Special Permit.
See provisions below.

• ☐ What date was the relevant bylaw adopted, and when was it last amended?

Planned Unit Development, by Special Permit: Amended May 2004. (E-mial communication with Town Planner Nipun Jain, 1/06/05)
[This amendment is NOT included in the information provided here, which is current as of October, 2003 only - researcher did not have access to the latest amendments]

Cluster Residential by Special Permit: Amended December 2002. (E-mail communication with Town Planner Nipun Jain, 1/06/05)

• ☐ Does the regulation specify whether developments built using PUD/OSRD, etc. will be allowed an increase in total units from the maximum allowed under conventional zoning?

Planned Unit Development by Special Permit: Allows for apartment development in CBD and IC districts where otherwise, only multifamily developments up to four units per structure are allowed, also by special permit.

Cluster Residential Special Permit: Yes, allows increase, based on an Open Space density bonus of 110% for 60% open space designation and 120% density increase for 70% open space designation.

• ☐ What structure types are allowed in the developmen?

Planned Unit Developments by SP: Apartments in existing buildings, attached dwellings up to four units per structure.

Cluster Residential by SP: Single family detached on separate lots, and multifamily with up to four units per structure.

• ☐ How much open space must be set aside (percent of total parcel)?

Planned Unit Developments by SP: 30%

Cluster Residential by SP: Minimum 50%, with density bonus for 60% and 70% open space preservation.

Provisions Follow:

"H. Planned Unit Development (PUD) by Special Permit: 1. Authority to Grant Permits: The Planning Board may grant a special permit for the construction of a Planned Unit Development (PUD) in the following districts: Central Business District and Central Industrial District. The special permit shall conform to this title and to Chapter 40A, Section 9, General Laws, and to regulations which the Planning Board shall adopt for carrying out its requirements under this title.

2. Applicability: The requirements of Section XI.H shall apply only to applications for special permits for PUD, provided, however, that Section XI.H.16, XI.H.18 and XI.H.19 shall apply to Planned Unit Development (PUD) Districts shown on the Zoning Map. Planned Unit Development (PUD) Districts shown on the Zoning Map shall conform in all respects to any other pertinent sections of the Zoning Bylaw. 3. Purpose: The purpose of the PUD special permit is to provide a mixture of land usage within the Town with the possibility of greater density and intensity than would normally be allowed provided that the land usage can be shown to be in the public good and a) will improve and/or reinforce the liveability and aesthetic qualities of the surrounding neighborhood and/or environment; b) is consistent with the objectives of this Bylaw; c) promotes the development of housing in Amesbury; and d) preserve, promote and encourage use of public and private open space. I. Pre-application Conference: Prior to the submission of an application for a special permit, the applicant should confer with the Planning Board to obtain information and guidance before entering into binding commitments or incurring substantial expense in the preparation of plans, surveys, and other data. 5.

Preliminary Plan Submittal: The applicant may file a preliminary plan accompanied by the form entitled "Submission of Preliminary Plan - Planned Unit Development" to the Planning Board at a regularly scheduled meeting. A copy of the preliminary plan and the form described in this section shall also be filed in the Town Clerk's Office. A certified check, in the amount of \$500, made out to the Town shall accompany the submission of the preliminary plan. The Planning Board, within twenty (20) days from receipt of the plan, shall review and determine whether the proposed project is consistent with the development of the Town. The Planning Board may suggest modifications and changes to the preliminary plan in anticipation of the filing of the final plan. If the Planning Board fails to

act within twenty (20) days, the applicant may proceed to file a final plan.

6. Preliminary Plan Contents: [...]

7. Final Plan Submittal: [...]

8. Final Plan Contents: [...]

9. Final Plan - Planning Board Considerations: [...]

10. Denial of Special Permit: [...]

11. Term of Special Permit: [...]

12. Changes from Recorded Plan: [...]

13. Conditions for Approval: The plan shall be subject to the following conditions and the Planning Board shall make a determination that the project meets all the requirements of Chapter 40A, Section 9, General Laws, and all the following conditions: a. The Planned Unit Development is consistent with the purposes set out in paragraph H.3. b. The PUD has been reviewed and approved by the Planning Board as to its design and architectural consistency. Further, the Planning Board shall consider and make recommendations regarding, among other things, the architectural value and significance of the site, building, or structure, the general design, arrangement and texture, material and color of the features involved and the relation of such features to similar features of buildings and structures in the surrounding area. In the case of new construction or additions to existing buildings or structures, the Planning Board shall consider the appropriateness of the size and shape of the buildings or structure both in relation to the land area upon which the building or structure is situated and to the buildings or structures in the vicinity. Further, the Planning Board may, in appropriate cases, impose dimensional and setback requirements in addition to those required by this title. The Planning Board shall not consider interior arrangements or architectural features not subject to public view.

14. Permitted Uses: In the PUD, the following uses are permitted: a. Residential: apartments in existing buildings only and only on floors above the ground floor; residential uses on the same floor as a commercial use are prohibited: the ground floor shall be devoted to permitted business uses. b. Attached dwelling units shall not exceed four units per structure. c. Business: restaurants, excluding fast-food restaurants; theaters; general retail sales and services, excluding medical and dental laboratories or centers. d. Expansion of buildings or rehabilitation of existing interiors: 1. Special permits can be granted to PUD projects that are essentially an expansion of the existing building; and if the project meets all parking and Site Plan criteria required by the Planning Board. 2. Special permits can be granted to PUD projects that are essentially a major renovation of an existing building if the major renovation involves 80% of the gross floor area, excluding basements, and if the project meets all parking and Site Plan criteria that may be required by the Planning Board.

15. Site Area: For new construction and expansion, a minimum lot size shall be 25,000 square feet. All portions of the project area must be zoned as Central Business District, or Central Industrial District, or a combination of both.

16. Usable Open Space: a. Usable open space shall be defined as a part or parts of land or structure with a PUD which are reserved for permanent active or passive recreation use. This space shall exclude parking areas, but include required setbacks, waterways, walkway, and be open and unobstructed to the sky. Trees, planting, arbors, flagpoles, sculpture, fountains, swimming pools, atriums, open-air recreation facilities, and similar objects shall not be considered "obstructions." b. In all PUDs that are new construction, at least 30% of the land shall be set aside as permanent usable open space, for the use of the PUD occupants, or for the community. The required open space may be conveyed to the Amesbury Conservation Commission, to a nonprofit conservation organization, or to a corporation or trust representing the ownership of the PUD and shall be protected by the conservation restriction as required in Chapter 40A, Section 9, General Laws, for common open space in cluster developments. A covenant shall be placed on the land such that no part of the PUD can be built, sold or occupied until such time as a satisfactory written agreement has been executed for protection of the open space. c. Open space requirements do not apply for PUD projects which are expansions of existing buildings or are major internal renovations. It shall be the objective of this section in cases where private open space has been traditionally utilized by the public; and where the public has been allowed the use of the area as open space, that said open space should not be included as part of the building expansion and is subject under this section of the Bylaw. 17. Setback Requirements: Insofar as the PUD abuts a residential district, all structures and facilities within the PUD shall be set back not less than fifty (50) feet from adjacent residential property lines.

18. Height: [...]

19. Off-Street Parking: [...]"

"D. CLUSTER RESIDENTIAL SPECIAL PERMIT:

1. Purpose:

a. To promote the more efficient use of land in harmony with its natural features. b. To encourage the preservation of valuable open space and maintain the Town's traditional character and land use pattern in which small villages contrast with open land. c. To protect water bodies and supplies, wetlands, flood plains, agricultural or forestry lands, wildlife, and other natural, cultural or historic resources. d. To minimize the total amount of disturbance on the site and preserve open space areas for active and passive recreational use, including the provision of neighborhood parks and trails. e. To permit greater flexibility and more attractive, efficient, economical design of residential subdivisions. f. To facilitate economical and efficient provision of utilities. g. To guide development consistent with the Town's Master Plan. h. To meet housing needs and to promote diverse and energy efficient housing at a variety of costs.

2. Applicability: a. The Planning Board may grant a special permit for the construction of a cluster residential development in the following districts: Residential: R-8; R-20; R-40; R-80; and Light Industrial. Additionally, the Planning Board shall follow the design and review procedures of this section for the site plan review requirements in the Rural Cluster (RC) District. b. The Planning Board approval of a special permit hereunder shall not substitute for compliance with the Subdivision Control Law, nor oblige the Planning Board to approve a related definitive plan for subdivision, nor reduce any time periods for Board consideration under the law. However, in order to facilitate processing, the Planning Board shall, insofar as practical under law, adopt regulations establishing procedures for submission of a combined plan and application which shall satisfy this section and the Board's regulations under the Subdivision Control Law.

3. Application Procedures:

a. Pre-application Conference and Determination of Project Density: Applicants are encouraged to submit preliminary plans and materials for review by the Planning Board prior to formal application for a special permit. The applicant may submit a Sketch Plan to assist the Planning Board in making a determination regarding the maximum number of dwelling units to be permitted on the tract of land proposed for residential cluster development. The sketch plan shall be drawn at a scale of 1" = 40' and include a "Yield" and "Cluster" plan as follows:

- * A "Yield plan" drawn to scale that clearly indicates the number of buildable residential lots the applicant believes would be attainable if the site were developed as a conventional subdivision consistent with Amesbury's Subdivision Rules and Regulations. In the instance where the property is within the Light Industrial District, for the purpose of density determination, the minimum lot size shall be 20,000 sq. ft.
- * A "Cluster plan" drawn to scale that clearly indicates the primary and secondary resource areas as defined below. From these two resource areas, the final plan shall clearly indicate the house placement, lots and road layout of the cluster plan. Both plans shall show the following:
 - * A north arrow;
 - * The names and locations of all streets and easements butting or within the proposed site;
 - * The plans shall indicate the lot size, frontage and setbacks for all lots shown.
 - * At a minimum, topography of the entire site at two (2) foot contour intervals.

Primary Resource Areas should show the following:

- * The location of all wetlands and floodplains shall be included on the plan. The wetlands and flood plains shall be determined by a licensed hydrologist, and/or qualified licensed professional.
- * The location of all significant woodlands, treelines, open fields or meadows, rocky outcroppings of ledge or bedrock, public water supply areas, watershed divides, aquifer recharge areas, drainage ways, wildlife habitat and corridor areas and areas of slopes greater than 10%. The locations of soil test pits and percolation tests with supporting documentation on test results.

Secondary Resource Areas should show the following: The location and description of all significant scenic views, fences and stone walls, roads and trails, recreational areas, historic structures and archeological sites. " Applicants shall also include a statement indicating the proposed use and ownership of the open space as permitted by this bylaw. Based on the sketch plans, drawings and any other materials the applicant submits relevant to the tract under consideration, the Planning Board, shall make a determination within 30 days as to the number of conventional lots that can be achieved on the proposed site. If the proposed area of "common open space" exceeds 60% of the site, the permitted maximum density allowed under the cluster residential special permit shall be the number of conventional lots, as determined by the Planning Board, times 110% percent. If the proposed area of "common open space" exceeds 70% of the site, the permitted maximum density allowed under the cluster residential special permit shall be the number of conventional lots, as determined by the Planning Board, times 120% percent. For those applicants who chose not to attend the pre-application conference for initial project review and determination of permitted density, the permitted density shall be determined by the Planning Board after it has reviewed the materials submitted in accordance with a Cluster Subdivision Plan listed in 3b, c, and d below. For those applicants who have received a determination of density based on this subsection (3a), the requirement in subsection 3b, relative to the preparation of a Conventional Subdivision Plan shall not be required.

3.b. Cluster Subdivision Plan: b. Application: Applicants for a special permit for a Cluster Residential Development shall submit to the Board ten (10) copies and an original of each of the following: " An application; " A preliminary conventional subdivision plan that complies with the Rules and Regulations governing the subdivision of land in Amesbury; " A cluster residential plan, and a site analysis; " If the plan involves more than one ownership, each owner of land included on the plan shall be a party to the application, and upon approval subject to its provisions.

c. Cluster Residential Plan: The application for a special permit shall be accompanied by the original copy of the final plan and ten (10) copies and any other data to be submitted and shall contain the following data: [...]

d. Site Analysis: The site analysis shall consist of a drawing or drawings at the same scale as the development plan, indicating the primary and secondary resources as defined in 3.a. e. Other Materials: In addition to the materials required above and by Section X.J of this Bylaw, the application shall also indicate each land owner's interest in the land to be developed, the form of organization proposed to own and maintain the common open space, the substance of covenants and grants of easements to be imposed upon the use of the land and structures and a development schedule. f. Review of Other Boards and Agencies: Upon receipt of the application and related plans/analysis, the Board shall within ten (10) days transmit one (1) copy each to the Board of Health, Conservation Commission, Town Engineer, Community Development Office, and Fire Department. These boards and agencies shall review said plans and provide recommendations to the Planning Board within thirty-five (35) days. g. Special Permit Considerations: In addition to the general special permit procedures and findings required in Section X.J, 4 and 5, the Board shall also make the following determinations: the plan complies with the requirements of Section XI.D.4; the plan is superior to a conventional one in preserving open space for conservation or recreation, and in utilizing the natural features of the land; where possible, approximate building sites have been identified and are not located closer than 100 feet to wetlands and waterbodies; lots and streets have been located to avoid or minimize adverse impacts on open space areas and to provide views of and access to the open space for the lots; the plan allows more efficient provisions of streets, utilities, and other public services; that it will not have detrimental effects on the abutting neighborhoods and that consideration has been given to recommendations of the Amesbury Open Space & Recreation Plan, Preservation Plan and Overall Master Plan. 4. Allowable Tract Size: For each application for a special permit, the applicant must have a tract in single or consolidated ownership at the time of application that is at least five (5) acres. However, the Planning Board may waive this minimum area requirement if the Cluster Development Plan includes an overall density reduction on the property, meets the design objectives and purposes of this section, and utilizes a common access driveway serving up to three (3) dwelling units on the property. 5. Allowable Uses: The following principal uses of the lots within the Cluster Residential Development shall be permitted: one-family detached dwellings on separate lots; residential structures with up to four (4) dwelling units, utilizing common wall construction on each lot or within a condominium development; church or other religious purposes; agriculture on parcels greater than five (5) acres; public parks; conservation areas and preserved open spaces; and membership clubs for the exclusive use of the residents of the development. The accessory uses permitted by right of special permit shall be as indicated in Section V.D of this Bylaw.

6. Dimensional Regulations and Development Standards: In a Cluster Residential Development, the following shall apply: a. All

buildings shall be limited to 35 feet in height. b. Detached Structures: In the case of cluster single family detached house lot development, the following dimensions and standards shall apply: 1. Lot Size: Zoning District Minimum Cluster Lot Size R-80 10,000 square feet R-40 10,000 square feet R-20 10,000 square feet IL 10,000 square feet RC 10,000 square feet 2. Lot Frontage: A cluster lot shall have a minimum frontage of not less than 100 feet. In areas of particular environmental sensitivity, the Planning Board may reduce this requirement up to 50% to protect or enhance the primary and secondary resources as defined in 3.a. 3. Lot Shape: Each cluster lot shall be of a size and shape that shall provide a building site which is in harmony with the natural features of the site. The size and shape of each lot and the location of the building site shall be subject to the approval of the Planning Board. 4. Lot Access: All proposed road construction shall comply to the Subdivision Rules and Regulations. The Planning Board may waive this requirement to allow a "common access driveway", as defined in XI.O, to be used as frontage and access for the lots in order to better protect or enhance the primary and secondary resources as defined in 3.a. 5. Building Site: The building site shall be clearly designated on each cluster lot, and shall be situated as to provide open space for each dwelling unit. 6. Open space on cluster lot: At least 50 percent of a cluster lot shall be open space. 7. Open space: Notwithstanding the requirements of the Massachusetts Stormwater Regulations, all stormwater detention or retention areas steeper than a 6:1 side-slope are excluded from the minimum open space area requirement unless a subsurface infiltration drainage system is used and designed for at least a 10 year storm for all roads and driveways and 2 years for all roof drains provided hydraulic soil groups "A" or "B", as defined by the Soil Conservation Services, are present in the area of proposed infiltration. Note, a drainage area of 6:1 side-slope or lesser may only be utilized in areas where the existing topography and vegetation are consistent in slope, character and scale. 8. Wherever feasible, the minimum width of open land between the limit of work of the cluster development and adjacent property shall be 50 feet except for access to the development. 9. The minimum yard requirements for all lots for single family residences shall be 25 feet for the front and rear yards and 15 feet for each side yard. The Planning Board may waive the front setback to 15 feet to protect or enhance the primary and secondary resources as defined in 3.a. c. Attached Structures: In the case of a cluster development consisting of attached structures, the following dimensional regulations and development standards shall apply: 1. Distance between structures: The minimum distance between structures shall be 50 feet. 2. Distance between building clusters: Wherever feasible, the minimum width of open land between any building cluster and adjacent property not part of the cluster development shall be 50 feet. 3. Open Space for cluster unit: Each dwelling unit within a multifamily residential structure shall have a minimum of 1,000 square feet of open space for the exclusive use of the unit occupants. 4. Building Site: The building site shall be clearly designated on each cluster lot, and shall be situated as to provide open space for each dwelling unit. 5. Lot Access: All proposed road construction shall comply to the Subdivision Rules and Regulations. The Planning Board may waive this requirement to allow a "common access driveway", as defined in XI.O, to be used as frontage and access for up to four (4) units in a building cluster in order to better protect or enhance the primary and secondary resources as defined in 3.a. In reviewing the proposed density and layout, the Planning Board may require increased design or construction standards to ensure adequate width, slope or construction of the common access driveway. 6. Open Space on cluster lot: At least 50 percent of a cluster lot shall be open space. 7. Open Space: Notwithstanding the requirements of the Massachusetts Stormwater Regulations, all stormwater detention or retention areas steeper than a 6:1 side-slope are excluded from the minimum open space area requirement unless a subsurface infiltration drainage system is used and designed for at least a 10 year storm for all roads and driveways and 2 years for all roof drains provided hydraulic soil groups "A" or "B", as defined by the Soil Conservation Services, are present in the area of proposed infiltration. Note, a drainage area of 6:1 side-slope or lesser may only be utilized in areas where the existing topography and vegetation are consistent in slope, character and scale. 7. Improvements: All streets, drainage, water systems, sewerage, utilities, grading, and other improvements shall be made in accordance with the Rules and Regulations Governing the Subdivision of Land in the Town of Amesbury. In accordance with the Subdivision Control Law and the Rules and Regulations Governing the Subdivision of Land in the Town of Amesbury, the Planning Board may require a performance bond for the proper installation of all improvements. 8. Design Requirements: In a residential cluster development and in the Rural Cluster District, the following shall apply:

- The open space shall be planned as single, contiguous areas whenever possible. Long thin strips or narrow areas of open space (less than 100 feet wide) shall occur only when necessary for access, as vegetated buffers along wetlands or the perimeter of the site, or as connections between open space areas.
- Open space areas shall be designed to protect or enhance the primary and secondary resources as defined in 3.a. c. Where the proposed development abuts or includes a body of water or a wetland, these areas and the buffer to such areas shall be incorporated into the open space. Where appropriate, reasonable access shall be provided to shorelines.
- The maximum number of house lots compatible with good design shall about the open space and all house lots shall have reasonable physical and visual access to the open space through internal roads, sidewalks or paths. An exception may be made for resource areas vulnerable to trampling or other disturbance.
- Open space shall be provided with adequate access, by a strip of land at least 20 feet wide, suitable for a footpath, from one or more streets in the development.
- Development along existing scenic roads and creation of new driveway openings on existing regional roadways shall be minimized.
- Where a proposed development abuts land held for conservation purposes, the development shall be configured to minimize adverse impacts to abutting conservation land. Trail connections should be provided where appropriate.

9. Common Open Space: In a residential cluster development and in the Rural Cluster District, the following shall apply: [...]"

- Amesbury Zoning Bylaw and Map, Adopted April 12, 1971 with Revisions Through October 14, 2003. XI.
 - E-mail communication with Nipun Jain, 1/06/05

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board H. Planned Unit Development (PUD) by Special Permit: 1. Authority to Grant Permits: The Planning Board may grant a special permit for the construction of a Planned Unit Development (PUD) in the following districts:

2. Applicability: a. The Planning Board may grant a special permit for the construction of a cluster residential development in the following districts:

Has any housing been built under the cluster/flexible provisions?

Yes Town of Amesbury Master Plan, June 2004:

In 1985 the Town modified some of its existing zoning districts to minimize the potential for growth, thereby maintaining the desired development pattern of centralized compact developed areas served by utilities, and conserving the open space and low density feel of outlying areas. The intent was to create a more sustainable pattern of development: to encourage growth and redevelopment in the downtown core and along the existing already developed major roadways; to limit development in outlying areas of town to protect and preserve key natural features; and, to maximize the Town's ability to provide utilities and infrastructure to areas determined feasible and desirable for new growth and development. The objectives of the zoning modifications were to reduce allowable densities and maintain rural character in outlying areas, encourage development in the existing development centers and corridors, and to increase commercial development opportunities in locations that relate to the interstate highway system.

Changes to the residential zoning districts included limiting the existing R-20 zone (20,000 sq. ft. minimum lot size) to areas that were currently serviced by public sewer. The R-30 zone (minimum lot size of 30,000 sq. ft.) was located in three outlying areas of Amesbury and was eliminated in favor of lower density residential zones. The previous R-20 and R-30 zones made up a large portion of developable land in town. The potential density of development would have required extension of water and sewer service, as well as possible upgrading of the sewer treatment facilities, and additional schools. The R-40 and R-80 zones (40,000 and 80,000 sq. ft. minimum lot sizes respectively) were established in unsewered areas to reduce the overall development density, thereby reducing potential for overtaxing existing utility systems and extending services to outlying areas. At the same time, the Town adopted a Cluster Residential (RC) Special Permit applicable in the R-20, R-40, R-80 and IL districts. The RC district mandates 10,000 sq. ft. minimum lot sizes in exchange for 50 percent of the tract to be set aside as common open space. Additional incentives allow for density bonuses of up to 20 percent for dedication of additional open space.

[Continued in the Master Plan]

A significant percentage of lower density single-family uses line the major roadways that form the spokes from the village center area, with newer cluster subdivisions and smaller neighborhood areas adjacent to these corridors. Older established low to medium density neighborhoods are most prevalent in vicinity of Market Street, Lions Mouth Road, Kimball Road and Lake Attitash Road.

Andover

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes The Town of Andover allows for cluster development of single family homes and multifamily homes (both in the single residence districts) and for Planned Development both as multifamily and mixed use development.

The single family clusters are allowed by special permit in the SRB and SRC districts (according to Code of the Town of Andover Massachusetts, Part II, Article VIII, Section 2.1, as amended 2003). While the multifamily is allowed in the SRA, SRB and SRC districts (Part II, Article VIII, Section 2.1), The Planned Development is allowed in the GB (general business district) and the MU (mixed use district) (Part II, Article VIII, Section 7.2).

In a telephone conversation on 7/19/04, Stephen Colyer, Town of Andover Director of Planning, said that the single family cluster provision has been in the Town Code since the 60s, and hundreds of units have been built under that provision. There have been about 40-50 units built under Multifamily Attached Cluster .

From ordinance.com:

SECTION 7.0. SPECIAL RESIDENTIAL REGULATIONS 7.1. CLUSTER DEVELOPMENT

7.1.1. General. The Planning Board may grant a special permit for the construction and occupancy of a cluster development on a tract of land of ten acres or more, in any single residence district other than the Single Residence A District, subject to the following regulations and conditions of this Section 7.1.

7.1.2. Dimensional Requirements.

1. Open Space and Lot Area. The total area of open space (see Section 7.1.4 below) plus all lots in such proposed development shall not be less than the product of the total number of lots times the minimum lot size for the zoning district in which the development is located, and in no case shall an individual lot have less than two-thirds (2/3) of the required lot size for the zoning district in which the development is located.

2. Minimum Lot Frontage. The minimum frontage of any individual lot shall be one hundred feet measured at the street line.

3. Reduced Lot Frontage or Lot Area. Only lots fronting on a proposed "minor" street (a turn-out street, cul-de-sac or dead-end street) may have reduced lot area as per Section 7.1.2.1 above and/or a minimum lot frontage of one hundred feet measured at the street line.

4. Conformance to Frontage and Area Requirements. All lots on existing town or public ways or lots abutting proposed major streets of the development (as defined in the Subdivision Rules and Regulations) shall conform to the frontage and area requirements of the zoning district in which the development lies. The provisions of this Zoning By-Law amendment shall not apply to those lots approved prior to the adoption of this amendment pursuant to the provisions of G.L. c. 40A and 41 and the Rules and Regulations governing the subdivision of land in the Town of Andover.

5. Reduction in Side Yard. In consideration of a special permit for a cluster development under this section, the Planning Board may approve a reduction in the minimum side yard depth to twenty feet.

7.1.3. Noncluster Layout. The applicant shall demonstrate to the Board by a written statement accompanied by a sketch plan of a noncluster layout at a scale of one inch equals forty feet or one inch equals one hundred feet, the reason or reasons why the Board should give favorable attention to an application for a special permit to cluster.

7.1.4. Open Space. All land not designated for roads, lots for dwellings or other development within the development shall be held for common open space. Common open space shall be preserved for recreation or conservation and shall comprise not less than thirty percent (30%) of the land within the cluster development; provided, however, that proposed open space areas deemed by the Board to be inappropriate for the uses of recreation, protection of significant natural features or buffering due to size, shape or location of such space or area shall be excluded from the computation of required open space areas.

1. Conveyance. Such open land shall either be conveyed to the Town of Andover and accepted by it for park or open space use or be conveyed to a nonprofit organization, the principal purpose of which is the conservation of open space, or be conveyed to a corporation or trust owned or to be owned by the owners of lots or residential units within the plan, articles of corporation or trust to be legally drawn up and available for review by Planning Board prior to final approval of the plan. If such a corporation or trust is utilized, ownership thereof shall pass with conveyances of the lots or residential units. In any case where such land is not conveyed to the town, a restriction enforceable by the Town of Andover shall be recorded providing that such land shall be kept in an open or natural state and not be built upon or developed for accessory uses such as parking or roadway. All such open space shall be restricted by deed from all future building. Before final approval of the special permit by the Planning Board, the developer shall state which of the three (3) conveyance options above is being proposed, and such disposition, if approved, shall be recorded as a restriction on the development plan.

2. Pedestrian Accessways. The Board may require the provision or reservation of pedestrian/bicycle accessways of suitable width and in locations suitable for pedestrian/bicycle movement of different types connecting open space areas within the cluster subdivision or to other adjacent open spaces and neighborhoods.

7.1.5. Special Permit. The Planning Board shall approve a special permit for a cluster development only if it finds that the proposed disposition of lots and buildings under the particular circumstances involved will make more efficient the provision by the town of health, safety, protective and other services without causing substantial detriment to the character of the neighborhood. In its consideration of a plan being proposed as a cluster subdivision, the Board shall give particular attention to, and may use as a basis for its decision, the following criteria:

1. The arrangement of lots, streets and buildings as they may promote the harmonious integration of the proposed development with existing surrounding properties;

2. Originality in the overall layout and design to achieve the best possible relationship between the proposed development and the land;

3. Usability of open spaces for active or passive recreation, determined by size, shape, topography and location;

4. Inclusion within open spaces of irreplaceable natural features such as streams, mature trees or clusters of trees, rock outcrops, eskers, bluffs, slopes and historic or archaeological features;

5. Accessibility of open spaces to the disabled, elderly and children;

6. Suitability of open spaces for scenic values and improvement or preservation of views.

7.2. PLANNED DEVELOPMENT

7.2.1. Applicability. The Planning Board may grant a special permit for Planned Development-Multifamily Dwelling (PD-MD) or

Planned Development-Mixed Use (PD-MU) for the following types of structures and uses:

1. PD-MD. (a) conversion or expansion of existing nonresidential structure(s) to multifamily dwellings; or (b) new multifamily dwelling construction;

2. PD-MU. (a) redevelopment, conversion or expansion of existing structure(s) to a combination of multifamily and business uses or a combination of nonresidential uses permitted in the zoning district; or (b) new construction for combined multifamily and business uses or new construction for a combination of nonresidential uses permitted in the zoning district.

a. Exemption from Special Permit Requirement. Any mixed use development comprised only of nonresidential uses shall not require a PD special permit under this section of the by-law if the lot area is less than two acres in size.

7.2.2. Density. The maximum allowable density shall be determined by calculating the required lot area per dwelling unit as follows:

1. General Business District. Two thousand square feet of lot area per dwelling area unit.

2. Mixed Use District. Three thousand square feet of lot area per dwelling unit. The Planning Board may, in its discretion, according to the characteristics of any particular lot, require less than the maximum allowable density.

7.2.3. Dimensional Requirements.

1. Building Height. Any addition or new construction shall not exceed the maximum height allowed by Appendix A, Table 2 of this by-law.

2. Building Coverage.

a. General Business District: In a General Business District, an existing structure occupying more than two-thirds (2/3) of the lot area shall not be expanded. New structures shall not exceed two-thirds (2/3) of the lot area within the General Business district.

b. Mixed Use District: In a Mixed Use District, maximum building coverage shall not exceed forty percent (40%) for new construction or expansion.

3. Building Setbacks.

a. General Business District: In a General Business District, building setbacks shall be determined in accordance with Section 4.1.4.2.b of this by-law.

b. Mixed Use District: In a Mixed Use District, new construction or building expansion shall be set back twenty feet from all property lines.

4. Minimum Lot Frontage. In a Mixed Use District only, the lot shall have a minimum frontage of fifty feet on an existing public way.

5. Setbacks From Residential Dwellings.

a. General Business District: No building in a General Business District shall be erected within fifteen feet of a residential building.

b. Mixed Use District: In a Mixed Use District, no structure shall be constructed nearer than fifty feet from the outside wall of an existing residential dwelling.

7.2.4. Affordability. No application for a PD-MD or PD-Mu which contains residential use shall be approved unless at least fifteen percent (15%) of the total dwelling units proposed are devoted to affordable housing, or such percentage as may be required by state or federal subsidy programs; provided, however, that such applications requesting three or fewer dwelling units are exempt from this requirement. "Affordable housing" shall be defined as any housing subsidized by the federal or state government under any program to assist the construction of affordable housing as defined in the applicable federal or state statute, whether built or operated by any public agency or any nonprofit or limited dividend organization. The calculation of affordable units shall be rounded to the next whole number for units equal to 0.5 or greater.

7.2.5. Design Standards.

1. Access. Parking lot driveways shall not provide access onto North Main Street or Main Street unless granted a special permit by the Planning Board in accordance with Section 5.1.10.

2. Parking Requirements.

a. There shall be two parking spaces per dwelling unit. Visitor parking shall be determined by the Planning Board with reference to the number of dwelling units proposed.

b. For mixed use developments, the parking required for each use shall be calculated and added to the total.

c. Upon the issuance of a special permit by the Planning Board, the required number of parking spaces on a common lot may be

reduced it can be shown that the parking needs for the uses are such that a lower total will serve all uses adequately. The Planning Board shall use the criteria under Section 5.1.12.S of this by-law in its review of the proposed parking alternatives).

d. Parking lots and driveways shall be designed as per Section 5.1 of this by-law. The Planning Board, in its discretion, may allow alternative dimensional designs for parking spaces and parking aisles if the Board finds that the design satisfies the objectives of Section 5.1.1 of this by-law.

e. Parking areas, driveways and pedestrian walkways shall be designed to ensure safe separation of vehicles and pedestrians and sufficient on-site traffic circulation and control in relation to surrounding streets and pedestrian ways. Pedestrian walkways shall be designed to link parking areas to buildings and, where applicable, to provide access along waterways and to abutting open space.

3. Landscaping, Screening and Lighting. where a parking lot exceeds fifty parking spaces, at least five percent (5%) of the parking lot interior shall be landscaped. "Landscaping" is defined as planted trees, shrubs and ground covers in a prepared planting area. Landscaping shall be used to: (a) buffer adjacent properties; (b) provide separation between buildings and parking areas; and c) provide shading within parking areas.

a. Parking areas shall be screened by landscaping, fencing or berming to minimize headlight glare. Lighting shall be designed and screened to prevent light overspill onto abutting properties and ways.

4. Disposal Areas. Adequate provision shall be made for snow disposal areas and dumpsters where appropriate. Dumpsters shall be screened by fencing or landscaping.

5. Access and Utilities.

a. The lot shall have frontage on an existing public way with sufficient capacity to safely accommodate the projected traffic volume;

b. There shall be town water and sewer available with sufficient capacity to serve the project.

c. Emergency vehicles shall have sufficient access to each structure.

7.2.6. Open Area. In a Mixed Use District, at least twenty percent (20%) of the lot shall be maintained as open area. Open area shall include landscaped yard setbacks, natural areas, recreation areas, pedestrian walkways, conservation areas, landscaping around buildings and interior landscaping for parking lots.

7.2.7. Procedure. Twelve copies of an application for a special permit for PD-MD or PD-MU shall be filed with the Planning Board. An interdepartmental review shall be conducted by staff of Planning, Conservation, Health, Public Works, Building, Police and Fire. Comments from the staff meeting shall be submitted in writing to the Planning Board. The application shall include the following information:

1. Analysis of the existing conditions on the site, including but not limited to wetlands, existing topography, soil conditions, areas within the one hundred year flood, trees over eight inches in diameter and any other significant natural features;

2. Site plan, which shall be prepared and stamped by a registered professional engineer, shall contain at least the following information: location, bulk and height of all existing and proposed buildings and accessory buildings and uses; existing and proposed topography; driveways and parking provisions; proposed landscaping plan, including continued use of existing vegetation, new plantings, screening, fencing, etc.; proposed lighting, signs, service areas, refuse and waste disposal areas;

3. Calculation of building footprint and impervious surface area for internal driveways and parking lot areas;

4. Calculation of parking requirements and analysis of proposed parking alternative(s) if a reduction in the number of parking spaces is being requested;

5. Description of extent to which the plan's design takes advantage of natural terrain;

6. Description and calculation of the open area(s) and its utility to the proposed development (size, shape, location and accessibility);

7. Projected size of each dwelling unit (square feet and number of bedrooms); description of the number and location of the affordable and market rate units;

8. Information on the subsidizing programs to be used and comments in writing from the subsidizing agency;

9. Plan for maintenance of open space, waste disposal drainage systems, roadways and snow removal;

10. Elevation of building exterior, description of building materials and type of construction and interior layout;

11. Description of the neighborhood in which the site is located, including utilities and other public facilities, and projected impacts of the proposed development on these;

12. Traffic analysis, which shall be conducted under the supervision of town staff. If consultant services are deemed by the town to be necessary, all costs shall be borne by the applicant;

13. A master sign plan showing the location, size and design of all signs proposed for the project site;

14. Those requirements not applicable to the proposed project shall be noted in the application.

7.2.8. Special Permit. The Planning Board may grant a special permit if it finds all of the following:

1. That the design standards and review criteria in this section have been met;

2. The provisions for parking and vehicular circulation on the site and access onto adjacent roadways will promote safe traffic control and flow;,

3. The provision for landscaping and screening will provide an adequate buffer for adjoining properties and will minimize the impact of the proposed uses and parking areas, and the effect of the bulk and height of buildings and structures;

4. Any provision for pedestrian ways will provide safe and convenient access on-site with linkage to adjacent pedestrian areas;

5. The project will provide for adequate drainage, water and sewer facilities with sufficient capacity to serve the planned development;

6. The intersections and roadways likely to be affected by the proposal are of sufficient capacity and design to accommodate the planned development.

7.2.9. Conditions. In granting a special permit, the Planning Board may impose reasonable conditions and safeguards which may include, but shall not be limited to, the following:

1. Requirements for reasonable off-site improvements to offset the impacts on the capacity and safety of adjacent roadways and intersections, and the capacity of the water, sewer and drainage systems affected by the proposed development;

2. Conditions to minimize impacts on environmental quality;

3. Requirements on the site design of the planned development to ensure compatibility with existing structures and neighboring properties;

4. Controls on the location and type of vehicular and pedestrian access.

7.3. NEW MULTI-FAMILY DWELLING CONSTRUCTION - ATTACHED CLUSTER

7.3.1. Purpose. The purposes of this Section are:

1. to promote and encourage alternative forms of housing which are accessible to existing town services;

2. to protect the natural environment and to conserve open space;

3. to promote energy conservation;

4. to allow development within the existing capacities of town services; and

5. to provide housing which will not be detrimental to the established or future character of the neighborhood and town.

7.3.2. Applicability. The Planning Board may grant a special permit for Attached Cluster to allow the construction of multiple dwellings subject to the criteria of Section 9.4.2 and to the following conditions set forth herein.

7.3.3. Density. The maximum base number of dwelling units shall be determined by dividing the buildable area by the minimum lot size allowed in the zoning district. For each base dwelling unit of one thousand square feet or less, the applicant is entitled to a credit of fifty percent (50%) of an additional dwelling unit of smaller size. Buildable area is calculated by subtracting from the total area of the lot a number which is ninety percent (90%) of the area shown as wetlands on the Town of Andover wetland maps.

7.3.4. Dimensional Requirements.

1. Lot Size. Each lot shall be not less than ten acres nor more than twenty-five acres.

2. Building Height. No building shall exceed thirty-five feet.

3. Building Setbacks.

a. Each building shall be set back at least seventy-five feet from all property boundaries;

b. Each building shall be set back at least fifteen feet from any road or parking area and set back at least fifty feet from other buildings.

4. Frontage. The lot shall have a minimum of fifty feet of frontage on an existing public way which has sufficient capacity to accommodate the projected traffic flows from the project.

7.3.5. Open Space. All land not designated for roads, buildings, privately owned yards and which is unsuitable for development shall be designated open space. Areas which are unsuitable for development shall include, but not be limited to, floodplains; wetlands as shown on the Town of Andover wetland maps; slopes of greater than fifteen percent (15%); and areas with ledge closer than four feet to the surface of the ground.

1. Open space shall comprise a minimum of sixty percent (60%) of the total area of the lot, and at least fifty percent (50%) of the open space shall be accessible and usable for recreation purposes.

2. Prior to the sale of any dwelling unit, the applicant shall submit a conservation restriction on the open space to the Planning Board for its review, modification and approval, and shall record the approved conservation restriction in the Registry of Deeds. In the event of the sale of any dwelling unit prior to the recording of an approved conservation restriction, the town shall have a lien on said real property for the value of the conservation restriction.

3. Prior to the sale of any dwelling unit, the applicant shall convey all open space land to either the town, a nonprofit corporation or a homeowners' association. If the applicant intends to convey to a nonprofit corporation or a homeowners' association, the applicant must obtain the prior approval of the Planning Board.

7.3.6. Design Standards. The following design standards shall apply:

1. There shall be not less than three nor more than six dwelling units in each building;
2. Each dwelling unit shall have a separate exterior entrance to the unit at ground floor level;
3. Buildings shall be designed and placed and landscaping used to maximize visual and audible privacy between buildings;
4. The number of dwelling units which have more than four rooms excluding bathrooms may not exceed sixty percent (60%) of the total number of dwelling units in the development;
5. The design and layout of the buildings and accessory uses may not be altered without prior approval of the Planning Board;
6. At least two parking spaces per dwelling unit shall be provided on the lot either in an off-street paved area or in a garage or carport; no parking area may have more than twelve spaces;
7. Adequate provision shall be made for aisles, driveways, visitor parking and snow disposal;
8. Appropriate landscaping shall be used to prevent or minimize lighting overspill;
9. All utilities shall be buried;
10. All access roads shall have a minimum width of thirty feet and shall be built to a standard approved by the Planning Board, dependent upon the advice of the Director of Public Works;
11. No entrance or exit from the development to an existing public or private way may be allowed unless there are sight distances of at least two hundred fifty feet in both directions on the public or private way, and unless no other public way or private way intersects the existing roadway within one hundred fifty feet of the proposed entrance or exitway;
12. There shall be town water and sewer available in said public way, and said water and sewer lines shall have sufficient capacity to accommodate the project.

7.3.7. Application. Twelve complete copies of the application for a special permit for attached cluster shall be filed with the Planning Board. The application shall include the following information;

1. Analysis of the existing conditions on the site, including but not limited to wetlands, existing topography, soil conditions, areas within the one hundred year flood, trees over eight inches in diameter and any other significant natural features;
2. Calculation of buildable area, as per Section 7.3.3;
3. Site plan, which shall be prepared and stamped by a registered engineer and a registered landscape architect, shall contain at least the following information: location, bulk and height of all proposed buildings and accessory buildings and uses; existing and proposed topography; driveways and parking provisions; proposed landscaping plan, including continued use of existing vegetation, new plantings, screening, fencing, etc.; proposed lighting, signs, service areas, refuse and waste disposal areas;
4. Calculation of a footprint: buildings, roadways, accessory uses;

5. Description of extent to which the plan's design takes advantage of natural terrain;
6. Description of open space and its utility to the town and the proposed development (size, shape, location, natural resource value and accessibility by residents of the town or of the cluster);
7. Projected size of each unit (square feet and number of bedrooms);
8. Plan for maintenance of open space, waste disposal, drainage systems, roadways, snow removal;
9. Elevation of typical building exterior, description of building materials and type of construction, typical interior layout;
10. Description of the neighborhood in which the site is located, including utilities and other public facilities, and projected impacts of the proposed development on these;
11. Traffic analysis, including projected volume and ability of the existing street network to absorb the proposed development's traffic.

7.3.8. Board Review. Before acting upon the application, the Planning Board shall submit it to the following boards and agencies which may review it jointly or separately: the Board of Health, the Conservation Commission, the Department of Public Works, the Design Advisory Group and other boards or agencies the Planning Board may deem appropriate. Any such agency to which applications are referred for review shall submit such recommendations as it deems appropriate to the Planning Board. Failure to make recommendations within twenty days of receipt shall be deemed lack of comment or opposition.

7.3.9. Additional Information. After the opportunity for review by other boards and agencies, the Planning Board may require the applicant to supply more specific information about the proposed development, as per questions and comments of the reviewing boards and agencies. Such additional information shall be submitted within ten days of the expiration of the previous twenty days as set forth in Section 7.3.8. above.

7.3.10. Special Permit Procedure. The procedure for a special permit under this section shall be governed by Section 9.4. if the Planning Board disagrees with the recommendations of the Conservation Commission or the Board of Health, the reasons shall be stated in the special permit decision filed with the Town Clerk.

7.3.11. Special Permit. The Board may grant a special permit for Attached Cluster only if its finds that the applicant has demonstrated the following:

1. that the Attached Cluster plan will be in harmony with the purposes of Section 7.3.1 and the long-range plan of the town;
2. that it will not have a detrimental impact on the neighborhood, will be designed with due consideration for health and safety, and is superior to a conventional subdivision plan in preserving open space, minimizing environmental disruption, allowing more efficient provision of services or allowing for greater variety in prices and types of housing stock.

CLUSTER DEVELOPMENT : A residential subdivision of detached single family dwellings on a tract of land of ten acres or more with a minimum of thirty percent (30%) of the land area designated as common open space, allowed by special permit in any single residence district other than Single Residence A.

On density allowed for cluster development:

For single family clusters:

According to Part II, Article VIII, Section 7.1.2, "Open Space and Lot Area. The total area of open space (see Section 7.1.4 below) plus all lots in such proposed development shall not be less than the product of the total number of lots times the minimum lot size for the zoning district in which the development is located, and in no case shall an individual lot have less than two-thirds (2/3) of the required lot size for the zoning district in which the development is located." Therefore, the numbers in the answer field represent 2/3 of the lot size for single family lots in each district.

...

The applicant shall demonstrate to the Board by a written statement accompanied by a sketch plan of a noncluster layout at a scale of one inch equals forty feet or one inch equals one hundred feet, the reason or reasons why the Board should give favorable attention to an application for a special permit to cluster." (Part II, Article VIII, Section 7.1.3]

For multifamily clusters: the researcher gathered the lot size information from Code of the Town of Andover Massachusetts, Part II, Article VIII, Section 7.3 (as amended 2003).

For Planned Development:

Code of the Town of Andover Massachusetts, Part II, Article VIII, Section 7.2.2 (as amended 2003) sets forth the density requirements for planned development. Additionally, the following applies with regards to planned developments, from Section 7.2.1

and 7.2.4, respectively:

"The Planning Board may grant a special permit for Planned Development-Multifamily Dwelling (PD-MD) or Planned Development-Mixed Use (PD-MU) for the following types of structures and uses:

1. PD-MD. (a) conversion or expansion of existing nonresidential structure(s) to multifamily dwellings; or (b) new multifamily dwelling construction;

2. PD-MU. (a) redevelopment, conversion or expansion of existing structure(s) to a combination of multifamily and business uses or a combination of nonresidential uses permitted in the zoning district; or (b) new construction for combined multifamily and business uses or new construction for a combination of nonresidential uses permitted in the zoning district.

a.Exemption from Special Permit Requirement. Any mixed use development comprised only of nonresidential uses shall not require a PD special permit under this section of the by-law if the lot area is less than two acres in size."

"Affordability. No application for a PD-MD or PD-MU which contains residential use shall be approved unless at least fifteen percent (15%) of the total dwelling units proposed are devoted to affordable housing, or such percentage as may be required by state or federal subsidy programs; provided, however, that such applications requesting three or fewer dwelling units are exempt from this requirement. "Affordable housing" shall be defined as any housing subsidized by the federal or state government under any program to assist the construction of affordable housing as defined in the applicable federal or state statute, whether built or operated by any public agency or any nonprofit or limited dividend organization. The calculation of affordable units shall be rounded to the next whole number for units equal to 0.5 or greater."

Researcher's notes on density:

Single Family Cluster:

SRB (20000 sq. ft. per lot)

SRC (2/3 of an acre)

Multifamily Cluster:

SRA (each lot not less than 10 acres, not more than 25 acres)

SRB (each lot not less than 10 acres, not more than 25 acres)

SRC (each lot not less than 10 acres, not more than 25 acres)

Planned Development:

GB (2000 sq. ft. of lot area per dwelling area unit)

MU (3000 sq. ft. of lot area per dwelling area unit)

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board 7.1. CLUSTER DEVELOPMENT

7.1.1. General. The Planning Board may grant a special permit for the construction and occupancy of a cluster development on a tract of land of ten acres or more, in any single residence district other than the Single Residence A District, subject to the following regulations and conditions of this Section 7.1.

7.2. PLANNED DEVELOPMENT

7.2.1. Applicability. The Planning Board may grant a special permit for Planned Development-Multifamily Dwelling (PD-MD) or Planned Development-Mixed Use (PD-MU) for the following types of structures and uses:

7.3. NEW MULTI-FAMILY DWELLING CONSTRUCTION - ATTACHED CLUSTER

7.3.10. Special Permit Procedure. The procedure for a special permit under this section shall be governed by Section 9.4. if the Planning Board disagrees with the recommendations of the Conservation Commission or the Board of Health, the reasons shall be stated in the special permit decision filed with the Town Clerk.

Has any housing been built under the cluster/flexible provisions?

Yes In a telephone conversation on 7/19/04, Stephen Colyer, Town of Andover Director of Planning, stated that the single family cluster provision has been in the Town Code since the 60s, and hundreds of units have been built under that provision. There have been about 40-50 units built under Multifamily Attached Cluster .

Arlington

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Zoning Bylaw Town of Arlington, Section 3.02 (on Arlington website as of August, 2004)

PUD - Planned Unit Development District

The Planned Unit Development District is composed of that area so designated on the official zoning map. Large scale, multi-use development is permitted upon approval of a development plan and the assembly of a large amount of land.

Zoning Bylaw Town of Arlington, Article 11 (on Arlington website as of August, 2004)

2. Planned Unit Development District. Every developer in a Planned Unit Development district shall file an application for an environmental design review. The application shall include the material listed in 11.06(d), as well as the following:

(a) The plans shall be certified by the land surveyor doing the boundary survey and the professional engineer or architect on the location of the building(s), setbacks, and all other required dimensions, elevations, and measurements and further that the plan be signed under the penalties of perjury.

(b) The corner points of the lot (or lots under common ownership) and the change of direction of lines to be marked by stone monuments, cut in stone, stake and nail, iron pin, or other marker, and shall be so marked.

The ARB shall review the plans and model and may grant a special permit subject to the conditions and safeguards listed in Section 10.11(b). The ARB for stated reasons may deny approval of a special permit or may approve a special permit without a finding of hardship.

The site plan shall be subject to the standards listed in Section 11.06(f) and the ARB shall make a determination that the project meets these standards.

ART. 102, ATM 3/83

Before granting a special permit, the ARB shall hold a public hearing, notice of which shall be given in a local newspaper once in each of two successive weeks with the first publication to be not less than fourteen (14) days before the date of hearing, and to owners of all property abutting the proposed development or land in the same ownership or contiguous ownership, and to all property owners deemed by the ARB to be affected thereby. The ARB shall make a copy of the site plan, the model, the application and any other supporting material submitted, immediately available to the Department of Planning and Community Development and they shall have an opportunity to prepare written reports with recommendations to be submitted to the ARB before or at the public hearing. The failure of the Department of Planning and Community Development to submit written reports or to give an oral report at the public hearing shall not invalidate action by the ARB. A favorable decision by the ARB shall require the votes of at least four members of said Board.

d. REQUIRED SUBMITTALS. In addition to the site plan required for special permits in Section 10.11(c) of this Bylaw, the application shall be accompanied by the following:

1. Model. An inexpensive study model or final presentation model at a minimum scale of 1" = 40' showing the tract, abutting streets, proposed contours, proposed buildings, and the massing of abutting buildings. (Not required for additions, alterations, or changes in use which increase gross floor area by less than 100 percent.)

2. Drawing of Existing Conditions. A drawing (at a minimum of 1" = 20' unless another scale is found suitable by the Department of Planning and Community Development) showing the location, type, size, or dimension of existing trees, rock masses, existing topography at two (2) foot contours, and other natural features with designations as to which features will be retained. In order to meet the conditions for approval of a special permit, all existing trees, rock masses, and other natural features shall be retained until a special permit is approved.

3. Drawing of Proposal.

(a) Structure: a drawing including color and type of surface materials showing front and rear elevations, and side elevations where there are no adjoining buildings, and floor plans.

(b) Landscape: a drawing showing the location, dimensions, and arrangements of all open spaces and yards, including type and size of planting materials, color and type of surface materials, methods to be employed for screening, and proposed topography at two (2) foot contours.

4. Photographs. Photographs showing the proposed building site and surrounding properties, and of the model (if required). Applications for alterations and additions shall include photographs showing existing structure or sign to be altered and its relationship to adjacent properties.

5. Impact Statement. Statement by applicant with explanation of how each of the environmental design review standards is

incorporated into the design of the proposed development. Where a particular standard is not applicable, a statement to that effect will suffice. An environmental impact statement prepared in accordance with state or Federal regulations may be accepted as a substitute in lieu of this statement.

6. Application for permit and accompanying plans as specified under Section 10.05 for each sign that is to be erected on the proposed structure(s).

e. ARLINGTON REDEVELOPMENT BOARD PROCEDURE. The ARB shall within 10 days refer the proposal and model thereof to the Department of Planning and Community Development which for the purposes of this section shall serve in an advisory capacity to the ARB. The Department of Planning and Community Development shall evaluate the proposed use on the basis of the standards set forth in paragraph f. of this section and Section 10.11(a), using outside consulting services when appropriate, and shall submit its findings and recommendations in a design review report to the ARB which specifically addresses each standard individually.

The ARB shall not take final action on an application for a special permit under this section until it has received the design review report or until 30 days have elapsed after submittal of said proposal to the Department of Planning and Community Development.

The ARB shall not deny a special permit required by this section unless it finds that the proposed use does not comply with the standards listed in paragraph f. to such a degree that such use would result in a substantial adverse impact upon the character of the neighborhood in which the use is proposed, or of the town and upon traffic, utilities and public or private investments therein, thereby conflicting with the purposes of this Bylaw.

f. ENVIRONMENTAL DESIGN REVIEW STANDARDS. The following standards shall be utilized by the Arlington Redevelopment Board and the Department of Planning and Community Development in reviewing all site and building plans. These standards are intended to provide a frame of reference for the applicant in the development of site and building plans as well as a method of review for the reviewing authority. These standards shall not be regarded as inflexible requirements. They are not intended to discourage creativity, invention and innovation. The specification of one or more particular architectural styles is not included in these standards. The standards of review outlined in subsections (1) through (11) below shall also apply to all accessory buildings, structures, free-standing signs and other site features, however related to the major buildings or structures.

1. Preservation of Landscape. The landscape shall be preserved in its natural state, insofar as practicable, by minimizing tree and soil removal, and any grade changes shall be in keeping with the general appearance of neighboring developed areas.

2. Relation of Buildings to Environment. Proposed development shall be related harmoniously to the terrain and to the use, scale, and architecture of existing buildings in the vicinity that have functional or visual relationship to the proposed buildings. The Arlington Redevelopment Board may require a modification in massing so as to reduce the effect of shadows on abutting property in an R0, R1 or R2 district or on public open space.

ART. 15, ATM 5/91

3. Open Space. All open space (landscaped and usable) shall be so designed as to add to the visual amenities of the vicinity by maximizing its visibility for persons passing the site or overlooking it from nearby properties. The location and configuration of usable open space shall be so designed as to encourage social interaction, maximize its utility, and facilitate maintenance.

4. Circulation. With respect to vehicular and pedestrian circulation, including entrances, ramps, walkways, drives, and parking, special attention shall be given to location and number of access points to the public streets (especially in relation to existing traffic controls and mass transit facilities), width of interior drives and access points, general interior circulation, separation of pedestrian and vehicular traffic, access to community facilities, and arrangement of parking areas that are safe and convenient and, insofar as practicable, do not detract from the use and enjoyment of proposed buildings and structures and the neighboring properties.

5. Surface Water Drainage. Special attention shall be given to proper site surface drainage so that removal of surface waters will not adversely affect neighboring properties or the public storm drainage system. Stormwater shall be removed from all roofs, canopies and paved areas and carried away in an underground drainage system. Surface water in all paved areas shall be collected at intervals so that it will not obstruct the flow of vehicular or pedestrian traffic, and will not create puddles in the paved areas.

6. Utility Service. Electric, telephone, cable TV and other such lines and equipment shall be underground. The proposed method of sanitary sewage disposal and solid waste disposal from all buildings shall be indicated.

7. Advertising Features. The size, location, design, color, texture, lighting and materials of all permanent signs and outdoor advertising structures or features shall not detract from the use and enjoyment of proposed buildings and structures and the surrounding properties.

8. Special Features. Exposed storage areas, exposed machinery installations, service areas, truck loading areas, utility buildings and structures, and similar accessory areas and structures shall be subject to such setbacks, screen plantings or other screening methods as shall reasonably be required to prevent their being incongruous with the existing or contemplated environment and the surrounding properties.

9. Safety. With respect to personal safety, all open and enclosed spaces shall be designed to facilitate building evacuation and maximize accessibility by fire, police, and other emergency personnel and equipment. Insofar as practicable, all exterior spaces and interior public and semi-public spaces shall be so designed as to minimize the fear and probability of personal harm or injury by increasing the potential surveillance by neighboring residents and passersby of any accident or attempted criminal act.

10. Heritage. With respect to Arlington's heritage, removal or disruption of historic, traditional or significant uses, structures, or

architectural elements shall be minimized insofar as practicable, whether these exist on the site or on adjacent properties.

11. Microclimate. With respect to the localized climatic characteristics of a given area, any development which proposes new structures, new hard-surface ground coverage, or the installation of machinery which emits heat, vapor, or fumes, shall endeavor to minimize, insofar as practicable, any adverse impact on light, air, and water resources, or on noise and temperature levels of the immediate environment.

Zoning Bylaw Town of Arlington, Section 6.10 (on Arlington website as of August, 2004)

Section 6.10 - Sale or Lease of Lots in a Planned Unit Development

Upon completion of an environmental design review, as required in Section 11.06, individual tracts of land in the Planned Unit Development of at least 30,000 square feet may be leased or sold for development in accordance with the approved Planned Unit Development site plan without the provision of new setbacks for front, side, or rear yards. Each tract or lot so leased or sold must make provision for a principal building, off-street parking, and open space or plaza area to serve it as required in the PUD district.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board Zoning Bylaw Town of Arlington, Article II (on Arlington website as of August, 2004)

ART. 12, ATM 5/91

Special Permit Granting Authority:

The Zoning Board of Appeals, or in the case of a special permit which qualifies for Environmental Design Review under Section 11.06 of the Zoning Bylaw, the Arlington Redevelopment Board.

Has any housing been built under the cluster/flexible provisions?

Yes Laura Weiner, Planner, said (9/14/04) that PUD has not been used in the four years she has worked for Arlington. She said: "It has not been used very much. We do have Planned Unit Development. It has not been used in the four years I have worked here. There isn't very much land."

Ashland

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes According to Robert Hill, Ashland Building Inspector, (7/22/04) Ashland was the first town in the state to have cluster development - established in the 1970s. A cluster development of about 200 homes was built in the 70s. He commented that while he does not know the exact numbers, there have been 7 developments since the 1970s ranging from 7-200 units.

Ashland Town Bylaws, Chapter 282, Zoning Bylaw, Section 282-40. Cluster development.

Section 282-40. Cluster development.

[Amended 5-12-1993 ATM, Art. 30; 10-16-1996 ATM, Art. 20]

A. Administration. The Planning Board may grant approval for the construction and occupancy of a cluster development (subdivision), supplemented by appropriate amenities as agreed to by the owner, of a parcel of land in excess of five (5) contiguous acres located in a Residential Zoning District, subject to criteria of the Subdivision Rules & Regulations (Chapter 344 of the Code) adopted by the Planning Board at the time of Preliminary Plan submittal. [Amended 5-12-1999 ATM, Art. 31]

B. Intent. The intent of cluster development is to allow more intensive screened use of separately owned lots by a building and its accessory structures together with preservation of common open space for scenic, agricultural, recreation, and conservation purposes, otherwise not provided by conventional subdivision plans. Additional enhancements are the preservation of more

greenery and woodlands through less disturbance, temperance of the appearance of suburban sprawl associated with conventional subdivision development and less costly development and maintenance outlay. [Amended 5-12-1999 ATM, Art. 31]

C. Application procedure. To promote better communication and avoid misunderstanding, applicants are encouraged to submit preliminary proposals and plans for informal review prior to formal application.

(1) Required submission.

(a) Applicants for a cluster development shall submit to the Planning Board six (6) copies of a completed application and ten (10) copies of a plan meeting the specifications for a preliminary plan as established by the Subdivision Regulations adopted by the Ashland Planning Board. (See Chapter 344, Subdivision of Land.) Said plan shall also indicate proposed building uses, building locations and development schedule and shall have been prepared by a landscape or registered architect, or civil engineer. Submitted application materials shall also indicate the applicant's legal interest in the land to be developed, the form of organization to be proposed to own and maintain the common land, the substance of covenants and grants of easements to be imposed upon the use of land and structures and the development schedule. [Amended 5-12-1999 ATM, Art. 31]

(b) At least four (4) copies of a site analysis shall be submitted, consisting of one (1) transparent copy of the above plan, and a series of site analysis drawings at the same scale, each on a separate sheet, indicating analysis of hydrologic systems, vegetation cover, slope and land form, soils and geology and such other characteristics as required by the rules and regulations of the Planning Board.

(2) Review and decision. Forthwith upon receipt of the application and required plans, the Planning Board shall transmit one (1) copy each to the Board of Health and Conservation Commission. The Board of Health and Conservation Commission shall submit written reports to the Planning Board within thirty-five (35) days of the referral, and the Planning Board shall make no decisions upon the application until receipt of all such reports or until thirty-five (35) days have elapsed since date of referral without such reports.

(3) Under this section, the Planning Board shall give consideration to the reports of the Board of Health and Conservation Commission and to the degree to which the proposed development conforms to the intent of the cluster development.

****Webmasters Note:** Subsection 282-40 C (3) has been amended as per Case No. 2255 adopted at the town meeting 5/15/02.

D. Requirements. A cluster development must conform to the following:

(1) An applicant for cluster development consideration, in determining the limit on the number of dwelling units which can be built on a specific tract, must determine the number of lots by the two methods listed below. The numbers of lots shall be determined based on whatever method depicts the least amount of lots. [Amended 5-9-2001 ATM Art 24]

(a) The total number of dwelling units shall not exceed the number for which the tract could have been developed (conventional lots), but for the provisions of this section. The applicant shall present calculations and a scaled drawing depicting a conventional development, for review and concurrence by the Planning Board; AND

(b) The total number of dwelling units shall not exceed that allowed by the following formula, concurred with by the Planning Board:

USABLE ACRES / MINIMUM LOT AREA = NUMBER OF CONDENSED SIZE LOTS

WHERE USABLE ACRES = (TOTAL TRACT ACRES) - [20% EXCLUSION OF TRACT ACRES (streets, walks, easements, etc.)] - [50% TRACT ACRES FOR OPEN SPACE]

****Webmasters Note:** The previous subsection (1) has been amended as per Case No. 1834 dated 5/9/01.

(2) No structure shall be built or used in a cluster development except in compliance with the use regulations of Section 282-21A and with the following dimensional regulations:

NOTES:

A. Side and rear yard requirements shall apply only where the lot in the cluster development abuts non-cluster adjacent property, elsewhere side and rear yard requirements may be waived by the Planning Board.

B. Larger lot sizes may be required, as determined by the Planning Board with advisory by the Board of Health, where public sewerage is not available, and considering soil conditions, water table and slope conditions.

C. No lot shall have more than ten percent (10%) of its minimum lot area made up of wetlands and slopes greater than twenty-five percent (25%) in grade, singularly or combined.

(3) Only single-family dwellings shall be allowed in cluster developments unless provisions of Subsection E are followed.

(4) Buildings shall be oriented with respect to scenic vistas, natural landscape features, topography and natural drainage areas in accordance with criteria for Section 282-6, Site plan review, of this chapter.

(5) New dwellings shall be grouped so that fields, pastures, woodlands, and road frontage remain as undeveloped as possible. To serve the purposes of this requirement, subdivision definitive plans shall depict the approximate location line of undisturbed woodlands and other greenery associated with separate building lots. [Amended 5/12/99]

(6) All remaining land in the cluster development not contained in building lots or within road rights-of-way shall be held for common use of the residents of the development and, in some circumstances, of the Town as open space and shall meet the following requirements:

(a) All such open space parcels, together, shall equal not less than fifty percent (50%) of the overall tract area of the cluster development and shall have building coverage of not more than five percent (5%).

(b) Each parcel of such open space or group of adjoining parcels shall be at least two (2) acres in area, have not less than twenty (20) feet frontage on a street and be of such shape and condition as to be useful for recreation or conservation purposes. No more than fifty percent (50%) of all common open space shall consist of wetlands and slopes greater than twenty-five percent (25%) in grade.

(c) At least fifty percent (50%) of all lots in a cluster development having reduced lot area shall abut such open space parcels, and no lot having reduced lot area shall be more than eight hundred (800) feet via streets from such parcels, which may be waived by the Planning Board.

(d) Desirable qualities of open space reservations are continuity of open space within the development and into existing or potential adjoining developments, protection of watercourses, wetlands, and other ecologically sensitive areas, configuration reflecting land forms and existing vegetative patterns and inclusion of open space to lots of reduced size.

(7) Open space conveyance.

(a) Open space and such other facilities as may be held in common shall be conveyed to one (1) of the following, as determined by the Planning Board, subject to the following guidelines. In general, valuable natural resource land such as wetlands not suitable for any public use or suitable for extensive agricultural or public recreational use should be conveyed to the Town, or a trust, or nonprofit organization; whereas land that will be principally used by the residents of the cluster development should be conveyed to a homeowners' association.

i. To a corporation or trust comprising a homeowners' association whose membership includes the owners of all lots or units contained in the tract. The developer shall include in the deed to owners of individual lots beneficial rights in said open space and shall grant a conservation restriction to the Town of Ashland over such land pursuant to Chapter 184, 31 through 33, M.G.L., to ensure that such land is kept in an open or natural state and is not built upon for residential use or developed for accessory uses such as parking, streets or driveways. This restriction shall be enforceable by the Town through its Conservation Commission in any proceeding authorized by Chapter 184, 33, M.G.L. In addition, the developer shall be responsible for the maintenance of the common land and any other facilities to be held in common until such time as the homeowners' association is capable of assuming said responsibility. In order to ensure that the association will properly maintain the land deeded to it under this section, the developer shall cause to be recorded at the Middlesex County Registry of Deeds a Declaration of Covenants and Restrictions that shall, at a minimum, provide for the following:

[a] Mandatory membership in an established homeowner's association as a requirement for ownership of any lot in the tract.

[b] Provision for maintenance assessments of all lots in order to ensure that the open land is maintained in a condition suitable for uses approved by the homeowner's association. Failure to pay such assessment shall create a lien on the property assessed, enforceable by either the homeowner's association or the owner of any lot.

[c] Provisions, which, so far as possible under the existing law, will ensure that the restrictions placed on the use of the open land will not terminate by operation of law or, that in the case of termination, that mandatory renewal of all restrictions shall occur automatically. ii. To the Town for a park or open space use, subject to the approval of the Board of Selectmen, with a deed restriction ensuring that it is maintained as open space. iii. To a trust or nonprofit organization for natural resources land or open land not suitable for public use. In the case of land that is to be maintained as active agricultural land, the land must be conveyed to a trust or nonprofit organization whose primary purpose is the preservation of farmland.

(b) Subject to the above, the open space may be used for agricultural, conservation or recreational purposes including golf courses, riding trails, tennis courts, gardens, swimming pools and temporary structures. The Planning Board may permit open land of a homeowner's association to be used for individual septic systems or for communal septic systems if it and the Board of Health are convinced that proper legal safeguards exist for proper management of an association-owned system.

(c) Prior to development or sale of any lot within a cluster development, all lots to be so developed shall be shown on a plan recorded in the Registry of Deeds or registered with the Land Court, and a covenant or other instrument satisfactory to the Planning Board shall have been executed assuring the open space or recreational use of lands so designated in the application.

(d) The cluster development shall be so designed that internal access, drainage, utilities and grading shall be functionally equivalent to that required for conventional lots in the Planning Board's adopted Subdivision Regulations or other rules and regulations, if applicable.

E. Development incentive for affordable housing.

(1) An applicant may apply to increase the number of dwelling units up to a maximum of twenty-five percent (25%) of the units otherwise permitted on the tract under this section, provided that a minimum of ten percent (10%) of all units in the tract are affordable. In all cases affordable units shall be mingled with market-rate housing units.

(2) The applicant for the development incentive shall document the affordable units' sales prices and how that affordability will be guaranteed over time. For the purposes of this section, the affordability criteria and standards for affordability guarantees of the Ashland Affordable Housing Committee shall be used. In the absence of such criteria, the criteria and standards of the Massachusetts Home Ownership Program shall be used. In cases involving the sale of units to the Ashland Housing Authority, the Commonwealth of Massachusetts Executive Office of Communities and Development's standards and regulations governing such sales shall apply.

(3) The Planning Board shall have the discretion to allow the use of attached dwelling units in a project developed under this section. No more than two (2) dwelling units per structure shall be allowed. Attached dwelling units shall be allowed upon meeting the following conditions:

(a) Attached units shall not visually detract from the surrounding neighborhood.

(b) Attached units will not result in an inappropriate density for the site.

(c) Attached units will result in a greater amount and more beneficial use of open space.

(4) The Planning Board may require as a condition of this section that, in lieu of all or some of the affordable units being provided within the development, the developer shall:

(a) Provide all or some of the required affordable units on a site different from the development, and provided that in all cases it is reasonably mixed with market-rate housing; or

(b) Provide all or some of the required affordable housing through alternative means other than those already listed in this subsection.

(5) In the case of a development of five (5) or fewer dwelling units or a development sponsored and operated by a nonprofit or charitable organization, the Planning Board may, at its discretion, modify the requirements of this section to avoid economic hardships.

F. Further requirements.

(1) Only residential, agricultural, recreational or conservation uses shall be permitted within a cluster development.

(2) Subsequent to definitive plan endorsement, the Planning Board may permit relocation of lot lines within the cluster development. However, any change in overall density, street layout or open space layout will require further public hearings. [Amended 5/12/99]

(3) All streets within the development shall conform to current Planning Board Subdivision Regulations' construction standards (see Chapter 344, Subdivision of Land) and shall provide access in and to the project, as required by said regulations.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board Section 282-40. Cluster development.

[Amended 5-12-1993 ATM, Art. 30; 10-16-1996 ATM, Art. 20]

A. Administration. The Planning Board may grant approval for the construction and occupancy of a cluster development (subdivision), supplemented by appropriate amenities as agreed to by the owner, of a parcel of land in excess of five (5) contiguous acres located in a Residential Zoning District, subject to criteria of the Subdivision Rules & Regulations (Chapter 344 of the Code) adopted by the Planning Board at the time of Preliminary Plan submittal. [Amended 5-12-1999 ATM, Art. 31]

Has any housing been built under the cluster/flexible provisions?

Yes According to Robert Hill, Ashland Building Inspector, in a telephone conversation on 7/22/04, Ashland was the first town in the state to have cluster development. Their rules date back to the 1970s. In the 1970s there was a cluster development of about 200 homes. He commented that while he does not the exact numbers, there have been 7 developments since the 1970s ranging from 7-200 units.

Attleboro

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes According to City of Attleboro Zoning Ordinance §17-3.4 TABLE OF USE REGULATIONS, Downtown Residential Cluster Dwellings are permitted by special permit of the Board of Appeals in the CB district, the Open Space Residential Development is allowed by special permit of the Planning Board in the GR and SR areas and Planned Unit Residential Development is allowed by special permit of the Planning Board in the area zoned SR.

City of Attleboro Zoning Ordinance §17-10.10 DOWNTOWN RESIDENTIAL CLUSTER DWELLINGS

A. In order to permit greater flexibility for the development of high-density multi-family residential buildings in the "Central Business" use district while maintaining the integrity of the business zone, residential dwelling units on the first floor level may be allowed by special permit in the "Central Business" use district from the Board of Appeals.

B. The Board of Appeals may grant said special permit after public hearing and in accordance with the provisions of §17-9.0 SPECIAL PERMITS only when it is satisfied that the proposed development of residential dwelling units on the first floor level is in the best interests of the "Central Business" use district as well as the City of Attleboro. Said special permit shall apply only to the first floor level residential dwelling units.

C. All dimensional and density regulations required in the underlying use district pursuant to §17-4.0 DIMENSIONAL AND DENSITY REGULATIONS shall prevail notwithstanding the granting of any such special permit. All off-street parking regulations required in the underlying use district pursuant to §17-5.10 TABLE OF OFF-STREET PARKING REGULATIONS shall prevail notwithstanding the granting of any such special permit unless otherwise specified by the Board of Appeals. First floor level façades of such residential buildings, as well as the style of related architectural and landscape features, shall consist of a design and quality so as to complement and enhance the integrity of the adjoining uses and the character of the downtown.

City of Attleboro Zoning Ordinance §17-11.2 DEFINITIONS- Dwelling, Downtown Cluster Dwellings: A residential building containing a minimum of eight (8) attached dwelling units, including apartment house and garden apartment house, whereby residential units on the first floor level are regulated by special permit and residential units above the first floor level are permitted by right.

City of Attleboro Zoning Ordinance §17-10.5 OPEN SPACE RESIDENTIAL DEVELOPMENTS

A. Purpose and Scope: In order to permit greater flexibility and more attractive, efficient and economical design of residential subdivisions, the owner of any five-acre or larger tract of land located in the applicable districts may apply for a special permit to reduce the minimum required lot areas and widths as provided in this section. The Planning Board may grant a special permit for an open space residential development, if satisfied that it meets the purposes of this section, and may amend such special permits as provided herein. The procedural requirements and conditions of §17-9.0 SPECIAL PERMITS hereof for the issuance of special permits shall apply to the Planning Board acting as special permit granting authority under this section.

B. Purposes of Open Space Residential Development

C. Dimensional Requirements – An open space residential development shall comply with the following dimensional requirements and shall not be changed so as to result in a violation of these requirements:

1. The number of building lots that could be accommodated within the tract shall not exceed the maximum number of such lots permitted by the minimum areas in the applicable Districts after deduction of fifteen (15%) percent of its area for streets. No land that is unusable for building due to being subject to an easement, or otherwise legally restricted, shall be included in the circulation of land available for development. The Planning Board may request the applicant to submit a sketch showing the maximum number of lots that could be obtained in a conventional subdivision for applicable Districts and may accept such sketch as evidence of the number of lots obtainable.

2. Not less than twenty-five (25%) percent of the total area of the tract shall be reserved as open land and shall be conveyed to the City of Attleboro and accepted by it for open space recreation and conservation purposes, or conveyed to a non-profit organization, the principal purpose of which is the conservation of open space, or conveyed to a corporation or trust owned or to be owned by the owners of residential lots in such open space residential development. The removal of dead or diseased vegetation, new planting, flood control measures by public authorities, unpaved trails, foot bridge, rustic shelters and picnic facilities, minor stream impoundments or diversions, shall be deemed to be consistent with the open space use of the land. When the open space is conveyed to other than the City of Attleboro, a restriction or easement in favor of the city shall be recorded providing that such land shall be kept in open or natural state, not subdivided or reduced in size and not built upon or developed for accessory uses other than open space conservation. The open space shall be in one parcel, except that the Planning Board may as a condition of the special permit provide for a different arrangement if deemed to be more beneficial, and each open space parcel shall have physical and legal access from a street. Such access shall have a width of forty (40') feet.

3. The area of each lot within an open space residential development may be reduced to not less than 12,000 square feet, but the Planning Board may require larger lots to accommodate any easements, wetlands or unusable area therein.

4. The width of each lot within an open space residential development may be reduced to not less than eighty (80') feet, provided that any lot facing across a street from residential lots not with an open space residential development shall have a width not less than the average width of such lots across the street, and provided, further that for lots on a circular turnaround or concave curve of

one hundred (100') feet radius or less, the lot frontage may be reduced to not less than fifty (50') feet.

5. Except for the provisions of open space and the reduction of lot area and width, as specified herein, the dimensional requirements of §17-4.9 TABLE OF DIMENSIONAL AND DENSITY REGULATIONS and other dimensional and density regulations of this ordinance shall apply to open space residential developments.

D. Compliance with ZONING ORDINANCE and SUBDIVISION CONTROL

E. Procedural Requirements

F. Contents of Special Permit

G. Open Space Residential Development Revisions and Modifications – Lot lines (provided no violation is caused thereby of area, width, or other dimensional requirements specified herein), location of buildings and utilities, landscaping and the surface culture of land may be changed by the applicant and the successors-in-title to the applicant without a revision of the special permit, provided such changes do not violate a condition imposed at the time of special permit issuance to ensure compliance with the purposes of open space residential development. However, any change of boundaries, area, use or ownership of the open space, including any subdivision thereof, revision of street lines, and any change affecting the general or specific conditions imposed by the special permit shall require and be made only upon a revision of the special permit. The procedure for revisions of a special permit shall be the same as specified for the initial issuance of a special permit, including a duly advertised public hearing, but the plans and information provided shall be limited to that necessary to evaluate the proposed revisions only.

City of Attleboro Zoning Ordinance §17-10.6 PLANNED UNIT RESIDENTIAL DEVELOPMENTS

A. Purpose and Scope – In order to permit greater flexibility and more attractive, efficient, and economical design of residential subdivisions, the owner of a fifty acre or larger tract of land located in a "Single Residence" zoning district may apply for a special permit to reduce the minimum required lot areas and widths and to mix land uses as provided in this section. The Planning Board may grant a special permit for a Planned Unit Residential Development (PURD) when satisfied that it meets the purposes and conditions set forth in this section.

B. Requirements for a Special Permit – Actions of the Planning Board pertaining to PURD shall be in accordance with §17-9.0 SPECIAL PERMITS of this ordinance with the Planning Board serving as the Special Permit Granting Authority.

C. Permitted Use – The following uses shall be permitted by the granting of a special permit for a PURD: single family dwellings; attached single family dwellings not to exceed four (4) dwelling units per structure, hall, club or other indoor place of amusement or assembly exclusively for use by the PURD residents and their guests; and such accessory uses as are customary in connection with such uses. Other uses continue to be permitted and controlled by §17-3.4 TABLE OF USE REGULATIONS. Unless otherwise authorized by this ordinance, accessory uses are to be permitted and controlled by §17-3.5 TABLE OF ACCESSORY USE REGULATIONS.

D. Density and Design Standards – A PURD shall comply with the following dimensional requirements and shall not be changed so as to result in a violation of these requirements:

1. The number of dwelling units to be accommodated within the tract shall not exceed the maximum of single family lots permitted by the minimum lot area in the zoning district in which the tract is located, after deducting fifteen (15%) percent of the area for streets. A PURD in more than one district may aggregate the results of these calculations. Land that is unusable for building due to being subject to an easement or otherwise legally or physically restricted shall not be included in the calculation of land available for development. The applicant shall submit a sketch delineating the wetlands and other unbuildable areas, and showing the maximum number of lots that could be obtained by a conventional subdivision.

2. Not less than twenty eight (28%) percent of a tract situated in district SR-A or SR-B or thirty (30%) percent of a tract situated in district SR-C, SR-D or SR-E shall be reserved as open land, and such open land shall be conveyed to one or a combination of the following:

a. The City of Attleboro, providing the land shall be accepted by the City for open space recreation and/or conservation purposes.

b. A non-profit corporation the principal purpose of which is the conservation of open space.

c. A corporation or trust owned or to be owned by the owners of a residential lots and/or units in such PURD.

When the open space is conveyed to other than the City of Attleboro, a restriction or easement in favor of the city shall be accepted by the Municipal Council and shall be recorded to provide that such land shall be kept in open or natural state, not subdivided or reduced in size, and not built upon or developed for accessory uses other than open space conservation or outdoor recreation compatible with open space use. The open space shall be in one parcel, except that the Planning Board may, as a condition of the special permit, allow a different arrangement if deemed to be more beneficial. Each open space parcel shall have physical and legal access from a street within the

PURD, and such access shall have a width of fifty (50') feet or more.

3. The area of each lot within a PURD may be reduced to not less than 8,000 square feet in districts SR-A and SR-B or 10,000 square feet in districts SR-C, SR-D or SR-E, but larger lots may be required to accommodate any easement, wetlands, or unusable area therein, as a condition of the special permit.

4. The width of each lot within a planned unit residential development may be reduced not less than ninety (90') feet. The width of lots on the perimeter of the PURD, which also abut existing ways, shall not be less than that required in the underlying zoning district. Lots on a circular turnaround or a concave curve of one hundred (100') feet radius or less, however, have the lot frontage reduced to not less than fifty (50') feet.

5. There shall be provided for each dwelling unit, contained in any building or buildings a lot area of not less than 4,000 square feet in districts SR-A and SR-B or 5,000 square feet in districts SR-C, SR-D or SR-E.

E. Procedural Requirements

F. Contents of Special Permit – The special permit for a PURD shall contain the following:

1. Specific reference to the plan of the PURD authorized by the special permit. The permit shall specify conformance to the plan, but may allow specific minor revisions in grading and the construction of buildings and utilities.

2. Approval of specifications for the mix of the various building types to be included in the PURD, such that not fewer than forty (40%) percent of the dwelling units shall be single family dwellings and no more than sixty (60%) percent shall be attached single family dwellings.

3. Method of disposition of the open space as regards ownership, use, restrictions and easements, evidence of acceptance by the

city or other corporation, and any guarantee or securities against violation of permit conditions.

4. The fact that conditions shall run with the land and be binding upon successors-in-title, assigns or devisees of the applicant.

5. Findings required by §17-10.6(E) PROCEDURAL REQUIREMENTS as they specifically apply to the particular PURD.

6. Any general or specific conditions, limitations and modifications including, but not limited to project phasing schedules imposed at the time of issuance of the special permit. The Planning Board may limit the number of units to be built in each twelve month period.

The ratio of single family to attached family to be constructed in each twelve month period shall reflect the overall mix as approved by the Planning Board, provided, however, that the Planning Board may permit a deviation in the construction ratio for any twelve month period if the Planning Board determines that such deviation will not impair or detract from the completion of the overall project in strict compliance with the approved mix. After general

construction commences, the Director of Planning and Development shall review at least once every six months, all building permits issued and compare them to the overall project phasing schedule. If the Director of Planning and Development determines that the construction of residential units differs from the phasing program, either in rate or ratio, the Director of Planning and Development shall so notify the developer and the Building Inspector in writing. The Building Inspector shall take appropriate measures to bring about compliance with the project phasing schedule.

7. Authority for the special permit (§17-10.6 PLANNED UNIT RESIDENTIAL DEVELOPMENT of this ordinance).

8. Dates when the special permit is issued, becomes effective if there is no appeal and lapses if no construction has commenced as required by §17-9.3 FAILURE TO COMMENCE.

G. Revisions and Modifications

H. Performance Guarantee

[City of Attleboro Zoning Ordinance, last amended November 2002]

OSRD: 5 acres or larger tract of land

PURD: 50 acre lot or larger

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board §17-10.5 OPEN SPACE RESIDENTIAL DEVELOPMENTS

A. Purpose and Scope: In order to permit greater flexibility and more attractive, efficient and economical design of residential subdivisions, the owner of any five-acre or larger tract of land located in the applicable districts may apply for a special permit to reduce the minimum required lot areas and widths as provided in this section. The Planning Board may grant a special permit for an open space residential development, if satisfied that it meets the purposes of this section, and may amend such special permits as provided herein.

§17-10.6 PLANNED UNIT RESIDENTIAL DEVELOPMENTS

A. Purpose and Scope – In order to permit greater flexibility and more attractive, efficient, and economical design of residential subdivisions, the owner of a fifty acre or larger tract of land located in a "Single Residence" zoning district may apply for a special permit to reduce the minimum required lot areas and widths and to mix land uses as provided in this section. The Planning Board may grant a special permit for a Planned Unit Residential Development (PURD) when satisfied that it meets the purposes and conditions set forth in this section.

Has any housing been built under the cluster/flexible provisions?

Yes According to Linda, Planning Board Secretary, (6/3/05) developments have been built using both PURD and OSR. She did not know the exact number, but researcher asked if it was in the 1-8 range and not more than 8, and she said "yes." She said that Downtown Cluster had not been used.

Auburn

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Mixed Use Development Overlay District (MUD)
Open Space Residential Development (OSRD)

· ☐ If answer is yes, is flexible zoning allowed through overlay districts?

Both are overlay districts. However, according to Town Planner Steve Antinelli, there is no delineation for the Mixed Use District in

the by-laws nor any specification for its location on the zoning map. This is an issue that will need to be clarified. There have been no requests to take advantage of the MUD provisions that the Planner is aware of.

Mixed Use Development Overlay District (MUD) - Town planner not sure of date of enactment.
Open Space Residential Development (OSRD) - 1987

Full texts of MUD and OSRD provisions follow:

"4.2 Open Space Residential Development – The Planning Board may grant a special permit for an Open Space Residential Development in any residential district subject to the following:

4.2.1 Purpose – The purpose of Open Space Residential Development is to encourage the preservation of common land for conservation, agriculture, open space and recreational use; to preserve historical or archaeological resources; to protect existing or potential municipal water supplies; to protect the value of real property; to promote more sensitive siting of buildings and better overall site planning; to promote better utilization of land in harmony with its natural features and with the general intent of the zoning by-law through a greater flexibility in design; and to allow more efficient provision of municipal services.

4.2.2 Procedures:

4.2.2.1 Filing of Application – Each application for a special permit for Open Space Residential Development shall be filed with the Planning Board with a copy filed forthwith with the Town Clerk, and shall be accompanied by 10 copies of a preliminary plan of the entire parcel under consideration, prepared by a professional architect, engineer or landscape architect.

4.2.2.2 Contents of Application – Said application and plan shall be prepared in accordance with requirements for a preliminary subdivision plan in the Rules and Regulations of the Planning Board governing subdivision of land, whether or not the development constitutes a subdivision, and shall include proposed location, bulk and height of all proposed buildings. In addition, the applicant shall provide the following information:

- a. The number of dwellings which could be constructed under this by-law by means of a conventional development plan, considering the whole parcel, exclusive of water bodies, floodplain, and land prohibited from development by legally enforceable restrictions, easements or covenants.
- b. An analysis of the site, including wetlands, water bodies, slopes, soil conditions, areas within the 100-year floodplain, and such other natural features as the Planning Board may request. As well, an existing topographic map and a proposed topographic map at two-foot intervals must be provided.
- c. A summary of the environmental concerns relating to the proposed plan.
- d. A description of the neighborhood in which the tract lies, including utilities and other public facilities, and the impact of the proposed plan upon them.

e. Evaluation of the open land proposed within the Open Space Residential Development, with respect to use, size, shape, location, natural resource value, and accessibility by residents of the town or of the Open Space Residential Development.

4.2.2.3 Review of Other Boards – Before acting upon the application, the board shall submit it with the plan to the following boards, which may review it jointly or separately: the board of health, the town engineer, the conservation commission, and the fire department. Any such board or agency to which petitions are referred for review shall submit such recommendations as it deems appropriate to the Planning Board and the applicant. Failure to make recommendations within 35 days of receipt shall be deemed lack of opposition.

4.2.2.4 Public Hearing – After the opportunity for review by other boards has taken place, the Planning Board shall hold a hearing under this section, in conformity with the provisions of G.L. Chapter 40A, §9, and of the zoning by-law and regulations of the Planning Board. The hearing shall be held within 65 days after filing of the application with the board and the clerk. Notice shall be given by publication and posted and by first-class mailings to "parties in interest" as defined in G.L. Chapter 40A, §11. The decision of the board, and any extension, modification or renewal thereof, shall be filed with the board and clerk within 90 days following the closing of the public hearing. Failure of the board to act within 90 days shall be deemed a grant of the permit applied for. Issuance of the permit requires an affirmative vote of four members of a five-member board.

4.2.2.5 Relation to Subdivision Control Law – Planning Board approval of a special permit hereunder shall not substitute for compliance with the subdivision control law, nor oblige the Planning Board to approve any related definitive plan for subdivision, nor reduce any time periods for board consideration under that law. However, in order to facilitate processing, the Planning Board shall, insofar as practical under existing law, adopt regulations establishing procedures for submission of a combined plan and application which shall satisfy this section and the Board's regulations under the subdivision control law.

4.2.3 Findings of Board – The Board may grant a special permit under this section only if it finds that the applicant has demonstrated the following: that the Open Space Residential Development plan will be in harmony with the general purpose of the by-law and the requirements of G.L. Chapter 40A, and the long range plan of the town; that it will not have a detrimental impact on the neighborhood, will be designed with due consideration for health and safety, and is superior to a conventional plan in preserving open space, minimizing environmental disruption, allowing for more efficient provision of services, or allowing for greater variety in prices or types of housing. In addition, the plan must meet the specific requirements of sections 4.2.4 and 4.2.5.

4.2.4 Minimum Dimensional Requirements

4.2.4.1 The area of the parcel to be developed is not less than six acres.

4.2.4.2 The minimum parcel frontage shall be in accordance with Table 2.

4.2.4.3 Every single-family detached dwelling is placed upon a lot with the height, frontage, side and rear yard requirements in accordance with the requirements of Table 2, 5.4, Dimensional Requirements – Open Space Residential.

4.2.4.4 Every two family or multi-family building is built with the setbacks from lot lines and other buildings, and the limitations as to size and height in accordance with the requirements of Table 2, 5.4, Dimensional Requirements – Open Space Residential.

4.2.4.5 Minimum width of open land between any group of lots and adjacent property is 20 feet in the RA and RB Districts and 40 feet in the RC and RR Districts, and between each group of clustered buildings is 100 feet.

4.2.4.6 Except as specified in a special permit granted under this section, all requirements of the zoning by-law shall continue to apply.

4.2.4.7 The requirements related to the ownership, upkeep, liability, and maintenance of the open land are in perpetuity and as such become the responsibility of the owners' heirs and assigns.

4.2.5 Required Open Land

4.2.5.1 At least 30% of the parcel in the RA and RB Districts, and 40% of the parcel in the RC and RR Districts, exclusive of land set aside for roads and parking, shall be open land.

4.2.5.2 The open land, and such other facilities as may be held in common shall be conveyed to one of the following, as determined by the Planning Board, subject to the following guidelines. In general, natural resource land such as wetlands not suitable for any public use, or suitable for extensive public recreational use, should be conveyed to the town or to a trust; whereas land which will be principally used by the residents of the Open Space Residential Development should be conveyed to a home association.

4.2.5.2.1 To a corporation or trust comprising a home association whose membership includes the owners of all lots or units contained in the parcel. The developer shall include in the deed to owners of individual lots beneficial rights in said open land, and shall grant a conservation restriction to the Town of Auburn over such land pursuant to M.G.L. Chapter 184, §31-33, to insure that such land be kept in an open or natural state and not be built upon for residential use or developed for accessory uses by such as parking or roadways. This restriction shall be enforceable by the Town through its Conservation Commission in any proceeding authorized by §33 of Chapter 184 of M.G.L. In addition, the developer shall be responsible for the maintenance of the common land and any other facilities to be held in common until such time as the homes association is capable of assuming said responsibility. In order to ensure that the association will properly maintain the land deeded to it under this section, the developer shall cause to be recorded at the Worcester County Registry of Deeds a Declaration of Covenants and Restrictions which shall, at a minimum, provide for the following:

- a. Mandatory membership in an established homes association, as a requirement of ownership of any lot in the parcel.
- b. Provisions for maintenance assessments of all lots in order to ensure that the open land is maintained in a condition suitable for the uses approved by the homes association. Failure to pay such assessment shall create a lien on the property assessed, enforceable by either the homes association or the owner of any lot.
- c. Provisions which, so far as possible, under the existing law, will ensure that the restrictions placed on the use of the open land will not terminate by operation of law.

4.2.5.2.2 To a nonprofit organization, the principal purpose of which is the conservation of open space. The developer or charity shall grant a conservation restriction as set out in 4.2.5.3.1 above.

4.2.5.2.3 To the Conservation Commission of the Town for a park or open space use, subject to the approval of Town Meeting, with a trust clause insuring that it be maintained as open space.

4.2.5.3 Subject to the above, the open space may be used for recreational purposes including golf courses, riding trails, tennis courts, gardens, swimming pools and temporary structures. The board may permit open land owned by a homes association to be used for individual septic systems, or for communal septic systems if it, and the board of health, are convinced that proper legal safeguards exist for management of a communally owned system.

4.2.6 Further Requirements

4.2.6.1 No use other than residential or recreational shall be permitted.

4.2.6.2 No lot shown on a plan for which a permit is granted under this section may be further subdivided, and a notation to this effect shall be shown upon the plan.

4.2.6.3 No certificate of occupancy shall be issued by the inspector of buildings until he has certified to the Planning Board that the premises have been built in accordance with the plan approved by the board hereunder.

4.2.6.4 The board may impose other conditions, safeguards, limitations on time and use, pursuant to its regulations.

4.2.6.5 The board may grant a special permit hereunder for Open Space Residential Development even if the proposed development is not subject to the subdivision control law.

4.2.6.6 Except insofar as the subdivision is given five years' protection under G.L. Chapter 40A, §6, the special permits granted under this section shall lapse within two years (or less), excluding time required to pursue or await the determination of an appeal, from the grant thereof, if a substantial use has not sooner commenced or if construction has not begun, except that the Planning Board may grant an extension for good cause and shall grant an extension if the delay was caused by the need to seek other permits.

4.2.6.7 Subsequent to granting of the permit, the Planning Board may permit relocation of lot lines within the Open Space Residential Development. However, any change in overall density, street layout, or open space layout will require further hearings.

4.2.7 Optional Density Bonus

4.2.7.1 Notwithstanding the limitations set out above, the Planning Board, if it deems it otherwise advisable to do so, shall as a provision of a special permit issued hereunder authorize increases in the permissible density of population or intensity of use in the proposed Open Space Residential Development, providing that the tract is sewered and that the number of units within the tract shall not be increased more than 25% over what would otherwise be permitted within the Open Space Residential Development, if the applicant provides one or more of the following:

4.2.7.1.1 Traffic or pedestrian improvements (e.g., bikepaths, bridle paths, screened parking).

4.2.7.1.2 Open Space which is landscaped or has unusual value to the community or to the residents and comprises an unusually large percent of the tract.

4.2.7.2 Such density/intensity bonus may include any or all of the following:

4.2.7.2.1 Decrease of minimum lot size.

4.2.7.2.2 Increase in number of lots.

4.2.7.3 Off-Premises Improvements – The Planning Board may approve a density bonus when the applicant agrees to make public improvements or improvements in the public interest on property not under the applicant's control."

"4.4 Mixed Use Development Overlay District (MD)

In order to permit a mixture of residential, open space and commercial uses, and a variety of building types, tracts of land within the Mixed Use Development Overlay District shall be developed under a special permit granted by the Planning Board as hereinafter defined and limited. Any such development must provide for a mixture of uses as appropriate.

4.4.1 Special Permit Authority – The Planning Board may grant a special permit for construction of an MD in the areas designed on the MD overlay. The special permit shall conform to this by-law and to G.L. Ch. 40A, §9, and to Regulations which the Board shall adopt for carrying out its requirements hereunder.

4.4.1.1 Review Board – The Planning Board shall have the right to establish a review board to review each proposed Mixed Use Development Special Permit. For this function, the Planning Board shall have the authority to appoint up to four (4) citizens at large to assist them in the review of the proposal. The citizen appointees shall have the right to fully discuss all elements of the proposed project but shall be advisory only, shall have no official status and shall not have any voting power.

4.4.2 Process – The process for granting a Special Permit will be followed. See Section 9.3. The Planning Board reserves the right to request further information.

4.4.3 Approval – Approval of a special permit for a Mixed Use Development shall require an affirmative vote of four of the five members of the Board. Further: the Board shall consider and make recommendations regarding, among other things, the architectural value and significance of the site, building or structure, the general design, arrangement and texture, material and color of the features involved and the relation of such features to similar features of buildings and structures in the surrounding area. In the case of new construction or additions to existing buildings or structures, the Board shall consider the appropriateness of the size and shape of the building or structure both in relation to the land area upon which the building or structure is situated and to the buildings or structures in the vicinity. Further, the Board may, in appropriate cases, impose dimensional and setback requirements in addition to those required by this by-law. The Board shall not consider interior arrangements or architectural features not subject to public view.

4.4.4 Permitted Uses – In a Mixed Use Development, the following uses are permitted:

4.4.4.1 Residential – Apartments, only on floors above the ground floor. However, in areas where the multi-use project abuts a residential zone, apartments are allowed on all floors on the side of the parcel facing the residential zone.

4.4.4.2 Business – Only within the first three floors.

4.4.4.2.1 Restaurants (excluding fast food restaurants)

4.4.4.2.2 Theaters

4.4.4.2.3 General retail sales and services (excluding retail sales of motor vehicles, boats, mobile homes and house trailers, automobile service stations and drive-through banking facilities)

4.4.4.2.4 Banks and financial services

4.4.4.2.5 Business and professional offices (excluding medical and dental laboratories, medical and dental centers, and medical and dental offices)

4.4.4.3 Expansion of Buildings or Rehabilitation of Existing Interiors – Special Permits can be granted to mixed use development projects that are essentially an expansion of the existing building if the expansion will at least double the existing gross square footage (excluding basements); and if the project meets all parking and site plan criteria required by the Board.

Special permits can be granted to mixed use development projects that are essentially a major renovation of an existing building if the major renovation involves one hundred percent (100%) of the gross floor area, excluding basements; and if the project meets all parking and site plan criteria required by the Board.

4.4.5 Dimensional Requirements

4.4.5.1 Site Area Requirements – For both new construction and expansion, there shall be no minimum square foot requirements.

4.4.5.2 Usable Open Space – The part or parts of land or structure within an MD which are reserved for permanent active or passive recreation use. This space shall exclude parking areas, required setbacks, waterways, walkways, and be open and unobstructed to the sky. Trees, plantings, arbors, flagpoles, sculpture, fountains, swimming pools, open air recreational facilities and similar objects shall not be considered obstructions.

In all mixed use developments that are new construction, at least ten percent (10%) of the land shall be set aside as permanent usable open space, for the use of the MD residents, or for all MD users, or for the community. The required open space shall, at the option of the Board, be conveyed to the Conservation Commission or to a non-profit conservation organization, or to a corporation or trust representing persons responsible for the MD and shall be protected by a conservation restriction as required by G.L. Ch. 40A, §9, for common open space in cluster developments. A covenant shall be placed on the land such that no part of the MD can be built, sold or occupied until such time as a satisfactory written agreement has been executed for the protection of the open space.

Open space requirements do not apply for mixed use development us projects which are expansions of existing buildings or are major internal renovations. It shall be the objective of this by-law, in cases where private open space has been traditionally utilized by the public and where the public has been allowed to use the area as open space by the owner or owners of the building, that open space should not be included as part of the building expansion and is subject under this section of the by-law.

4.4.5.3 Setback Requirements – Insofar as the MD abuts a residential district, all structures and facilities within the MD shall be set back no less than thirty (30) feet from adjacent residential property lines.

4.4.5.4 Height – No buildings in the MD shall exceed seventy (70) feet in height. Parking facilities within the building shall not be calculated as part of the allowable height. The maximum additional height allowed for parking facilities shall be nine (9) feet.

4.4.6 Parking Requirements

[...]"

- Auburn Zoning By-law. As amended through August, 2004.

- Phone communication with Town Planner Steve Antinelli, 1/03/05

Open Space Residential Development: Complex dimensional regulations table depending on underlying district. Smallest min lot area per structure = 10,000 sf in RA district

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board 4.2 Open Space Residential Development – The Planning Board may grant a special permit for an Open Space Residential Development in any residential district subject to the following:

Has any housing been built under the cluster/flexible provisions?

Yes Survey received from Auburn on 4/29/05, completed by Susan Jolicoeur:

Has any housing been built under the cluster/flexible provisions? (none, 1-8 projects, more than 8)

"1-8 projects"

Avon

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Avon has Cluster Residential Development and Planned Unit Development; they are allowed by special permit in Residential (R-25) and Residential (R-40).

Section 7 - 7-5 Specific Requirements for Particular Uses by Special Permit

E. Cluster Residential Development

The Planning Board, as a Special Permit Granting Authority, may issue a Special Permit for the construction of a cluster residential development provided that the following conditions are met with respect to any particular parcel of land:

1. For residential development in a cluster pattern subject to the dimensional regulation less than the minimum required for the development of an individual lot in the same district, the following conditions shall apply:

a. The tract of single or consolidated ownership at the time of application shall be at least 15 acres in size, and shall be subject to the approval of the Planning Board under the Subdivision Control law.

b. Each individual lot shall be subject to all requirements for a one-family detached dwelling in any "R-25" District.

- c. The total number of proposed lots in the development within any District shall not exceed the number of lots which could be developed under normal application requirements of the R-25 District. For purposes of this Section, it shall be assumed that a maximum of 80 percent of the total tract area could be utilized to meet lot area requirements.
- d. The development shall be served by a public water system.
- e. The manner of sewage disposal shall be approved in writing by the Board of Health.
- f. At least ten percent of the total tract area (of which at least 50 percent shall not be wetland or over 5 percent slope land) shall be set aside as common land and shall either be deeded to the town or covenanted with the town to be maintained as permanent "open space" in private or cooperative nonprofit ownership.
- g. Such common land shall be deeded to and accepted by the town or permanently covenanted simultaneously with the Planning Board's approval of the Definitive Subdivision Plan.
- h. Such common land shall be restricted to open space recreational uses such as tot lot, park, playground, playfield, golf course, or conservation area.
- 1. Such common land shall have suitable access to a street.

F. Planned Unit Development

The Planning Board, as a Special Permit Granting Authority, may issue a Special Permit for the construction of a planned unit development provided that the following conditions are met with respect to any particular parcel of land:

- 1. For development in a planned unit concept for uses including among others, residential, recreational, commercial, and institutional, and not subject to the Table of Dimensional and Density Regulations, the following conditions shall apply:
 - a. The tract shall be at least 50 contiguous acres in single or consolidated ownership at the time of application and shall be subject to approval by the Planning Board under Subdivision Control Law.
 - b. The following uses shall be permitted: residential (one-, two-, and multifamily dwelling); community facilities (religious or educational; membership club for exclusive use of the residents of the planned unit development, public recreation or open space, fire station) and commercial (retail or service establishment).
 - c. At least 20 percent of the land area shall be set aside as permanent open space and offered to the town for acceptance as public open space or covenanted by the owner as public open space.
 - d. The remaining 80 percent of the land area may be developed for residential, community facilities and commercial uses. No more than 5 percent of the total residential gross floor area at any time may be devoted to commercial gross floor area.
 - e. The residential net density within the developed area (80 percent portion) shall not exceed 20 dwelling units per acre, not including streets.
 - f. At any one time not more than 30 percent of the total dwelling units shall be of one type of bedroom composition.
 - g. Buildings shall be at least 60 feet from any district boundary and at least 15 feet from any street line or parking area and at least 24 feet apart.
 - h. Buildings shall not exceed (3) three stories in height.
 - 1. The development shall be served by a public water system.
 - j. The manner of sewage disposal shall be approved in writing by the Board of Health.

Section II: Definitions

PLANNED DEVELOPMENT : A development involving the construction of two or more principal buildings on the same lot for any permitted use.

CLUSTER DEVELOPMENT : A division of land into lots for use as single-family building sites where said lots are arranged into one or more groups having area and yard measurements less than the minimum required in Table of Dimensional and Density Regulations. These clusters or groups shall be separated from adjacent property and other groups of lots by intervening common land. The number of lots over the entire tract of land shall not exceed the number of lots permitted under normal application of the area regulations of the zone in which the tract of land is located.

According to the table of use regulations, planned unit development and cluster residential design are allowed by special permit in both residential districts.

Notes on density:

Cluster - at least 15 acres in size; 25,000 minimum lot size; 25,000 sq feet per dwelling unit

PUD - at least 50 acres in size; not exceed 20 dwelling units per acre

The Land Use Ordinance of Avon
 NORFOLK COUNTY, MA
 ZONING BY-LAWS
 SECTION VII SPECIAL PERMITS
 Section 7 - 7-5 Specific Requirements for Particular Uses by Special Permit

SECTION VI DIMENSIONAL AND DENSITY REGULATIONS
6-4 Dimensional and Density Regulations Table

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board E. Cluster Residential Development

The Planning Board, as a Special Permit Granting Authority, may issue a Special Permit for the construction of a cluster residential development provided that the following conditions are met with respect to any particular parcel of land:

F. Planned Unit Development

The Planning Board, as a Special Permit Granting Authority, may issue a Special Permit for the construction of a planned unit development provided that the following conditions are met with respect to any particular parcel of land:

7-4 Authority To Issue Permits

Planning Board-The Planning Board shall be the Special Permit Granting Authority for all requests or applications for the following:

Hotels/Motels
Apartment Houses
Cluster Zoning
Planned Unit Development
Planned Business Development
Planned Industrial Development
Removal of Sand, Gravel, Loam and, in conjunction with the Conservation Commission,
Filling of Water, Wet Area or depression.

Has any housing been built under the cluster/flexible provisions?

Ayer

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Cluster Development provisions were added to the bylaws in 2000. Cluster developments are permitted by Special Permit in A-1, A-2 and GR Districts.

"Section 6. Cluster Development

(Added ATM 5/8/00, approved 7/26/00)

6.11 Applicability

Cluster Developments shall be permitted in the Residence A-1, Residence A-2 and GR districts only, upon issuance of a Special Permit with site plan review from the Planning Board, which shall act in all instances as the Special Permit Granting Authority (SPGA) and approval of a subdivision plan of the land. These actions shall be in accordance with the additional requirements specified herein and in a concurrent review process integrating the subdivision and special permit procedures.

All definitions of terms included in Article VI, Cluster Development, shall supercede like definitions existing in Article II of the Ayer Zoning By-Law (ZBL), for purposes of pursuing a cluster development.

6.12 Definition and Purpose

A.cluster development is a subdivision consisting of 1) three or more residential units, in which a parcel of land is divided into lots for constructing dwellings of varying types, wherein the lots may have a smaller land area or dimensions than required in a

conventional subdivision; and 2) common open space. The cluster subdivision may be established on the basis of condominium, cooperative or individual ownership or modifications thereof.

The purpose of the Cluster Development By-Law is, through more flexible design, to encourage the preservation of open land and waters for their scenic beauty and agricultural, open space, and recreational use; to preserve, historical and archaeological resources; to protect the water resources; to maintain the value of real property; to promote more sensitive siting of buildings and better overall site planning; to promote a variety of housing types; to promote a better use of the land in harmony with its natural features; and to facilitate the construction and maintenance of streets, utilities and public services in an economical and efficient manner. To accomplish these community goals, it is intended that Cluster Development be developed as an entity in which an alternative pattern of development may be permitted in order to gain the following benefits:

- a. The provision of an alternative to conventional subdivision patterns and associated consumption of land into private lots and unnecessary paving and infrastructure.
- b. The potential creation of more affordable housing units than in a conventional subdivision.
- c. The enhancement of the compatibility of the proposed development with that of the surrounding residential areas.
- d. The increased protection of natural resources including water bodies and water courses, wetlands resource areas and buffers, floodplains, agricultural lands and wildlife habitat.
- e. The increased protection of aquifer recharge areas and the municipal water supply.

6.1.3 Use and Dimensional Standards

6.131 The area of the parcel to be developed shall not be less than 65,340 square feet in residence district GR, 87,120 square feet in A-2, and 108,900 square feet in A-1.

6.132 Allowed Housing Types

a. General: the following types of residential buildings shall be allowed in a cluster development: one-family detached; semi-attached dwelling; (two units separated by a common wall; two-family or duplex (over and under units); townhouse with a limit of six units in one building; (units in) a converted municipal, institutional or industrial building.

b. A maximum of 40% of the units in a cluster development shall be of the one-family detached type.

c. The entire development shall be served by the public sanitary sewer and water distribution-systems. If connection to one or both of these services is not immediately available, the applicant shall make necessary capital improvement projects that will create the necessary tie-in to the service(s), as part of the subdivision application.

6.133 Except as specified in a special permit granted under this section, all requirements of the Zoning By-Law shall continue to apply.

6.134 Allowed Density (density entitlement)

The density entitlement for dwelling units shall be calculated in two ways. First, it shall be calculated in the manner of a conventional non-cluster subdivision, citing Article V, Section 12, ZBL. Second, it shall be calculated by means of the following formula: take the total parcel area less seventy five percent (75%) of the wetland resource areas (as defined by the MA Wetlands Protection Act, Chapter 131 M.G.L., and 310 CMR) and land sloped more than twenty (20%) percent, less ten (10) percent of that area (for roadways) and dividing that number by the minimum lot area of the zoning district in which the parcel is located and round it to the nearest whole number. The greater density entitlement of the two shall constitute the allowed number of units.

[Area Regulations Table - unable to copy]

6.135 Affordable Dwelling Units

a. Applicants are encouraged to provide dwelling units that are deemed to be affordable or below market sales price or rental levels for the region. Units may be of the ownership type or, if managed by a duly authorized non-profit or governmental entity, rental type.

b. The applicant shall establish such restrictions, conditions and/or limitations as are necessary to ensure that any designated affordable housing units provided in the development will remain affordable housing on a long term basis, whether said units are of the ownership or rental type. By means of special conditions attached to the issuance of the Special Permit where affordable units are proposed in a cluster, the Board shall establish a requirement that the units remain affordable for a minimum of twenty years or other period set by the Board. Affordability levels shall be indexed over time to rents and sales prices based upon annual household income definitions provided by the HUD Regional Economist, Boston regional office A maximum of thirty (30) percent of the units in a cluster may be designated as affordable units. Affordable housing units shall be geographically dispersed throughout the development, to the degree feasible, in developments with ten (10) or more units.

[... design guidelines, application content and process, preliminary plan, definitive plan ...]"

- Land Use Ordinance of Ayer, 1973 (as amended), Art. VI.6. Cluster Development.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board 6.11 Applicability

Cluster Developments shall be permitted in the Residence A-1, Residence A-2 and GR districts only, upon issuance of a Special Permit with site plan review from the Planning Board, which shall act in all instances as the Special Permit Granting Authority (SPGA) and approval of a subdivision plan of the land.

Has any housing been built under the cluster/flexible provisions?

Yes Two developments have been built under the Cluster Development provisions.

Bedford

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No Researcher found in the table of use regulations, Section 6 of the Town of Bedford Zoning Bylaw (ordinance.com, amended 2002) that Cluster Development and Planned Residential Development are by special permit.

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Town of Bedford Zoning Bylaw, Section 8 and 9 (from ordinance.com, updated 2002)

8. CLUSTER DEVELOPMENT

8.1 Purpose

Cluster Development allows, by Special Permit from the Planning Board, a pattern of land development alternate to the standard Subdivision permitted in the Residential Districts. It is intended to encourage the conservation of open space and the efficient use of land in harmony with its natural features.

8.2 Standards

8.2.1 Minimum Tract Size

Cluster Development shall be permitted upon a single tract, in one ownership, with definite boundaries ascertainable from a recorded deed or recorded plan which has an area of not less than five times the minimum lot area of the zoning district within which it is situated (Residence C - 125,000 square feet; Residence B - 150,000 square feet; Residence A - 200,000 square feet; Residence R - 300,000 square feet). Existing public or private ways need not constitute boundaries of the tract, but the area within any such ways shall not be counted in determining minimum tract size."

8.2.2 Number of Lots

The number of lots permitted within any Cluster shall be determined by the Planning Board to assure compliance with the purposes of the Cluster Development and shall not exceed the larger of the numbers, obtained by applying either of the following Subsections:

8.2.2.1 The number of lots obtained by dividing the total area of the tract, exclusive of land situated within the Flood Plain or Wetlands Conservancy Districts, by the minimum standard lot size permitted in the zoning district(s) within which the tract is located provided that no land shall be included which at the time of the submission of an application under this Section is subject to a perpetual restriction of the type described in M.G.L. C. 184 S. 31 or any restriction similar thereto.

8.2.2.2 The number of lots obtained under standard Subdivision upon which a single family dwelling could be constructed in the residential district(s) within which the tract is located without regard to the Cluster Development.

8.2.3 Permitted Uses

Single family detached dwelling.

8.2.4 Utilities

Each lot shall be serviced by a municipal water service and a municipal sewer. On-site disposal systems may only be permitted if municipal sewer is not available and if, prior to granting the cluster permit, the Board of Health reports that each lot has passed a satisfactory percolation test and soils examination or that the Board of Health reports that the tract has been sufficiently tested to assure that the lots can comply with its regulations for disposal systems. If an onsite disposal system is permitted, a sewer line shall be installed for use when municipal sewer becomes available.

8.2.5 Dimensional Regulations

Except as provided in this Section, dimensional shall comply with the provisions of Section 6 Dimensional Regulations.

8.2.6 Common Land

8.2.6.1 Size and Nature of Common Land

The area of Common Land shall equal at least 25% of the total area of the Cluster Development tract. Such land shall have a shape, dimension, character and location suitable to assure its use for park, recreation, conservation or agricultural purposes by at least all the residents of the Cluster and no more than 50% of the minimum required Common Land shall be situated within the Flood Plain/Wetland District. Each parcel of Common Land shall have at least 40 feet of frontage and no structure shall be constructed thereon in excess of 15 feet in height nor shall the maximum lot coverage, including paved areas, exceed 10% without Planning Board approval.

8.2.6.2 Access, Restrictions and Ownership

Provision shall be made so that the Common Land shall be readily accessible to the owners and occupants of the lots in the Cluster and owned by a corporation, nonprofit organization, or trust whose owners or beneficiaries are all the owners and occupants of the lots, or by the Town or otherwise as the Planning Board may direct. In all cases a perpetual restriction of the type described in M.G.L. C. 184 S. 31 (including future amendments thereto and corresponding provisions of future laws) running to or enforceable by the Town shall be recorded in respect to such land. Such restriction shall provide that the Common Land shall be retained in perpetuity for one or more of the following uses: conservation, agriculture, recreation or park. Such restriction shall be in such form and substance as the Planning Board shall prescribe and may contain such additional restrictions on development and use of the Common Land as the Planning Board may deem appropriate.

8.2.6.3 Ownership and Maintenance

In order to ensure that the corporation, non-profit organization or trust will properly maintain the Common Land, an instrument(s) shall be recorded at the Middlesex South District Registry of Deeds which shall, as a minimum, provide:

- (a) A legal description of the Common Land;
- (b) A statement of the purposes for which the Common Land is intended to be used and the restrictions on its use and alienation;
- (c) The type and name of the corporation, non-profit organization or trust which will own, manage and maintain the Common Land;
- (d) The ownership or beneficial interest in the corporation, non-profit organization or trust of each owner of a dwelling in the Cluster Development and a provision that such ownership or beneficial interest shall be appurtenant to the dwelling to which it relates and may not be conveyed or encumbered separately therefrom;
- (e) Provisions for the number, term of office, and the manner of election to office, removal from office and the filling of vacancies in the office of directors and/or officers of the corporation, or non-profit organization or trustees of the trust;
- (f) Procedures for the conduct of the affairs and business of the corporation, non-profit organization or trust, including provision for the calling and holding of meetings of members and directors and/or officers of the corporation or non-profit organization or beneficiaries and trustees of the trust, and provision for quorum and voting requirements for action to be taken. Each owner of a dwelling shall have voting rights proportional to his ownership or beneficial interest in the corporation, non-profit organization or trust;
- (g) Provision for the management, maintenance, operation, improvement and repair of the Common Land and facilities thereon, including provisions for obtaining and maintaining adequate insurance and levying and collecting from the dwelling owners common charges to pay for expenses associated with the Common Land, including real estate taxes. It shall be provided that common charges are to be allocated among the dwelling owners in proportion to their ownership or beneficial interests in the corporation, non-profit organization or trust, and that each dwelling owner's share of the common charge shall be a lien against his real estate in the Cluster Development which shall have priority over all other liens with the exception of municipal liens and first mortgages of record; and
- (h) The method by which such instrument or instruments may be amended.

8.2.7 Limitation of Subdivision

No lot shown on a plan for which a permit is granted under this Section may be further subdivided and a notation to this effect shall be shown on the plan.

8.2.8 Greenbelt

No building shall be erected within 50 feet of the boundary line with adjoining land zoned for residential use. A greenbelt shall be provided to screen the proposed development from adjoining land zoned for residential use, as specified in Section 6.2.12.

8.3 Procedure for Approval

8.3.1 Application

In connection with the submission of a subdivision plan for Planning Board approval under the Subdivision Control Law or, if no such approval is required after consultation with the Planning Board, any person who desires a Special Permit for a Cluster shall submit an application in writing in such form as the Planning Board may require which shall include plans meeting the requirements set forth in the Subdivision Rules and Regulations, of the Planning Board and such additional information as the Planning Board may require including:

8.3.1.1 A development statement consisting of a petition, a list of parties in interest, the names of the development team and a description of the tract and the development, including the size of the tract, number of lots together with sufficient information to make a determination on the number of permissible lots, the size of the Common Land parcels, including the area and percent of any Common Land zoned Flood Plain/Wetland District and a development schedule for all site construction, including the projected completion date of Common Land improvements.

8.3.1.2 Copies of all proposed instruments are to be recorded with the plans, including the Common Land perpetual restriction, the deed and the membership corporation, non-profit organization or trust.

8.3.2 Conditions

If a Special Permit is granted, the Planning Board may impose as a condition that the Common Land shall be conveyed, free of any mortgage interest or security interest and subject to a perpetual restriction of type described above, prior to the Planning Board's release of any lots from the subdivision restriction covenant or, if there is no such covenant, prior to the Inspector of Building's issuance of a building permit for any lot. The petitioner shall provide the Planning Board with satisfactory assurance of said conveyance and recording in the form of copies of the recorded instruments bearing the recording stamp.

8.4 Amendments

8.4.1 Minor Revisions

Following the granting by the Planning Board of a permit under this Section, it may for good cause shown amend the plan solely to make minor changes in lot lines consistent with the Special Permit, provided, however, that no such amendment shall:

8.4.1.1 Grant any reduction in the size or change in location of the Common Open Land as provided in the permit;

8.4.1.2 Grant any change in the layout of the ways as provided in the permit;

8.4.1.3 Increase the number of lots as provided in the permit; or

8.4.1.4 Decrease the dimensional requirements of any lot below the minimum permitted by this Bylaw.

8.4.2 Changes

Any change in the number of lots, the lay-out of ways, the Common Open Land and its ownership or use, or any other conditions stated in the original Special Permit shall require a new Special Permit issued in accordance with the provisions of this Bylaw.

9. PLANNED RESIDENTIAL DEVELOPMENT (PRD)

9.1 Purpose

Planned Residential Development allows by Special Permit from the Planning Board an alternative pattern of land development to the pattern permitted in the Residential Districts. It is intended to encourage the conservation of more significant open space, while at the same time providing for a greater mixture of housing types in the Town at somewhat greater dwelling unit densities than is permitted in Residential Districts and Cluster Developments, without a significant increase in Town-wide population density. The Planning Board shall consider whether the proposed site design, development layout, number, type and design of housing constitute a suitable alternative to the pattern of land development permitted in the residential district within which it is to be located.

9.2 Standards

9.2.1 Minimum Tract Size

Planned Residential development shall be permitted upon a single tract, in one ownership, with definite boundaries ascertainable from a recorded deed or recorded plan which has an area of not less than five times the minimum lot area of the zoning district within which it is situated (Residence C - 125,000 square feet; Residence B - 150,000 square feet; Residence A - 200,000 square

feet; Residence R - 300,000 square feet). Existing public or private ways need not constitute boundaries of the tract, but the area within any such ways shall not be counted in determining minimum tract size."

9.2.2 Permissible Density

Subject to the limitations upon density contained in Subsection 9.2.3 below, the number of dwelling units permitted within any PRD shall be determined by the Planning Board to assure compliance with the Standards of Planned Residential Development Subsection 9.2.2.1 through 9.2.2.3 of this Subsection 9.2.2.

9.2.2.1 PRD Tract

The number of dwelling units obtained by dividing the area of the tract, exclusive of land situated within the Flood Plain/Wetland District, by the minimum standard lot size permitted in the zoning district(s) within which the tract is located, provided that no land shall be included which at the time of the submission of an application under this Section is subject to a perpetual restriction of the type described in M.G.L. c. 184 Sec. 31 or any restriction similar thereto.

9.2.2.2 Transferable Development Rights

The density of the PRD tract may be increased by 15% by conveying to the Town, or by restricting for the benefit of the Town, land which is not within the PRD tract and which at the time of submission of an application under this Section was in private ownership and unencumbered by a perpetual restriction of the type described in M.G.L. C. 184 Section 31 or any restriction similar thereto, provided such transfer or restriction is consonant with the purposes of this Bylaw generally and this Section 9 in particular. The number of transferable units is obtained by determining the area of land situated outside the Flood Plain/Wetland District and

(1) by dividing such area of land situated in any one or more Residential District(s) which the applicant proposed to convey or restrict by the minimum lot size permitted in the zoning district(s) within which such land is located and

(2) by multiplying the number obtained therefrom by 60%.

9.2.2.3 Low and Moderate Income Housing

The number of dwelling units may, with Planning Board approval, be increased by up to twice the number obtained through application of subsection 9.2.2.1, if 50% of these additional units, but no less than 10% of the total number of units in the Planned Residential Development, meet the requirements of the Executive Office of Communities and Development, Office of Private Housing for low and moderate income housing under the Local Initiative Program. The developer shall submit an application to the Office of Private Housing, and shall be responsible for submitting all of the material required for this application. The developer shall submit this application to the Office of Private Housing, either at the same time that the Special Permit application is submitted to the Planning Board, or prior to the submittal of such Special Permit application. These low and moderate income units are subject to the following general requirements:

(a) The units must be serving households at or below 80 percent of median household income.

(b) The units must be subject to Use Restrictions to ensure that the units remain in perpetuity available exclusively to persons with qualifying incomes.

(c) The units must be sold or rented on a fair and open basis. The owners of the units must adopt an affirmative fair marketing plan.

9.2.3 Maximum Allowable Density

A number of units in excess of these provisions may be authorized by the Planning Board after approval by Town Meeting of such PRD in accordance with Section 14.8, up to the following maximum densities for the zoning district(s) within which the tract is located; Residence C-five units per acre; Residence B-four units per acre; Residence A-three units per acre; Residence R-two units per acre. Not less than 20% of all units authorized in excess of 25% obtained by the application of Subsection 9.2.2.1 above shall be low and moderate income housing or affordable housing.

9.2.4 Permitted Uses

There shall be permitted in PRD:

9.2.4.1 Single Family Units

Single family detached and attached and multi-unit structures of all type without regard to dwelling unit configuration or form of ownership, provided, however, that no more than 80% of the dwelling units within the PRD shall be in buildings of the same type.

9.2.4.2 Accessory Uses

Accessory uses incidental to the principal uses indicated above.

9.2.4.3 Miscellaneous Uses

Construction and maintenance of a structure such as a flag pole, gazebo, patio, or similar structure, which structure does not exceed 100 square feet in size, may be permitted by the Building Inspector. However, any change to approved buildings including but not limited to attached greenhouses, dormers, decks, porches or carports, or the construction of significant detached structures, shall only be pursuant to amendment of the Special Permit if same is allowed.

9.2.5 Lot Area, Frontage and Yard Requirements

There shall be no minimum lot area, frontage or yard requirements within a PRD. However, no building shall be erected within 50 feet of a public way or boundary line of the PRD. A Greenbelt shall be provided to screen the proposed development from adjoining land zoned for residential use, as specified in Section 6.2.12.

9.2.6 Height

The maximum permitted height of any structure within a PRD shall be 37 feet.

9.2.7 Area of Residential Development

The area developed for a residential use, including buildings, parking and other areas paved for vehicular use, shall not exceed 30% of the total area of the PRD tract. Foot and bicycle paths and recreational facilities, including buildings wholly devoted to recreation, shall not be counted in calculating the 30% limitation.

9.2.8 Common Open Space

9.2.8.1 Minimum Use and Limitations

All land within the PRD tract which is not covered by buildings, roads, driveways, parking areas or service areas or which is not set aside as private yards, patios or gardens for the residents shall be Common Open Space. The area of the Common Open Space shall equal at least 40% of the total area of the PRD tract. Such land shall have a shape, dimension, character and location suitable to assure its use for park, recreation, conservation or agricultural purposes by at least all the residents of the PRD and no more than 50% of the minimum required Common Land shall be situated within the Flood Plain/Wetland District.

9.2.8.2 Ownership

Provision shall be made so that the Common Open Space shall be owned in common by and readily accessible to the owners of all units in the PRD, or by a corporation, non-profit organization or trust whose members are all the owners and occupants of the units, or by the Town or otherwise as the Planning Board may direct. In all cases a perpetual restriction of the type described in M.G.L. C. 184 S. 31 (including future amendments thereto and corresponding provisions of future laws) running to or enforceable by the Town shall be recorded in respect to such land. Such restriction shall provide that the Common Open Space shall be retained in perpetuity for one or more of the following uses: conservation, agriculture, recreation or park. Such restriction shall be in such form and substance as the Planning Board shall prescribe and may contain such additional restrictions on development and use of the Common Open Space as the Planning Board may deem appropriate.

9.2.8.3 Ownership Requirements

In order to ensure that the corporation, nonprofit organization or trust will properly maintain the Common Open Space, an instrument(s) shall be recorded at the Middlesex South District Registry of Deeds which shall, as a minimum, provide:

(a) A legal description of the Common Open Space;

(b) A statement of the purposes for which the Common Open Space is intended to be used and the restrictions on its use and alienation;

(c) The type and name of the corporation, non-profit organization or trust which will own, manage and maintain the Common Open Space.

(d) The ownership or beneficial interest in the corporation, non-profit organization or trust of each owner of a dwelling in the cluster development and a provision that such ownership or beneficial interest shall be appurtenant to the dwelling to which it relates and may not be conveyed or encumbered separately therefrom;

(e) Provisions for the number, term of office, and the manner of election to office, removal from office and the filling of vacancies in the office of directors and/or officers of the corporation or non-profit organization or trustees of the trust;

(f) Procedures for the conduct of the affairs and business of the corporation, non-profit organization or trust, including provision for the calling and holding of meetings of members and directors and/or officers of the corporation or non-profit organization or beneficiaries and trustees of the trust and provision for quorum and voting requirements for action to be taken. Each owner of a dwelling shall have voting rights proportional to his ownership or beneficial interest in the corporation, non-profit organization or trust;

(g) Provision for the management, maintenance, operation, improvement and repair of the Common Open Space and facilities thereon, including provisions for obtaining and maintaining adequate insurance and levying and collecting from the dwelling owners

common charges to pay for expenses associated with the Common Open Space, including real estate taxes. It shall be provided that common charges are to be allocated among the dwelling owners in proportion to their ownership or beneficial interests in the corporation, non-profit organization or trust, and that each dwelling owner's share of the common charge shall be a lien against his real estate in the PRD which shall have priority over all other liens with the exception of municipal liens and first mortgages of record; and

(h) The method by which such instrument or instruments may be amended.

9.2.9 Limitation of Subdivision

No lot shown on a plan for which a permit is granted under this Section may be further subdivided, and a notation to this effect shall be shown on the plan.

9.2.10 Special provisions for the Bedford Housing Authority

Except as provided in Subsection 9.2.6 above, the limitations contained in Subsection 9.2 shall not apply to a PRD which will be owned by the Bedford Housing Authority and for which it is the applicant, provided that the Planning Board shall find that the proposed design is generally consonant with the purposes of this Bylaw.

9.3 Procedure for Approval

9.3.1 Application

Any person who desires a Special Permit for a PRD shall submit an application in writing in such form as the Planning Board may require which shall include the following:

9.3.1.1 Development Statement

A Development Statement shall consist of a petition, a list of the parties in interest with respect to the PRD tract and any parcel proposed to be used pursuant to Subsection 9.2.2.2, a list of the development team and a written statement meeting the requirements of a site evaluation statement under the Subdivision Rules and Regulations of the Planning Board and setting forth the development concept, including in tabular form, the number of units, type, size (number of bedrooms, floor area), ground coverage and summary showing the Area of Residential Development and Common Open Space as percentages of the total area of the PRD tract and a development schedule for all site improvements.

9.3.1.2 Legal Instruments

Copies of and proposed instruments to be recorded with the plans, including the Common Open Space perpetual restriction, the deed and the membership corporation, nonprofit organization or trust.

9.3.1.3 Plans

Development plans bearing the seal of a Massachusetts Registered Architect, Registered Civil Engineer or similar professional as appropriate and consisting of:

(a) Site plans and specifications showing all site improvements and meeting, to the extent applicable, the requirements set forth for a Definitive Plan in the Subdivision Rules and Regulations of the Planning Board;

(b) Site perspective, sections, elevations 1/8 inch = 1 foot and typical floor plan(s) 1/4 inch = 1 foot;

(c) Detailed plans for disposal of sanitary sewage and surface drainage; and

(d) Detailed plans for landscaping.

9.3.1.4 Additional Information

Such additional information as the Board may determine.

9.3.2 Referral and Schedule

The Planning Board shall, within ten days of receipt of an application under Section 9, refer the application to the Conservation Commission, Board of Public Works, Board of Health and Inspector of Buildings for written reports and recommendations and no decisions shall be made until such reports are returned or 35 days have elapsed following such referral without receipt of such reports.

9.3.3 Planning Board

A Special Permit shall be issued under this Section if the Planning Board finds that the PRD is in harmony with the purpose and intent of this Section and that the PRD contains a mix of residential, open space or other uses in a variety of buildings to be sufficiently advantageous to the Town to render it appropriate to depart from the requirements of the Bylaw; otherwise applicable to

the Residential District(s) in which the PRD is located. If a Special Permit is granted, the Planning Board may impose, as a condition thereof, that the installation of municipal services and construction of interior drives within the PRD shall comply with the requirements of the Subdivision Rules and Regulations of the Planning Board, may require sufficient security to ensure such compliance and the completion of planned recreational facilities and site amenities and may impose such additional safeguards as public safety, welfare and convenience may require.

15. INDUSTRIAL MIXED USE

15.1 Purpose

Industrial Mixed Use allows by Special Permit from the Planning Board an alternative pattern of land development to the pattern normally permitted in the underlying District. It is intended to create mixed commercial, residential, and open space areas where the visual and physical dominance of the automobile is made secondary to pedestrian needs; to encourage pedestrian activity by creating a pleasant, rich and diverse experience for pedestrians; to reduce traffic congestion and air pollution by providing opportunities for retail services, housing and employment in close proximity; and to encourage the sharing of parking lots and driveway curb cuts, minimizing the amount of paved parking surface area, and reducing traffic congestion.

15.2 Authority.

The Planning Board shall be the Special Permit Granting Authority for Industrial Mixed Use developments. The Planning Board may vary the dimensional and parking requirements of this section if, in its opinion, such change will result in an improved design of the development. This authority continues subsequent to occupancy.

15.3 Permitted Uses

The following types of uses (and non other) shall be permitted in Mixed Use developments. These uses may be commingled into a single structure or structures or may be located in separate structures on the site.

15.3.1 Business and Professional Office

15.3.2 Research Facility

15.3.3 Multifamily Dwellings

No less than 25 percent of the total number of units shall be affordable to households at or below 80 percent of the median household income for the Boston Metropolitan Area as determined by the most recent calculation of the United States Department of Housing and Urban Development. The affordable units must be subject to Use Restrictions to ensure that the units remain available in perpetuity, exclusively to persons with qualifying incomes. The units must be sold or rented on a fair and open basis and the owners of the units must adopt an affirmative fair marketing plan. The minimum area for any of the residential units within the Mixed Use Overlay District shall be no less than 550 square feet and the maximum area shall not exceed 1000 square feet. The average size shall be 750 square feet (plus or minus 25 square feet). Residential Units shall be developed under the Local Initiative Program of the Massachusetts Department of Housing and Community Development or another subsidy program that allows the housing to count towards the affordable housing requirements of Chapter 40B of the Massachusetts General Law.

15.3.4 Retail Store not exceeding 2000 square feet of sales floor area

15.3.5 Personal Service Shop

15.3.6 Restaurant

15.3.7 Child Care Facility

15.3.8 Bank

15.3.9 Private Recreation

15.3.10 Municipal Use

15.3.11 Underground and Above Ground Utilities

15.3.12 Parking Facility

Paragraph 7.3.2.2 of this bylaw applies with respect to the Planning Board's consideration of the grant of a Special Permit for the Mixed Use Overlay development.

15.4 Density.

15.4.1 The following uses shall be permitted a maximum combined floor area ratio (FAR) of 25 percent. A minimum of 5% FAR shall be provided for these uses. Any of the allowable floor area not provided for these uses may be added to the Multifamily Dwellings

FAR.

15.4.1.1 Business and Professional Office

15.4.1.2 Research Facility

15.4.2 Multifamily Dwellings shall have a maximum FAR of 15 percent exclusive of the allocation of additional area allowed under 15.4.1.

15.4.3 The following uses shall have a maximum combined FAR of 10 percent.

15.4.3.1 Retail Store not exceeding 2000 square feet of sales floor area

15.4.3.2 Personal Service Shop

15.4.3.3 Restaurant

15.4.3.4 Child Care Facility

15.4.3.5 Bank

15.4.3.6 Private Recreation

15.4.3.7 Municipal Use

15.5 Dimensional Requirements

The dimensional requirements below shall apply.

15.5.1 Minimum contiguous area of the Industrial Mixed Use development shall be 4 acres (Paragraph 6.2.2 applies.). The site of any new principal structure shall be completely within an ellipse which ellipse shall :

1. Be completely within the lot;
2. Have an area of at least 3 acres.
3. Have a minor diameter of at least 200 feet.
4. The ratio of the minor diameter to the major diameter shall be no greater than 5.

15.5.2 Minimum lot frontage shall be 200 feet.

15.5.3 Minimum lot width shall be 200 feet.

15.5.4 The maximum front yard shall be 20 feet and there is no minimum front yard.

15.5.5 Minimum rear yard shall be 15 feet and there is no minimum side yard. There shall also be at least 15 feet separation between any two structures in the development and the areas behind and between all structures shall be clear and accessible to the Town's fire suppression vehicles.

15.5.6 Maximum height shall be 42 feet.

15.5.7 Maximum lot coverage shall be 35 percent.

15.5.8 Minimum landscaping shall be 25 percent, and shall meet the requirements of Section 6.2.12 of these bylaws.

15.5.9 Maximum floor area ratio shall be 50 percent.

15.6 Parking and Curb Cut Requirements

Parking and circulation requirements shall be in accordance with Section 7.4 of this Bylaw except as described below.

15.6.1 In all Mixed Use developments adequate off-street parking shall be provided. The Planning Board and the applicant shall have as a goal for the purposes of defining adequate off-street parking, making the most efficient use of the parking facilities to be provided and minimizing the area of land to be paved for this purpose. In implementing this goal the Board shall consider complementary or shared use of parking areas by activities having different peak demand times, and the applicant shall locate adjacent uses in such a manner as will facilitate the

15.6.2 Parking may be provided at ground level, underground or in a parking garage. Parking garages can be free standing or as

part of buildings dedicated to other permitted uses. Parking spaces must be assigned to specific uses (including shared uses) at the time of the submission of the Final Plan.

15.6.3 Parking shall be primarily located at the rear or at the side of buildings.

15.6.4 There shall be only one curb cut providing access to the development from any public way. A development having frontage on two or more streets may be permitted additional curb cuts if deemed necessary by the Planning Board. Whenever possible there shall be shared curb cuts with adjacent developments.

15.6.5 There shall be 1.5 parking spaces for each dwelling unit.

15.6.6 Section 7.4.3 concerning the granting of relief from parking regulations by the Zoning Board of Appeals shall not apply. See paragraph 15, 2.

15.7 Application

Any person who desires a Special Permit for a Mixed Use development shall submit 14 copies of the application in such form as the Planning Board may require which shall include the following:

15.7.1 Development Statement

A Development Statement shall consist of a petition, a list of the parties in interest with respect to the tract, a list of the development team and a written statement describing the major aspects of the proposed development.

15.7.2 Development Plans

Development plans bearing the seal of a Massachusetts Registered Architect, Registered Civil Engineer or similar professional as appropriate and consisting of

(a) Site plans and specifications showing all site improvements and meeting the requirements set forth for a Site Plan under Section 7.5.

(b) Site perspective, sections, elevations 1/8 inch= 1 foot.

(c) Detailed plans for disposal of sanitary sewage and surface drainage; and

(d) Detailed plans for landscaping.

15.7.3 Additional information as the Board may determine.

15.8 Planning Board Findings

A special permit shall be issued under this Section if the Planning Board finds that the development is in harmony with the purpose, and intent of this Section and that it contains a compatible mix of uses sufficiently advantageous to the Town to render it appropriate to depart from the requirements of the Bylaw otherwise applicable to the Industrial District in which the development is located.

15.9 Amendments

After approval, the developer may seek amendments to the approved plan. Minor amendments may be made by a majority vote of the Planning Board. It shall be a finding of the Planning Board, not subject to dispute by the applicant, whether a requested amendment is deemed to be major or minor. A major amendment shall require the filing of an amended special permit application.

****Webmasters Note:** The previous section, 4.5.17 Industrial Mixed Use, has been added as per Case No. 1977 from town meeting date 3/25/02.

Notes on density:

For Cluster zoning, the tract must be 5 times the minimum lot area of the zoning district - Residence C 125,000 sf; Residence B 150,000 sf; Residence A 200,000 sf; Residence R 300,000 sf.

The number of lots are either what could be build "as of right", or the total tract minus wetlands divided by the minimum lot size requirement.

For Planned Residential Development, the minimum tract size must be five times the underlying minimum lot area. Density requirements are more complicated than for cluster development. The number of dwelling units shall be determined by the Planning Board. The number of dwelling units is determined by taking the size of the tract and dividing by the minimum lot size. The density can be increased by 15% through Transfer of Development Rights. Also, the number of units can be doubled if 50% of the additional units are affordable. By approval of Town Meeting, 5 more units per acre can be added in Res C; 4 more units per acre in

Res B; 3 more units per acre in Res A; 2 more units per acre in Res R. Not less than 20% of units beyond a certain number of the total granted shall be affordable.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board 8. CLUSTER DEVELOPMENT
8.1 Purpose

Cluster Development allows, by Special Permit from the Planning Board, a pattern of land development alternate to the standard Subdivision permitted in the Residential Districts. It is intended to encourage the conservation of open space and the efficient use of land in harmony with its natural features.

15.1 Purpose

Industrial Mixed Use allows by Special Permit from the Planning Board an alternative pattern of land development to the pattern normally permitted in the underlying District.

9. PLANNED RESIDENTIAL DEVELOPMENT (PRD)
9.1 Purpose

Planned Residential Development allows by Special Permit from the Planning Board an alternative pattern of land development to the pattern permitted in the Residential Districts.

Has any housing been built under the cluster/flexible provisions?

Yes Richard Joly, Director of the Planning Department, said: "yes, we have a number of developments under both of the bylaws."

Bellingham

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes 4300. Major Residential Development
4310. Intent.
The intent of Major Residential Development (MRD) provisions is to allow greater flexibility and creativity in residential development and to assure a public voice and public authority in consideration of development in order to gain the following.

4311. Location of development on sites best suited for building, and protection of land not suited for development, reflecting such considerations as:

- permanent preservation of open space for conservation or recreational use, especially in large contiguous areas within the site or linked to off-site protected areas;
- protection of water bodies, streams, wetlands, wildlife habitats, and other natural resources;
- protection of the character of the community through preserving open space within view from public roads, preservation of stone walls and other historic landscape features, preservation of scenic vistas, and siting of dwellings at low-visibility locations;
- protection of street appearance and capacity by avoiding development close to or having egress directly onto existing streets.

4312. Efficient patterns for construction and maintenance of public facilities and services such as streets and utilities.

4313. Promotion of social and economic diversity.

4314. Privacy for residents of individual lots.

4315. Avoidance of unnecessary development cost.

4320. Applicability.
Section 4300 shall apply to all Major Residential Developments as defined in Article V.

4340. Use Regulations.

Uses allowed in a Major Residential Development shall be all those permitted or allowed on special permit at that location under Section 2400 Use Regulations Schedule and other provisions of this Bylaw, whether residential use or non-residential use, so long as at least a majority of the proposed floor area within the development is committed for residential use, and provided that all other requirements of the Zoning Bylaw, including, if applicable, approval under Section 1420 Development Plan Approval, are complied with.

4350. Alternative Dimensional Regulations.

The following alternative dimensional regulations may be used in preparing plans for Major Residential Development, rather than those of Section 2600 Intensity of Use Schedule, except where specified below.

4351. Allowable Number of Dwelling Units. The maximum number of dwelling units that may be allowed shall equal the maximum number of units that could reasonably be expected to be created with the proposed mix of single-family dwellings, two-family dwellings, and special residential uses through conventional development of the land under Section 2600 Intensity of Use Schedule and Section 4400 Special Residential Uses without substantial waivers or variances from applicable regulations, as determined by the Planning Board. In making that determination, land proposed for use other than residential, open space, or circulation shall be excluded. The Planning Board may limit the development to a smaller allowable number of units only upon its determination that special circumstances of this site location or design that are not generally true throughout the vicinity make that reduction necessary in this case to protect important public concerns.

4352. Other Dimensional Regulations. Other dimensional regulations for individual lots (but not for determining the allowable number of dwelling units) shall be as follows, rather than as provided at Section 2600 Intensity of use schedule.

(a) Lot Area. Minimum lot area shall be that necessary to meet requirements for building envelope ((d) below) and for Board of Health requirements, but lot area in no event shall be less than 20,000 square feet.

(b) Lot frontage and lot width. The lot frontage and lot width through buildings or structures shall be that necessary to meet requirements for building envelope requirements and to provide for adequate access to the building site, but in no event shall lot frontage or width be less than thirty-five (35) feet.

(c) Existing Street Protection. There may not be a larger number of lots relying on front-age on a street other than one created by the development in-volved than would be expected under a conventional plan.

(d) Building envelope. Principal buildings, accessory buildings, and parking, both initially and through subsequent additions and alterations, shall be located within a designated building envelope. Such envelopes shall not exceed 40% of the lot area (exclusive of wetlands) of the lots they are on, and shall be located consistent with the following.

(i) Building envelopes shall include no land within front, side and rear yards based upon requirements contained in the Intensity of Use Requirements of Section 2600 applied as follows:

· For yards measured from the boundary line at the perimeter of the Major Residential Development the requirements for the Suburban District shall apply.

· For yards not measured from the perimeter boundary the requirements for the Residential (R) District shall apply, except that the Planning Board in acting on the special permit approval may authorize a reduction of up to 50% in those requirements upon its determination that such reduction results in better design, improved protection of natural or cultural resources, and adequate protection of privacy and safety.

(ii) Building envelopes shall include no land within any wetland, flood plain, or slope in excess of 25%.

(iii) Building envelopes shall not be located within 100 feet of any Designated Natural or Cultural Resource unless, in approving the Major Residential Development special permit, the Planning Board determines that either such buffering is inappropriate, as in the case of proposing an architecturally compatible building in the vicinity of an historic structure, or that meeting these resource buffers would leave otherwise developable property without economically beneficial use, and that the relief granted is the minimum necessary to allow economic use.

iv) Where possible, building envelopes shall avoid damage to areas of visual importance, such as ridgelines, open fields, or dense vegetation buffering development from existing roads.

4360. Other Requirements.

4361. Common Open Space. Any proposed common open space within the Major Residential Development shall be conveyed to the Town or its Conservation Commission and accepted for park or open space use, or shall be conveyed to a non-profit organization the principal purpose of which is the conservation of open space, or shall be conveyed to a corporation or trust owned or to be owned by the owners of lots or residential units within the plan, as provided by Section 9 of Chapter 40A, G.L. In any case where such land is not conveyed to the Town, a restriction enforceable by the Town shall be recorded providing that such land shall be kept in an open or natural state and not be built upon or developed for accessory uses such as parking or roadway. Building coverage shall not exceed 5% in such conservation or recreation areas.

4362. Landscaping. Elements such as any protected open space areas, street trees, stream buffer areas, other buffers, cul-de-sac planting areas, and outstanding specimen trees or tree groupings shall be used as part of an integrated conceptual design uniting the various elements of the site and preserving and enhancing its natural and scenic resource elements.

(a) Existing trees and indigenous vegetation shall be retained to the extent reasonably feasible, except where the Board concurs that removal is preferable for opening views from public roads, control of invasive growth, or other benefits.

(b) Protected areas and resources shall be linked in continuous patterns to the extent reasonably feasible.

(c) Protection for trees and tree groupings to be retained shall include avoidance of grade change within the drip line, careful marking to avoid accidental damage, and location of materials and soil deposits distant from those trees during construction.

2690. Targeted Housing. On special permit from the Planning Board, dwelling units may be designated as "Targeted", provided

that:

- (a) either the development containing the unit qualifies to seek a Comprehensive Permit under Chapter 40B, G.L., or the dwelling unit meets the definition of "Assisted elderly housing" in Section V of this Bylaw.
- (b) the Planning Board finds that the housing is consistent with policy guidelines it has approved for Townwide housing development.
- (c) the Planning Board finds that the location and design of the housing will not result in hazard, overburdening of public services, or neighborhood or environmental degradation.

The lot area requirements for such targeted units shall equal one-half those provided in Section 2600, Intensity of Use Schedule, and frontage requirements shall equal two-thirds of those requirements. All other intensity of use requirements shall be met.

Code of By-Laws, Division II Zoning
<http://www.bellinghamma.org/townclerkbylzo.htm>
(Revised by Town Clerk 09/2002)

Minimum lot area shall be that necessary to meet requirements for building envelope ((d) below) and for Board of Health requirements, but lot area in no event shall be less than 20,000 square feet.
Building envelope shall not exceed 40% of the lot area (exclusive of wetlands) of the lots they are on.

Section V - Definitions

Major Residential Development

Either of the following:

- Development of ten or more dwelling units on a single lot, or
- One or more divisions of land (whether or not a 'subdivision' requiring Planning Board approval) that would cumulatively result in an increase by ten or more lots (excluding any restricted from residential use) above the number existing twenty-four months earlier on a parcel or a set of contiguous parcels which were in common ownership as of October 10, 2001, except that if each resulting lot has both lot area and frontage at least 50% greater than that required under Section 2600 Intensity of Use Schedule the land division shall not be considered to be a Major Residential Development.

4351. Allowable Number of Dwelling Units. The maximum number of dwelling units that may be allowed shall equal the maximum number of units that could reasonably be expected to be created with the proposed mix of single-family dwellings, two-family dwellings, and special residential uses through conventional development of the land under Section 2600 Intensity of Use Schedule and Section 4400 Special Residential Uses without substantial waivers or variances from applicable regulations, as determined by the Planning Board. In making that determination, land proposed for use other than residential, open space, or circulation shall be excluded. The Planning Board may limit the development to a smaller allowable number of units only upon its determination that special circumstances of this site location or design that are not generally true throughout the vicinity make that reduction necessary in this case to protect important public concerns.

According to Table 2600 (Intensity of Use Schedule), the minimum lot areas for two-family dwellings and other uses (respectively) are as follows:

District A: 160,000 sq. feet/ 80,000 sq. feet
District S: 80,000 sq. feet/ 40,000 sq. feet
District R: 80,000 sq. feet/ 40,000 sq. feet
District M: 80,000 sq. feet/ 40,000 sq. feet
Districts B-1, B-2: 80,000 sq. feet/ 40,000 sq. feet
District I: N/A / 60,000 sq. feet

4352. Other Dimensional Regulations.

- (a) Lot Area. Minimum lot area shall be that necessary to meet requirements for building envelope ((d) below) and for Board of Health requirements, but lot area in no event shall be less than 20,000 square feet.
- (d) Building envelope. Principal buildings, accessory buildings, and parking, both initially and through subsequent additions and alterations, shall be located within a designated building envelope. Such envelopes shall not exceed 40% of the lot area (exclusive of wetlands) of the lots they are on, and shall be located consistent with the following.

Code of By-Laws, Division II Zoning
<http://www.bellinghamma.org/townclerkbylzo.htm>
(Revised by Town Clerk 09/2002)

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board According to the table of uses:

Major residential development by special permit from the planning board in A, S, R, M, B1, and B2.

Has any housing been built under the cluster/flexible provisions?

Yes According to Stacey Wetstein, Town Planner, there have been at least three cluster developments. (10/18/04)

Survey received from Bellingham on 5/12/05:

Has any housing been built under the cluster/flexible provisions? (none, 1-8 projects, more than 8)

"1-8 projects"

Belmont

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

Yes While the "cluster" section is only by special permit, there is a section titled "McLean District", which according to the planner is flexible.

Mr. Higgins, Town Planner, emailed the following:

"The entire McLean development is a really a "cluster". All of the development is concentrated in the core with over 128 acres of open space surrounding it. The five land uses are allowed by right."

SECTION 6A McLEAN DISTRICT
[Amended 3/9/99; approved 11/8/99]

1) There are six (6) subdistricts within the McLean District: Residential Subdistrict (divided into Zone 1A and 1B and Zone

2); Senior Living Subdistrict; Research and Development Subdistrict; McLean Institutional Subdistrict; Open Space Subdistrict and the Cemetery Subdistrict.

6A.1 Allowed Uses

6A.1.1 Residential Subdistricts

Within the Residential Subdistricts, side-by-side attached single family dwellings (and the conversion of structures existing as of the date of adoption hereof to single family or multi-family dwellings) shall be allowed, as well as private club or lodge facilities used exclusively by residents with a maximum aggregate gross floor area of 16,000 square feet (provided that such facilities are located within the first floor of existing buildings that are rehabilitated and reused and that dwelling units are located within the upper floors of such buildings) and those other accessory uses permitted in the Single Residence A, B, C and D Districts, other than lodging and boarding (provided, however, that accessory parking shall be limited as provided in Section 6A.3 and accessory structures shall only be allowed by special permit issued by the Planning Board).

6A.1.2 Senior Living Subdistrict

Within the Senior Living Subdistrict, a continuing care retirement community shall be allowed, which shall be defined as development comprised of housing and other associated services operated or sponsored as a coordinated unit by a corporation or organization having as its principal purpose the provision of housing and associated services, including those designed to provide for medical care and assistance with activities of daily living, for elderly persons. A continuing care retirement community may include one or more of the following types of facilities:

(a) Independent Living Facilities

Independent Living Facilities provide private living and dining accommodations to persons fifty-five (55) years of age or older, and may include the provision of common areas, social and educational programs, and psychological counseling and crisis intervention as needed, all with the purpose of providing an environment in which older persons can continue to derive the personal and psychological benefits of independent living while also enjoying the substantial social and educational benefits of community living. Home health care facilities for the provision of medical, nutritional, social, psychological and educational services for the residents of the Independent Living Facilities are permitted.

(b) Assisted Living Facilities

Assisted Living Facilities provide a sheltered living environment for persons fifty-five (55) years of age or older, and may include such services as housekeeping, cooking and common dining, social, psychological, and educational programs, programs for Alzheimer care, assistance with personal needs, and crisis intervention, all with the purpose of assisting each resident to continue to

develop and to lead a productive and fulfilling life.

(c) Nursing Care Facilities

Nursing Care Facilities are those facilities licensed or approved by the applicable state or federal agency to provide full-time convalescent or chronic care to individuals who, by reason of advanced age, chronic illness or infirmity, are unable to care for themselves. Nursing Care Facilities may include medical and therapeutic and ancillary support and rehabilitation services, including but not limited to food services, programs for Alzheimer care, social, psychological and educational programs, and twenty-four hour supervision as appropriate.

(d) Multipurpose Senior Facilities

Multipurpose Senior Facilities provide social, educational, medical and therapeutic, wellness, counseling, recreational, outreach, and other activities for residents of the Independent Living Facilities, the Assisted Living Facilities and the Nursing Care Facilities. Multipurpose Senior Facilities may include a beauty parlor/barber shop, convenience store, ice cream parlor, bank, exercise center, and other such services ancillary to a senior living community, so long as such services are provided exclusively for staff, residents and their guests.

(e) Day Care and Similar Programs

Adult day care facilities and respite care facilities shall be allowed; provided, however, that such uses shall not serve more than 100 persons per day.

6A.1.3 Research and Development Subdistrict

Within the Research and Development Subdistrict, offices for and laboratories for research and development, including but not limited to, research and development in the fields of biology, chemistry, electronic, engineering, geology, medicine, pharmaceutical, physics, computer research and technology shall be allowed.

6A.1.4 McLean Institutional Subdistrict

6A.1.5 Open Space Subdistrict.

6A.1.6 Cemetery Subdistricts

6A.2 Dimensional Requirements.

(Gross floor area shall have the meaning set forth in this By-Law except that such area shall include all structures within the Subdistrict (except for preserved structures of historic significance which are vacant, unused and unoccupied and structures on privately-owned land used by the Town for public purposes), not within a given lot, and except that interior parking areas shall be excluded.)

6A.2.1 Residential Subdistricts

The dimensional requirements applicable to the Residential Subdistricts are:

(a) Maximum building height of 2 1/2 stories and 36 feet. For the purposes of this Section 6A, "height" shall mean the vertical distance from the average natural grade adjoining the building at all exterior walls to the highest point of the roof.

Notwithstanding the foregoing, for purposes of determining the height of no more than 12 buildings in Zone 1A (each of which must have its side with its greatest height from grade turned more than 90 degrees away from the northern boundary of the Subdistrict) and no more than 20 buildings in Zone 2, an alternative height limit shall be applied: the vertical distance from the average natural grade adjoining the building on the side that has the highest average natural grade to the highest point of the roof shall not exceed 36 feet and the vertical distance from the average natural grade adjoining the building on the side that has the lowest average natural grade to the highest point of the roof shall not exceed 50 feet. For buildings using this alternative height limit, a floor having a ceiling elevation at or below the average natural grade adjoining the building on the side that has the highest average natural grade shall not be considered a story. Each dwelling unit shall be considered a separate building for the purpose of determining height hereunder. No flat or shed roofs shall be allowed on buildings or building elements of more than one story.

(b) Maximum number of dwelling units and gross floor area.

(1) in Zone 1A, maximum of 33 units and a maximum total gross floor area of 99,000 square feet.

(2) in Zone 1B, maximum of 22 units and a maximum total gross floor area of 66,000 square feet.

(3) in Zone 2, maximum of 56 units and a maximum total gross floor area of 168,000 square feet.

(4) notwithstanding the provisions of subsections (b)(1), (b)(2) and (b)(3), an additional 11 dwelling units may be constructed as a historic preservation bonus based on rehabilitation and reuse of buildings consistent with the United States Secretary of the Interior's Standards and Guidelines for Rehabilitation; five such units shall be earned based on preservation and restoration of the existing building known as Upham Building and shall be located in Zone 2; four such units shall be earned based on rehabilitation

and reuse of the existing building known as Hope Cottage and shall be located in Zone 2 and one such unit shall be earned based on rehabilitation and reuse of the existing building known as South Cottage and shall be located in Zone 2. Such units shall not have a maximum gross floor area so long as they are located in the existing buildings as preserved and restored. Such units shall have a maximum average gross floor area of 3,000 square feet if they are located outside the buildings preserved and restored.

(c) Minimum open space of 60% of lot area within Zone 1A and minimum open space of 40% of lot area within Zone 1B and Zone 2.

(d) Maximum lot coverage of 20% of lot area within Zone 1A and Zone 1B and maximum lot coverage of 30% of lot area within Zone 2.

(e) Maximum impervious surface coverage of 40% of lot area within Zone 1A and maximum impervious surface coverage of 60% of lot area within Zone 1B and Zone 2. For the purposes of this Section 6A, "impervious surface coverage" shall mean the total area of all surfaces which reduce or prevent the absorption of storm water into land (including buildings, parking lots, driveways and sidewalks).

(f) Minimum setback from buildings to the Subdistrict boundary line of 15 feet. No fences or walls higher than 4 feet (or such greater height as is approved by the Planning Board in connection with Design and Site Plan review), nor any parking areas may be placed within such setback.

(g) Minimum setback from buildings to common driveways of 15 feet.

(h) Along the northerly boundary of Zone 1A, for 400 feet from the northeast corner of the subdistrict, and along the easterly boundary of Zone 1A, for 200 feet from the northeast corner of the subdistrict, the following shall apply:

(1) The area within 30 feet of such portions of such boundaries shall be maintained in an undeveloped and natural condition, except for the landscaping described below.

(2) If structures are located in Zone 1A within 100 feet of such portions of such boundaries, there shall be landscape buffering, including evergreen trees of substantial size (12 to 15 feet in height) upon planting, along both sides of such portions of such boundaries (to the extent permitted by the Town, where on Town property), which shall (a) provide a dense visual screening of such structures from view from the adjacent land in the Open Space Subdistrict; (b) be designed in a manner consistent as feasible with the natural appearance of the area and (c) be designed in a manner consistent as feasible with the continued life and health of the existing trees. Such landscape buffering may include the removal of invasive plants and their replacement with other native species.

6A.2.2 Senior Living Subdistrict

The dimensional requirements applicable to the Senior Living Subdistrict are:

(a) Maximum building height of 5 stories and 58 feet, except that one building may extend as high as 6 stories and 67 feet; provided that in such case the Planning Board determines that the siting and design of the building having such additional height shall be such that its roof elevation does not exceed the roof elevation of the 5 story building in the Subdistrict with the highest roof elevation and takes into consideration the tree line in the vicinity of such building; provided, further that a parking structure shall have a maximum height of 5 stories and 45 feet. For purposes of determining the height of a building in the Subdistrict, if and only if the lowest floor of the building is used for parking, then an alternative height limit shall be applied: the vertical distance from the average natural grade adjoining the building on the side that has the highest average natural grade to the highest point of the roof shall not exceed 58 feet and the vertical distance from the average natural grade adjoining the building on the side that has the lowest average natural grade to the highest point of the roof shall not exceed 68 feet. For buildings using this alternative height limit, a floor having a ceiling elevation at or below the average natural grade adjoining the building on the side that has the highest average natural grade shall not be considered a story.

(b) Maximum number of 480 units, at least 30 non-nursing care units of which must be set aside on a continuing basis as affordable units, and no more than a total gross floor area of 600,000 square feet; provided, however, that an additional 6 units having a total gross floor area of no more than 6,000 square feet may be constructed as a historic preservation bonus based on rehabilitation and reuse of buildings consistent with the United States Secretary of the Interior's Standards and Guidelines for Rehabilitation; two such units shall be earned based on rehabilitation and reuse of the existing building known as Chapel Building; and four such units shall be earned based on rehabilitation and reuse of the existing building known as Office Building. Of the 486 units, no more than 400 shall be Independent Living Facilities, no more than 150 shall be Assisted Living facilities and no more than 150 shall be nursing care beds within Nursing Care Facilities. "Affordable units" shall mean units which are rented or sold to, and occupied by, households with annual incomes of up to 120% of the median as defined by the United States Department of Housing and Urban Development. The availability of the affordable units may be phased in by approval of the Planning Board in connection with Design and Site Plan Review.

(c) Multipurpose senior facilities (not including customary common areas for the residential units) cannot exceed 10% of the total allowable gross floor area and shall be included within such total allowable gross floor area.

(d) Minimum open space of 30% of lot area within the Subdistrict.

(e) Maximum lot coverage of 40% of lot area within the Subdistrict.

(f) Maximum impervious surface coverage of 70% of lot area within the Subdistrict.

(g) Minimum setback from buildings to the Subdistrict boundary line of 10 feet. No fences or walls higher than 4 feet (or such greater height as is approved by the Planning Board in connection with Design and Site Plan review), nor any parking areas, may be placed within such setback.

6A.2.3 Research and Development Subdistrict

6A.2.4 McLean Institutional Subdistrict

6A.2.5 McLean Cemetery Subdistrict

6A.3 Parking and Access Requirements

6A.4 Design and Site Plan Review

Any activity requiring a building permit in any Subdistrict, and any proposed construction of a vehicular access shall require design and site plan approval by the provisions of Section 7.3 of this By-Law shall not apply except as provided below).

The Planning Board shall promulgate rules requiring any applicant for Design and Site Plan Review under this Section 6A.4 to pay a review fee, in an amount to be determined by the Planning Board to cover the reasonable costs of the Planning Board for the employment of any independent consultants determined to be needed to assist in the review of the application for site plan approval. Such consultants shall be qualified professionals in the relevant fields of expertise determined by the Planning Board.

The objectives of Design and Site Plan Review under this Section 6A.4 shall be to:

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes

6.5 Cluster Development

The Board of Appeals may grant a Special Permit for any tract of land in a Single Residence District to be developed as a Cluster Development subject to the requirements and conditions set forth below:

6.5.1 Objectives

The general objectives of Cluster Developments are to encourage:

- a) Preservation of open space for park, recreation, conservation or agricultural purposes.
- b) Better utilization of natural features of the land through a greater flexibility of design.
- c) More efficient provision of municipal services.
- d) Creating opportunities for affordable housing.

Note: §6.5 .1 d) was amended by Article 26 at the 2003 Annual Town Meeting.

6.5.2 Tract Size

The minimum tract areas upon which Cluster Developments may be allowed in the various Single Residence Districts are:

Single Residence A - 180,000 square feet

Single Residence B - 120,000 square feet

Single Residence C - 84,000 square feet

Single Residence D - 180,000 square feet

6.5.3 Number of Dwelling Units

a) The maximum number of dwelling units allowed within any Cluster Development shall be the number determined by dividing 85% of the area of the tract, exclusive of any wetlands or floodplain, by the minimum lot size permitted in the Single Residence District(s) within which the Cluster is located.

b) The maximum number of dwelling units allowed within the Cluster Development shall be the number determined by dividing 100% of the area of the tract, exclusive of any wetlands or flood plain, by 95% of the minimum lot size permitted in the single residence district(s) within which the cluster is located, provided that where five (5) or more housing units will be developed, the Board of Appeals determines that the developer complies with the following affordable housing requirements. The fifth housing unit and every third unit thereafter shall be an affordable housing unit; except that beginning with the 23rd unit, that 23rd unit and every fourth unit thereafter shall be an affordable housing unit.

Note: §6.5.3 was amended by Article 26 at the 2003 Annual Town Meeting.

6.5.4 Open Land

a) The area of open land shall equal at least 25% of the total area of the Cluster Development tract. Such land shall have a shape, dimension, character and location

suitable to assure its use for park, recreation, conservation or agricultural purposes

by all the residents of the Cluster. Provision shall be made so that the open land shall be readily accessible to the owners and occupants of the lots in the Cluster, and owned by a corporation, association or trust whose owners or beneficiaries are all the owners and occupants of the lots, or by the Town, or otherwise as the Board of Appeals may direct in accordance with Massachusetts General Law, Chapter 40A.

b) In all cases, a perpetual restriction of the type described in Massachusetts General Law, Chapter 184, Section 31 (including future amendments thereto and corresponding provisions of future laws) running to or enforceable by the Town shall be recorded in respect to such land. Such restriction shall provide that the open land shall be retained in perpetuity for one or more of the following uses: conservation, agriculture, recreation or park. Such restriction shall be in such form and substance as the Board of Appeals shall prescribe and may contain such additional restrictions on development and use of the open land as the Board of Appeals may deem appropriate after considering any comments which the Conservation Commission may choose to submit.

c) If a Special Permit is issued, the Board of Appeals may impose as a condition that the open land shall be conveyed by the applicant free of any mortgage interest or security interest and subject to a perpetual restriction of the type described in Section 6.5.4 a) prior to the issuance by the Building Inspector of a Building Permit for any dwelling or structure.

6.5.5 Dimensional Regulations

Except as otherwise provided in this Section, a Cluster Development tract shall comply with the frontage, setback, distance between buildings and building heights set forth in the Schedule of Dimensional Regulations contained in Section 4.2 of this By-Law. If the Cluster Development is divided into one or more individual lots, the frontage of each lot on a street or on a private road or way within the Cluster Development tract shall be as specified by the Board of Appeals consistent with fire safety, aesthetics and the character of the Cluster Development tract.

6.5.6 Attached Dwelling Units

The Board of Appeals may in its discretion allow a Cluster Development to consist in whole or in part of attached dwelling units if such units are not inconsistent with the aesthetics and physical appearance of the other buildings in the immediate vicinity.

6.5.7 Limitation of Subdivision

No lot shown on a plan for which a Permit is granted under this Section may be further subdivided and a notation to this effect shall be shown on the plan.

6.5.8 Design and Site Plan Review

Cluster Developments, whether or not containing attached dwelling units, are subject to the Design and Site Plan Review procedures and requirements of Section 7.3 of this By-Law.

6 - 4

Town of Belmont Zoning By-Law

As amended through 11/17/2003

Approved 1/20/2004

6.5.9 Amendments

Following the granting by the Board of Appeals of a Permit under this Section, it may, upon application and for good cause shown after notice and a public hearing as required for granting a Special Permit, amend the plan solely to make changes in lot lines shown on the plan, provided, however, that no such amendment shall:

- a) Grant any reduction in the size or change in location of the open land as provided in the Permit;
- b) Grant any change in the layout of the ways as provided in the Permit;
- c) Increase the number of lots as provided in the Permit; or
- d) Decrease the dimensional requirements of any lot below the minimum dimensions permitted by this By-Law.

Town of Belmont Zoning Bylaws, Section 6.5 and 6.5(1) (April 28, 2003)

6.5 Cluster Development

The Board of Appeals may grant a special permit for any tract of land in a single residence district to be developed as a cluster development subject to the requirements and conditions set forth below:

6.5.1 Objectives

The general objectives of cluster developments are to encourage:

- a) Preservation of open space for park, recreation, conservation or agricultural purposes.
- b) Better utilization of natural features of the land through a greater flexibility of design.
- c) More efficient provision of municipal services.
- d) Creating opportunities for affordable housing.

On survey received from Belmont on 3/23/05:

What year was the first provision for flexible zoning adopted?

1988

What was the last year the municipality amended the cluster/flexible provision?

2003

Which entity is the special permit granting authority for cluster/flexible zoning?

Board of Appeals 6.5 Cluster Development
The Board of Appeals may grant a Special Permit for any tract of land in a Single Residence District to be developed as a Cluster Development subject to the requirements and conditions set forth below:

Has any housing been built under the cluster/flexible provisions?

Yes Answer provided on survey received from Belmont on 3/23/05: "2 projects."

Berkley

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

No

Which entity is the special permit granting authority for cluster/flexible zoning?

Has any housing been built under the cluster/flexible provisions?

Berlin

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes See Senior Residential Development:
430 SENIOR RESIDENTIAL DEVELOPMENT OVERLAY DISTRICT
(Added STM 3/29/99, approved 4/14/99)

431 Establishment of District

This section establishes a Senior Residential Development Overlay District in addition to the zoning districts described in Article 2 and the other overlay districts described in Article 4. The District is established as a special district which may overlay any other zoning district.

432 Purpose

The Senior Residential Development Overlay District is created for the purpose of permitting Senior Residential Developments in specific areas approved by Town Meeting.

433 Use Regulations

Land within the Senior Residential Development Overlay District may be used for the following purposes:

- (a) all the purposes permitted and as regulated in the underlying district;
- (b) Senior Residential Developments subject to the provisions of Section 720. Such developments shall be subject to the regulations of the underlying district that are not modified by the provisions of Section 720.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board 720 SENIOR RESIDENTIAL DEVELOPMENT
(Amended STM 3/29/99, approved 4/14/99)

722.1 General Provisions: In the Senior Residential Overlay District, the Planning Board may grant a special permit for a Senior Residential Development (SRD) as an alternative to conventional subdivision.

Has any housing been built under the cluster/flexible provisions?

Beverly

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes According to the Beverly Zoning Ordinance, Section 29-23 (as amended through 2003), the City of Beverly allows for Planned Residential Developments (PRD) with the purpose, "to provide for innovative design and flexibility in residential development, to provide a mixture of housing types at certain locations; to provide for the economical installation and maintenance of streets and utilities; and to conserve open space and natural amenities."

The PRDs are allowed by special permit in the R-90 (One-Family Residential District), R-45 (One Family-Residential District), R-22 (One-Family Residential District), R-15 (One-family Residential District), and RMD (Multifamily Residential Development District).

The Board of Appeals is the special permit granting authority.

The Board of Appeals may allow the following (according to the Beverly Zoning Ordinance, Section 29-23(A)(2) (as amended through 2003): "In any R-90, R-45, R-22, RMD, and RSD District, the Board of Appeals may permit by special permit a Planned Residential Development comprising a combination of the following uses: one-family dwellings, two-family dwellings, semi-detached dwellings, and multi-family dwellings, (rental or otherwise), public or private schools, public recreation and open space, fire stations, and other public facilities, and membership clubs for the exclusive use of residents of the PRD."

Cluster developments are allowed in the City of Beverly, but only in the one-family residential districts of the city. Cluster Developments are allowed in the following districts: R-90 (one-family residential), R-45 (one-family residential), R-22(one-family residential), R-15 (one-family residential), and R-10 (one-family residential).

From ordinance.com:

29-23 SPECIAL DENSITY AND DIMENSIONAL REGULATIONS

A. Planned Residential Development (PRD)

1. Purposes - To provide for innovative design and flexibility in residential development, to provide for a mixture of housing types at certain locations; to provide for the economical installation and maintenance of streets and utilities; and to conserve open space and natural amenities.

2. Use Regulations - In any R-90, R-45, R-22, RMD, and RSD District, the Board of Appeals may permit by Special Permit a Planned Residential Development comprising a combination of the following uses: one-family dwellings, two-family dwellings, semi-detached dwellings, and multi-family dwellings, (rental or otherwise), public or private schools, public recreation and open space, fire stations, and other public facilities, and membership clubs for the exclusive use of residents of the PRD.

3. Procedure - Application for Special Permit for a PRD shall be filed and processed in accordance with Section 29-27 of this Ordinance, unless otherwise provided herein. Site Plan Review by the Planning Board is also required for PRD's - see Section 29-28.c: of this Ordinance for procedures and filing requirements. The Board of Appeals shall not take final action on an application for PRD until it has received a report thereon from the Planning Board within 35 days or until said Planning Board has allowed 35 days to elapse without submission of a report. An approved site plan shall thereafter be subject to the requirements of the City of Beverly (Planning Board Rules and Regulations). 7/1/92

4. Development Requirements - a PRD shall be subject to the requirements for the district in which the project is located, except in the case of existing structures, and except where modified and supplemented as follows:

a. Minimum lot area of a PRD shall be: five (5) acres in the R-15 District; seven (7) acres in the R-22 District; ten (10) acres in the R-45 District; twelve (12) acres in the R-90 District. There shall be no PRD's in the R-6 or R-10 Districts.

b. At least thirty percent (30%) of the gross area of the PRD shall be dedicated as permanent open space for the protection of natural drainage areas, the conservation of woodlands and other natural amenities, parks and recreation and other such public natural uses described or shown on the Comprehensive Plan and Official Map of the City of Beverly. Upon recommendation of the Planning Board such open space shall be either; deeded to the City of Beverly for public use or conservation, subject to approval thereof by the Board of Aldermen; covenanted by the owner or developer with an association of residents of the PRD as permanent open space. If such space is retained in private ownership, as a condition in the granting of a Special Permit to permit the PRD, the owner or developer of the PRD shall establish a procedure for maintaining the open space in an orderly state. This dedicated open space shall not include parking areas or drives and shall not be within the minimum yard requirements for building in the particular zoning district.

c. Lot requirements for one-family dwellings in a PRD may be reduced to not less than those dimensional requirements set forth in the next least restrictive "RI" District in which the PRD is proposed.

d. Maximum density in dwelling units per gross area of a proposed PRD shall be the same as allowed in that district for a single-family dwelling as set forth in the requirements for the zoning district in which the project is located. This density calculation shall exclude wetlands as defined by M.G.L. Chapter 131 as amended, and shall exclude any standing bodies of water. The applicant will file a Request for Determination with the Beverly Conservation Commission at the same time as filing with the Special Permit Granting Authority to determine the wetland area of the lot.

e. A PRD site at the time of application shall be served by both public water and sewer systems, such systems to be of sufficient capacity to accommodate increased density of development of the PRD as determined and approved by the Commissioner of Public Works. The Provisions of this paragraph may be waived by the Commissioner of Public Works.

f. The provisions of this section are optional. The Planning Board or the Board of Appeals are not required to approve a PRD plan where it finds that, by increasing the density of the tract, the general area would be affected adversely by such action.

B. Reduction of Lot Requirements for "Cluster" Residential Subdivisions

1. Purposes - To provide an optional format for subdivision development in which requirements for individual building lots in a subdivision would be reduced in a given District without an increase in the gross density of population or development in the subdivision possible under normal lot requirements for the District in which such subdivision is located; to provide for the economical development of residential home sites and the efficient provision of public service through this clustering technique; and to preserve and protect drainage ways, wooded areas, areas of difficult terrain, and to encourage the provision of open space.

2. Procedure - The Planning Board may approve a subdivision plan submitted in accordance with the City of Beverly, (Planning Board Rules and Regulations) and meeting requirements of this section, provided the cluster layout will not adversely affect the surrounding neighborhood. The burden of proof shall be on the project proponent.

3. Lot Variations and Requirements a. Within the R-90, R-45, R-22, R-15, and R-10 Districts, the minimum lot size, lot frontages, yards, and other such dimensional requirements set forth in the requirements for individual lots in the zoning district in which the project is 7/1/92 located, may be reduced on approval by the Planning Board for a subdivision applied for hereunder.

b. The Planning Board shall not approve a subdivision-plan proposal that would result in a number of building lots within the gross area of a subdivision in excess of the number of lots otherwise possible by following lot (as defined in Section 29-2) size requirements set forth in the requirements for the zoning district in which such proposed subdivision is located. Such number of lots shall be determined by dividing the gross area of the proposed subdivision by the minimum lot size requirement for the District excluding the street right-of-way area required to service a lot and excluding any wetlands and standing bodies of water. Other public rights-of-ways shall be deducted from the gross area of a subdivision as well in making this calculation.

c. In order to be considered hereunder, a subdivision shall have a minimum gross area of four (4) acres.

d. All lots shall be served by public water and sewer systems, subject to the approval of the Commissioner of Public Works.

4. Dedicated Open Space

a. Any remaining area of the proposed subdivision not dedicated for streets and other public right-of-way and not plotted into building lots shall be dedicated as open space.

b. Lands required to be dedicated shall be so as to meet the needs for conservation of natural amenities, protection of natural drainage areas and streams, parks and recreation, and other such public and natural uses as described in or shown on the Comprehensive Plan of the City of Beverly. The Planning Board shall have full advisory powers as to the location and size of such open space areas.

c. Upon recommendation of the Planning Board all such open space within a subdivision approved hereunder shall be either: deeded to the City of Beverly for public use or conservation, subject to the acceptance thereof by the Board of Aldermen; or deeded to an association of property owners within the subdivision for their common use, control, and management. Where the latter arrangement is the case and said association fails to maintain the open space in an orderly state, the City may perform such maintenance as necessary and assess the cost of the responsible property owners.

d. No portion of any dedicated open space shall thereafter be sold or developed for any use other than that for which it is dedicated. Appropriate deed restrictions and other legally binding agreements to insure that this provision is adhered to in perpetuity shall be made prior to final approval of a subdivision plan by the Planning Board.

5. Provisions of this Section are optional - nothing herein shall be construed as requiring a subdivider or developer to elect this means of subdividing a tract; and nothing herein shall require the Planning Board or the Board of Appeals to approve a subdivision plan proposed hereunder where it finds that, by lessening requirements for individual lots, the general area would be affected adversely by such action.

Notes on density:

According to Section 29-23, which governs Planned Residential Development, the density requirements are the same as the requirements for the district in which the development is built with four (4) exceptions/modifications:
The minimum lot size of a PRD in R-15 shall be five (5) acres, R-22 seven (7) acres, R-45 ten (10) acres, and R-90 twelve (12) acres.

For Cluster Developments, according to Section 29-23(B)(3)(a)-(d), the lot shall at least have a minimum gross area of 4 acres to be considered for a cluster development. The individual dwelling lot size at the discretion of the planning board.

Planned Residential Developments: R-90 (12 acres), R-45 (10 acres), R-22 (7 acres), R-15 (5 acres),
RMD (8000 sq. ft. plus 4000 sq. ft. for each dwelling unit over two), and RSD (3600 sq. ft.).

Survey received from Beverly on 3/28/05:

What year was the first provision for flexible zoning adopted?

"?"

What was the last year that the municipality amended the cluster/flexible provisions?

"In process"

Which entity is the special permit granting authority for cluster/flexible zoning?

Board of Appeals 2. Use Regulations - In any R-90, R-45, R-22, RMD, and RSD District, the Board of Appeals may permit by Special Permit a Planned Residential Development comprising a combination of the following uses:

Has any housing been built under the cluster/flexible provisions?

Yes Survey received from Beverly on 3/28/05:

Q: Has any housing been built under the cluster/flexible provisions? (none, 1-8 projects, more than 8)

A: 1-8 projects

Billerica

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No Residential Cluster Overlay is by special permit in Billerica.

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes From ordinance.com:

3. RESIDENTIAL CLUSTER OVERLAY DISTRICT

All uses permitted by right or by special permit in the underlying districts are permitted by right or by special permit in the Residential Cluster Overlay District, which is intended to encourage the conservation of open space and the efficient use of land in harmony with its natural features. In addition, the following RESIDENTIAL uses are permitted:

By right:

(1) Accessory residential uses

(b) By special permit:

(1) Cluster development

Requirements for Use:

PERMITTED USES

Single-family detached residences on separately deeded lots, one residence per lot.

DIMENSIONAL REQUIREMENTS

Residential cluster development shall be allowed on parcels of land having a minimum contiguous area of 10 acres located within Village Residence, Neighborhood Residence, or Rural Residence Districts.

Lot area may be reduced to 20,000 square feet in Neighborhood and Rural Residence Districts, and to 15,000 square feet in the Village Residence District. The land designated as open space must equal or surpass the total area by which all lots have been reduced.

The minimum frontage in all residential districts may be reduced to 100 feet, except the frontage on a cul-de-sac turnaround maybe reduced to 75 feet provided the entire frontage is located on the cul-de-sac radius and the lot width parallel to the street at the front building line is a minimum of 100 feet.

All yards shall conform to the yard requirements set forth in the Zoning By-law for the District in which the use is located.

No residence, temporary structure, driveway, accessory structure, swimming pool, parking area, filling, paving or fencing shall be located within 100 feet of the perimeter of the applicable Residential Cluster Overlay District, except for utility easements or roadways.

All contiguous areas within any one discrete Residential Cluster Overlay District shall be utilized in the design of the residential cluster development. No overlay district shall be split so as to render one portion cluster and the other conventional. Any such discrete area shall be developed exclusively as either a -conventional subdivision or a residential cluster development.

The total number of building lots in a residential cluster development shall be no greater than the number of building lots that would otherwise be permitted in the district where the land is located.

OPEN SPACE

The area of open space shall equal at least 40% of the total area of the residential cluster development tract.

The minimum required open space area may contain ponds, marshes, or other protected wetlands, but a minimum of 40% of the entire site's non-wetland area shall be located within the open space area.

Parking areas, streets, or other areas associated with the residential cluster development shall not be included in the open space area.

For open space areas, minimum frontage on a public way or subdivision may be reduced to 40 feet.

Any area designated as open space must contain at least four acres of contiguous open space land.

Open space areas shall remain undeveloped but may be subject to easements for the construction, maintenance, and repair of utility and drainage facilities serving the residential cluster development or adjacent parcels.

Open space areas shall have a shape, dimension, character, and location suitable for passive recreation, conservation, or agricultural purposes.

Open space areas may not be excavated or filled and must be maintained in their natural state.

Provisions shall be made so that the open space areas are readily accessible to the owners or occupants of the lots in the residential cluster development, or, if the open space areas are under Town ownership, to the residents of the Town.

OPEN SPACE AREA OWNERSHIP

Open space areas shall be owned by a corporation, non-profit organization, or trust whose owners or beneficiaries are all owners and occupants of the lots, or by the Town, or otherwise as directed at the time of special permit issuance.

All open space shall be subject to a perpetual restriction of the type described in M.G.L., ch. 184, § 31, as amended, running to or enforceable by the Town. Said restriction shall be recorded at the Middlesex North Registry of Deeds. Such restriction shall provide that the open space areas shall be retained in perpetuity for one or more of the following uses: conservation, agriculture or passive recreation. Such restriction shall be in such form and substance as the SPGA shall prescribe and may contain such additional restrictions on development and use of the open space as deemed appropriate.

In order to ensure that the corporation, non-profit organization, or trust will properly maintain the open space area, an instrument(s) shall be recorded at the Middlesex North Registry of Deeds, which shall at a minimum provide:

- a legal description of the open space;
- a statement of the purposes for which the open space is intended to be used and the restrictions on its use and alienation;
- the type and name of the corporation, non-profit organization or trust which will own, manage, and maintain the open space;
- the ownership or beneficial interest in the corporation, non-profit organization, or trust of each owner of a dwelling in the residential cluster development and a provision that such ownership or beneficial interest shall be appurtenant to the dwelling to which it relates and may not be conveyed or encumbered separately therefrom;
- provisions for the number, term of office and the manner of election to office, removal from office, and the filling of vacancies in the office of directors and/or officers of the corporation or non-profit organization or trustees of the trust;
- procedure for the conduct of the affairs and business of the corporation, non-profit organization, or trust including provision for the calling and holding of meetings of members and directors and/or officers of the corporation or non-profit organization or beneficiaries and trustees of the trust and provision for quorum and voting requirements for action to be taken. Each owner of a residence shall have voting rights proportional to that owner's ownership or beneficial interest in the corporation, non-profit organization, or trust.
- provision for the management, maintenance, operation, improvement and repair of the open space and facilities thereon, including provisions for obtaining and maintaining adequate insurance and levying and collecting from the dwelling owners common charges to pay for expenses associated with the open space area, including real estate taxes. It shall be provided that common ownership or beneficial interests in the corporation, non-profit organization, or trust, and that each dwelling owner's share of the common charge shall be a lien against his real estate in the residential cluster development, which shall have priority over all other liens with the exception of municipal liens and first mortgages of record; and
- the method by which such instrument or instruments may be amended.

SUBDIVISION APPROVAL REQUIREMENTS

SPGA approval of a special permit hereunder shall not substitute for compliance with the Subdivision Control Law, nor oblige the Planning Board to approve any related definitive subdivision plan, nor reduce any time periods for Board consideration under the law. However, in order to facilitate processing, the Planning Board shall, insofar as practical under existing law, permit submission of a combined plan and application which shall satisfy this Section of the Zoning By-Law and the Planning Board's Rules and Regulations under the Subdivision Control Law.

The special permit application shall not be submitted prior to the approval of a conventional preliminary subdivision plan in accordance with the Subdivision Rules and Regulations. Such plan shall provide satisfactory evidence that the number of lots shown on the residential cluster development plan is no greater than the number of lots that could otherwise be developed in a conventional subdivision. Each conventional lot must have enough non-wetland area to site a dwelling. A second preliminary plan showing the proposed cluster plan shall also be submitted along with the conventional preliminary subdivision plan.

If the residential cluster development does not require approval under the Subdivision Control Law, the applicant shall nevertheless submit a plan or plans in the form and containing the same information required to be shown on a preliminary subdivision plan by the Subdivision Rules and Regulations.

The application plan for the special permit shall be prepared in accordance with the requirements for a definitive subdivision plan as set forth in the Subdivision Rules and Regulations and shall also include the following:

- the proposed location, bulk and height of all proposed buildings;
- an analysis of the site, including wetlands, slopes, soil conditions, areas within the 100 year flood zone, vegetative areas, and other natural features as the SPGA may request; and
- an evaluation of the open space proposed within the residential cluster development, with respect to the size, shape, location, natural resource value, and accessibility by residents of the development or residents of the Town, as applicable.

Required Findings:

The use complies with the site plan approval requirements of the Zoning By-law.

The plan and application meet all requirements for submission.

The proposed use will not have a detrimental impact on the neighborhood.

The plan is designed with consideration for health and safety and is superior to a conventional plan in preserving open space, minimizing environmental disruption, and allowing for more efficient provision of services.

Marked on survey received from Billerica on 3/21/05:

What year was the first provision for flexible zoning adopted?

1992

What was the last year that the municipality amended the cluster/flexible provisions?

2001

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board SUBDIVISION APPROVAL REQUIREMENTS

SPGA approval of a special permit hereunder shall not substitute for compliance with the Subdivision Control Law, nor oblige the Planning Board to approve any related definitive subdivision plan, nor reduce any time periods for Board consideration under the law. However, in order to facilitate processing, the Planning Board shall, insofar as practical under existing law, permit submission of a combined plan and application which shall satisfy this Section of the Zoning By-Law and the Planning Board's Rules and Regulations under the Subdivision Control Law.

Has any housing been built under the cluster/flexible provisions?

Yes Marked on survey received from Billerica on 3/21/05:

Has any housing been built under the cluster/flexible provisions? (none, 1-8 projects, more than 8)

1-8 projects

Blackstone

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes ARTICLE V Definitions and Word Usage
Section 123-24. Definitions and word usage.
FLEXIBLE RESIDENTIAL DEVELOPMENT : An alternative form of land development involving the division of a parcel into building lots, using flexible intensity regulations, as provided at subsection 123-13.1 of this Bylaw. [Added 04/25/94 ATM, Art. 24(A)]

What follows is the entire by-law on Flexible Residential Development.

Section 123-13.1. Flexible Residential Development.

[Added by 04-25-94 ATM, Art. 24(A)J.

A. Purpose. The purpose of Flexible Residential Development provisions is to allow greater flexibility and creativity in residential development in order to gain:

(1) location of development on sites best suited for development, and protection of land not suited for development, reflecting such considerations as:

- permanent preservation of open space for agriculture, conservation, or recreational use, especially in large contiguous areas within the site or linked to off-site protected areas;
- protection of water bodies, streams, wetlands, wildlife habitats, and other conservation resources;
- protection of the character of the community through preserving open space within view from public roads, preservation of stone walls and other historic landscape features, preservation of scenic vistas, and through siting of dwelling at low-visibility locations;
- protection of street appearance and capacity by avoiding development close to or egressing directly onto such streets;

(2) efficient patterns for construction and maintenance of public facilities and services such as streets and utilities;

(3) privacy for residents of individual lots; and

(4) avoidance of unnecessary development cost.

B. Applicability. Flexible Residential Development is allowed only if granted a special permit by the Planning Board in accordance with the following procedures and requirements. Non-contiguous land either in the same ownership or subject to binding agreements may be incorporated into the same development application, with density and open space determinations made as if all of the land were contained in a single contiguous parcel.

C. Procedures.

(1) Applicants for Flexible Residential Development are encouraged to meet with the Planning Board for a pre-application conference to allow consideration of general approaches, increasing the likelihood of prompt approval of later plans.

(2) Applications for a special permit for Flexible Residential Development shall include the following. It is recommended that these materials be prepared by an interdisciplinary team including a Registered Land Surveyor, a Professional Engineer and a registered Architect or Landscape Architect.

(a) A concept plan meeting the requirements for a preliminary subdivision plan under the Subdivision Regulations of the Planning Board.

(b) Additional graphic, analytic, and narrative material as necessary to evaluate the plan relative to the purposes of Flexible Residential Development listed at subsection Section 123-13.1.A, and demonstrating compliance with the standards of this Bylaw.

D. Dimensional Requirements. Developments within a Flexible Residential Development shall be subject to the following in lieu of the lot area, frontage and yard requirements of subsection Section 123-13 Intensity of Use Schedule.

(1) Basic Number of Lots. The basic number of building lots which may be created from any parcel shall be the number which reasonably could be expected to be built upon that parcel under a conventional subdivision plan, in consideration of how much of the land is actually buildable in compliance with all applicable development requirements of the Town and State, based upon review of a sketch conventional plan submitted by the applicant showing division in compliance with the dimensional standards of subsection Section 123-13 Intensity of Use Schedule.

(2) Lot Area. There is no categorical minimum lot area required. Individual lot area need only be that necessary for meeting building yard requirements (where applicable), off-street parking, and location of any on-site water supply and sewage disposal facilities.

(3) Frontage. There is no categorical minimum frontage required, except that the development as a whole shall have at least that frontage required for a single-family dwelling under subsection Section 123-13. The frontage provided for individual lots being created need only be that necessary to meet yard requirements and to provide for adequate access to the building site. Where shared driveways or other circumstances render frontage on a street to be of no importance none is required.

(4) Existing Street Protection. Lots having reduced area or frontage shall not have frontage on a street other than one created by the development involved, unless specifically authorized by the Planning Board where justified by peculiar site circumstances.

(5) Yard Requirements. Yards as required by subsection Section 123-13 shall apply at any boundary line at the perimeter of the Flexible Residential Development, including the existing street line, but are not applicable elsewhere within the development.

E. Open Space. Any proposed open space within the Development shall be conveyed to the Town, to a nonprofit organization, or to a corporation or trust owned or to be owned by the owners of the lots within the development, as provided by Section 9 of Chapter

40A GL, the Zoning Act.

F. Decision. The Planning Board shall approve the Flexible Residential Development or approve it with conditions provided that it meets all standards of the Zoning Bylaw, and better satisfies the purposes of Flexible Residential Development (subsection Section 123-13.1.A) than would development not using these provisions.

G. Endorsement. The plan creating the lots shall be endorsed by the Planning Board as "Approved for Flexible Residential Development". The plan shall also contain the following annotation:

"No further increase in the number of lots shall be allowed through subsequent land division."

Zoning Bylaw of Town of Blackstone, MA (last updated 5/28/2002) at: www.ordinance.com

Survey received from Balckston on 5/17/05, completed by Philip Herr.

What was the last year that the municipality amended the cluster/flexible provisions?

"1996. Amendment to be voted on May 31 [2005] @ ATM"

What types of structures are allowed under cluster/flexible zoning?

"SINGLE, TWO-FAMILY"

Has any housing been built under the cluster/flexible provisions? (none, 1-8 projects, more than 8)

"1-8"

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board B. Applicability. Flexible Residential Development is allowed only if granted a special permit by the Planning Board in accordance with the following procedures and requirements. Non-contiguous land either in the same ownership or subject to binding agreements may be incorporated into the same development application, with density and open space determinations made as if all of the land were contained in a single contiguous parcel.

Has any housing been built under the cluster/flexible provisions?

Yes Survey received from Balckston on 5/17/05, completed by Philip Herr.

Has any housing been built under the cluster/flexible provisions? (none, 1-8 projects, more than 8)

"1-8"

Bolton

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Town of Bolton Bylaws, May 2004

2.3.6.1 A Farmland and Open Space Planned Residential Development (FOSPRD) can be created for a residential development by using a special permit.

2.3.6.2 Purpose:

(a) To preserve agriculture and open space

(b) To preserve the rural and historic character of Bolton

(c) To provide land owners with an alternative to traditional subdivisions that

allows houses to be built in a way that is more in harmony with local site conditions, without increasing the density of new developments.

2.3.6.3 Prerequisites:

The entire FOSPRD must be in the Town of Bolton, in a residential zone. It must be at least 10 acres, or within fifty (50) feet of another FOSPRD.

2.3.6.4 Maximum Number of Dwellings:

(a) The maximum number of dwellings which can be built in a FOSPRD is equal to the number of dwellings which, is demonstrated to the satisfaction of

the Planning Board, could be built on the land in a traditional subdivision.

(b) The applicant shall propose a number of dwellings to the Planning Board by submitting a preliminary plan showing how a traditional subdivision might

be laid out, including: roads, lots, house locations and well and septic locations.

(c) Evidence must be submitted to prove that the lots shown would satisfy Board of Health requirements for sewage treatment. This evidence must include a description of soil types and positive percolation tests. The percolation tests shall be done for all the proposed lots, but the Planning Board may waive testing of certain areas if the Planning Board decides that the local soil conditions are suitable for development.

2.3.6.5 Restricted Areas:

(a) Size of Restricted Areas

At least 33% of the area of the FOSPRD must be restricted with either a Farmland Restriction (FR) or an Open Space Restriction (OSR). The 33% requirement may be reached with FR land, OSR land, or some of each. The two types of restrictions are defined below in Sections C & D. No more than 25% of the minimum amount of restricted land can be in a Water Resource Protection District or Flood Plain District, as defined in Sections 2.5.4 and 2.5.3.

(b) How Restricted Areas Are Selected

1. The Planning Board, after consultation with the applicant, Selectmen, Conservation Commission, Board of Health, abutters and general public, shall

determine: location of FR land, location of OSR land, location of active use land within OSR land, location and amount of any footpaths. Active use is defined to include ballfields and playgrounds. The Planning Board shall balance the interests of conservation of natural resources, the value of land and existing buildings, and any demonstrated hardship, financial or otherwise that would affect the applicant in determining the location of the restricted area.

2. The intent of this bylaw is for the Planning Board to give preference to FR over OSR, for land that is being farmed or is good farming soils.

3. The required open space shall be configured to the extent practicable, so that it shall be aggregated into a contiguous area, or abut existing significant

open space, or achieve one or more of the purposes described in Section 2.3.6.2.

(c) Farmland Restriction (FR)

1. Only agricultural or horticultural uses are allowed in the FR area. These uses are defined in Mass General Laws Chapter 6IA.

2. No buildings are allowed in the FR area, except 5% of the area can be covered with barns and other accessory farming buildings.

3. The FR land can be owned by either: the Town of Bolton, a conservation trust, a homeowners association of the residents of the FOSPRD, or other

owner, such as a farmer. In no event may the FR in any manner be combined, included or joined with or considered as part of the individual dwelling lot

area(s). No portion of the FR may be included in determining the minimum dwelling lot area(s) as prescribed in 2.3.5 or 2.3.6.7 a) 1).

In all cases the land must be subject to an agricultural preservation restrictions under Mass General

Law Chapter 184 s 31 & 32 and that the provisions of that restriction must be reviewed and approved by the Planning Board. The farming rights to the land

owned by the Town of Bolton may be sold or leased to farmers.

4. If agricultural activities cease for 3 or more years, then the Town may mow to save any fields or orchards. Fifteen (15) years after the agricultural

activity ceases, the Planning Board may, after public hearing and review, cause the FR to be converted to OSR land.

5. No septic systems are allowed in the FR area other than to serve any buildings mentioned in item (c2) above.

6. All five of the above restrictions must be written into the deed of the land in the FR area.

(d) Open Space Restriction (OSR):

1. No new buildings may be constructed on OSR land. No dwellings are allowed in the OSR area.

2. OSR land can be owned by: the Town of Bolton, a conservation trust, or a homeowners association of the residents of the FOSPRD. The restrictions

are owned by the Town of Bolton. In no event may the OSR in any manner be combined, included or joined with or considered as part of the individual

dwelling lot area(s). No portion of the OSR may be included in determining the minimum dwelling lot area(s) as prescribed in 2.3.5 or 2.3.6.7 a) 1).

3. The OSR land can be used for passive recreation or active recreation. Active recreational uses can not cover more than 10% of the OSR land.

4. The above 3 restrictions must be written into the deed of the land in the OSR area.

2.3.6.6 Roadways:

(a) When constructing new right-of-way, the applicant must file a subdivision plan and meet all the normal requirements, not withstanding the other provisions of the zoning bylaw:

1. Street widths will be controlled by the Town of Bolton's Subdivision Rules and Regulations and in no case will be less than 18 feet in width.

2. Common driveways serving up to 5 (five) houses each may be obtained under 2.4.1.2 even if none of the lots are backland lots.

2.3.6.7 Dimensional Requirements:

(a) Must meet all dimensional requirements of the Bolton Zoning Bylaws (Section 2.3.5) except:

1. Minimum lot area reduced to 1 acre

2. Minimum lot frontage reduced to 25 feet

3. No "Minimum lot width at 100 feet back from the street" requirement

2.3.6.8 Approval Process:

(a) The Planning Board shall be the special permit granting authority for a FOSPRD. The applicant must comply with all the other zoning bylaws of the Town of Bolton.

(b) The Planning Board may issue regulations to go with this bylaw, which specify the application procedure and may charge a fee to cover engineering and legal review and other expenses.

(c) When considering whether or not to grant a special permit, the Planning Board should consider:

1. Whether the proposed plan restricts development on significant farms, farm soils, fields, orchards, hilltops, scenic vistas, stone walls, and other areas important to Bolton's rural character.

2. Whether the proposed plan results in the preservation of buildings with historic significance, which includes buildings more than 100 years old.

3. Whether the proposed plan serves the intent of this bylaw as described in Section 2.3.6.2 better than the alternative of a traditional subdivision.

2.3.6.9 Submission Requirements

The applicant shall submit to the Planning Board copies of the following:

(a) A traditional Preliminary or Definitive Plan meeting the informational requirements of the Bolton Subdivision Rules and Regulations: and

(b) A FOSPRD Preliminary or Definitive Plan meeting the informational requirements of the Bolton Subdivision Rules and Regulations 2.3.6.10 Relations to Subdivision Regulations:

In so far as a FOSPRD constitutes a subdivision (per M.G.L. C41, Section 81-L), both the subdivision and the special permitting approval processes may run concurrently. However, subsequent approval by the Planning Board of such portions of the development which constitutes a subdivision shall be required

as set forth in the Bolton Subdivision Rules and Regulations, including the approval of the streets and utility system. A favorable action which may be

made by the Board on a special permit application for a FOSPRD shall not, therefore, be deemed either to constitute subdivision approval under Bolton

Subdivision Rules and Regulations, nor imply that such approval will be given.

Survey received from Bolton 5/20/05 (completed by town planner):

What year was the first provision for flexible zoning adopted?

"1989"

What was the last year that the municipality amended the cluster/flexible provisions?

"1996"

What types of structures are allowed under cluster/flexible zoning?

"Single family residential"

Has any housing been built under the cluster/flexible provisions? (none, 1-8 projects, more than 8)

"more than 8"

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board

2.2.3.1 Special Permit Granting Authority

Special Permit applications shall be heard and decided upon by the Board of Appeals, except in the case where some other Special Permit Granting Authority is specified by this Bylaw.

2.3.6.8 Approval Process:

(a) The Planning Board shall be the special permit granting authority for a FOSPRD (Farmland and Open Space Planned Residential Development). The applicant must comply with all the other zoning bylaws of the Town of Bolton.

Town of Bolton Bylaws, May 2004

Has any housing been built under the cluster/flexible provisions?

Yes Town Planner Nat Tipton wrote in an email on 11/12/04 that "Our cluster zoning (FOSPRD) has resulted in the last seven subdivision[s] being create[d] with houses in smaller 1 acre lot[s] and preservation of a larger contiguous open space are[a]. Our inclusionary zoning is only 6 months old and has not resulted in any affordable units yet."

Survey received from Bolton 5/20/05 (completed by town planner):

Has any housing been built under the cluster/flexible provisions? (none, 1-8 projects, more than 8)

"more than 8"

Boxborough

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

No There is no mention of cluster or OSRD zoning in the town's by-laws. What follows is the entire section of the town's master plan that addresses OSRD:

OPEN SPACE RESIDENTIAL DESIGN

An Open Space Residential Design (OSD) shall refer to residential developments in which reduced lot sizes may be permitted in exchange for the protection of valuable open space and/or scenic vistas. The land not included in the building lots or street rights-of-way shall be dedicated as permanently preserved open space. Overall housing density will be based on that which could be built under a conventional development plan. The Planning Board has the authority and is encouraged to waive certain subdivision standards where the purpose and intent of this Open Space Residential Design bylaw supported by the proposal under consideration in Boxborough.

1.0 Purpose and Intent

1.1 To encourage the permanent preservation of open space, agricultural and forestry land, other natural resources including waterbodies and wetlands, historical and archeological resources.

1.2 To maintain the Town's traditional character and land use pattern in which small villages contrast with open land.

1.3 To allow for greater flexibility and creativity in the design of residential developments.

1.4 To protect scenic vistas from the Town's roadways and other places.

1.5 To facilitate the construction and maintenance of streets, utilities and public services in a more economical and efficient manner.

1.6 To protect existing and potential municipal water (surface and groundwater) supplies.

1.7 To allow for and encourage an efficient form of development that consumes less open land and conforms to existing topography and natural features better than a conventional subdivision.

1.8 To encourage the provision of diverse housing opportunities and the integration of a variety of housing types.

1.9 To further the goals and policies of the Boxborough Master Plan and other local plans.

2.0 Applicability

This bylaw shall be applicable to all proposals for residential subdivision of ten (10) acres or more that a) abut public or private conservation land or b) are located on scenic roads.

3.0 Procedural Requirements

3.1 Rules and Regulations

The Planning Board shall adopt Rules and Regulations consistent with the provisions of this bylaw and shall file a copy of said Rules and Regulations with the Town Clerk. Such rules, known as the "Rules and Regulations Governing the Subdivision of Land", shall address the size, form, contents, and number of copies of plans to be submitted, as well as additional design standards.

3.2 Pre-Application Meeting

A pre-application meeting between the Planning Board and or Town Planner and the applicant is strongly encouraged. This meeting is intended to promote better communication and to avoid misunderstandings, prior to preparation of a formal application for conventional or open space design subdivision.

3.3 Preliminary Submission

3.3.1 Two Plan Submission – Conventional and OSD

Where the land is so located, the applicant shall submit a preliminary plan illustrating 1) subdivision of the land under a conventional subdivision scenario, as well as 2) an open space design in accordance with this bylaw for review and comparison by the Planning Board. One of the purposes of this review is to determine the number of lots possible under the Open Space Residential Design, should the OSD be the preferable form of development. Approval of a preliminary plan pursuant to G.L. c. 41, §81-S may also shorten the period of review for the Definitive Subdivision and Open Space Design Plan.

The number of dwelling units permitted shall not exceed that which would be permitted under a conventional subdivision that complies with the Boxborough Zoning Bylaw and Rules and Regulations Governing the Subdivision of Land and any other applicable laws

and regulations of the Town or the state

3.3.2 Existing Conditions Plan

An accompanying Existing Conditions Plan shall depict site features as available from existing information, including: existing topography, wetlands, waterbodies and the 100- year floodplain, all existing rights of way, easements, and existing structures, the location

of significant features such as woodlands, tree lines, open fields or meadows, scenic views, watershed divides and drainage ways, fences and stone walls, roads, driveways, and cart paths. Abutting land owned by the Town of Boxborough or other non-profit conservation or preservation entity shall be specifically identified. These details will be defined more specifically at the Definitive plan stage.

3.3.3 Planning Board Direction/ Presumptions

The Planning Board shall hold a meeting to review the two development scenarios, including the opportunities and constraints of each. In evaluating the plans, the Planning Board shall consider the ability of each development scenario to satisfy the following criteria:

- Preservation of the historic, cultural and rural character of the town;
- Preservation of natural resources;
- Integration of the proposal with the existing neighborhood;
- Ability to create connections to existing trails or to enhance existing open spaces;
- Preservation of views along scenic roadways;
- Opportunity for public amenities such as recreation or public access;
- Provision of diverse housing types.

Following the evaluation, the Board shall direct the applicant to proceed with a proposal for either the OSD or the conventional scenario and shall specify its priorities in terms of plan elements (e.g. preservation of scenic road frontage, larger lot size, connection of trail network). It is not presumed that the OSD will always result in a better alternative.

Where the open space provided is of little value and the considerations above cannot be successfully provided in an OSD, the conventional form of subdivision may be most desirable.

The Planning Board shall direct the applicant to proceed in accordance with the OSD upon a finding that it complies with the purpose and intent of this section and is superior in design to a conventional subdivision with regard to protection of natural features and scenic resources of the site and of the community.

3.4 Definitive Open Space Design Plan

3.4.1 Definitive Plan

If the Planning Board directs the applicant to proceed in accordance with the conventional subdivision plan, the applicant shall do so in accordance with the Rules and Regulations for the Subdivision of Land. Alternatively, if an Open Space Design is preferred, the criteria herein shall supercede the definitive plan requirements insofar as those requirements conflict with those specified herein.

The OSD Definitive Plan shall show the following features, which shall be presumed to be necessary, unless the Planning Board determines any particular feature is not relevant or helpful to the review: location and boundaries of the site, proposed land and building uses, lot lines, location of existing and proposed open spaces, proposed grading, location and width of streets and ways, parking, street and common area landscaping, existing vegetation to be retained, water supply or approximate location of wells, septic systems, drainage, and easements.

The plan shall be prepared by a team including a Registered Civil Engineer, Registered Land Surveyor, and a Registered Landscape Architect as appropriate to ensure a design most sensitive to the land and resources of the development site. Applicants shall also include a statement indicating the proposed use and ownership of the open space as permitted herein.

3.4.2 Site Analysis

Expanding on the Existing Conditions Plan, a Site Analysis shall be performed and described, showing locations of soil test pits and percolation tests, with supporting documentation on soils test results, traffic impact, and drainage.

3.4.3 Waiver of Requirements

The plan contents stated in section 3.4 are mandatory unless specifically waived at the discretion of the Planning Board under the provisions of G.L. c. 41 §81-R, and only upon a finding that the requested information will not aid in consideration of the proposed project.

3.5 Review and Decision

Upon receipt of a complete application and the required plans, the Planning Board shall distribute copies to other local boards and commissions in accordance with the Subdivision Rules and Regulations. The Planning Board shall hold a public hearing and shall act on

applications according to the procedure specified in the Subdivision Rules and Regulations and in accordance with the Massachusetts Subdivision Control Law. Notice shall be provided of hearings in accordance with M.G.L. chapter 41, § 81T.

The approval of a Definitive Plan for Open Space Residential Development shall be conditioned to provide that no further division of land which increases the number of lots or results in an alteration to the area to be set aside as open space may occur without a modification of the subdivision approval. Any significant alteration of lot lines or layout of ways shall require approval of the Planning Board and shall be in compliance with the requirements of this section and M.G.L. chapter 41 §81-W. The Planning Board may allow insignificant changes without a public hearing.

3.6 Relationship to Subdivision Control Law and other Regulations Nothing contained herein shall exempt a proposed subdivision from compliance with applicable provisions of the Town of Boxborough's Zoning Bylaw or Subdivision Rules and Regulations that are not covered by this section, nor shall it affect the right of the Board of Health and of the Planning Board to approve, condition or disapprove a subdivision plan in accordance with the provision of such Rules and Regulations and of the Subdivision Control Law. This section shall not exempt a proposed subdivision from other applicable regulations, including those of the Board of Health, Conservation Commission or State and Federal agencies. It is the applicant's responsibility to ensure that all necessary permits are obtained.

4.0. Standards and Dimensional Requirements

Where the requirements of this section differ from or conflict with the requirements in the Table of Density and Dimensional Standards found elsewhere in this bylaw, the requirements of this section shall prevail.

4.1 Dimensional Requirements

The Planning Board may allow a minimum lot size of no less than 40,000 square feet per lot. The standard requirements for front, side and rear yards, as well as building height apply to an OSD as they do for conventional subdivisions. The required lot frontage may be reduced to a minimum of 125 feet and similarly, lot width may be reduced to no less than 90 feet. The reduced standards provided herein shall apply only to lots fronting on internal roadways and shall not apply to the roadways from which the OSD subdivision is accessed.

All building lots must be able to contain a circle of a minimum diameter of 90 feet from the front lot line to the building line, the shortest distance between the two sidelines and intersecting the front of the primary structure on the lot. See illustrations at right.

Not Acceptable Acceptable

Road

90 feet

Road

90 feet

4.2 Flag Lots

Flag lots with a minimum frontage and width of 50 feet at any point may be permitted in an Open Space Design, provided that the pole portion does not exceed 300 feet in length, and the flag portion meets all applicable lot requirements in section 4.1 above.

Shared driveways are required where flag lots abut one another to reduce curb cuts along the road.

4.3 Required Open Space

All land area not utilized for lots, roads, and drainage shall be set aside as open space. A minimum of 35% open space shall be provided; of this, 50% of the minimum open space area shall be upland. For example, a 100 acre parcel containing 30 acres of wetland shall provide 35 acres of open space of which at least 17.5 acres are upland.

Applicants are encouraged to include wetlands and waterbodies within the open space, however they do not count toward the required upland portion of the open space. Roadway right-of-ways shall not count toward the area to be provided as open space. Areas of dedicated open space in excess of the minimum requirement may contain any percentage of wetlands, waterways or steep slopes, and may contain common well or drainage facilities, in addition to recreational facilities such as buildings, parking stalls and picnic areas.

5.0 Permissible Uses of Open Space

5.1 Purposes

Open space shall be used solely for conservation, recreation, agriculture or forestry purposes by residents and/or the public. Where appropriate, multiple use of open space is encouraged. At least half of the required open space may be required by the Planning Board to be left in a natural state. The proposed use of the open space shall be specified in the application. If several uses are proposed, the plans shall specify what uses will occur in what areas. The Planning Board shall have the authority to approve or disapprove particular uses proposed for the open space.

5.2 Recreation Lands

Where appropriate to the topography and natural features of the site, the Planning Board may require that at least 10% of the open space or two acres (whichever is less) shall be of a shape, slope, location and condition to provide an informal field for group recreation or community gardens for the residents of the subdivision.

5.3 Accessory Structures

Up to 5% of the open space may be set aside and designated to allow for the construction of structures and facilities accessory to the proposed use of the open space including parking, garden or recreation storage sheds.

6.0 Ownership of Open Space

6.1 Ownership Options

At the developer's option and subject to approval by the Planning Board, all areas to be protected as open space shall be held by one or a combination of the following parties.

Road

Flag portion

meets min.

lot area

6.1.1 Town of Boxborough - to be placed under the care, custody and control of the Conservation Commission [the Conservation Commission shall have the authority to

delegate such control as it deems necessary and appropriate] and be accepted by it for a park, conservation, active or passive recreation. Land conveyed to the Town should be open for public use, as deemed appropriate by the controlling party;

6.1.2 Non-profit organization - the principal purpose of which is the conservation or preservation of open space, as specified in section 6.2 below. Such organization shall be acceptable to the Town as a bona fide conservation organization (e.g. the Boxborough Land Trust);

6.1.3 Homeowners Association - a corporation or trust owned by the owners of lots or residential units within the development and where land is placed under Conservation Restriction, as specified in section 6.2 below. If such a corporation or trust is utilized as indicated herein, ownership thereof shall run with the land. The developer is responsible for the maintenance of the open space and other facilities to be held in common until such time as the homeowners association is capable of assuming such responsibility. Thereafter, the members of the association shall share the cost of maintaining the open space. The Planning Board shall require the applicant to provide evidence of creation of the homeowner's association prior to the conveyance of any lots within the subdivision.

6.1.4 Individual – in limited situations, the Planning Board may authorize that the open space will be retained by an individual property owner. These situations will be evaluated on a case-by-case basis, and are most desirable where land will be reserved for active agricultural use. Where an individual property owner retains ownership of the open space, the provisions of section 6.2 below shall apply.

6.2 Permanent Restriction

In any case where open space is not conveyed to the Town, a permanent conservation restriction or Agricultural Preservation Restriction (APR) in accordance with M.G.L. chapter 184 §31-33 approved by the Planning Board and Board of Selectmen and enforceable by the Town, conforming to the standards of the Massachusetts Executive Office of Environmental Affairs, Division of Conservation Services, shall be recorded to ensure that such land shall be kept in an open or natural state and not be built upon for residential use or developed for accessory uses such as parking or roadways except as permitted by this bylaw and approved by the Planning Board. Restrictions shall provide for periodic inspection of the open space by the Town. Such restriction shall be submitted to the Planning Board prior to approval of the project and recorded at the Registry of Deeds/Land Court simultaneously with recording of the definitive subdivision plan. The Planning Board may require a management plan that describes how existing woods, fields, meadows or other natural areas shall be maintained in accordance with good conservation practices.

Where the open space is deemed to be not acceptable under the statutory provisions above, the land may be protected by an alternative means, such as a development restriction that is recorded and runs with the land in perpetuity.

6.3 Encumbrances

All areas to be conveyed as open space shall be conveyed free of any mortgage interest, security interest, liens or other encumbrances. This clause shall not apply to an individual who holds property subject to an APR or CR as described in sections 6.1.4 and 6.2 above.

6.4 Maintenance of Open Space

In any case where open space is not conveyed to the Town, the Town shall be granted an easement over such land sufficient to ensure its perpetual maintenance as conservation or recreation land. Such easement shall provide that in the event the association or other owner fails to maintain the open space in reasonable condition, the Town may, after notice to the lot owner(s) and public hearing, enter upon such land to maintain it in order to prevent or abate a nuisance. The cost of such maintenance by the Town shall be assessed against the properties within the development and/or to the owner of the open space. The Town may file a lien against the lot or lots to ensure payment of such maintenance expenses.

6.5 Monumentation

Where the boundaries of the open space are not readily observable in the field, the Planning Board may require placement of surveyed bounds sufficient to identify the location of the open space.

7.0 Design Requirements

The location of open space provided through this bylaw shall be consistent with the policies contained in the Boxborough Master Plan and Open Space and Recreation Plan. The following design requirements shall apply to open space and lots provided through this section.

7.1 Open Space Location / Greenways

7.1.1 Open space shall be planned as large, contiguous areas whenever possible. Long thin strips or narrow areas of open space (less than 100' wide) shall occur only when necessary for access, as vegetated buffers along wetlands, or as connections between open space areas.

7.1.2 Open space shall be arranged to protect valuable natural and cultural environments such as stream valleys, wetland buffers, unfragmented forestland and significant trees, wildlife habitat, open fields, scenic views, trails, and archeological sites and to avoid development in hazardous areas such as floodplains and steep slopes. The development plan shall take advantage of the natural topography of the site, and cuts and fills shall be minimized.

7.1.3 Development along existing scenic roads, whether designated as such or not, and creation of new driveway openings on existing scenic roadways shall be minimized. The open space buffer along such scenic roads shall be maximized, but in no case shall the distance between a scenic road right-of-way and the nearest residential lot line be less than 200 feet.

7.1.4 The Open Space may be in more than one parcel provided that the size, shape and location of such parcels are suitable for the designated uses. Where feasible, these parcels shall be linked by trails and/or sidewalks.

7.1.5 Where a proposed development abuts land held for conservation purposes, the development should be configured to minimize adverse impacts to abutting conservation land. OSD open space and trail connections should be provided adjacent to such conservation land where appropriate and feasible.

7.2 Open Space Access

7.2.1 Dedicated open spaces shall be laid out in conjunction with existing and proposed streets and sidewalks so that the greatest degree of internal pedestrian circulation and physical or visual access to the open space is achieved. Where the open space is to be owned by the Town, adequate provisions shall be included to accommodate public use, including locations for placement of parking and signs.

7.2.2 Open space shall be provided with adequate access, by a strip of land at least 20 feet wide, suitable for a footpath, from one or more streets in the development. An exception may be made for resource areas vulnerable to trampling or other disturbance.

7.2.3 Lots and streets have been located to avoid or minimize adverse impacts on open space areas and to provide views of and access to the open space.

7.3 Landscaping

7.3.1 Naturally occurring vegetation shall be conserved to the greatest extent feasible, especially along existing town roads. Landscaping and tree removal is subject to the approval of the Board prior to any work and final approval of the Open Space Design.

7.3.2 Common areas such as community greens, cul-de-sac islands, and both sides of new streets shall be landscaped with deciduous shade trees (minimum 2 ½ - inch caliper at chest height) and/or flowering shrubs with high wildlife conservation value. The suggested street tree interval is 30 to 50 feet, as appropriate according to species selected and site-specific factors, at the discretion of the Planning Board.

7.4 Agricultural Areas

In agricultural areas, lots shall be laid out to the greatest extent feasible, to achieve the following objectives, without conflicting with the provisions of section 7.0 herein.

Developed areas are located on the least fertile soils for agricultural use so that land mapped as "prime agricultural land" or of "state importance" by the U.S.D.A. Natural Resources Conservation Service in the "Field Office Technical Guide for Massachusetts" will remain available for future agricultural use.

Structures are located within any wooded upland on the parcel, or along the far edges of open fields to the greatest extent possible.

Residential and agricultural areas are situated to minimize the lengths of any common boundaries between new house lots and lands preserved for agriculture.

Dwelling units and non-agricultural structures are separated from the agricultural uses by a 100 foot wide buffer strip of trees and native plantings sufficient to reduce conflicts between farming operations and residents.

7.5 Forestry Areas

In forested areas where there exists a potential for a sustained-yield of forest products (based on existing vegetation, parcel size, contiguity with other forestry parcels, and forestry site indices), lots shall be laid out, to the greatest extent feasible, to achieve the following objectives.

Areas of older growth forest or productive forest soils are included in the dedicated open space.

Access for logging equipment is provided in a manner that does not conflict with residential uses.

Adequate buffering is provided in order to minimize disruption of residential areas or conflicts with the use of other open space areas, and to assure the safety of the residents.

8.0 Modification of Subdivision Roadway Standards

The Planning Board may reduce applicable subdivision road construction standards (roadway width, centerline radii, curbing, cul-de-sac radius, drainage requirements, etc.) in exchange for the provision of greater than 60% open space within the OSD, where, in the opinion of the Planning Board, such reductions will result in enhanced overall site design and provide adequate and safe access for the development. Where this section applies, the Planning Board may apply the "rural subdivision" standards, which may be incorporated into the Subdivision Rules and Regulations.

This section can be adopted as a zoning bylaw [4900. Open Space Residential Design] or alternatively be incorporated to the Subdivision Rules and Regulations; if included within zoning, the Subdivision regulations will likely need updating for consistency and design specific

criteria. If the provisions of this section are located within subdivision, the following applicable dimensional requirements should be included within the zoning bylaw as "OSD" within section 2310.

- Min. Lot – 40,000 sf
- Min. Upland – 20,000 sf
- Min. Frontage – 125 feet
- Min. lot width – 90 feet
- Min. front setback – 40 feet
- Min. side setback – 30 feet
- Min. rear setback – 40 feet
- Maximum stories - 3
- Max. bld. Height – 45 feet
- Max. Lot coverage – n/a
- FAR – n/a
- Min. Open Space – 35%

This draft prepared by BROWN & BROWN, P.C. as part of the Master Plan prepared by Beals and Thomas, Inc. 2001.

Researcher obtained information from:

Boxborough Master Plan, January 29, 2002 at: <http://town.boxborough.ma.us/boxborough/cgi-bin/makepage.cgi?frame=/boxborough/documents/MasterPlan.pdf>

When asked in an email about whether the OSRD suggestions in the master plan have been implemented, Interim Town Planner Amanda Amory said "Again, the Town has a Master Plan Implementation Committee, which meets quarterly. It is on their agenda to address these topics. As you know, Zoning Bylaw changes take time to implement and the Town has had numerous staffing changes in the past two years. The Most Recent Zoning Bylaws, posted on the Web site, were last amended in May 2004."

Which entity is the special permit granting authority for cluster/flexible zoning?

Has any housing been built under the cluster/flexible provisions?

Boxford

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

No

Which entity is the special permit granting authority for cluster/flexible zoning?

Has any housing been built under the cluster/flexible provisions?

Boylston

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

No

Which entity is the special permit granting authority for cluster/flexible zoning?

Has any housing been built under the cluster/flexible provisions?

Braintree

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Zoning Bylaw Town of Braintree, Section 135-610 CLUSTER ZONING I, II, III (From Ordinance.com, Last updated 2003)

CLUSTER ZONING I, II, III

A. Purposes: Cluster Development Districts are established for the following purposes:

1. To promote the more efficient use of land in harmony with its natural features;
2. To encourage the preservation of valuable open space;
3. To promote diverse and energy-efficient housing at a variety of costs;
4. To protect waterbodies and water supplies, wetlands, floodplains, agricultural lands, wildlife and other natural resources;
5. To promote aesthetics and other amenities;
6. To permit greater flexibility and creative design.

B. Rezoning Criteria

1. Permitted density in a Cluster Zone shall be determined at the time land is rezoned and shall be based on the following:
 - a. the current zoning in adjacent areas
 - b. the current zoning of the site being rezoned
 - c. the suitability of the land for an increase or decrease in the intensity of development, including:
 - (1) extent of Wetlands and drainage areas
 - (2) availability of utilities, including sewer and water

- (3) impact on roads, on schools and/or on other public facilities
- (4) other overlay zoning districts which affect the area to be rezoned
- (5) extent of steep slopes and ledge or other topographical characteristics of the land.

C. Density Requirements.

Cluster Zoning shall permit a density of development as follows:

- a. Cluster I Zone - one unit per 43,560 square feet of developable land
- b. Cluster II Zone - one unit per 25,000 square feet of developable land
- c. Cluster III Zone - one unit per 15,000 square feet of developable land Developable land shall include all the land in the parcel excluding that area defined as wetlands in Massachusetts General Laws (M.G.L.), Chapter 131, Section 40, and floodplain areas as shown on the National Flood Insurance Program Flood Boundary and Floodway Map (as most recently amended).

D. Regulations. The Special Permit Granting Authority (SPGA) shall adopt regulations for carrying out its duties under this Section.

E. Procedures for issuance of Special Permit.

- 1. Each applicant for a Special Permit under this Section shall file for a Special Permit in accordance with the provisions of Article V of this Chapter and with any rules and regulations as may have been adopted by the SPGA. All applications for Special Permits shall be processed in accordance with the provisions of Article V of this Chapter.
- 2. Contents of Application. Applications for Cluster Development shall include a plan prepared in accordance with the provisions of Article V and Section 135-711 of this Chapter. In addition, the applicant shall provide the following information:
 - a. The number of dwellings which could be constructed by means of a conventional development plan, considering the whole tract.
 - b. An environmental analysis of the site to include at a minimum wetlands, slopes, soil conditions, areas within the 100-year-flood, trees over 5 inches in diameter at 4.5 feet above the ground and such other natural features as the SPGA may request. A copy of the Environmental Impact Report shall be furnished with the application if required by law.
 - c. A description of the neighborhood adjacent to the project, including the adequacy of utilities and other public facilities and the impact of the proposed development upon them.
 - d. Evaluation of the open land proposed within the development with respect to its size, shape, location, natural resource values and accessibility to the residents of both the Town and the Cluster Development.
 - e. Traffic Report if required by Article XIV of Braintree Zoning Bylaw or by the SPGA.

3. Relation to Subdivision Control Act. SPGA approval of a Special Permit shall not substitute for compliance with the Subdivision Control Act, nor obligate the Planning Board to approve any related Definitive Plan for Subdivision, nor reduce any time periods for Board consideration under the law. However, in order to facilitate processing, the Planning Board shall, insofar as practical under existing law, act concurrently on a request for both Definitive Subdivision Plan and Special Permit Approval.

F. Findings of the Board. In addition to the requirements specified in Article V, the Board may grant a Special Permit under this Section only if it finds that the Cluster Development meets the following criteria:

- 1. It is in harmony with the general purpose of this By-law, the requirements of M.G.L., Chapter 40A, and the long range plan(s) of the Town.
- 2. It will not have a detrimental impact on the neighborhood.
- 3. It is designed with due consideration for health and safety and is superior to conventional development in preserving open space, minimizing environmental disruption, allowing for more efficient provisions of services or allowing for greater variety in prices or types of housing.
- 4. The plan meets the requirements specified in Section 135-610 G, H and I.

G. Minimum Dimensional Requirements.

- 1. The minimum lot size for a Cluster Development shall be five (5) acres.

2. A Cluster Development shall meet all the dimensional and density requirements as set forth in Section 135-701 of this Chapter.

3. All single family detached dwellings within a Cluster Development shall have:

- a. a minimum side yard separation between buildings of twenty (20) feet
- b. a minimum rear yard separation between buildings of forty (40) feet
- c. a minimum front yard set back from the edge of pavement on access ways of fifteen (15) feet.

4. All multi-family 2 family dwellings within a Cluster Development shall have:

- a. a minimum side yard separation between buildings of twenty (20) feet
- b. a minimum rear yard separation between buildings of forty (40) feet
- c. a minimum front yard set back from the edge of pavement on access ways of fifteen (15) feet.

****Webmasters Note:** The previous section 135-610 G4 has been amended as per Case No. 1781 from town meeting 5/7/01.

H. Required Open Land.

1. At least 50% of the site, exclusive of land set aside for access ways and parking, shall be open space. At least 30% of the open space shall be suitable for passive or active recreational use.

2. The open space and such other facilities as may be held in common shall be conveyed to one of the following with notification to the SPGA:

a. To a corporation or trust comprising a homeowners' association whose membership includes the owners of individual lots or units contained in the tract.

(1) The developer shall include in the deed to owners of individual lots or units beneficial rights in said open land. The developer shall grant a conservation restriction to the Town of Braintree over such land pursuant to the M.G.L., Chapter 184, Sections 31-33, to ensure that such land be kept in an open or natural state. This restriction shall be enforceable by the Town through its Conservation Commission in any proceeding Authorized by M.G.L., Chapter 184, Section 33.

(2) In addition, the developer shall be responsible for the maintenance of the common land and any other facilities to be held in common until such time as the homeowners' association assumes said responsibility. In order to ensure that the association will properly maintain the land deeded to it under this Section, the developer shall record at the Norfolk Registry of Deeds a declaration of covenants and restrictions which shall provide for the following: mandatory membership in an established homeowners association as a requirement of ownership of any lot or unit in the tract and provisions for maintenance assessments of all lots or units in order to ensure that the open land is maintained in a condition suitable for the approved uses.

b. To a nonprofit organization, the principal purpose of which is the conservation of said open space. The developer or charity shall grant a conservation restriction as set out in (a) above.

c. To the Conservation commission of the Town for open space use. Said conveyance shall be subject to the approval of the Selectmen, with a trust clause ensuring that it be maintained as open space.

3. Subject to the above, the open space may be used for recreational purposes including golf courses, riding trails, tennis courts, gardens and swimming pools.

1. Further Requirements.

1. No use other than residential or recreational shall be permitted in a Cluster Development.

2. Any lot shown on a plan for which a Permit for cluster development has been granted shall not be further subdivided, and a notation to this effect shall be shown upon the plan.

3. A certificate of occupancy shall not be issued by the Building Inspector until he/she has certified to the SPGA that the premises have been built in accordance with the plan as approved by the SPGA.

4. The SPGA may impose conditions, safeguards, limitations on time and use.

5. The SPGA may grant a Special Permit for clustering even if the proposed development is not subject to the Subdivision Control Law.

6. Subsequent to granting of a Special Permit, the SPGA may permit relocation of lot lines within the Cluster. However, any change

in overall density, street layout, or open space layout will require further public hearings.

Zoning Bylaw Town of Braintree, Section 135-612 PLANNED UNIT DEVELOPMENT, (From Ordinance.com, Last updated 2003)

135-612 PLANNED UNIT DEVELOPMENT

(Article 36 ATM 5/91)

Regulations Applying to Planned Unit Development (PUD) Districts

A. Purpose. The intent of the Planned Unit Development (PUD) Districts is to provide a greater degree of flexibility for the development of large tracts of land which provide residential, commercial, and business activities on the same parcel of land in a planned, controlled environment. A PUD proposal may contain both individual building sites and common property which are developed as an integrated mixed land use unit.

The purposes of the PUD by law are:

1. Allow for greater variety and flexibility in the development of housing types.
2. Make housing units available to moderate-income residents who might otherwise have difficulty finding homes within the Town.
3. Promote the permanent preservation of Open Space.
4. Facilitate the construction and maintenance of streets, utilities and public services in a more economical and efficient manner.
5. Promote retail and service uses closely related to the residential sections of the PUD in a manner which blends all land uses into an aesthetically complementary whole.

B. Authority to grant permits. The Planning Board as Special Permit Granting Authority (SPGA) may grant a special permit for the construction of a PUD in a PUD Zoning District. A special permit granted under this section shall conform to Chapter 40A, Section 9, M.G.L., to Section 135-502 of the Braintree Zoning Bylaw, and to any rules and regulations which the SPGA shall from time to time adopt for the purpose of carrying out its requirements under this section.

C. Minimum Standards: To implement the intent of the PUD provision, the following criteria shall be met:

1. The site under review shall be located in a PUD Zoning overlay District as approved by Town Meeting.
2. The proposed project areas shall encompass a contiguous minimum land area of three (3) acres.
3. The concept plans for the property must be submitted to Town Meeting for approval prior to submission to the SPGA.
4. In no case shall there be less than 25% percent of the total land area in Open Space and greater than 25% lot coverage. The SPGA shall have the right, based on the individual project, to increase the above minimum standards.
5. Retail/service activities shall be planned and constructed in a manner architecturally similar and complementary to the residential units within the proposed development.
6. The site under review shall be in single or consolidated ownership at the time of application.
7. The PUD shall contain at a minimum two (2) of the following uses: residential, open space, business, or commercial.
8. The PUD shall have a minimum frontage of 100 feet.

D. Submission Process

1. Pre-application conference. Prior to the submission of an application for a special permit under this section, the applicant shall confer with the SPGA to obtain information and guidance on the preparation of plans, surveys and other data.

2. Application Process:

A. The applicant for a PUD shall submit an application for a special permit as required in Section 135-502 of the Braintree Zoning Bylaw. Said application shall be acted upon in accordance with the provisions set forth in Section 135-502 of the Braintree Zoning Bylaw.

3. Information Required.

An application for a PUD shall include a plan or plans which meet the following specifications and provide the following data:

- A. All plans shall be drawn at a scale of one inch equals forty feet by a professional engineer, registered architect or registered

landscape architect.

B. The boundary plan shall be stamped by the registered land surveyor who shall certify the accuracy of the location of the buildings, setbacks and all other required dimensions, elevations and measurements.

C. PUD district boundaries, north arrow, date, scale, legend and project title, the name or names of applicants and engineer or designer.

D. Names of all abutters, abutting land uses, and the approximate location and width of all adjacent streets.

E. The location and extent of all proposed land uses including open space, the number and types of residential units, the density for each housing type, and overall project density.

F. All interior streets, roads, easements and their planned public or private ownership, as well as all points of access and egress from existing public rights-of-way.

G. Description of the manner in which any areas that are not publicly owned are to be maintained, including open space, streets, lighting and others according to the proposal.

H. The location of existing or proposed buildings on the lot which shall include the total square footage and dimensions of all buildings (including height), all building elevations and floor plans, and perspective renderings, which depict the materials and colors to be used.

1. The location of the natural features of the site, including wetlands, floodplains, slopes over ten percent, soil conditions and other features requested by the SPGA or required by the regulations of the SPGA.

J. The overall water and sanitary sewer system with proposed points of attachment to existing systems. The proposed storm water drainage systems and their relation to the existing systems.

K. The boundary lines of existing and proposed lots with areas and dimensions. The distance of existing and proposed buildings from the lot lines and the distance between buildings on the same lot.

L. Existing and proposed topographical lines at two-foot intervals.

M. The location and number of parking spaces, loading spaces, and handicapped spaces.

N. A landscape plan which shall include the total square feet of all landscape and recreation areas, and a depiction of materials to be used, including the quantity, size and species of all plantings.

O. A description of the neighborhood in which the tract lies, including utilities and other public facilities and the general impact of the proposed PUD upon them.

P. Deed or other recorded instrument that shows the applicant to be the owner of the land to be designated as a PUD or proof that the applicant has the site under a purchase and sales agreement.

Q. If the development is to be phased, a description and graphic representation of the phasing of the entire proposal in terms of length of time, type and manner of units or activities completed per phase.

R. Evidence as required by the reviewing Boards of the applicants ability to complete the proposed PUD.

S. A written statement by the applicant setting forth the reason why, in his opinion, the proposal would be in the public interest and would be consistent with the Town goals and objectives.

T. A description of any covenants, grants of easement, or other restrictions proposed to be imposed upon the use of the land, buildings or structures, including proposed easements for public utilities.

U. A Traffic Report as required under Braintree zoning Bylaw Article XIV.

V. The applicant shall provide graphic and/or narrative descriptions of the differences, if any, that would occur if the site were not to be developed with a special permit under this chapter.

D. Density and Dimensional Requirements.

1. A PUD shall meet the lot size, the open space, lot coverage and frontage requirements as set forth in Section 135-611 C of the Braintree Zoning Bylaw.

2. Other dimensional and density requirements, including but not limited to residential density, yard and height requirements, and parking and loading dock requirements, shall be determined by the SPGA. In no case shall there be less than 25% percent of the total land area in Open Space and greater than 25% lot coverage. In determining other dimensional and density requirements, the SPGA shall consider the following factors:

a. Character of development in the abutting neighborhoods. b. Individual characteristics of the project and the site. c. Degree of open space proposed and the quality of the open space. d. The percentage of lot coverage. e. The public amenities to be provided. f. The amount of affordable housing to be provided.

E. Factors to be considered by the SPGA

The SPGA review of a PUD application shall include, but is not limited to, the following considerations:

1. Relationship of the PUD to the abutting neighborhoods to insure the PUD is in harmony with and does not derogate from the neighborhoods.
2. Adequacy and arrangement of vehicular traffic access and circulation, including intersections, road widths, channelization structures, and traffic control.
3. Adequacy and arrangement of pedestrian traffic access and circulation, including separation of pedestrian from vehicular traffic, walkway structures, control of intersections with vehicular traffic and pedestrian convenience.
4. Location, arrangement, size and design of buildings, lighting and signs.
5. Location, arrangement, appearance, and sufficiency of off- street parking and loading.
6. Adequacy, type, and arrangement of trees, shrubs and other landscaping constituting visual and/or noise-detering buffer between adjacent land uses and adjacent land.
7. In the case of multiple family-dwellings, the adequacy of usable open space for playgrounds and informal recreation.
8. Adequacy of structures, roadways, and landscaping in areas with moderate to high susceptibility to flooding and ponding and/or erosion.
9. Protection of adjacent properties against noise, glare, unsightliness, or other objectionable features.
10. The presence of Fair Housing policies and a marketing plan to promote Fair Housing.

F. In a PUD overlay district, all the zoning requirements of the underlying zoning districts shall apply unless and until a Special Permit for a PUD has been issued by the SPGA. (Art. 17 STM 10/27/92)

Peter Loppola, Director of Planning and Conservation, said on 7/6/04 that although there is a PUD overlay zone that was created in 1991, there has been no PUD development. He explained: "We created the use regulations but we did not feel it appropriate to designate certain zones. We figured we could go back to town meeting on a case by case basis, but so far nobody has wanted to do it. I assume someday we will do it."

According to the planner, the last cluster development was about 12 units. He estimated that about 400-800 cluster units have been developed. One project itself was 400 units. Others were 50. The rate of cluster development has slowed down since they have used most of the cluster-zoned land. There are perhaps one or two parcels left.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board Zoning Bylaw Town of Braintree, Section 135-102 DEFINITIONS, (From Ordinance.com, Last updated 2003)
"SPECIAL PERMIT GRANTING AUTHORITY The Braintree Planning Board."

Has any housing been built under the cluster/flexible provisions?

Yes Peter Loppola, Director of Planning and Conservation, said on 7/6/04 that although there is a PUD overlay zone that was created in 1991, there has been no PUD development. He explained: "We created the use regulations but we did not feel it appropriate to designate certain zones. We figured we could go back to town meeting on a case by case basis, but so far nobody has wanted to do it. I assume someday we will do it."

According to the planner, the last cluster development was about 12 units. He estimated that about 400-800 cluster units have been developed. One project itself was 400 units. Others were 50. The rate of cluster development has slowed down since they have used most of the cluster-zoned land. There are perhaps one or two parcels left.

Bridgewater

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Bridgewater Zoning Bylaws, Revised 2000

Table of Use Regulations (Section 6.30): Open Space Community Development and Adult Retirement Villages are allowed by special permit in Residential Districts A/B, C, and D. Planned Development is primarily industrial.

9.20 OPEN SPACE COMMUNITY DEVELOPMENT (Adopted 11/1.3/89)

9.21 General Description An "Open Space Community" shall mean a residential development in which the dwellings are clustered together into one or more groups on a site and separated from each other and adjacent properties by permanently protected open space. Such developments shall only be allowed in residential districts subject in a special permit being granted by the planning board.

An Open Space Community shall include an Adult Retirement Village (ARV - See Section 2). Adult Retirement Villages constructed pursuant to special provisions of this section shall comply with all the provisions of the Open Space Community except as specified otherwise. (Amended 5/1/2000)

9.22 Purpose

The purposes of Open Space Community development are to:

- a. allow for greater flexibility and creativity in the design of residential developments;
- b. encourage the permanent preservation of open space, agricultural lands and other natural resources;
- c. emulate the traditional New England rural character and land use pattern in which small settlements contrast with open space and farmlands;
- d. facilitate the construction and maintenance of streets, utilities and public services in a more economical and efficient manner;
- e. encourage a less sprawling form of development that consumes less open land.

9.23 Application Procedure

An application for a special permit to develop an open space community shall be submitted and received in a manner pursuant to the procedures set forth in Chapter 40A, M.G.L. as amended. Special permits shall only be issued following public hearings held within sixty-five days after filing of an application and its site plan with the planning board at a regularly scheduled meeting and the town clerk. Additional copies shall be submitted by the applicant to the planning board for distribution to the board of health, conservation commission, water and sewer commission, highway department, director of planning and community development, and town engineer. These agencies shall review the application and site plan and shall report their findings and recommendations to the planning board. Failure of any such agencies to report their recommendations within thirty-five days after such agencies receive the application and plan, shall be deemed lack of opposition thereto. Final action shall be taken on such applications within ninety days following the public hearing on said application. The rights granted by the special permit to develop an open space community shall lapse if they are not exercised within two years after the date the special permit is granted. Once a special permit is issued, the applicant shall submit a definitive subdivision plan under Section 81U of Chapter 41, M.G.L. for approval of the streets, drainage systems and other related improvements. The plan shall show the approved open space community. The preliminary subdivision plan submitted with the special permit application, if granted, shall also be considered as having been submitted under Section 81S of Chapter 41, M.G.L.

9.24 Informational Requirements for the Site Plan

In accordance with Section 9 of Chapter 40A, the planning board shall adopt guidelines as to the form and informational content of site plans and any accompanying material. In addition to said guidelines, the applicant shall submit the following:

- a. A plan prepared by a professional registered land surveyor and professional engineer indicating the existing conditions on the site including the dimensions of the site, its area in square feet, location of wetlands, streams, one hundred year flood plains, poorly draining soils, topography and significant vegetation. Location of wetlands and poorly draining soils shall be identified by a professional botanist.

b. A preliminary site plan prepared by a professional landscape architect showing the location of buildings, roadways, parking areas, accessory structures, landscaping, proposed contours, wetlands, common open space and other proposed amenities and features. The area of individual building sites and the area of the common open space shall also be indicated in acreage and/or square feet.

c. A preliminary plan prepared by a professional registered land surveyor showing a conventional subdivision of the site in accordance with the rules governing the subdivision of land within the Town of Bridgewater. A preliminary site plan showing a conventional subdivision is not required for submission of an Adult Retirement Village (ARV) in accordance with Section 9.25 lh. (Amended 5/1/2000)

d. If an open space community is to operate under a condominium of similar form of ownership, a community association agreement shall be submitted with the special permit application ensuring continuing maintenance of common utilities, roadways, land and facilities, and each dwelling a share of maintenance expenses. Such agreements or covenants shall provide that in the event that the association fails to maintain the common open land in reasonable order and condition in accordance with the agreement, the town may, after notice to the association and public hearing, enter upon such land and maintain it in order to preserve the taxable values of the properties within the development and to prevent the common land from becoming a public nuisance. The covenants shall also provide that the cost of such maintenance incurred by the town shall be assessed notably against the properties within the development. Such agreement shall be subject to the review and approval of town counsel and the planning board.

9.25 Decision Criteria A special permit for an open space community shall be granted provided an application complies with the following requirements and design objectives as determined by the planning board.

9.251 General Requirements: The land space requirements of Section 8 of this zoning bylaw shall apply to all dwellings and lots within an open space community unless otherwise stated herein.

a. The minimum area of land required for open space community shall be fifteen acres in Residential A/B districts and ten acres in Residential C and Residential D districts. Such minimum land areas shall be exclusive of any wetlands as defined by Section 40 of Chapter 131, M.G.L. and shall comprise a contiguous portion of a site.

b. An open space community shall not result in a greater overall number of dwellings than would occur in a standard subdivision, with the exception of an Adult Retirement Village (see sec. 9.25 lh) an increase of twenty-five (25%) percent over the maximum number of units allowed within a standard subdivision. (Amended 5/1/2000)

c. An open space community shall only include the type of dwellings that are currently allowed within the zoning district.

d. Lot area per dwelling unit within an open space community shall not be less than fifty percent of the minimum lot area per dwelling unit normally required in the zoning district. Lots within an open space community shall not encompass any wetlands as defined by Section 40 of Chapter 131, M.G.L.

e. Frontage for lots within an open space community shall be located only on roadways therein and shall be a distance of not less than fifty feet subject to the approval of the planning board.

f. Minimum depth requirements for dwellings within an open space community shall not be less than thirty feet from a roadway, twenty feet from a rear property line and twelve feet from a side property line subject to the approval of the planning board.

g. No dwelling shall be located within one hundred feet of any agricultural land whether it is within or adjoining an open space community.

h. Adult Retirement Villages (ARV) - Open Space Communities constructed under the requirements of this section shall be known as Adult Retirement Villages. Units constructed under this section shall comply with all provisions of the Open Space. Community except as provided below. (Adopted 5/1/2000)

i. Minimum (contiguous upland) land space will be 9250 sq. ft. per dwelling unit.

ii. Dwelling units will be limited to 2000 square feet in living space, and 576 sq. ft. garage. Enclosed porch unheated optional (Max. 140 sq. ft.)

**Webmasters Note: The previous subsection has been amended as per an update approved at a town meeting held on 5/3/04.

iii. Basement ceiling heights shall be limited to a maximum height of eight feet (8').

**Webmasters Note: The previous subsection has been amended as per an update approved at a town meeting held on 5/3/04.

iv. The number of units to be contained in an Adult Retirement Village shall range from a minimum of 30 to a maximum of 60.

v. The Adult Retirement Village is specifically limited to the use, residence and occupancy of persons who have achieved a minimum age of 55 years, provided, however, that no more than one of the persons occupying any unit may be under fifty five (55) years of age as provided by Mass State Law. Each dwelling unit shall be owner occupied.

vi. The entire land area of the Adult Retirement Village, including the open space, with the exception of the roadway, shall be owned collectively by the unit owners and managed in condominium fashion, by an ARV Association established by the village ownership.

vii. The Planning Board shall have the authority to promulgate further regulations to implement an Adult Retirement Village.

viii. 80% of the minimum land area required in ARV shall be contiguous uplands, if sufficient open space has been provided.

****Webmasters Note:** The previous subsection has been added as per an update approved at a town meeting held on 5/3/04.

The Adult Retirement Village is conceived as a compact layout designed to lower maintenance cost, foster community and preserve open space. Where feasible, new homes shall be organized around traditional village streets with front entrances facing the street and private back yards looking out onto protected open space. A central open space shall provide a focus for the community with a community building at one end serving as the visual and functional center of the village. The community building shall be constructed when 45 units have been completed. The dwelling units shall be of high quality construction with due being taken in landscaping efforts to retain as much as possible the natural topography of the village environs. To enhance the village concept the developer should be encouraged to employ standard historic, traditional and complimentary colors for all units.

****Webmasters Note:** The previous paragraph has been amended as per an update approved at a town meeting held on 5/3/04.

9.252 Open Space Requirements: Lands not serving as building lots or for the construction of streets within an open space community shall be preserved as common open space in accordance with the following:

a. No less than thirty-five percent of the land within an open space community shall be preserved as common open space in accordance with subsection d, herein.

b. Common open space shall encompass a contiguous portion land not otherwise defined as wetland by Section 40 of Chapter 131 M.G.L. The area of such land shall not be less than thirty-five percent of the total area of the building lots within the open space community.

c. Further subdivision of common open space or its use for other than recreation, conservation or agriculture, except for easements for drainage, underground utilities and septic systems, shall be prohibited. Structures or buildings necessary to recreation, conservation or agricultural uses may be erected but shall not exceed five percent coverage of the common open space subject to the approval of the planning board.

d. Subject to the approval of the planning head, all common open space shall be either:

i. conveyed to a community association owned or to be owned by the owners of lots within the development. If such a community association is utilized, ownership thereof shall pass with conveyance of the lots in perpetuity; ii. conveyed to a nonprofit organization, the principal purpose of which is the conservation or preservation of open space; iii. donated to the town and accepted by it as a park or open space use. Such donation shall be at the option of the town and shall require the approval of town meeting; iv. owners of farmland are not required to sell the part of their property which is to become permanent agricultural open space, provided that they convey the development rights of that open space in a restriction prohibiting future development of the property;

e. In any case where common open space is not conveyed to the town, a restriction granted under Sections 31 and 32 of Chapter 184, M.G.L. and enforceable by the town shall be recorded to ensure that such land shall be kept in an open or natural state for perpetuity and not be built upon for residential use or developed for accessory uses such as parking or roadways. However, trails, pathways and similar forms of access may be permitted within the common open space provided such access is accessory to its conservation, recreational and agricultural purpose. Such restrictions shall further provide for the maintenance of the common land in a manner which will ensure its suitability for its function, appearance, cleanliness, and for the proper maintenance of drainage, utilities, and other improvements located therein.

9.253 Design Objectives:

a. An open space community shall serve in protecting the most significant natural or scenic features of a site that would otherwise be vulnerable to development.

b. Buildings and streets shall be located so as to minimize encroachment upon wetlands, flood hazard zones and areas of poorly draining soils as well as to minimize disruption of existing topography and vegetation.

c. Whenever feasible, land along public ways shall be included within an open space community and be largely preserved in their natural state or be appropriately landscaped.

d. The location and relative density of dwellings shall serve to facilitate the use, enjoyment or appreciation of the common open space by those residing within an open space community.

9.60 PLANNED DEVELOPMENT DISTRICT (Amended 11/9/98)

9.61 Purpose:

The purpose of this section is to allow the Town to regulate development of planned industrial parks in designated suitable areas so as to achieve significant revenue or employment benefits without adverse impacts on their neighborhoods or on the Town's natural

resources. Thus the approach is to regulate such development through a special permit procedure which is a more flexible process than is possible through conventional zoning. The review by the special permit granting authority will include mixture of uses, site access, internal circulation and parking, probable traffic impacts, overall density, building location, overall project layout, provision and design of open space, visual impact on adjacent ways and neighborhoods and drainage and water resource impacts.

To allow a residential use without special review the district permits single family housing according to the present Residential AS lot and yard requirements as of right.

9.62 General Provisions: In a Planned Development District comprehensively, planned industrial/commercial pinks shall be allowable by special permit, subject in the following specific requirements and general guidelines, and to the specific conditions set forth by the special permit granting authority in applying those provisions.

9.63 Definition; Requirements:

9.631 Definitions. Specific definitions for certain terms used in Section 9.60 are set forth in this Section 9.631. To the extent these definitions and their operative provisions me inconsistent with the definitions contained in Section 2, the provisions of this Section 9.631 shall govern. As used in this Section 9.60, the following terms shall have the following meanings:

ASSOCIATED BUILDINGS shall mean a series of buildings either attached or arranged so as to appear to be attached.

BUFFER ADJACENT TO PUBLIC WAYS shall mean an area left in its natural condition or landscaped except that access roads, traffic control equipment, signs, drainage facilities, utility lines and other infrastructure improvements shall be allowed in such an area.

GROSS FLOOR AREA shall mean the horizontal area of the floor or floors for the building in question.

HOTEL PARCEL shall mean a parcel of land located wholly within the Town of Bridgewater and adjacent to an interstate, or limited-access state highway on which a hotel building is located or to be located within 600 feet of such interstate or limited-access state highway.

LOT AREA shall mean the total land area within a lot.

LOT COVERAGE shall mean the ratio (expressed as a percent) of the area of land within a lot covered by building to the Lot Area of the lot.

OPEN SPACE shall mean the ratio (expressed as a percent) of the area of land within a lot not covered by building or paving to the Lot Area of the lot.

PUBLIC WAY shall mean an accepted state, county or town public way in existence on January 1, 1998 other than in interstate or limited-access state highway.

TOTAL PERMISSIBLE FLOOR AREA shall mean the Gross Floor Area of all buildings approved as pan of the special permit issued under this Section (Sec. 9.60).

9.632 Requirements.

Prior to the submission of a formal application for a Special Permit, the applicant, who shall be the owner of the tract or his duly authorized agent, shall submit to the Planning Board, which shall serve as the Special Permit Granting Authority, a Preliminary Plan following the requirements for Preliminary Plans contained in Section III (A), or the Rules and regulations Governing Subdivision of Land, Planning Board, Bridgewater, Massachusetts, as amended. In addition, the plan shall show significant wetlands, zoning district boundaries, and the lot frontage of residential lots across the road from the proposed Planned Development.

The following conditions are to be met with respect to any particular parcel of land in a Planned Development District

1. The tract is in single or consolidated ownership at the time of the application and is at least 10 acres in size.
2. Permitted uses shall be limited to those listed under Section 6.3 Table of Uses Regulations, as amended.
3. The following dimensional requirements shall apply to buildings and structures and the lots on which they are located:
4. The manner of sewage disposal shall be approved in writing by the Board of Health.
5. Formal application for Special Permit shall be governed by Massachusetts General Laws, Chapter 40A, Section 9, and Rules and Regulations Governing Subdivision of Land, Planning Board, Bridgewater Massachusetts, Section III (B), Definitive Plan Procedures.
6. The project area shall include a 200' minimum depth buffer adjacent to public ways so as substantially to screen the uses of the premises from adjacent properties. No buffer strip shall be required where the project abuts an interstate highway or access ramp.

9.64 Use Regulations

9.641 Planned Developments, by Special Permit. In such developments the following uses shall be permitted in the designated proportions: a) Up to 100% of total Permissible Floor Area may be devoted to office use. b) Up to 80% of total Permissible Floor Area may be devoted to Health Care Facilities and/or research and development. c) Up to 5% of total Permissible Floor Area may be devoted to light manufacturing and/or assembly facilities. d) Up to 5% of total Permissible Floor Area may be devoted to distribution facilities. e) Up to 25% of total Permissible Floor area may be devoted to a motel or a Convention/ exposition center. f) Up to 20% of the Gross Floor Area of each building maybe devoted to supporting commercial services including, but not limited to, fast print or photo processing services, duplicating services, secretarial services, or business equipment repair services, and those commercial uses allowed by special permit in the Industrial A District.

9.642 Single family housing on one acre lots according to the dimensional standards of the Residential A/B district. (See 8.4 Land Space Requirements Table).

9.643 There shall be no storage, processing, treatment or recycling of hazardous waste generated within the Planned Development District. All hazardous waste generated within the Planned Development District shall conform to all applicable federal, state and local laws regarding hazardous waste.

9.65 General Guidelines

Before approving an application for a special permit under this Section, the Planning Board shall find that the proposal meets the requirements under 9.63 and 9.64 above, and:

9.651 That the mixture of uses reflects consideration of the overall purpose of the district, the probable impacts of the proposed uses on one another within the development, and the impacts on existing nearby uses. In making such determination, consideration should be given to proposed hours of operation.

9.652 That the internal vehicular circulation system provides for flexible vehicular circulation connecting all points within the park without use of roads outside the development and that it avoids use of long dead-end roads or provides an alternate emergency bypass route to any dead end roads of over 1000. length.

9.653 That all roads within the development conform to the construction standards in the Rules and Regulations for the Subdivision of Land of the Bridgewater Planning Board and that the developer has met the Performance Guarantee requirements set out in the subdivision rules and regulations of the Planning Board.

9.654 That based on the recommendations of the Planning Board the project has safe access (in terms of sight lines and grade) to an existing public way and that such public way has sufficient capacity in its present state, or with planned improvements, to accommodate the project at its maximum level of development.

9.655 That the pedestrian circulation system includes pathways providing direct routes between major buildings, parking areas and roads and that a secondary walking system allows movement to and through open space areas.

Where a building is devoted to mixed use, parking spaces at the above ratios shall be provided on a proportional basis in accordance with the portion of the building devoted to each use.

The Planning Board shall have the authority to grant a special permit to reduce the parking requirements under this Section 9.656 by as much as 20% for parking facilities serving use mixtures whose operating basis and activity patterns indicate that the total number of spaces needed at any one time will be significantly less than the total required by this Section 9.656.

9.658 That the drainage systems serving the development are designed to minimize increases in runoff, to maximize groundwater recharge and to protect the quality of receiving waters, and that the sewerage systems are designed to protect off site water bodies and aquifers from degradation of existing water quality and conform to all applicable federal, state and local laws.

9.659 That the development will not negatively affect normal and fire protection water services in the surrounding area, or if the development would have such affect, that the applicant has provided for on-site water systems to eliminate such negative effect.

9.660 That the applicant has demonstrated its ability, financial and otherwise, to bring the development to completion.

9.661 That the management plan submitted by the applicant is sufficient to insure continued unified management of the development in accordance with the standards set forth by the Planning Board.

9.662 That the applicant has proposed adequate security to insure the payment to the Town for the Town's share of any costs incurred for improvements such as roadway improvements, traffic signalization or water lines required as a direct result of the construction of the development.

9.663 That adequate provisions have been made for the removal of solid wastes produced by the development, with particular consideration being given to the ultimate destination of such wastes; and that provisions have been made for the immediate removal of sludge produced as a result of on-site sewage treatment, if any.

9.664 That yard and setback requirements applicable to the Industrial A District are met, except that the Planning Board may allow reduction of up to 50% in the yard and setback requirements if the applicant demonstrates that the building sites and proposed uses, including possible expansion requirements, warrant such reductions.

9.665 That lot size requirements are met, except that the Planning Board may allow a reduction of up to 20% of such requirements if the applicant demonstrates that the building sites and proposed uses, including possible expansion requirements, warrant such reductions.

9.667 That the exterior building materials blend with the setting or complement it.

9.668 That building masses and heights along the perimeter of the project are compatible with the views from adjacent ways and neighborhoods.

9.67 Procedures

9.671 An application for a Special Permit to develop a Planned Development shall be submitted and received in a manner pursuant to the procedures set forth in Massachusetts General Laws, Chapter 40A, and all amendments thereto, as well as adherence to the Town's Zoning By-Laws, the Planning Board Rules and Regulations under Subdivision of Land and in this Zoning Amendment and further that Special Permits shall only be issued following public hearings held within sixty-five (65) days after filing of an application with the special permit granting authority, a copy of which shall forthwith be given to the Town Clerk by the applicant. Final action shall be taken on such applications within ninety (90) days following the public Hearing on said applications. The rights granted by special permit under this by-law shall lapse if they are not exercised within two (2) years after the special permit is granted.

9.672 A site plan and written plan shall be prepared for the whole tract of land and shall be submitted to the Town Clerk who shall distribute copies to the Board of Appeals, the Planning Board, Board of Health, the Conservation Commission, and the Community Development Coordinator. These agencies shall review the site plan and application and shall report their findings and recommendations for approval or disapproval, together with reasons therefor and any additional requirements, to the Planning Board within 35 days of receipt of the application and plan. Appeal from this decision of the Special Permit Granting Authority may be taken in accordance with the provisions of Massachusetts General Laws, Chapter 40A, Section 17.

(g) A program for meeting the requirements of the by-law with regard to the provision of public improvements and amenities of the Town made necessary by the construction of the project, including the method of financing such improvements and/or amenities.

9.68 Amendments

9.681 The Planned Development shall be constructed and operated in conformance with the site plan presented to the Board and any conditions imposed by the Board in the Special Permit.

9.682 Variations from the site plan and conditions of the special permit may be authorized by the Planning Board. Requests for substantial variations from the site plan and conditions of the Special Permit as determined by the Planning Board may be granted only after notice and public hearing pursuant to this Section.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board 9.21 General Description An "Open Space Community" shall mean a residential development in which the dwellings are clustered together into one or more groups on a site and separated from each other and adjacent properties by permanently protected open space. Such developments shall only be allowed in residential districts subject in a special permit being granted by the planning board.

Has any housing been built under the cluster/flexible provisions?

Yes According to David Moore, Building Inspector, there have been 4 or 5 single family residential cluster developments in Bridgewater. (10/04)

Brockton

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No Answer confirmed via 7/29 fax from Kristine in the Brockton Building Department -- Kristine wrote a line in the answer blank for this question.

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

No Answer confirmed via 7/29 fax from Kristine in the Brockton Building Department -- Kristine wrote a line in the answer blank for this question.

Which entity is the special permit granting authority for cluster/flexible zoning?

Has any housing been built under the cluster/flexible provisions?

Brookline

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Section 4.30 Table of Use Regulations of the bylaw on ordinance.com:

1.A. Cluster subdivisions are allowed by special permit in S and SC (Residence Districts).

SECTION 5.11 CLUSTER SUBDIVISIONS, DESIGNED GROUPS OF SINGLE-FAMILY DWELLINGS, AND ESTATE CONVERSIONS

(a) The minimum lot size for lots in a residential subdivision approved by the Planning Board may be 20,000 square feet in an S-40 District, 12,500 square feet in an S-25 District and 7,500 square feet in an S-15 District, provided that the following conditions are met:

(1) the subdivision is 5 acres or more in total area in S-40 Districts, 3 acres or more in S-25 Districts, and 2 acres or more in S-15 Districts, including public or private ways, platted lots, and the permanent open space specified below;

(2) the total number of lots does not exceed the number that would result if the total area of the subdivision were divided by the minimum lot size for lots in subdivisions not subject to this Section;

(3) land is set aside within the subdivision and its maintenance as permanent open space assured by covenant satisfactory to the Board of Appeals or by some other manner satisfactory to the Board of Appeals, in compliance with Chapter 40A of the General Laws, the area of such land to be not less than the difference between the total area platted in the subdivision and the total area which would have been so platted if all lots were of the minimum lot size for lots in normal subdivisions not subject to this Section, as determined by the Planning Board in the review of the subdivisions;

(4) the land so set aside is shown on the approved subdivision plan and provided in such a manner that it is usable for recreation or other activities, and is accessible to all residents of the subdivision or, where the land has been deeded to the Town, to the public.

(b) The Board of Appeals by special permit may authorize the development of designed groups of single-family dwellings in S and SC Districts subject to the following conditions and procedures:

(1) the lot is 5 acres or more in area in S-40 Districts, 3 acres or more in S-25 Districts, 2 acres or more in S-15, S-10 and S-7 Districts; and 1 or more acres in SC-10 and SC-7 Districts. Lot area shall be defined in accordance with Section 2.18, and contiguous lots may be combined to satisfy the acreage requirements of this paragraph;

(2) except as increased under Section 5.11 (b)(4), the total number of dwelling units does not exceed the number that would result if the area of the lot were divided by the minimum lot size in the district for single-family detached dwellings (the "base density"). Where the computation of base density results in a fractional number, only the fraction of one-half or more shall be counted as one. The Board of Appeals may limit the total number of dwelling units to less than the base density if in its judgment substantially adverse lot conditions, such as soil, topography, shape, significant landscape features or abutting uses, so require. In determining the lot area for purposes of calculating the allowable number of dwelling units, if any part of the lot is wetland as determined by the Conservation Commission, no more than 10 percent of the area to be used for calculation shall be wetland;

(3) permitted dwellings may be either attached or detached or any combination of the two types;

(4) the Board of Appeals may grant a number of dwelling units higher than permitted in Section 5.11 (b)(2) where any of the following conditions obtain, provided that the increase shall not exceed 25% in total beyond what is permitted in Section 5.11 (b)(2).

(i) Open space: 1% bonus for every 20% increase in landscaped open space over the minimum amount of landscaped open space required by, Section 5.00 and 1% bonus for every 20% increase in usable open space over the minimum amount of useable open space required by Section 5.00.

(ii) Concealed parking: 1% bonus per 5% of required parking concealed below grade, within or under a residential structure.

(iii) Superior site design: up to 10% bonus for superior site design, which may include, without limitation: public open space, either accessible to the public or within public view; historically appropriate building materials; preservation of existing dwellings or other architecturally significant structures; preservation of significant trees; street improvements such as wider sidewalks, underground wiring, lighting, landscaping, and pedestrian walkways and benches; provision of active and passive recreational facilities that are appropriate to the proposed development and to its immediately surrounding neighborhood; maintenance of Town open space; creation, restoration and preservation of access to existing Town open space; preservation and protection of environmentally sensitive areas; sensitivity to the surrounding neighborhood; support for neighborhood facilities and services; and preservation of historical structures significant to the Town. Any such element of site design which usefully and substantially exceeds the applicable minimum requirement for such element, if any, shall be deemed to contribute to the superiority of such site design.

(5) the entire lot shall be designed to, and shall, remain in one ownership and shall be developed and maintained as a whole, except that:

(i) individual dwelling units together with the immediately adjacent yard areas designed for the private use of the residents of the individual dwelling units may be individually owned by any method deemed by the Board of Appeals to ensure the unified control and maintenance of the entire lot; and

(ii) the open space created under this Section shall be owned, preserved and protected as provided in Section 5.11 (b)(10).

(6) the minimum land area occupied by each detached single-family dwelling together with immediately adjacent yard areas designed for the private use of the occupant family shall not be less than is required in Section 5.11 (a);

(7) the minimum land area occupied by each attached single-family dwelling together with immediately adjacent yard areas designed for the private use of the occupant family shall be 2,000 square feet, and the minimum width of such land area and of each such dwelling between party walls shall be 25 feet;

(8) the maximum horizontal dimension of any group of attached single-family dwellings together with one-story wings or attached accessory structures shall not exceed 150 feet, and the maximum horizontal dimension of that part of such a group that is more than one-story in height shall not exceed 120 feet;

(9) each group of attached single-family dwellings shall be separated from the end of any other such group by a distance not less than two times the minimum side yard specified in Section 5.00 for the district in which the site is located; and where two such groups are placed face to face or back to back and are parallel or within 45 degrees of parallel they shall be separated by a distance not less than the sum of the minimum front and rear yards specified for the district in said Section;

(10) the open space created under this Section shall be designed, developed and maintained for the use and enjoyment of all residents in common, and shall be restricted by deed or covenant to be used primarily for recreational, park, conservation or other open space uses, and shall be conveyed to the Town and accepted by it for park or open space use, or to a non-profit organization the principal purpose of which is the conservation of open space, or to a corporation or trust owned or to be owned by the owners of the dwelling units. When facilities for the service and maintenance of the open space are located within the open space, their combined gross floor area shall not exceed one half of one percent of the open space area;

(11) no building, parking area, swimming pool, or any area designed and intended for active recreation shall be located nearer to any side or rear lot line than the dimension specified for the minimum rear yard by Section 5.00 for the district in which the site is located and the Board of Appeals may require that such intervening space be so densely landscaped as to provide effective visual screening from adjoining property zoned for residence; except that no detached single-family dwelling need be farther from any lot line than required by the yard regulations applicable in the district;

(12) an application for a special permit for a designed group of single-family dwellings under this Section shall be subject to the Community and Environmental Impact and Design Review procedures and standards of Section 5.09;

(13) in granting a special permit for a designed group of single-family dwellings under this Section, in addition to the findings required under Section 5.09 and Section 9.5, the Board of Appeals shall find that:

(i) the location, topography, vicinity or natural features of the site make it particularly suitable for such development, and

(ii) the design of the development is such as to be in harmony with the prevailing character of the neighborhood.

(c) The Board of Appeals may by special permit authorize the conversion of an existing structure or structures in S or SC Districts, constructed prior to the effective date of this By-law (July 27, 1962), to two or more dwelling units provided the following conditions are met:

(1) the lot upon which the existing structure or structures are located is 5 acres or more in S-40 Districts, 3 acres or more in S-25 Districts, 2 acres or more in S-15, S-10 and S-7 Districts, and 1 or more acres in SC-10 and SC-7 Districts. Lot area shall be defined in accordance with Section 2.18, and contiguous lots may be combined to satisfy the acreage requirements of this paragraph;

(2) one or more of the existing structure or structures to be converted contain at least 5,000 square feet of floor area either as defined in Section 2.11 or potentially habitable area that could be converted without any exterior construction that adds floor area;

(3) except as increased under Section 5.11(c)(4), the total number of dwelling units does not exceed the number that would result if the area of the lot were divided by the minimum lot size in the district for single-family detached dwellings (the "base density") or, if:

(i) more than 50% of the total number of dwelling units are contained in existing structure or structures; and

(ii) more than 50% of the total floor area of the existing structure or structures are preserved, restored, renovated and rehabilitated as dwelling units or ancillary structures; the total number of dwelling units does not exceed 125% of the base density. The number of dwelling units permitted by the Board of Appeals under this Section 5.11(c)(3) in excess of the base density shall reflect the historic, architectural and community significance of the existing structure or structures once converted to dwelling units, including, without limitation, their design, location, facades, building materials and compatibility with the predominant architecture of the surrounding neighborhood. The Board of Appeals may limit the total number of dwelling units to less than the base density if in its judgment substantially adverse lot conditions, such as soil, topography, shape, significant landscape features or abutting uses, so require, or if the preservation or restoration of the historical or other architecturally significant features of the building(s) would be prevented or materially impaired.

(4) the Board of Appeals may grant a number of dwelling units higher than permitted in Section 5.11(c)(3) where any of the following conditions obtain, provided that the increase shall not exceed 25% in total beyond what is permitted in Section 5.11(c)(3).

(i) Effective conversion of existing structures to residential use: 2% bonus per every 10%, in excess of 50%, of a percentage equal to the number of dwelling units contained in the existing structure or structures divided by the total number of proposed dwelling units on the lot.

(ii) Open space: 1% bonus for every 20% increase in landscaped open space over the minimum amount of landscaped open space required by Section 5.00 and 1% bonus for every 20% increase in usable open space over the minimum amount of usable open space required by Section 5.00.

(iii) Concealed parking: 1% bonus per 5% of required parking concealed below grade, within or under a residential structure.

(iv) Superior site design: up to 10% bonus for superior site design, which may include, without limitation: public open space, either accessible to the public or within public view; historically appropriate building materials; preservation of existing dwellings or other architecturally significant structures; preservation of significant trees; street improvements such as wider sidewalks, underground wiring, lighting, landscaping, and pedestrian walkways and benches; provision of active and passive recreational facilities that are appropriate to the proposed development and to its immediately surrounding neighborhood; maintenance of Town open space; creation, restoration and preservation of access to existing Town open space; preservation and protection of environmentally sensitive areas; sensitivity to the surrounding neighborhood; support for neighborhood facilities and services; and preservation of historical structures significant to the Town. Any such element of site design which usefully and substantially exceeds the applicable minimum requirement for such element, if any, shall be deemed to contribute to the superiority of such site design.

(5) the entire lot shall be designed to, and shall, remain in one ownership and shall be developed and maintained as a whole, except that:

(i) individual dwelling units together with the immediately adjacent yard areas designed for the private use of the residents of the individual dwelling units may be individually owned by any method deemed by the Board of Appeals to ensure the unified control and maintenance of the entire lot; and

(ii) the open space created under this Section shall be owned, preserved and protected as provided in Section 5.11 (c)(6).

(6) the open space created under this Section shall be designed, developed and maintained for the use and enjoyment of all residents in common, shall be restricted by deed or covenant to be used primarily for recreational, park, conservation or other open space uses, and shall be conveyed to the Town and accepted by it for park or open space use, or to a non-profit organization the principal purpose of which is the conservation of open space, or to a corporation or trust owned or to be owned by the owners of the dwelling units. When facilities for the service and maintenance of the open space are located within the open space, their combined gross floor area shall not exceed one-half of one percent of the open space area.

(7) no building, parking area, swimming pool, or any area designed and intended for active recreation shall be located nearer to any side or rear lot line than the dimension specified for the minimum rear yard by Section 5.00 for the district in which the site is located and the Board of Appeals may require that such intervening space be so densely landscaped as to provide effective visual screening from adjoining property zoned for residence;

(8) an application for a special permit for a conversion under this paragraph shall be subject to the Community and Environmental Impact and Design Review procedures and standards of Section 5.09;

(9) in granting a special permit under this paragraph, in addition to the findings required under Section 5.09 and Section 9.5, the Board of Appeals shall find that:

(i) the location, topography, vicinity, or natural features of the lot make it particularly suitable for such development, and

(ii) the structure(s) on the lot is of an appearance which is compatible with the vicinity or which shall be preserved or restored in a manner to justify granting a special permit under this Section 5.11;

(10) in addition to the conditions and safeguards listed in Section 9.5(b) which the Board of Appeals may attach to a special permit relief, the Board may require facade, open space or other such easements to ensure that the historical and architectural character of the lot and structure(s) is protected.

(d) The Board of Appeals, where appropriate, shall consult with the Planning Board, the Conservation Commission, the Preservation Commission and any other municipal authority, board, commission or other agency when any site condition, element of site design or other aspect of the proposed cluster subdivision, designed group of single-family dwellings or estate conversion falls within the regulatory authority of such municipal agency and bears materially on any discretionary increase or decrease in the total number of dwelling units allowed under any special permit granted under this Section 5.11.

(e) A proposal may combine the development alternatives permitted by subsections (a), (b) and (c) of this Section 5.11 provided that the site satisfies the most restrictive threshold acreage requirement of the subsections under which a special permit is sought. Otherwise, and where applicable, when a majority of the site's proposed dwelling units are to be developed as a subdivision, as a designed group or from the conversion of an existing structure or structures, then the development of the site will be subject to the conditions and standards set out in subsection (a), (b) or (c), respectively, of this Section 5.11. Regardless of which subsection of Section 5.11 governs the development of the site, any new construction shall contain only attached or detached dwellings, but converted existing structures may contain one or more dwelling units in any configuration.

(f) All subdivisions of 10 lots or more seeking special permits or variances for increases in permissible density or intensity of use are also subject to the provisions of Section 4.40.

Which entity is the special permit granting authority for cluster/flexible zoning?

Board of Appeals (b) The Board of Appeals by special permit may authorize the development of designed groups of single-family dwellings in S and SC Districts subject to the following conditions and procedures:

Has any housing been built under the cluster/flexible provisions?

Burlington

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Kristin Hoffman, Assistant Planner, said (7/21/04) that there is cluster zoning on the books (Open Space Residential Design). She said: "We require 10 acres right now which is silly for any town within 128. We are trying to bring it to 3 acres." She said that there was one development that triggered the cluster provisions: Cranberry Estates. She said it was single family housing all on one parcel; it was built in the last 7 years.

The Zoning Bylaws of the Town of Burlington, Section 8.4.0 (Adopted 1977, Amended 2003)
Town of Burlington, Zoning Bylaws, Page 78. Electronic Version.

As amended through May 2003

SECTION 8.4.0 OPEN SPACE RESIDENTIAL DEVELOPMENT

The Planning Board may grant a special permit for an Open Space Residential Development in any residential district subject to the following:

8.4.1 Purpose

The purpose of Open Space Residential Development is to encourage the preservation of common land for conservation, agriculture, open space and recreational use; to provide increased opportunities for affordable housing; to preserve historical or archaeological resources; to protect existing or potential municipal water supplies; to protect the value of real property; to promote more sensitive siting of buildings and better overall site planning; to promote better utilization of land in harmony with its natural features and with the general intent of the zoning bylaw through a greater flexibility in design; and to allow more efficient provision of municipal services.

8.4.2 Procedures

(a) Filing of Application: Each application for a special permit for Open Space Residential

Development shall be filed with the Planning Board, with a copy filed forthwith with the Town Clerk, and shall be accompanied by 10 copies of a plan, pursuant to Section B below, of the entire parcel under consideration, prepared by a professional architect, engineer or landscape architect.

(b) Contents of Application: Said application and plan shall be prepared in accordance with the requirements of special permits and with the Planning Board's Site Plan Review Rules and Regulations, and where applicable, the filing of a Subdivision Plan, and shall include proposed location, bulk and height of all proposed buildings. In addition, the applicant shall provide the following information:

1. The number of dwellings which could be constructed under the zoning provisions which govern the parcel at the time of application, considering the whole parcel, excluding water bodies, flood plain, and land prohibited from development by legally enforceable restrictions, easements or covenants. The number of dwelling units shall be determined by the Planning Board using the standards the Board would normally apply to a One-Family Dwelling District (RO) residential subdivision plan submitted according to the Subdivision Control Law and Zoning Bylaws of the Town of Burlington, including but not limited to Section 6.6.0 Lot Interpretation and Restrictions. The number of dwelling units so determined by the Planning Board shall be divided by the total gross acreage of the parcel to establish the base density of units per acre. In no event may the base density of units per acre exceed the Maximum base density of 2.2 units per acre.

2. An analysis of the site, including wetlands, wetlands zoning district boundaries, water bodies, slopes, soil conditions, areas within the 100-year flood, and such Town of Burlington, Zoning Bylaws, Page 79. Electronic Version.

As amended through May 2003

other natural features as the Planning Board may request. As well, an existing topographic map and a proposed topographic map at two feet intervals must be provided.

3. A summary of the environmental concerns relating to the proposed plan.

4. A description of the neighborhood in which the tract lies, including utilities and other public facilities, and the impact of the proposed plan upon them.

5. Evaluation of the open land proposed within the Open Space Residential Development, with respect to use, size, shape, location, natural resource value, and accessibility by residents of the Town or of the Open Space Residential Development.

(c) Review by Other Boards: Before acting upon the application, the Board shall submit it with the plan to the following boards, which may review it jointly or separately: the Building Inspector, the Department of Public Works, the Board of Selectmen, the Police Department, the Board of Health, the Town Engineer, the Conservation Commission, and the Fire Department. Any such board or agency to which petitions are referred for review shall submit such recommendations as it deems appropriate to the Planning Board and the applicant. Failure to make recommendations within 35 days of receipt shall be deemed lack of opposition.

(d) Public Hearing: After the opportunity for review by other boards has taken place, the Planning Board shall hold a hearing under this section, in conformity with the provisions of G.L. Chapter 40A, S9, and of the zoning bylaw and regulations of the Planning Board. The hearing shall be held within 65 days after filing of the application with the Board and the Clerk. Notice shall be given by publication and posted and by first-class mailings to "parties in interest" as defined in G.L. Chapter 40A, #11. The decision of the Board, and any extension, modification or renewal thereof, shall be filed with the Board and Clerk within 90 days following the public hearing. Failure of the Board to act within 90 days shall be deemed a grant of the permit applied for. The required time limits for a public hearing and Board action may be extended by written agreement between the applicant and the Planning Board. Issuance of the permit requires an affirmative vote of two-thirds of the Planning Board.

(e) Relation to Subdivision Control Act: Planning Board approval of a special permit hereunder shall not substitute for compliance with the subdivision control act, nor oblige the Planning Board to approve any related definitive plan for subdivision, nor reduce any time periods for Board consideration under that law. However, in order to facilitate processing, the Planning Board shall, insofar as practical under existing law, adopt regulations establishing procedures for submission of a combined plan and application which shall satisfy this section and the Board's regulations under the subdivision control act.

8.4.3 Findings of Board

The Board may grant a special permit under this section only if it finds that the applicant has demonstrated the following: that the Open Space Residential Development plan will be in harmony with the general purpose of the bylaw and the requirements of G.L. Chapter 40A, and the long range plan of the town; that it will not have a detrimental impact on the neighborhood, will be designed with due consideration for health and safety, and is superior to a conventional plan in preserving open space, minimizing environmental disruption, allowing for more efficient provision

of services, or allowing for greater variety in prices or types of housing.

Town of Burlington, Zoning Bylaws, Page 80. Electronic Version.

As amended through May 2003

8.4.4 Minimum Dimensional Requirements

(a) The area of the parcel to be developed is not less than ten acres.

(b) The minimum parcel frontage shall be 50 feet.

(c) Every single family detached dwelling is placed upon a lot with the height, frontage, side and rear yard requirements in accordance with the requirements of Table 8.4.8.

Dimensional Requirements -- Open Space Residential (see page 8-18).

(d) Every two family or multi-family building is built with the setbacks from lot lines and other buildings, and the limitations as to size and height in accordance with the requirements of Table 8.4.8 Dimensional Requirements -- Open Space Residential.

(e) The minimum buffer in width around the perimeter of the parcel shall be 30 feet for clusters comprised of single family units, 50 feet for multi-family units, and 120 feet for multi-family units adjacent to an RO District.

(f) Except as specified in a special permit granted under this section, all requirements of the Zoning Bylaw shall continue to apply.

(g) The requirements related to the ownership, upkeep, liability, and maintenance of the open land are in perpetuity and as such become the responsibility of the owners' heirs and assigns.

8.4.5 Required Open Land

(a) At least 40% of the parcel exclusive of land set aside for roads and parking, shall be open land.

(b) The open land and such other facilities as may be held in common shall be conveyed to one of the following, as determined by the Planning Board, subject to the following guidelines. In general, natural resource land such as wetlands not suitable for any public use, or suitable for extensive public recreational use, should be conveyed to the Town or to a trust; whereas land which will be principally used by the residents of the Open Space Residential Development should be conveyed to a home association. At least 10% of the open land shall be useable for active or passive recreation.

(1) To a corporation or trust comprising a home association whose membership includes the owners of all lots or units contained in the parcel. The developer shall include in the deed to owners of individual lots beneficial rights in said open land, and shall grant a conservation restriction to the Town of Burlington over such land pursuant to M.G.L. Chapter 184, S131-33, to insure that such land be kept in an open or natural state and not be built upon for residential use or developed for accessory uses such as parking or roadways. This restriction shall be enforceable by the Town through its Conservation Commission in any proceeding authorized by S33 of Chapter 184 of M.G.L.

In addition, the developer shall be responsible for the maintenance of the common land and any other facilities to be held in common until such time as the homes association is capable of assuming said responsibility. In order to ensure that the association will properly maintain the land deeded to it under this section, the developer shall cause to be recorded at the Middlesex South County Registry of Deeds a Declaration of Covenants and Restrictions which shall, at a minimum, provide for the following:

Town of Burlington, Zoning Bylaws, Page 81. Electronic Version.

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- Mandatory membership in an established homes association, as a requirement of ownership of any lot in the parcel.

- Provisions for maintenance assessments of all lots in order to ensure that the open land is maintained in a condition suitable for the uses approved by the homes association. Failure to pay such assessment shall create a lien on the property assessed, enforceable by either the homes association or the owner of any lot. (Note: At no time shall the Town assume the responsibility for maintenance.)

- Provision which, so far as possible under the existing law, will ensure that the restriction placed on the use of the open land will not terminate by operation of law.

2. To a nonprofit organization, the principal purpose of which is the conservation of open space.

3. To the Conservation Commission of the Town for a park or open space use, subject to the approval of Town Meeting, with a trust clause insuring that it be maintained as open space.

(c) Subject to the above, the open space may be used for recreational purposes including golf courses, riding trails, tennis courts, gardens, swimming pools and temporary structures (i.e., tents, stages for special events and other structures that are intended to be assembled and disassembled within a 14 day period). The Board may permit open land owned by a homes association to be used for individual septic systems, or for communal septic systems if it, and the Board of Health so recommends.

8.4.6 Further Requirements

- (a) No use of the parcel other than residential or recreational shall be permitted.
- (b) No lot shown on a plan for which a permit is granted under this section may be further subdivided, and a notation to this effect shall be shown upon the plan.
- (c) No certificate of occupancy shall be issued by the Building Inspector until he has certified to the Planning Board that the premises have been built in accordance with the plan approved by the Board hereunder.
- (d) The Planning Board may impose other conditions, safeguards, limitations on time and use, pursuant to its regulations.
- (e) The Planning Board may grant a special permit hereunder for Open Space Residential Development even if the proposed development is not subject to the subdivision control law.
- (f) Special Permits granted under this section shall lapse within two years (or less), excluding time required to pursue or await the determination of an appeal, from the grant thereof, if a substantial use has not sooner commenced or if construction has not begun, except that the Planning Board may grant an extension for good cause and shall grant an extension if the delay was caused by the need to seek other permits.

Town of Burlington, Zoning Bylaws, Page 82. Electronic Version.

As amended through May 2003

- (g) Subsequent to granting of the permit, the Planning Board may permit relocation of lot lines within the Open Space Residential Development. However, any change in overall density, street layout, or open space layout will require further hearings.

8.4.7 Optional Units Incentive

- (a) Notwithstanding the limitations set out above, the Planning Board, if it deems it otherwise advisable to do so, shall as a provision of a special permit issued hereunder authorize increases in the permissible intensity of use in the proposed Open Space Residential Development over the base units per acre providing that the tract is tied to the public sewer system and that the number of units within the tract shall not exceed a density of 4 dwelling units per acre. The additional units may be obtained at the discretion of the Planning Board over the base density of units per acre by providing one or more of the following:

1. Traffic or pedestrian improvements (e.g., bike paths, bridle paths, screened parking): up to 0.3 units added.
2. Open space which is landscaped or has unusual value to the community or to the residents and comprises an unusually large percent of the tract: up to 0.5 units added.
3. Units that permanently contribute to the Town's Affordable Housing Action Plan: up to 1.0 units added.

(Note A: The maximum density per acre with bonus shall be no more than 180% of the base density as determined by the Planning Board pursuant to Section 8.4.2, subsection (b)1.)

(Note B: The Planning Board may grant less than the maximum bonus provision for affordable housing if there are only minimal number of units that are affordable and/or where severe environmental constraints exist on the parcel.)

- (b) Such bonus may include any or all of the following:

1. Decrease of minimum lot size.
2. Increase in number of lots.

- (c) Off Premises Improvements: The Planning Board may approve a density bonus when the applicant agrees to make public improvements or improvements in the public interest on property not under the applicant's control.

8.4.8 Table 8.4.8 Open Space Residential-Dimensional Requirements

Minimum area of parcel feet 10 Acres (435,600 square feet)

Maximum height of buildings 40 feet

30 feet when within 100 feet of an RO District

Minimum frontage of the tract on the existing street 50 feet

Minimum frontage setback 25 feet for single family

50 feet for multi-family

Minimum distance between individual buildings 30 feet

Maximum distance between 100 feet (unless otherwise groups of buildings permitted by the Planning Board)

Minimum percent of open space 40% (Note: 10% of this 40% must be useable for active or passive recreation purposes and must be unpaved.)

Buffer requirements 30 feet in width for developments with single family units

50 feet for developments with multi-family units

120 feet for developments with multi-family units

adjacent to an RO District

Maximum base density without bonus per acre 2.2 units

The Zoning Bylaws of the Town of Burlington, Section 12.1.0 (Adopted 1977, Amended 2003) - Planned Development District.

12.1.2 General Requirements

No land shall be rezoned to PD District unless and until a Concept Plan as described in Section 12.1.4 has been submitted to Town Meeting and approved.

No use is permitted and no development may occur in a PD District except in conformity with the Concept Plan approved by the Town Meeting, the provisions of Section 12.1 and a Special Permit with Site Plan review pursuant to a PD District rezoning (hereinafter referred to as a "PD Special Permit") granted by the Planning Board.

The development and uses approved in a rezoning to PD District must be commenced by obtaining a PD Special Permit as required in Section 12.1.5 within two years. Until such time as the required PD Special Permit is granted and recorded by the property owner or if a PD Special Permit is not obtained within two years, the development of the property shall be governed by the provisions presently in effect in the zoning district for which the land was zoned immediately prior to its inclusion in the PD District. The foregoing two (2) year time period shall not be applicable to any Planned Development (PD) District established prior to January 1, 2003 and which involves land owned by the Town on January 1, 2003 as part of the original PD rezoning proposal. For any such Planned Development (PD) District involving such Town-owned land as part of the original PD rezoning proposal, the zoning established by the Planned Development (PD) District shall be effective upon the date of approval by Town Meeting.

The PD District does not have any minimum lot size and there is no minimum lot area required to seek a rezoning to the PD District.

SECTION 12.1.0 PLANNED DEVELOPMENT DISTRICT

12.1.1 Purposes

The Planned Development (PD) District is intended:

To permit a developer to propose, and for the Town to vote on, a development proposal that specifies a mixture of commercial, industrial, residential, open space or other uses and the site development requirements to be used for a specific site.

To permit considerable flexibility in the development of individual tracts of land by requiring few predetermined standards.

To permit the use of development standards tailored to a specific site and more detailed than those for the standard zoning districts.

To permit the Town to evaluate the potential impacts of a proposed development and to authorize the Planning Board, as the Special Permit Granting Authority, to require that the development of the site substantially conform to site development standards approved as part of the rezoning to PD District and intended to mitigate or compensate for the potential impacts.

12.1.2 General Requirements

No land shall be rezoned to PD District unless and until a Concept Plan as described in Section 12.1.4 has been submitted to Town Meeting and approved.

No use is permitted and no development may occur in a PD District except in conformity with the Concept Plan approved by the Town Meeting, the provisions of Section 12.1 and a Special Permit with Site Plan review pursuant to a PD District rezoning (hereinafter referred to as a "PD Special Permit") granted by the Planning Board.

The development and uses approved in a rezoning to PD District must be commenced by obtaining a PD Special Permit as required in Section 12.1.5 within two years. Until such time as the required PD Special Permit is granted and recorded by the property owner or if a PD Special Permit is not obtained within two years, the development of the property shall be governed by the provisions presently in effect in the zoning district for which the land was zoned immediately prior to its inclusion in the PD District. The foregoing two (2) year time period shall not be applicable to any Planned Development (PD) District established prior to January 1, 2003 and which involves land owned by the Town on January 1, 2003 as part of the original PD rezoning proposal. For any such Planned Development (PD) District involving such Town-owned land as part of the original PD rezoning proposal, the zoning established by the Planned Development (PD) District shall be effective upon the date of approval by Town Meeting.

**Webmasters Note: The previous paragraph has been amended as per an update approved at a town meeting held on 5/12/03.

The PD District does not have any minimum lot size and there is no minimum lot area required to seek a rezoning to the PD District.

12.1.3 Procedure for Rezoning to "PD" District

The developer and property owner if different from the developer shall submit a Concept Plan to the Board of Selectmen together with a letter petitioning for a rezoning to the PD District requesting that the matter be placed on the next Town Meeting warrant.

The Board of Selectmen shall refer the rezoning application and the Concept Plan to the Planning Board within 14 days.

Within 65 days of receiving the rezoning application and Concept Plan, the Planning Board shall hold a public hearing on the

requested rezoning.

Following the public hearing, the Planning Board shall prepare a detailed report regarding the requested rezoning and Concept Plan and shall recommend to Town Meeting whether the requested rezoning should be approved, amended and approved or denied.

In order to be approved a rezoning to the PD District must receive a two-thirds vote at Town Meeting.

12.1.4 Submission Requirements for a PD District Rezoning

The application for a PD District Rezoning shall include a Concept Plan and the required submission fee.

1. Submission Fee: The Planning Board shall specify submission fees for a PD District rezoning in its Rules and Regulations. In no case shall the fee be less than \$350. The required fee shall be submitted with the rezoning request and Concept Plan.

2. Concept Plan Requirements: A Concept Plan shall include the following:

(a) In addition to the submission requirements outlined in this section, the Planning Board may impose additional submission requirements through the adoption of Rules and Regulations for a PD District rezoning.

(b) A preliminary site construction plan showing in a general manner:

1. The location of buildings; number of stories, approximate floor area and maximum height of each building; the distance in feet between buildings.

2. Existing and proposed contours.

3. Proposed lot lines.

4. Grading and landscaping.

5. The location and dimensions of drives and parking areas.

6. The location and characteristics of any common open space or usable open space.

7. The proposed drainage system.

8. Proposed landscaping.

9. Building elevations.

(c) Uses to be permitted or allowed by special permit in the buildings, which may be a narrative describing the type and character of uses and/or a listing, by cross reference, of uses to be permitted as they appear in Section 4.2.0, 4.3.0 and 4.4.0 "Use Regulations Schedules."

Other zoning provisions; this may be a narrative describing special regulations unique to the development and/or a cross reference to provisions of this Bylaw that will apply to the PD District.

(d) Special conditions, if any, applicable to the proposed development which may include grants of benefits to the Town such as land for public purposes, construction of improvements (or financial contributions therefor) in behalf of the Town, or other development limitations such as aesthetic features.

(e) A table showing:

1. Total land area.

2. Developable site area.

3. Common or usable open space, if any.

4. Site coverage of buildings.

5. Area covered with impervious surface.

6. Impervious surface ratio.

7. Gross floor area of all nonresidential buildings.

8. Floor area rational if applicable.

9. Density of dwelling units, or their equivalent, if applicable.

10. Number of off-street parking spaces and, if applicable, loading bays.

(f) A locus-context map of all land within 500 feet of any part of the tract and showing:

1. All dwellings and principal buildings.

2. The land use of each lot.

3. Lot and right-of-way lines.

4. Existing contours at two-foot intervals.

5. Principal natural features in general such as:
Significant rock outcroppings.

Water systems (including standing surface water, brooks or streams, the direction of drainage, wetlands, and the 100-year flood elevation.)

Significant vegetation (including mature trees, unique specimens of vegetation, and vegetation that indicates wetness.)

6. zoning district boundaries.

7. Recorded easements on the site and within the 500-foot locus.

8. Public facilities, such as conservation or recreation land, footpaths, bicycle paths, or streets.

9. significant noise/visual impact (including views from the site and sources of noise affecting the site.)

10. Historically or architecturally significant structures and sites on or adjacent to the site.

(g) A property rights and dimensional standards plan showing:

1. The location of existing easements or other property rights affecting the development.

2. The approximate locations of any sections of the land to which the Town would be granted property rights, either easements or transfer of ownership for street, utility, conservation or other purposes.

3. The anticipated division of the property into parcels in private ownership, if any, if it affects zoning provisions.

4. The yard setback in feet for buildings and parking lots from lot lines and where applicable, a zoning district boundary, a brook or a pond.

5. The boundaries of any common open space or usable open space.

(h) A utilities analysis showing:

1. The location and size of the Town's existing water mains, fire hydrants, sanitary sewers, and storm drains.

2. The proposed locations and the approximate size of utilities to be constructed on the site and their proposed connections to the Town's utilities, and any special features, such as culverts or pumping stations, that might affect the ability of the Town to service the development.

(i) A traffic analysis to be conducted by a traffic engineer who will certify that he/she qualifies for the position of member of the Institute of Transportation Engineers (ITE). The analysis shall include:

1. Traffic counts on arterial streets that provide access to the development site showing data on Average Daily Traffic (ADT) and a.m. and p.m. peak periods (conducted for two hours divided into fifteen-minute segments;)

2. Intersection turning movement counts at intersections likely to be affected by the proposed development (conducted for two hours divided into fifteen-minute segments;)

3. An inventory of roadway characteristics showing the width of the principal approach streets and the presence or absence of sidewalks and their conditions;

4. Estimated trip generation showing the projected inbound and outbound vehicular trips for the a.m. and p.m. peak periods and a typical one hour off-peak trip generation;

5. The estimated distribution of new trips by approach streets;

6. The effect of additional traffic generated by the development on traffic "levels of service" on each approach street;

7. Estimated off-street parking and loading requirements and time of peak accumulation.

12.1.5 PD Special Permit Requirements

Development pursuant to a PD District rezoning is subject to the approval of PD Special Permit as outlined in this subsection.

Application for a PD Special Permit under this section shall be made to the Town Clerk by submitting nine (9) copies of all submission material and paying the required application fee. Circulation of the PD special Permit application to Town departments shall be as outlined in Subsection 9.2.2.1.

The application for a PD Special Permit under this section shall include a Site Development and Use Plan as described in this section together with the required submission fee.

1. Submission Fee: The Planning Board shall specify a submission fee for a PD Special Permit in its Rules and Regulations and in no case shall the fee be less than \$350.00.

2. Site Development and Use Plan Requirements: The Site Development and Use Plan shall include all of the material and information contained in the Concept Plan with the following modifications and additions:

(a) All information typically required on a site plan in accordance with Planning Board Site Plan Rules and Regulations.

(b) A utilities plan showing the location, size, materials and connections to the Town's utilities.

(c) A property rights plan based on an instrument survey identifying parcels, if any, to be conveyed to the Town by deed or easement.

(d) A site grading plan showing proposed changes in contours and identifying landscaping materials, species of plants and sizes and specific plans for any common open space.

(e) A traffic analysis including proposed mitigating measures, if any, to maintain an acceptable traffic level of service.

(f) Preliminary drafts of any deed, easement, offer or agreement to carry out any special condition.

(g) Such other information as the Planning Board may specify in its Rules and Regulations from time to time for special permits pursuant to a PD District rezoning.

12.1.6 Public Hearing

The Public Hearing shall be held in accordance with the provisions of Section 9.6.0. Additionally, notice of the public hearing shall be mailed, by the applicant, post prepaid, to all current Town meeting Members, based on the active list of Town Meeting members as maintained by the Town Clerk at the time of submission of the Petition.

12.1.7 Criteria for Approval

The Planning Board shall approve the PD Special Permit if the Board finds that all the following conditions are met:

1. The Site Development and Use Plan is substantially in conformance with the Concept Plan approved by Town Meeting. The Planning Board may permit minor changes in light of the more detailed survey and engineering design provided that they do not conflict with the intent of the Concept Plan but the Board shall not approve any change in minimum setbacks, maximum building height, maximum total square feet of development, or uses.

2. The Concept Plan approved by Town Meeting and the Site Development and Use Plan are incorporated into the PD Special Permit by reference.

3. Methods satisfactory to the Planning Board of ensuring the performance of any special conditions included in the Concept Plan have been submitted by the developer.

4. Any land designated as common open space on the Concept Plan shall be either conveyed to the Town or protected by an easement granted to the Town.

5. The Planning Board reserves the right to: require that up to 30% of all new housing units be made affordable to persons of low and moderate income according to the standards of the State and/or Town of Burlington as determined by the Planning Board. The Planning Board in granting a PD Special Permit may impose such additional conditions as the Planning Board finds will serve the public interest and are consistent with the intent of the Concept Plan approved by Town Meeting.

The Planning Board may deny an application for PD Special Permit and base its denial on the finding that the development proposed in the Site Development and Use Plan did not meet one or more of the four criteria for approval.

No changes to the obligations contained in the special conditions or to the specifications contained in the Zoning Table, or changes in uses as reflected on the Preliminary Site Plan, shall be permitted except by a vote of Town Meeting.

12.1.8 Changes in a Site Development and Use Plan

Changes in uses or substantial changes in the site development from that shown on the Site Development and Use Plan referenced in the PD Special Permit are not permitted without the approval by Town meeting of a new Concept Plan in accordance with the procedures outlined in Section 12.1.3 followed by the issuance by the Planning Board of a new PD Special Permit based on the new plan.

12.1.9 Use Allowed by Special Permit in the RD District

Application for a special permit for a particular use within a PD District shall be made concurrent with a PD Special Permit or subsequent to its approval. The approval criteria for the special permit for a particular use shall be those set out in Section 9.2.0.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board SECTION 9.2.0 SPECIAL PERMIT
9.2.1 Requirements
In all districts, any use or accessory use designated by SP in the Principal Use Regulations Schedule and the Accessory Use Regulations Schedule (Article IV, Sections 4.2.0 and 4.3.0) shall require a Special Permit granted by the Planning Board.

Has any housing been built under the cluster/flexible provisions?

Yes Kristin Hoffman, Assistant Planner, said (7/21/04) that there is cluster zoning on the books (Open Space Residential Design). She said: "We require 10 acres right now which is silly for any town within 128. We are trying to bring it to 3 acres." She said that there was one development that triggered the cluster provisions: Cranberry Estates. She said it was single family housing all on one parcel; it was built in the last 7 years.

Cambridge

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes PLANNED UNIT DEVELOPMENT . A land development project comprehensively planned by the developer with a single site plan for a parcel of a size eligible for PUD designation. A PUD is designed to permit flexibility in building siting, mixtures of housing types and land uses, usable open spaces, and the preservation of significant natural features.

ARTICLE 12.000 PLANNED UNIT DEVELOPMENT
12.10 STATEMENT OF PURPOSE

This Article of the Zoning Ordinance of the City of Cambridge is hereby adopted to encourage the construction of Planned Unit Developments. The Planned Unit Development districts and uses created herein are intended to provide greater opportunity for the construction of quality developments on large tracts of land by providing flexible guidelines which allow the integration a variety of land uses and densities in one development.

12.20 AREA OF APPLICABILITY

A Planned Unit Development shall be allowed by Special Permit in PUD districts so designated from time to time on the zoning map and shall be regulated by the general development controls set forth in Section 12.50 and by the specific development controls for the individual PUD district in which the project is located. Planned Unit Development Districts shall be overlay districts on the zoning map and, for any land within a PUD district, a developer may choose to conform either to all the controls which govern the base district or to all the PUD development controls and process.

12.30 REVIEW OF PLANNED UNIT DEVELOPMENT APPLICATIONS

12.31 Review Scope. An application to construct a Planned Unit Development must be reviewed in a manner which is consistent with the procedures set forth in this Section 12.30 and those procedures required by Chapter 40A of the General Laws of the Commonwealth of Massachusetts, as amended.

12.32 Constitution of Review Authority. The Planning Board shall review and approve or disapprove all applications for Special Permits to construct Planned Unit Developments. In reviewing an application for a Special Permit for a Planned Unit Development, the Planning Board may also seek the professional opinion of the staff of city departments, including but not limited to, the Community Development Department, Public Works Department, Traffic and Parking Department, Police Department, Fire Department, Water-Department, and School Department.

12.33 Pre-application Conference. A developer desiring to obtain a Special Permit to construct a Planned Unit Development may request a Pre-Application Conference with the Planning Board prior to submitting an application for the Special Permit.

12.33.1 The purpose of the Pre-Application Conference shall be to familiarize both the developer and the Planning Board with each other's intentions with respect to the PUD. Although a Pre-Application Conference shall not be required, this preliminary meeting between the Planning Board and the developer is desirable since it should help clarify many procedural and policy issues.

12.33.2 At the Pre-Application Conference, the Planning Board shall familiarize the developer with the process for obtaining a Special Permit for a PUD and explain to him issues that should be considered in planning the project. The developer may discuss his range of options concerning development and inform the Planning Board of his development concept. Any statement made by either the Planning Board or the developer concerning potential disposition of a Special Permit application of the final form of the development shall not be legally binding.

12.33.3 The developer shall not be required to present any written or graphic materials at the Pre-Application Conference. The Planning Board shall make available to the developer at this time any forms required for application for a Special Permit for a PUD.

12.34 Development Proposal. A developer who wishes to apply for a Special Permit for a PUD must submit to the Planning Board a Development Proposal completed on the appropriate forms which may be obtained from the Planning Board at the Pre-Application Conference or from the Community Development Department.

12.34.1 The written and graphic information specified in Section 12.34.3 and on the appropriate forms must be submitted for the entire proposed project. A copy of the Development Proposal shall remain open to the public during the application process and shall be located in the Community Development Department.

12.34.2 The purpose of the Development Proposal shall be to provide the Planning Board with an opportunity for in-depth substantive review of the PUD before final designs are developed.

12.34.3 The Development Proposal shall include written and graphic materials in the appropriate number as specified by the Planning Board.

(1) Written materials shall include, but not be limited to, the following:

(a) legal description of the total development parcel proposed for development including exact location and a statement of present and proposed ownership;

(b) statement of development concept, including the planning objectives and the character of the development to be achieved through the PUD;

(c) development schedule indicating the appropriate date when construction of the PUD can be expected to begin and be completed, including initiation and completion dates of separate stages of a phased development;

(d) statement of intentions regarding the future selling or leasing of all or portions of the PUD, such as land area, dwelling units, and public facilities;

(e) statement of financing plan, including projected sources and amounts of funds;

(f) statement of how utilities and other public works will be provided, including design standards;

(g) the impact of the development on existing city services outside the development.

(2) Quantitative data including:

(a) parcel size;

(b) proposed lot coverage of structures;

(c) floor area ratio;

(d) total amount of usable open space, both private and public;

(e) total number and type of dwelling units by number of bedrooms;

(f) projected rent levels or selling price by unit size; approximate gross residential densities;

(h) total amount in square footage of nonresidential construction by type of use;

(i) economic feasibility or market analysis including projected market area and proposed rent levels for commercial development;

(j) number of parking spaces to be provided by use;

(k) total length of streets to be conveyed to the city government;

(l) total length of streets to be held as private ways within the development;

(m) total length by type of other public works to be conveyed to the city government;

(n) number and types of public facilities.

(3) Graphic materials shall include, but not be limited to, the following:

(a) map of existing site conditions, including contours, water course, floor plains, unique nature features, existing vegetation, soil types, existing buildings;

(b) map of existing land use;

(c) existing and proposed lot lines;

(d) location and size of gross floor area of all existing and proposed buildings, structures, and other improvements including maximum heights, types of dwelling units, and nonresidential structures by use;

(e) location and size in square feet of all usable open space and areas to be conveyed, dedicated, or reserved as common open spaces, public parks, recreational areas, school sites, and similar public and semi-public uses;

(f) the existing and proposed circulation system of arterial, collector, and local streets, including off-street parking areas, service areas, loading areas, and all points of access to existing public rights of way;

(g) proposed pedestrian circulation system;

(h) existing and proposed utility systems including sanitary sewers, storm sewers, and water, electric, gas, and telephone lines;

(i) general landscaped plan indicating the treatment of materials used for private and common open spaces; description of adjacent land areas, including land uses, zoning, densities, circulation systems, public facilities, and unique natural features of the landscape;

(k) proposed treatment of the perimeter of the development, including materials and techniques used such as screens, fences, and walls.

12.34.4 When applying for a Special Permit to construct a PUD, a developer must pay for all expenses incident to advertising for public hearings that may be incurred by the Planning Board.

12.35 Review of Development Proposal. Within sixty-five (65) days of the date of receipt of a complete application for a Special

Permit to construct a PUD, the Planning Board shall hold a public hearing. The purpose of the public hearing shall be to solicit public opinion concerning the Development Proposal.

12.35.1 Between the date of submission of the application for a Special Permit to construct a PUD and the public hearing concerning the Development Proposal, the Planning Board may submit the Development Proposal for review to city departments, including but not limited to, the Community Development Department, Public Works Department, Traffic and Parking Department, Police Department, Fire Department, Water Department. Any city department desiring to comment on the Development Proposal shall submit comments in writing to the Planning Board within sixty (60) days of the date of receipt of the application for a Special Permit or no later than five (5) days before the date of the public hearing. All written comments shall be made a part of the application for a Special Permit and shall remain on public record.

12.35.2 Within twenty-one (21) days after the public hearing, the Planning Board shall make a determination concerning the Development Proposal. If the Planning Board approves the Development Proposal or conditionally approves the Development Proposal with recommendations for modifications, then the developer must submit a Final Development Plan as specified in Section 12.36. If the Planning Board disapproves the Development Proposal then the application for a Special Permit to construct a PUD shall be denied. If the Planning Board makes no decision within the specified time limit, then the Development Proposal shall be considered approved and the developer shall prepare a Final Development Plan.

12.35.3 Approval of the Development Proposal shall be granted only upon determination by the Planning Board that the Development Proposal:

- (1) conforms with the General Development Controls set forth in Section 12.50, and the development controls set forth for the specific PUD district in which the project is located;
- (2) conforms with adopted policy plans or development guidelines for the portion of the city in which the PUD district is located;
- (3) provides benefits to the city which outweigh its adverse effects; in making this determination the Planning Board shall consider the following:
 - (a) quality of site design, including integration of a variety of land uses, building types, and densities; preservation of natural features; compatibility with adjacent land uses; provision and type of open space; provision of other amenities designed to benefit the general public;
 - (b) traffic flow and safety;
 - (c) adequacy of utilities and other public works;
 - (d) impact on existing public facilities within the city; and
 - (e) potential fiscal impact.

12.36 Final Development Plan. The purpose of the Final Development Plan shall be to set forth in final form the specifics of the proposed development proposal and to allow review for any additional items not present in the Development Proposal.

12.36.1 The developer shall submit a Final Development Plan to the Planning Board, no later than fifty-nine (59) days after the Public Hearing concerning the Development Proposal. Failure to submit a Final Development Plan within the specified time period shall result in the termination of the application for a Special Permit to construct a PUD.

12.36.2 The Final Development Plan shall consist of final versions of all statements and graphics presented in the Development Proposal and must contain any revisions which are required by the Planning Board at the time of conditional approval of the Development Proposal.

12.36.3 The Planning Board shall hold a public hearing to consider the Final Development Plan no later than sixty-nine (69) days after the public hearing concerning the Development Proposal. The purpose of the public hearing shall be to solicit public opinion on the Final Development Plan with emphasis placed on reviewing modifications made to the Development Proposal.

12.36.4 The Planning Board shall make the decision to approve or disapprove the application for a Special Permit to construct a Planned Unit Development no later than ninety (90) days after the public hearing concerning the Development Proposal. Approval of the Final Development Plan shall be granted only upon determination by the Planning Board that the Final Development Plan meets the evaluation criteria set forth in Section 12.35.3 and contains any revisions to the Development Proposal required by the Planning Board. If the Planning Board grants the Special Permit with conditions, the conditions must be agreed to in writing by the developer before the Special Permit is granted. The Planning Board shall make its final decision in writing and shall specify its reason for not granting a Special Permit to construct a PUD. If the Planning Board makes no decision within the specified time limit, then the Final Development Plan shall be considered approved and the Special Permit to construct a PUD shall be deemed granted.

12.37 Amendments to Final Development Plan. After approval of the Final Development Plan by the Planning Board, the developer may seek amendments to the Final Development Plan, only if he encounters difficulties in constructing the PUD which could not have reasonably been foreseen, such as with terrain or soil conditions or other complications.

12.37.1 Amendments to the Final Development Plan shall be considered major or minor. Minor amendments, as specified in

Section 12.37.2 shall be authorized by written approval of the Planning Board. Major amendments, as specified in Section 12.37.3, shall be considered as an original application for a Special Permit to construct a PUD and shall be subject to procedures specified in Section 12.34 through 12.36. The Planning Board shall decide whether proposed changes are major or minor.

12.37.2 Minor amendments are changes which do not alter the concept of the PUD in terms of density, floor area ratio, land usage, height, provision of open space, or the physical relationship of elements of the development. Minor amendments shall include, but not be limited to, small changes in the location of buildings, open space, or parking; or realignment of minor streets.

12.37.3 Major amendments represent substantial deviations from the PUD concept approved by the Planning Board. Major amendments shall include, but not be limited to, large changes in floor space, mix of uses, density, lot coverage, height, setbacks, lot sizes, open space; changes in the location of buildings, open space, or parking; or changes in the circulation system.

12.40 ENFORCEMENT

12.41 Commencement of Construction. The developer shall begin construction of the PUD within twelve (12) months of the date of the granting of the Special Permit to construct a PUD. The Planning Board may grant, in writing an extension of this time period of up to twelve (12) months upon determination of good cause by the developer. If the developer fails to commence construction of the PUD within the specified time, the Special Permit shall lapse.

12.41.1 If the PUD is to be developed in stages, then the developer must begin the construction of each stage within the time limits specified in the Final Development Plan. Construction in each phase shall include all the elements of that phase specified in the Final Development Plan.

12.42 The Planning Board, or its Designee, shall periodically monitor the construction of the PUD, with respect to start of construction and development phasing. If the Planning Board, or its designee, finds that either the developer has failed to begin development within the specified time period or that the developer is not proceeding in accordance with the approved development phasing, with respect to either timing or construction of an approved mix of project elements, then the Planning Board shall review the PUD and may extend the time for start of construction or the length of time needed to complete a phase, revoke the Special Permit, or recommend that the developer amend the Final Development Plan subject to procedures specified in Section 12.37. If the Planning Board revokes the Special Permit for the PUD then the Final Development Plan shall be null and void.

12.50 GENERAL DEVELOPMENT CONTROLS

12.51 Applicability and Conformance with Existing Policy Plans. The following regulations in this Section 12.50 shall control development within each PUD district. Each development proposal for a PUD shall, to the extent feasible, be made to conform to existing policy plans established by the Planning Board or City Council from time to time for the specific area of the city in which the PUD is located.

12.52 PUD Development Parcel Size. The minimum size of a development parcel for a planned unit development shall as indicated in each planned units development's individual regulations; however the Planning Board may, at its discretion, allow development parcels containing less than the minimum parcel size required but at least five times the minimum required area for a lot in the base zoning district in which the development would be located. The Planning Board shall permit a development parcel containing less than the minimum parcel size required only upon its written determination that public review and approval of such a small development is necessary for accomplishing the planning objectives of the PUD district in which the development is located.

12.53 Standards for Construction of Roadways. All new roadways within a PUD shall be constructed in conformance with standards established by the Department of Traffic and Parking.

12.53.1 Any existing private way or subsequently constructed private way in a PUD may be accepted by the City as a public way only if it meets the Minimum Standards for Acceptance of Existing Private Ways as Public Ways as adopted by the Planning Board.

12.53.2 The design of the overall circulation pattern shall be prepared in accordance with the principles and concepts established in "Recommended Practices for Subdivision Streets" prepared by the Institute of Traffic Engineers (1965).

12.54 Standards for Construction of Utilities and Public Works. All improvements to the site which include the installation of utilities, public lighting, sewers, and other public works shall be constructed according to criteria established by the Public Works Department, Water Department, Electrical Department, the Planning Board and other appropriate departments. If the developer provides public works, roadways, and utility improvement to the site, the Planning Board may require the developer to post a performance bond.

12.55 Landscaping. All open areas within a PUD which are not used as driveways, walkways, or parking lots shall be landscaped in an appropriate manner utilizing both natural and manmade materials such as grass, trees, shrubs, and benches. Wherever possible, deciduous trees should be planted along new and existing streets. Plazas, arcades, malls, and similar manmade developments shall be counted as landscaped area. In addition, landscaping within a PUD shall conform to any landscaping criteria or requirements which may be adopted by the Planning Board or City Council from time to time, except that any PUD development prior to the establishment of formal landscaping regulations shall not have to conform to them. Outdoor lighting shall be considered in a landscaping plan and shall be designed to complement both manmade and natural elements of the PUD.

12.56 Environmental Performance Standards. All uses in the PUD district shall conform to all applicable federal, state and local laws and regulations regarding the environment such as laws and regulations concerning noise, air quality, water quality, radiation,

and radioactivity.

ARTICLE 13.000 PLANNED UNIT DEVELOPMENT DISTRICTS
13.10 PUD AT KENDALL SQUARE: DEVELOPMENT CONTROLS

13.20 PUD-1 DISTRICT: DEVELOPMENT CONTROLS

13.30 PUD-2 DISTRICT: DEVELOPMENT CONTROLS

13.40 PUD-3 DISTRICT: DEVELOPMENT CONTROLS

13.50 PUD-4, PUD4A, and PUD 4113 DISTRICT: DEVELOPMENT CONTROLS

13.60 PUD-5 DISTRICT CONTROLS

13.70 PLANNED UNIT DEVELOPMENT IN THE NORTH POINT RESIDENCE DISTRICT.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board 12.32 Constitution of Review Authority. The Planning Board shall review and approve or disapprove all applications for Special Permits to construct Planned Unit Developments. In reviewing an application for a Special Permit for a Planned Unit Development, the Planning Board may also seek the professional opinion of the staff of city departments, including but not limited to, the Community Development Department, Public Works Department, Traffic and Parking Department, Police Department, Fire Department, Water-Department, and School Department.

Has any housing been built under the cluster/flexible provisions?

Canton

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Zoning Bylaw Town of Canton, Section 1.15.20 (Adopted 1998, Amended 2003)

1.15.20 Flexible Residential Development: An option which permits an applicant to build single family dwellings with reduced lot area and frontage requirements so as to create a development in which the lots are grouped together with adjacent common open land.

Zoning Bylaw Town of Canton, Section 5.4 (Adopted 1998, Amended 2003)

5.4 Flexible Residential Development 107

5.41 DEFINITIONS

For the purpose of this Section the following words and phrases shall have the meaning herein indicated.

5.41.1 Special Permit Granting Authority (SPGA): The Planning Board is hereby designated as the Special Permit Granting Authority (SPGA) for all purposes under this section and shall adopt rules and regulations governing the administration of applications for special permits under this Section.

107 Adopted ATM 1998, Article 39

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5.41.2 Flexible Development: An option which permits an applicant to build single family dwellings with reduced lot area and frontage requirements so

as to create a development in which the lots are grouped together with adjacent common open land.

5.41.3 Homes Association: A corporation or trust owned or to be owned by the owners of lots within a tract approved for flexible development, which holds the title to common open land and which is responsible for the costs and maintenance of said open land and any other facilities to be held in common.

5.41.4 Common Open Land: A parcel or parcels of undeveloped land or an area of water, or a combination of undeveloped land and water within the site designated for a Flexible Residential Development, maintained and preserved for open uses, and designed and intended for the use or enjoyment of residents of the Flexible Residential Development. Common Open Land may contain such complementary structures and improvements as are necessary and appropriate for the benefit and enjoyment of residents of the Flexible Residential Development, but shall not include streets or parking areas except those incidental to open space use.

5.41.5 Wetlands: An area characterized by vegetation described in General Laws, chapter 131, Section 40.

5.42 PURPOSE

The purpose of this Section is to promote a more efficient use of land in harmony with its natural features; to preserve common open land for conservation, agriculture, open space, and recreational use; to preserve historical and archaeological resources and to protect existing or potential municipal water supplies, all in accordance with the general intent of the Zoning By-laws to protect and promote the health, safety, convenience and general welfare of the inhabitants of the Town of Canton. The Planning Board may grant a Special Permit which would exempt such land from the lot area, frontage, setback, side yard and width of lot requirements of the Canton Zoning Bylaw. All other zoning requirements found elsewhere in the Canton Zoning Bylaws will continue to apply within the Flexible Residential Development unless this section of the Bylaw or individual Special Permit states otherwise.

5.43 ENVIRONMENTAL ASSESSMENT

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5.43.1 Master Plan and Report

The Applicant will prepare a Master Plan and Report in conformity with the Planning Board's Rules and Regulations. The Master Plan and Report will describe conditions prior to and on completion of both conventional development and Flexible Residential Development. Environmental issues to be addressed include water quality, pollution of groundwater, damage or threat to wetlands, flood plains, and plant and animals.

5.43.2 Site Plans

The Applicant will prepare Site Plans in conformity with the Planning Board Rules and Regulations. The Site Plans will furnish information consistent with information required by the Planning Board for approval of a Subdivision. The Planning Board may grant a Special Permit under this section only if it finds the following:

A. That the flexible residential development will be in harmony with the general purpose of the bylaw and the requirements of General Laws, Chapter 40A, and the long range Open Space Plan of the town; that it will not have a detrimental impact on the neighborhood, will be designed with due consideration for health and safety, and is superior to a conventional plan in preserving open space, minimizing environmental disruption, or allowing for more efficient provision of services.

B. That the development itself impinges upon critical environmental areas such as:

B.1 Land abutting the rivers, brooks and/or ponds of significant public interest, which enhance or protect wetlands or flood plain, or which provide public access to the water body, or which enhance or provide significant scenic vistas or views, or which provide water-related recreational opportunities;

B.2 Land which currently is in agricultural use or land which is suitable in size, location and soil, characteristics for agricultural use;

B.3 Land which provides a significant wildlife habitat or which is a unique natural area;

B.4 Groundwater Protection District land which provides recharge to Canton's current or future municipal wells and highly

avored aquifer areas;

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C. That the common open space protects critical environmental areas and provides a valuable outdoor recreation resource.

C.1 Land which is to be developed for active or passive recreational use;

C.2 Land which preserves existing trail networks or land on which new trails will be developed. New trails will be developed as part of the flexible development for integration into an existing trail network;

C.3 Land which enhances scenic roadside views;

C.4 Land providing desirable public access to existing Town or State recreational or conservation land.

D. That land intended to be conveyed to, or restricted for the benefit of, the Town:

D.1 Enhances the protection of critical environmental areas, unique natural features, scenic vistas or potential or existing farmland;

D.2 Provides a valuable addition to the open space resources of the Town;

D.3 Provides for a more efficient use of land in harmony with its natural features;

D.4 Provides for creativity in the design of developments through a carefully controlled process;

D.5 Provides a less sprawling form of development, a shorter network of streets and utilities, more economical development of land with less consumption of open space;

D.6 Permanently preserve natural topography and wooded areas within development areas and preserves usable open space and recreation close to homes;

D.7 Provides an efficient procedure to ensure appropriate high quality design and site planning to enhance the neighborhoods in which they occur and to the Town as a whole.

5.44 PROCEDURE

5.44.1 Filing an Application

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Every applicant for a Flexible Residential Development shall file for a Special Permit with the office of the Planning Board and shall be accompanied by eight (8) copies of a Master Plan of the entire permit area under consideration, prepared by a professional land surveyor and landscape architect. A copy of the application shall simultaneously be filed in the office of the Town Clerk.

5.44.2 Contents of Application

In addition to any other documents or information required by the Planning Board pursuant to its rules and regulations adopted hereunder, application for a special permit pursuant to this Section shall be accompanied by a Preliminary Site Plan, which shall show all of the information required for a preliminary subdivision plan as specified in the Canton Planning Board Subdivision Rules and Regulations, such additional information required by the Zoning By-Laws or as the Planning Board deems necessary, and, to the extent applicable, all proposed instruments to be recorded with the plans.

In addition, the applicant shall provide the following information:

A. A concept plan showing the number of lots permitted under this bylaw by means of a conventional subdivision plan, considering the whole tract, exclusive of water bodies and land prohibited from development by legally enforceable restrictions, easements, or covenants. The Planning Board shall determine the number of lots permitted within any Flexible Residential Development, to assure compliance with the purposes of the Zoning By-law.

B. A summary of the environmental concerns relating to the proposed plans. The environmental summary would include a site analysis plan showing wetlands, slopes over 15 percent, soil conditions, fall water tables, areas within the Floodplains Districts, Groundwater Protection Districts, and such other natural features as the Planning Board may request.

C. A description of the neighborhood in which the tract lies, including utilities and other public facilities, and the impact of the proposed plan upon them.

D. Evaluation of the open land proposed within the development, with respect to size, shape, location, natural resource value and accessibility by residents of the Town or of the development.

5.44.3 Review of Other Boards

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Before acting upon the application, the Planning Board shall submit it with the preliminary plan to the following boards and town agencies, which may review it jointly or separately: The Board of Selectmen, The Conservation Commission, the Board of Health, the Department of Public Works, The Planning Department and other boards the Planning Board may deem appropriate. Any such board or agency to which petitions are referred for review shall submit such recommendations, as it deems appropriate to the Planning Board. Failure to make recommendations within 35 days of receipt shall be deemed lack of opposition.

5.44.4 Public Hearing

After the opportunity for review by other boards has taken place, the Planning Board shall hold a Public Hearing under this section, in conformity with the provisions of General Laws - Chapter 40A, s. 9 and of the Canton Zoning Bylaw and the Rules and Regulations of the Planning Board. The hearing shall be held within sixty-five (65) days after filing of the application and definitive plans with the Planning Board and the Town Clerk. Notice shall be given by publication and posting and by first-class mailings to "Parties in interest" as defined in General Laws, Chapter 40A, Section 11. The decision of the board, and any extension, modification, or renewal thereof, shall be filed with the Planning Board and Town Clerk within ninety (90) days following the closing of the public hearing. Issuance of the Special Permit requires a vote of four members of a five-member board.

Two separate public hearings, one for the Special Permit and one for the definitive subdivision plan must be held.

5.44.5 Relation to Subdivision Control Act

Planning Board approval of a Special Permit hereunder by the Planning Board shall not be a substitute for compliance with the Subdivision Control Act, nor oblige the Planning Board to approve any related definitive plan for subdivision, nor reduce any time periods for the Planning Board's consideration under that law. However, in order to facilitate processing, the Planning Board shall, insofar as practical under existing law, adopt regulations establishing procedures for submission of a combined plan and application which shall satisfy this Section, and the Planning Board's regulations under the Subdivision Control Act.

5.45 STANDARDS

5.45.1 Applicable Zoning Districts

Flexible Residential Development applies to the Residence B, Residence A, and Residence AA District(s).

5.45.2 Minimum Tract Size.

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Flexible Residential Development shall be upon a single tract, in one ownership with definite boundaries ascertainable from a recorded deed or recorded plan, which has an area of not less than the following:

Residence B: One hundred thousand (100,000) square feet;

Residence A: Two hundred thousand (200,000) square feet;

Residence AA: Three hundred thousand (300,000) square feet).

Existing public and private ways need not constitute boundaries of the tract but the area within such ways shall not be counted in determining tract size.

5.45.3 Number of Lots.

The number of lots within any Flexible Residential Development shall be determined by the Planning Board to assure compliance with the purposes of this Section, and shall not exceed the basic density. The basic density of a Flexible Residential Development shall be the number of lots upon which a single family dwelling could be constructed in the residential district in which the Flexible Residential Development is located without regard to the Flexible Residential Development, and without waivers of the design standards set forth in the Subdivision Rules and Regulations of the Planning Board.

5.45.4 Dimensional Regulations.

All dimensions shall comply with the provisions of the lot dimensional regulations of this subsection.

Minimum lot area:

Residence AA 20,000 Sq. Ft.

Residence A 15,000 Sq. Ft.

Residence B 10,000 Sq. Ft.

Minimum lot frontage: Each lot shall have a minimum frontage of fifty (50) feet.

5.45.5 Minimum Lot Width.

Each lot shall have a lot width of not less than fifty (50) feet and the

nearest point on the front wall of the dwelling shall be set back on its lot at least to a point where the lot width is a minimum of seventy (70) feet in the Residence AA and A Districts, and sixty (60) feet in the Residence B District.

5.45.6 Setback and Side Yard Requirements.

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Each lot shall have a setback distance of not less than thirty (30) feet and a side yard width of not less than fifteen (15) feet from the nearest point on any exterior the wall of the dwelling.

5.45.7 Common Open Land:

The area of the Common Open Land shall equal at least thirty (30) percent of the total area of the Flexible Residential Development tract in Residence District AA, twenty five (25) percent in Residence District A and twenty (20) percent in Residence District B. The open space shall have a shape, dimension, character and location suitable to assure its use for park, recreation, conservation, or agricultural purposes by at least all the residents of the Flexible Residential Development.

Land considered by the Planning Board as marginal or unsuitable for building, such as, inaccessible wetland and open water, steep slopes, highly erosion or poorly drained areas, areas of very shallow bedrock, or of very high water table shall be included in the permanent open space; but no more than fifty (50%) percent of the required open land shall consist of such marginal or unbuildable areas.

In determining whether the intent of this section has been satisfied, the Planning Board shall consider the extent to which land having one or more of the characteristics outlined in Section C. PURPOSE is included in the proposed open space.

5.45.8 Conveyance of Common Open Land

The open land may be held in common and shall be conveyed in one of the following manners, as determined by the Planning Board.

- A. to the town, which shall accept it for park or open space use; or
- B. to another non-profit conservation organization approved by the Planning Board, the principal purpose of which is the conservation of open space; or
- C. to a corporation, trust or association owned or to be owned by the owners of lots or residential units within the tract, provided that if such a corporation, trust or association holds title, ownership thereof shall pass with conveyance of the lots. The developer shall include in the deed to owners of individual lots beneficial rights in said open land, and shall grant a conservation restriction to the Town of Canton over such land pursuant to Massachusetts General Laws, Chapter 184, Section 31-33, to insure that such land be kept in an open or natural state and not be built upon for residential use

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or developed for accessory uses such as parking or roadways. This restriction shall be enforceable by the Town through its Conservation Commission in any proceeding authorized by Section 33 of Chapter 184 of the Massachusetts General Laws. In addition, the developer shall be responsible for the maintenance of the common land to be held in common until such time as the homeowner's association is capable of assuming said responsibility. In order to ensure that the association will properly maintain the land deeded to it under this section, the developer shall cause to be recorded at the Norfolk Registry of Deeds a Declaration of Covenants and Restrictions which shall, at a minimum, provide for the following:

C.1 Mandatory membership in an established homes association as a requirement of ownership of any lot in the tract;

C.2 Provisions for maintenance assessments of all lots in order to ensure that the open land is maintained in a condition suitable for the uses approved by the homes association. Failure to pay such assessment shall create a lien on the property assessed, enforceable by either the homes association or the owner of any lot;

C.3 Provision which, so far as possible under the existing law will ensure that the restriction placed on the use of the open land will not terminate by operation of law.

Subject to the above, Common Open Land may be used for passive and

active residential recreational purposes such as swimming pools, walking trails and tennis courts.

Zoning Bylaw Town of Canton, Section 5.6 (Adopted 1998, Amended 2003)

5.6 Canton Center Economic Opportunity District By-law 109

5.61 Purpose of District

There is hereby established a Canton Center Economic Opportunity District (CCEOD) Zoning By-law. The benefits of the Canton Center Economic Opportunity District Zoning By-law shall accrue only to those parcels located entirely within the boundary of the Canton Center Economic Opportunity District. The Canton Center Economic Opportunity District is established for the accomplishment of the following purposes:

109 5.6 Inserted ATM 2000 under Article 53

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5.61.1 To promote the economic health and stability of the Town by encouraging development and economic investment in the Canton Center Economic Opportunity District that will generate employment and tax revenue.

5.61.2 To provide additional planning flexibility for projects located in the Canton Center Economic Opportunity District, including enhancing the coordination of the project with the environmental and natural features of the development site.

5.61.3 To encourage mixed-use development, including but not limited to, offices, retail shops, and multi-family housing.

5.61.4 To permit and encourage the development of parks and open spaces which would be available for use by the general public.

5.61.5 To permit the use of new development standards which will promote the desired changes in Canton Center.

5.61.6 To provide information on the potential impacts of a proposed development.

5.61.7 To enable the Special Permit Granting Authority (SPGA) to require adherence to "Site Development and Use Plans" in the granting of a special permit.

5.65 Uses Permitted

Within the Canton Center Economic Opportunity District, the Board of Appeals may issue a special permit for the following uses:

5.65.1 Apartment houses or buildings.

5.65.2 Retail stores and offices including salesrooms and showrooms, consumer service establishments, business and professional offices, executive and administrative offices, banks and other institutions.

5.65.3 All uses allowed by right or by special permit in the underlying zoning district.

5.65.4 Restaurant and other on-premises eating and drinking establishments. 109.2

No building or structure shall be designed, arranged or constructed and no building, structure or land shall be used, in whole or in part, for any purpose other than for one or more of the uses herein set forth as permissible by special permit.

5.66 Standards and Criteria

5.66.1 Minimum Lot Size

A. The minimum lot size is not less than 10,000 square feet of "buildable lot area". The lot must contain the "buildable lot area" in a single, contiguous site within the boundaries of the Canton Center Economic Opportunity District.

B. No portion of a way or street, as defined by the by-law may be included in computing the minimum required "buildable lot area".

5.66.2 Lot Coverage

No building shall be constructed so as to cover, together with any other building on the lot, more than fifty (50) percent of the "buildable lot area".

5.66.3 Minimum Lot Frontage and Access

109.2 5.65.4 Inserted ATM 2002, Article 50

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Lots with over 60,000 S.F. of "buildable lot area"

shall have a minimum frontage of one hundred twenty feet (120) feet and at least one means of ingress/egress. Each means of ingress/egress shall have a continuous frontage or not less than sixty feet.

5.66.4 Density

No building or structure shall be designed, arranged or constructed and no building, structure or land shall be used, in whole or in part, which exceeds the densities specified below for residential and non-residential uses.

- One dwelling unit per 2,000 S.F. of "buildable lot area", plus
- Three thousand (3,000) gross square feet of non-residential floor area per 10,000 S.F. of "buildable lot area" or portion thereof.

For the purpose of this section, "gross square feet of nonresidential floor area" means the total non-residential floor area contained within exterior walls but does not include basement space used for heating and utilities, storage or for automobile parking.

5.66.5 Setbacks and Yard Regulations for Buildings

No building shall be constructed so as to be nearer to the line of any street than the "required setback distance" or nearer to the side lines of its lot than the "required side yard width" or nearer to the rear line of its lot than the "required rear yard depth" specified below:

- Required Setback Distance 15 feet
- Required Side Yard Width N/A
- Required Rear Yard Depth 25 feet

A. The required setback distance shall be measured from the nearest exterior line of the street in question.

B. No storage or display of goods, products, materials or equipment, vending machines or similar commercial devices shall be located nearer to the

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line of any street than the permitted setback distance for a building on the lot.

C. No lot on which a building is located shall be reduced or changed in size or shape so that the building or lot fails to comply with the "buildable lot area", frontage, building coverage, yard setbacks, or other dimensional provisions of this Section

Notes on density:

FLEXIBLE RESIDENTIAL DEVELOPMENT

Minimum tract size:

Res B: 100,000 sf
Res A: 200,000 sf
Res AA: 300,000 sf

Density: number of lots upon which single family residences could be constructed in the underlying district.

Minimum lot area:

Res AA: 20,000 sf
Res A: 15,000 sf
Res B: 10,000 sf

Frontage: 50 feet

CANTON CENTER ECONOMIC OPPORTUNITY DISTRICT

Apartment houses allowed by special permit.

Minimum lot size: 10,000 sf

One dwelling unit per 2000 sf of "buildable lot area"
3000 gross square feet of non-residential floor area per 10,000 sf of "buildable lot area"

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board Roger Nicholas, Town Planner, answered that the Zoning Board of Appeals is the SPGA, except for cluster development which is covered by the planning board as SPGA.

The Planning Board is hereby designated as the Special Permit Granting Authority (SPGA) for all purposes under Section 5.4 Flexible Residential Development, and shall adopt rules and regulations governing the administration of applicants for special permits under this Section 5.4.17

Has any housing been built under the cluster/flexible provisions?

No Roger Nicholas, Town Planner, on 8/18/04 said Canton has flexible zoning on the books, but Canton has not been very successful with it. They negotiated a deal with a parcel of land that town meeting changed from a category that did not allow for housing to allow for housing with the provision that it would be a flexible residential development. The parcel was owned by the Church and it had been zoned for cemetery. At town meeting they changed it to single family residence district, but with the provision that it would be used as a cluster to gain the open space protection. The Church has put the land for sale, but in the sale agreement, it has to be cluster. Mr. Nichols explained that although the property has been posted for sale, the cluster development would not be as lucrative for buyers as a traditional subdivision. He said that if developers can choose between cluster division on 10,000 square foot lots or subdivision on 20,000 square foot lots with the same number of units, then developers would prefer to create 20,000 square foot lots.

Carlisle

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes 5.5 Conservation Clusters

A lot in Residence District B may meet the dimensional requirements for the construction of a single family dwelling if said lot is located in a Conservation Cluster, as hereinafter defined, although said lot does not meet the size, frontage, and shape requirements of Sections # 4.1.1, #4.1.2, and #4.1.3 of these zoning bylaws. For the purposes of this section, a Conservation Cluster is a division of land into building lots and Open Space, as hereinafter defined, in accordance with the requirements of this Section. As used herein, the term "Open Space" shall mean any land within the Conservation Cluster which is not designated as a building lot and encompasses the "natural resource", as also hereinafter defined, for which preservation would be accomplished by the grant of a special permit hereunder.

5.5.1 Purpose

The purpose of this Section is to provide a method for the preservation of natural resources which would not otherwise be preserved when private landowners seek to divide their land into building lots. A "natural resource" means open space, agricultural land or point of historic interest which serves one or more of the following objectives:

5.5.1.1 Maintain the rural or historic character of the Town.

5.5.1.1.1 Preserve the most significant woods, fields and streams. 5.5.1.1.2 Protect selected views, vistas and buffer areas.
5.5.1.1.3 Protect points of historic interest.

5.5.1.2 Maintain the shape, image and function of the Town center.

5.5.1.2.1 Preserve and enhance open space within or near the center. 5.5.1.2.2 Preserve the natural and historic backdrop around the center

5.5.1.3 Protect natural resources, especially water supplies.

5.5.1.3.1 Protect individual well water supplies. 5.5.1.3.2 Preserve natural habitats. 5.5.1.3.3 Provide for conservation management.
5.5.1.3.4 Protect watershed areas.

5.5.1.4 Improve facilities for active and passive recreation.

5.5.1.4.1 Provide suitable areas for active sports. 5.5.1.4.2 Expand areas for passive recreation 5.5.1.4.3 Encourage linkage of conservation land.

5.5.1.5 Encourage preservation of agriculture.

5.5.1.5.1 Protect farmland from development. 5.5.1.5.2 Encourage active farming.

5.5.2 Requirements

Any person seeking to divide a parcel of land having ten (10) or more acres, and having one or more natural resources which merit preservation, may apply to the Planning Board for a special permit under this Section to have the parcel designated as a Conservation Cluster.

Each application for a special permit hereunder shall be accompanied by a plan of the land, showing division thereof pursuant to the Approval Not Required procedures promulgated by the Planning Board under M.G.L. c. 41 Sections 81 L and 81 P, which plan shall demonstrate how division of the land would be accomplished in accordance with the requirements of Sections # 4.1.1, # 4.1.2, and # 4.1.3 of these Zoning Bylaws and without resort to this Section. The applicant shall identify on the plan the natural resource or resources of which preservation will be accomplished if a special permit is granted hereunder.

Notwithstanding the requirements of Sections # 4.1.1, # 4.1.2, and A 4.1.3 of these zoning bylaws, the Planning Board may grant a special permit which allows certain lots (hereinafter referred to as "building lots") within a Conservation Cluster to meet area, frontage, and shape requirements for lots laid out as dwelling sites, provided:

5.5.2.1 The total area of land included within the parcel to be designated as a Conservation Cluster contains ten (10) acres or more;

5.5.2.2 The maximum number of building lots shall not exceed one plus the number of building lots into which the requirements of Sections # 4.1.1, #4.1.2, and #4.1.3 of these Zoning Bylaws and the provisions of M.G.L. c 41, section 81L without being considered a "Subdivision" thereunder; provided, however, that in determining the number of building lots into which the parcel could otherwise be divided, each building lot therein shall have at least three-quarters (3/4) of an acre of contiguous land which is not in a Wetland/Flood Hazard District, as defined in Section 2.2 of the zoning bylaws.

5.5.2.3 Every building lot shall have an area of at least two (2) acres;

5.5.2.4 Every building lot shall have:

5.5.2.4.1 the site of the dwelling completely within an ellipse, which ellipse shall

5.5.2.4.1.1 be completely within the lot;

5.5.2.4.1.2 have an area of at least 1.12 acres; and

5.5.2.4.1.3 have a minor diameter of at least one hundred fifty feet (150')p

5.5.2.4.2 a minimum street frontage of not less than twenty (20) feet, and 5.5.2.4.3 a minimum width of twenty (20) feet between the street which provides its frontage and the site of the dwelling thereon;

5.5.2.5 Open space within the Conservation Cluster is in a location, is of a size and shape and has a means of access approved by the Planning Board and its area equals or exceeds thirty (30%) percent of the parcel to be designated as a Conservation Cluster; provided, however, that not more than half of the thirty (30%) percent minimum shall include land within the Wetland/Flood Hazard District;

5.5.2.6 A Conservation Cluster shall be separated from adjacent property and other Conservation Clusters by intervening open space and adequate setbacks;

5.5.2.7 All open space is either:

5.5.2.7.1 conveyed to the Town of Carlisle and accepted by it for park or open space use or

5.5.2.7.2 conveyed to a non-profit organization the principal purpose of which is the conservation of open space or

5.5.2.7.3 held in corporate or trust ownership by the owners of building lots within the development (or adjacent thereto, if admitted to the corporation).

5.5.2.8 In the case of corporate or trust ownership, beneficial rights in said open space shall be deeded to the owners and a restriction enforceable by the Town pursuant to M.G.L. Ch. 184, Section 32 providing that such land shall be kept in open or natural state shall be recorded at the Middlesex North District Registry of Deeds. All deed restrictions with respect to ownership, use and maintenance of open space shall be subject to approval by the Planning Board and thereafter referenced on, and recorded with, the special permit and the plan; (Amended at STM 11/14/2000)

5.5.2.9 Wherever possible, all building lots within the Conservation Cluster shall be served by common driveways for which special permits shall be sought in accordance with the requirements of Section # 5.4, but, notwithstanding the limitation of Section # 5.4, the Planning Board may allow the number of lots in a Conservation Cluster to be served by a common driveway to be the maximum number allowed by Section 4 5.4 plus one. The Planning Board shall impose conditions prohibiting the construction of any driveway or other means of access to building lots in the Conservation Cluster apart from the common driveway;

5.5.2.10 The developer shall, by appropriate restrictions or covenants which shall run in favor of the town and the owners of the open space, prohibit further division of the land within the Conservation Cluster.

5.5.3 Planning Board Action

The Planning Board shall notify the Conservation Commission, the Board of Health, the Historical Commission and the Selectmen of the application for a special permit hereunder and allow them a reasonable time to inspect and comment upon said application. The Planning Board may grant a special permit under this Section upon written findings that the request is compatible with the purpose of this Section, meets the minimum requirements hereunder and will in fact result in the preservation of a particularly identified natural resource upon the parcel for which the special permit is granted.

5.7 Senior Residential Open Space Community

Tracts of land in Residence District B may be considered eligible for this special permit.

5.7.1 Purpose

The Senior Residential Open Space Community is intended: to encourage residential development which meets the physical, emotional and social needs of senior citizens, and to encourage the preservation of rurality, open areas and natural settings, and to encourage energy efficient and cost effective residential development.

Definition

For the purposes of this section, dwelling unit is defined as a portion of a building, which portion is designed as the residence of one family.

5.7.3 Special Permit Granting Authority

The Planning Board shall be the Special Permit Granting Authority for the purposes of this section. It will develop rules and regulations governing the process whereby the special permit for a Senior Residential Open Space Community may be granted.

5.7.4 Conditions for Grant of Special Permit

In order to grant a permit for a Senior Residential Open Space Community, the Planning Board must find:

5.7.4.1 That the number of dwelling units will be no greater than 1.5 times the number of lots which the Planning Board, incorporating wetland considerations, determines would be allowed on the parcel were it to be developed as a subdivision according to the Rules and Regulations for the Subdivision of Land in Carlisle; but that the number of dwelling units will not exceed one half the number of acres in the tract.

5.7.4.2 That the total number of dwelling units permitted under this bylaw has not exceeded 3% of the total number of constructed dwelling units in the Town.

5.7.4.3 That the total tract area is at least 10 acres.

5.7.4.4 That the width of any lot shall be at least 40 feet between the point of physical access on a way which is acceptable for frontage under Chapter 41 and any building containing a dwelling unit.

5.7.4.5 That the entire Senior Residential Open Space Community tract is separated from adjacent property by intervening Open Space.

5.7.4.6 That the Open Space shall constitute at least 1.2 acres for every dwelling unit.

5.7.4.7 That the Open Space meets at least one of the following criteria:

5.7.4.7.1 It preserves some component of Carlisle's farm community, such as agricultural fields. 5.7.4.7.2 It preserves areas of open

meadow, woodland, water bodies or ecotone. 5.7.4.7.3 It creates or preserves vistas or buffer areas. 5.7.4.7.4 It preserves valuable habitat for identifiable species of fauna and flora. 5.7.4.7.5 It preserves an artifact of historic value.

5.7.4.8 That the Open Space is of such shape, size and location as are appropriate for its intended use. In making this finding, the Planning Board may find it appropriate that the Open Space be used, in part, to create a visual buffer between the Senior Residential Open Space Community and abutting uses, and for small structures associated with allowed uses of the Open Space.

5.7.4.9 That the Open Space does not include any residential structures, or any appurtenant structures such as carports, septic systems, roads, driveways or parking, other than those which the Planning Board may allow under #5.7.4.8 above.

5.7.4.10 That the Open Space shall be conveyed to the Town of Carlisle for park or open space use, or conveyed to a non-profit organization the principal purpose of which is the conservation of open space, or conveyed to a corporation or trust composed of the owners of units within the Senior Residential Open Space Community. In the case where such land is not conveyed to the Town, the Board must find that beneficial rights in said Open Space shall be deeded to the owners, and a permanent restriction enforceable by the Town pursuant to M.G.L. Ch. 184, Section 32, providing that such land shall be kept in open or natural state, shall be recorded at the Middlesex North District Registry of Deeds.d

5.7.4.11 That access from a way, of suitable width and location, has been provided to the Open Space.

5.7.4.12 That the Senior Residential Open Space Community will be composed of attached dwelling units which nevertheless reflect, in size and architecture, the character of Carlisle's single family residences. The buildings shall not have the appearance of apartments.

5.7.4.13 That each building in the Senior Residential Open Space Community has no more than four dwelling units, averaging no more than two bedrooms each, that no unit has more than three bedrooms, and that no building measures more than 6000 square feet. This calculation includes the area within the building that may be devoted to garage spaces.

5.7.4.14 That all residential buildings will have safe access from ways.

5.7.4.15 That provision has been made for at least two parking spaces per unit inclusive of any garage spaces.

5.7.4.16 That all residential buildings are located at least 100 feet from the boundary of the land subject to this special permit, and at least 50 feet from the Open Space, and at least 30 feet from other residential buildings.

5.7.4.17 That a Homeowners' Association will be formed which will have the legal responsibility for the management and maintenance of the development. This responsibility includes but is not limited to exterior maintenance of buildings, plowing, driveway, parking lot and road maintenance, landscape maintenance, and maintenance of common utilities, including septic systems and wells. In addition, the Homeowners' Association must accept responsibility for the maintenance of the Open Space if the Open Space is to be conveyed to a corporation or trust either of which is composed of unit owners.

5.7.4.18 The following age restrictions shall apply:e

5.7.4.18.1 That each dwelling unit shall have in residence at least one person who has reached the age of 55 within the meaning of M.G.L.c.151B section 4, paragraph 6, and 42 USC section 3607(b)(2)(C).

5.7.4.18.2 That no resident of a dwelling unit shall be under the age of 18.

5.7.4.18.3 That in the event that there is no longer a qualifying resident of a unit, a two-year exemption shall be allowed for the transfer of the unit to another eligible household pursuant to Section 5.7.4.18.1

5.7.4.18.4 All condominium deeds, trusts or other documents shall incorporate the age restrictions contained in this Section 5.7.4.18.

5.7.5 Submission Requirements

An applicant which desires a Special Permit under this section shall submit an application to the Town Clerk and to the Planning Board, accompanied by the following plans and documents:

5.7.5.1 A plan of the whole tract giving such information as the Planning Board requires in order to determine how many lots would be allowed were the tract to be divided under the Rules and Regulations Governing the Subdivision of Land in Carlisle.

5.7.5.2 A Land Use Plan for the entire Senior Residential Open Space Community, drawn in accordance with the rules and regulations of the Planning Board, which includes, but is not limited to, the following information: 1) the location, size, ownership, and uses of the proposed Open Space, designating the natural resources to be preserved; 2) the location and form of the access to the Open Space; 3) the lots to be developed; 4) a table including the number of residential buildings and dwelling units proposed, the maximum number of bedrooms, and the square footage of each dwelling unit and building; 5) the layout and placement of all roads, driveways, access ways, parking spaces, residential buildings, accessory buildings, septic tanks, leaching fields, wells, and any other proposed construction, including landscaping and lighting; 6) typical architectural plans and renderings, including plan, elevation and perspective views of a typical Senior Residential Open Space Community building; and 7) draft documents for the conveyance of the Open Space if it is to be given to the Town, or permanent restriction if it is not to be conveyed to the Town, a Homeowners' Maintenance agreement, an Open Space Maintenance Agreement, and a document detailing the ownership and

maintenance of common areas.

5.7.6 Additional Conditions

5.7.6.1 Lots subject to a special permit under Section #5.7 shall be exempt from Sections 44. 1, #4.2, and #4.3 of these zoning bylaws.

5.7.6.2 As a condition of approval, the Board may require such changes in the proposed development plans and may impose such conditions and safeguards as it deems necessary to secure the objectives of this bylaw, and to protect the health, safety and welfare of the inhabitants of the neighborhood and of the Town of Carlisle.

5.7.6.3 No tract for which a special permit under this Section #5.7 has been granted shall be further subdivided unless and until the special permit lapses.

5.7.6.4 Change in Plans after grant of Special Permit

No change in any aspect of the approved plans shall be permitted. A new special permit will be required for any change.

5.7.6.5 Notwithstanding the requirements of Section #7.2, a special permit granted under this section shall lapse if, within two years from the grant thereof, a substantial use of the permit has not commenced. The Planning Board may extend the special permit for a period of no more than two years if it finds good cause.

Note: On survey received from Carlisle on 4/22/05, it is marked that the first provisions for flexible zoning were adopted in 1982. They were last amended in 2000.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board According to the Town of Carlisle Zoning Bylaw, Section 7.2: "The Board of Appeals shall be the special permit granting authority for all special permits except as provided in Section #5.1 (Residence District M), Section #5.2 (Wetland/Flood Hazard District), Section #5.4 (Private Driveways), Section #5.5 (Conservation Clusters), Section #5.6 (Accessory Apartments), Section #5.7 (Senior Residential Open Space Community) and Section #5.9 (Personal Wireless Service Facilities). (Amended at STM 11/14/2000)." In the districts in which the Board of Appeals is NOT the Special Permit Granting Authority, the Planning Board acts as the SPGA.

Has any housing been built under the cluster/flexible provisions?

Yes On survey received from Carlisle on 4/22/05:

Has any housing been built under the cluster/flexible provisions? (none, 1-8 projects, more than 8)

"more than 8"

Carver

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Town of Carver Zoning Bylaws (Adopted 1963, Revised 2003)

ARTICLE III. GENERAL REGULATIONS

3700. FLEXIBLE DEVELOPMENT

3710. Purpose. The purpose of this Section 3700, Flexible Development, is to preserve open space, forested, and other scenic views along the public ways in the Town of Carver; to protect the natural environment; to protect the value of real property; to promote more sensitive siting of buildings and better overall site planning; to preserve Carver's traditional New England landscape; and to allow landowners a reasonable return on their investment.

3720. Applicability. Any creation of five (5) or more lots in a residence district, whether a subdivision or not, from a parcel or set of

contiguous parcels held in common ownership may proceed under this Section 3720, Flexible Development, pursuant to issuance of a Special Permit by the Planning Board, as indicated in Section 2230, the Use Regulation Schedule. Such Special Permits shall be acted upon in accordance with the following provisions:

3730. Procedures. Applicants for Flexible Development shall file with the Planning Board six(6) copies of a Development Plan conforming to the requirements for a preliminary subdivision plan under the Subdivision Regulations of the Planning Board. The Planning Board may also require as part of the Development Plan any additional information necessary to make the determinations and assessments cited herein. Carver Zoning Bylaw 36 Amended June 2003

3740. Modification of Lots - Requirements. The Planning Board may authorize modification of lot size, shape, and other bulk requirements for lots within a Flexible Development, subject to the following limitations:

3741. Lots having reduced area or frontage shall not have frontage on a street other than a street created by a subdivision involved.

3742. Lots may be reduced in area to a minimum of 1.0 acre, provided that all lots located within the Flexible Development shall average 50,000 sq. ft. in size.

3743. Lot frontage may be reduced to a minimum of 100 feet, provided that all lots located within the Flexible Development shall average in frontage 125 feet.

3744. Each lot shall have at least 75% of the required yards for the district.

3750. Visual Buffer Requirements. A buffer area, not less than 200 feet in width, shall be provided between any public way adjacent to the Flexible Development and any home constructed therein. The buffer may be constituted as a "no build" zone within the site, and may serve as area for individual lots contained therein. No indigenous vegetation shall be removed from this buffer zone before or after the development of the residential compound (except for removal necessary for the construction of subdivision roadways and services), nor shall any building or structure be placed therein.

3760. Relation to Other Requirements. The submittals and permits of this Section shall be in addition to any other requirements of the Subdivision Control Law or any other provisions of this Zoning By-Law.

3800. CONSERVATION SUBDIVISION DESIGN

3810. Purpose. The purpose of this Section 3800, Conservation Subdivision Design, is to encourage the preservation of open land for its scenic beauty and to enhance agricultural, open space, forestry, and recreational use; to preserve historical and archeological resources; to protect the natural environment; to protect the value of real property; to promote more sensitive siting of buildings and better overall site planning; to perpetuate the appearance of Carver's traditional New England landscape; to allow landowners a reasonable return on their investment; to

facilitate the construction and maintenance of streets, utilities, and public services in a more economical and efficient manner; and to promote the development of housing affordable to low and moderate income families.

3820. Applicability. Any creation of five (5) or more lots, whether a subdivision or not, from a parcel or set of contiguous parcels held in common ownership and located entirely within the Residential Agricultural (RA) District, may proceed under this Section 3800, Conservation Subdivision Design, pursuant to the issuance of a special permit by the Planning Board, as indicated in Section 2230, the Use Regulation Schedule. Such special permits shall be acted upon in accordance with the following provisions.

3830. Procedures. Applicants for Conservation Subdivision Design shall file with the Planning Board six (6) copies of the following:

3831. A Development Plan conforming to the requirements for a preliminary subdivision plan under the Subdivision Regulations of the Planning Board. Such plan shall indicate proposed topography, wetlands, and, unless the development is to be sewerred, the results of deep soil test pits and percolation tests at the rate of one per acre, but in no case fewer than four (4) per Conservation Subdivision. Where wetland delineation is in doubt or dispute, the Planning Board shall require the applicant to submit to the Conservation Commission a request for determination of applicability pursuant to G.L. c. 131, s.40 and 310 CMR 10.05(3). The Planning Board shall refer data on proposed wastewater disposal to the Board of Health for their review and recommendation. The Planning Board may also require as part of the Development Plan any additional information necessary to make the determinations and assessments cited herein.

3832. Four-Step Design Process. Each Development Plan shall follow a four-step design process, as described below. When the Development Plan is submitted, applicants shall be prepared to demonstrate to the Planning Board that these four design steps were followed by their site designers in determining the layout of their proposed streets, houselots, and open space.

a. Designating the Open Space. First, the open space is identified. The open space shall include, to the extent feasible, the most sensitive and noteworthy natural, scenic, and cultural resources on the property.

b. Location of House Sites. Second, potential house sites are tentatively located. House sites should be located not closer than 100 feet to wetlands areas, but may be situated within 50 feet of open space areas, in order to enjoy views of the latter without negatively impacting the former.

c. Street and Lot Layout. Third, align the proposed streets to provide vehicular access to each house in the most reasonable and economical way. When lots and access streets are laid out, they shall be located in a way that avoids or at least minimizes adverse impacts

on open space. To the greatest extent practicable, wetland crossings and streets traversing existing slopes over 15% shall be strongly discouraged.

d. Lot Lines. Fourth, draw in the lot lines. These are generally drawn midway between house locations.

3840. Modification of Lot Requirements. The Planning Board may authorize modification of lot size, shape, and other bulk requirements for lots within a Conservation Subdivision, subject to the following limitations:

3841. Lots having reduced area or frontage shall not have frontage on a street other than a street created by a subdivision involved.

3842. Each lot shall contain not less than one-half of the area otherwise required in the district, and have frontage of not less than 50 feet.

3843. Each lot shall have at least 50% of the required yards in the district.

3850. Number of Dwelling Units. The maximum number of dwelling units allowed shall be equal to the number of lots which could reasonably be expected to be developed upon that parcel under a conventional plan in full conformance with all zoning, subdivision

regulations, health regulations, wetlands regulations and other applicable requirements. The proponent shall have the burden of proof with regard to the design and engineering specifications for such conventional plan. The Planning Board may require a preliminary conventional subdivision lotting plan to be submitted in order to demonstrate potential.

3860. Open Space Requirements. A minimum of 20% of the parcel shown on the Development Plan shall be contiguous open space, excluding required yards and buffer areas. Such open space may be separated by the road(s) constructed within the Conservation Subdivision. Not more than 25% of such open space shall be wetlands, as defined pursuant to G.L. c. 131, s. 40.

3861. The required open space shall be used for conservation, historic preservation and education, outdoor education, recreation, park purposes, agriculture, horticulture, forestry, or for a combination of these uses, and shall be served by suitable access for such purposes.

3862. The required open space shall remain unbuilt upon, provided that ten percent (10%) of such open space may be paved or built upon for structures accessory to the dedicated use or uses of such open space, pedestrian walks, bikepaths, and agriculture.

3863. Underground utilities to serve the Conservation Subdivision site may be located within the required open space.

3864. The required open space shall, at the owner's election, be conveyed to:

a. The Town of Carver or its Conservation Commission;

b. A nonprofit organization, the principal purpose of which is the conservation of open space and any of the purposes for such open space set forth above; or

c. A corporation or trust owned jointly or in common by the owners of lots within the Conservation Subdivision. If such corporation or trust is utilized, ownership thereof shall pass with conveyance of the lots in perpetuity. Maintenance of the open space and facilities shall be permanently guaranteed by such corporation or trust which shall provide for mandatory assessments for maintenance expenses to each lot. Each such trust or corporation shall be deemed to have assented to allow the Town of Carver to perform

maintenance of the open space and facilities, if the trust or corporation fails to provide adequate maintenance, and shall grant the town an easement for this purpose. In such event, the town shall first provide fourteen (14) days written notice to the trust or corporation as to the inadequate maintenance, and, if the trust or corporation fails to complete such maintenance, the town may perform it. The owner of each lot shall be deemed to have assented to the town filing a lien against each lot in the development for the full cost of such maintenance, which liens shall be released upon payment to the town of same. Each individual deed, and the deed or trust or articles of incorporation, shall include provisions designed to effect these provisions. Documents creating such trust or corporation shall be submitted to the Planning Board for approval, and shall thereafter be recorded in the Registry of Deeds.

3865. Any proposed open space, unless conveyed to the Town or its Conservation Commission, shall be subject to a recorded restriction enforceable by the Town, providing that such land shall be perpetually kept in an open state, that it shall be preserved for exclusively agricultural, horticultural, educational or recreational purposes, and that it shall be maintained in a manner which will ensure its suitability for its intended purposes.

3870. Buffer Areas. All dwellings and structures shall be located a minimum of 50 feet from adjacent properties, and 100 feet from adjacent surface waters or wetlands. Buffer areas shall be retained in their natural vegetative state to the maximum extent feasible, in accordance with G.L. c. 131, s. 40, the Wetlands Protection Act, except where adjacent to agriculturally used property.

3880. Decision. The Planning Board may approve, approve with conditions, or deny an application for a Conservation Subdivision, after assessing whether the Conservation Subdivision better promotes the objectives of Section 3810, herein, than would a conventional development.

3890. Relation to Other Requirements. The submittals and permits of this section shall be in addition to any other requirements of the Subdivision Control Law or any other provisions of this Zoning By-Law.

3900. TOWNHOUSE DEVELOPMENT

3910. Purpose. The purpose of this section is to encourage the preservation of open land for its scenic beauty particularly frontage along public ways, ponds, rivers, wetlands and to enhance open space, forestry, and recreational use; to preserve existing agricultural, historical and archeological resources; to protect the natural environment; to protect the value of real property; to promote more sensitive siting of buildings and better overall site planning; to perpetuate the appearance of Carver's traditional New England landscape; to facilitate the construction and maintenance of streets, utilities, and public services in a more economical and efficient manner; and to promote the development of varied housing opportunities, including housing affordable to low and moderate income families and provide accompanying conveniences, recreational areas and community center facilities.

3920. Applicability. A Townhouse Development may be permitted by special permit on a single tract of land, in single or consolidated ownership at the time of application, with an area of at least twenty acres (20) entirely in the RA District or in the HC District, or with an area of at least three (3) acres entirely in the GB District or in the V District.

3930. Procedures. An applicant for a Townhouse Development shall submit to the Planning Board an application for a special permit and ten (10) copies of a Development Plan in such form as may be required in the Planning Board's Rules and Regulations Governing Townhouse Development Special Permits, together with a Net Usable Land Area plan as described in Section 3940 and an application for Site Plan Approval under Section 3100. Special permits for Townhouse Developments shall be acted upon in accordance with Section 5300 of this by-law, and shall conform to the standards in Section 2230 and to the following requirements.

Carver Zoning Bylaw 40 Amended June 2003

3940. Number of Dwelling Units. The number of dwelling units shall be established by having a Net Usable Land Area (NULA) plan for the overall property submitted to the Board. The NULA acreage is established by subtracting all water bodies, wetlands, marshes, bogs and land within a sixty-five (65) foot wetland buffer area to these regulated lands. The remaining upland area is the NULA for the purposes of establishing the number of dwelling units allowed in a townhouse

development. In the RA and HC districts, the total number of proposed dwelling units within the development shall not exceed one point two-five (1.25) units per NULA acre.

In the GB and V districts, the total number of proposed dwelling units within the development shall not exceed two (2) units per NULA acre.

3941. Ten percent (10%) of the total number of dwelling units shall meet the State's affordable housing requirements for low to moderate income. These affordable units shall be marketed through the Carver Housing Authority, South Shore Housing Authority or other housing organization approved by the Board with resale restrictions to assure continued affordability in perpetuity. Such restrictions shall be made known to the homebuyer or renter prior to the purchase / occupancy of unit. Dwelling units reserved for occupancy by persons or families of low to moderate income, or for occupancy by a single individual, shall not be segregated from market rate or larger dwelling units in the Townhouse Development.

3942. Dwelling units shall be varied as to the number of bedrooms. The maximum number of bedrooms allow in a dwelling unit shall be three (3). No more than fifteen percent (15%) of the total number of dwelling units shall have three (3) bedrooms.

3943. Maximum building height shall not exceed thirty-five (35) feet.

3944. The number of townhouse units in a proposed Town House Development, when combined with the number of all existing and previously permitted townhouse units in Carver, shall not exceed twenty-five percent (25%) of the total number of existing dwelling units in the Town as of the date of the Townhouse Development special permit application.

3950. Open Space Requirements. One or more open space areas shall be shown on the development plan. Such areas shall include the following:

- a. all undeveloped wetlands on the parcel;
- b. the 65 ft. buffers to those wetlands; and
- c. a minimum of fifty percent (50%) of the NULA of the parcel if it is in the RA or HC district, or a minimum of thirty percent (30%) of the NULA of the parcel in the GB or V district.

Such open space shall exclude required building envelopes, and buffers to adjoining properties (except where buffer areas are contiguous to said open space areas). Such open space may be divided by roads constructed within the Townhouse Development.

3951. The required open space shall be used for conservation, historic preservation and education, outdoor passive education, park purposes, or for a combination of these uses, and shall be served by suitable access for such purposes.

Carver Zoning Bylaw 41 Amended June 2003

3952. The required open space shall remain unbuilt upon, provided that five percent (5%) of such open space may be paved or built upon for structures accessory to the dedicated use or uses of such open space, such as a community center, pedestrian walks, bike paths, pools, tennis courts, and existing agriculture.

3953. The required open space shall be of a shape, size, character, and location suitable, in the opinion of the Planning Board, for its intended purposes. At least half of the required upland open space shall be in a consolidated and unfragmented mass, as reasonably interpreted by the Planning Board. To the extent possible, the open space shall include land of the greatest scenic, environmental, or recreational importance to the Town.

3954. The required open space shall be conveyed in conformance to the requirements provided in the Rules and Regulations Governing Townhouse Development Special Permits.

3955. Any proposed open space, unless conveyed to the Town or its Conservation Commission, shall be subject to a recorded restriction enforceable by the Town, providing that such land shall be perpetually kept in an open state, that it shall be preserved for the uses listed in Section 3951, and that it shall be maintained in a manner that will ensure its suitability for its intended purposes.

3960. Design Standards. The following design standards are required:

3961. Buffer Areas: All dwellings and structures shall be located a minimum of sixty (60) feet from adjacent properties, and one hundred (100) feet from adjacent surface waters or wetlands. Buffer areas shall be retained in their natural vegetative state to the maximum extent feasible, where the sixty (60) foot buffer of natural vegetation is not adequate (in the Planning Board's opinion) to screen the development from adjacent properties the Board may require additional plantings, earth berms and/or fencing.

3962. Building Envelope: All site plans shall locate a building envelope radius of forty (40) feet from the outside edge of a townhouse building or group of buildings. Open space, ways, lanes and collectors may not be located within the building envelope. Parking, driveways, sidewalks, individual unit gardens/lawns etc. may be developed within the building envelope. For the minimum setback between buildings see the following Section 3963.

3963. Architectural style: Architectural style shall be in harmony with the prevailing character and scale of buildings in the neighborhood and the Town, through the use of appropriate building materials, screening, breaks in roof and wall lines, setbacks and other architectural techniques. Variation in detail, style, form and location shall be used (for both the residential units and accessory garages if employed) to provide visual interest and avoid monotony. Proposed buildings shall relate harmoniously to each other with adequate light, air, circulation, and separation between buildings. Adequate separation shall mean a minimum distance of 1.2 times the height of the proposed buildings.

3964. Roadways: Roadway length and construction details are provided in the Townhouse Development Special Permit Rules and Regulations. The Board may require that existing problems on/ or adjacent to the site be mitigated as a condition of approval of the special permit under this section.

Carver Zoning Bylaw 42 Amended June 2003

3965. Parking: The development shall provide two (2) spaces per each unit, plus one (1) visitor parking space for every five (5) units, plus one (1) space for every two hundred (200) square feet of non-residential building area. In cases where the units are provided with a garage and two spaces for each unit on a driveway, the visitor spaces shall not be required. Parking areas shall be screened from public ways and adjacent or abutting properties by building location, fencing and/or dense plantings. Parking areas, including maneuvering space for parking and loading areas shall not be located within the required buffer areas. No parking shall be allowed on interior roadways.

3966. Services: Exposed storage areas, machinery, service areas, truck loading areas, adequate solid waste disposal facilities, utility buildings and structures and other unsightly uses shall be set back and/or screened to protect neighbors and future residents from said features. Electric, telephone, cable TV, and other such utilities shall be underground. An adequate water source for fire protection shall be provided.

3967. Lighting: No building/structure shall be floodlit. Drives, walkways, entryways, and parking areas shall not be illuminated by lights higher than fifteen (15) feet, which shall be shielded to have a total cutoff of all light at less than ninety (90) degrees and a beam cutoff less than seventy-five (75) degrees..

3970. Decision. The Planning Board may approve, approve with conditions, or deny an application for a Townhouse Development, after considering the criterion set out in Section 5300, and also assessing whether the Townhouse Development better promotes the objectives of Section 3910, herein, than would conventional development.

3980. Relation to Other Requirements. The submittals and permits of this section shall be in addition to any other requirements of the Subdivision Control Law or any other provisions of this Zoning By-law.

Survey received from Carver on 5/3/05 (completed by Jack Hunter):

What year was the first provision for flexible zoning adopted?

"1998"

What was the last year that the municipality amended the cluster/flexible provisions?

"1998"

Can more units be built under cluster/flexible zoning than would be allowed through conventional zoning?

"Yes"

What types of structures are allowed under cluster/flexible zoning?

"Single family"

Has any housing been built under the cluster/flexible provisions?

"No"

From Town of Carver Master Plan 2001, in the section on housing, page 2-10:

"The Flexible Development provision allows lots of varying dimensions within a subdivision. The minimum lot size is one acre, with an average lot size of 50,000 square feet. In the case of large subdivisions (over 20 acres), this type of subdivision may allow a higher yield than traditional subdivisions, which provides an incentive for developers to utilize this provision. The variation in lot sizes can allow for the preservation of natural resources through the flexible location of buildings in roads in a subdivision to fit the natural terrain. Also, a visual buffer is required between the buildings within the subdivision and any existing roads, which will help to preserve the scenic rural quality of the town.

Conservation Subdivision ("Cluster") allows for the creation of smaller lots (at least one-half the area of traditional lots) that may be clustered together, while a minimum of 20% of the property is reserved as open space to be protected in perpetuity. The total number of homes may not

exceed the number that could be constructed under traditional subdivision rules.

Townhouse Development allows for multifamily development with up to 5 units per structure on parcels larger than 10 acres, with the requirement that a minimum of 20% of the parcel be reserved as protected open space. The site must be able to accommodate the septic flow from the development, unless sewers are to be provided. The maximum number of dwelling units is constrained by a ceiling on the total bedrooms in the development of 2.5 times the number of lots which could be created under a conventional subdivision plan. This allows substantial flexibility for developers to determine the market to which the housing will be targeted, while limiting the potential population impacts. The Zoning Bylaw specifies that units reserved for low/moderate income occupants must not be segregated from market rate units."

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board Flexible Development, Conservation Subdivision, and Townhouse Development are all granted by special permit of the Planning Board based on the regulation listed below.

Town of Carver Zoning Bylaws (Adopted 1963, Revised 2003)

ARTICLE II. USE, DIMENSIONAL, AND TIMING REGULATIONS.

2200. USE REGULATIONS.

[SP*] A use authorized under special permit from the Planning Board as provided under Section 5300.

Has any housing been built under the cluster/flexible provisions?

No Survey received from Carver on 5/3/05 (completed by Jack Hunter):

Has any housing been built under the cluster/flexible provisions?

"No"

Chelmsford

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes 7/22/04 Email response from Andy Sheehan, Chelmsford Community Development Coordinator -- "Chelmsford adopted open space residential subdivision provision in 1987. It has been a used about 8 times, but has only resulted in one project that provided beneficial open space."

The Land Use Ordinance of Chelmsford
MIDDLESEX COUNTY, MASSACHUSETTS
Chapter 195 ZONING

[HISTORY: Adopted by the Annual Town Meeting of the Town of Chelmsford 10-22-1998 by Arts. 22 to 26. Amendments noted where applicable.]

ARTICLE XVIII Planned Open Space Development
Section 195-92. Purpose.

Planned open space developments, hereinafter known as "POS," may be allowed by special permit by the Planning Board for the purpose of providing attractive, convenient, efficient neighborhoods and to promote the conservation of open space and the efficient use of land in harmony with its natural features.

Section 195-93. General standards.

A. The tract of land proposed for a POS shall contain a minimum of 10 acres. These proposals shall be permitted only within a subdivision as defined in MGL c. 41, Section 81L.

B. Number of dwelling units. The maximum number of dwelling units allowed shall be equal to the number of lots which could reasonably be expected to be developed upon that parcel under a conventional plan in full conformance with all zoning, subdivision regulations, health regulations, wetlands regulations and other applicable requirements. The proponent shall have the burden of proof with regard to the design and engineering specifications for such conventional plan.

C. If any part of a dwelling or accessory building in a POS is proposed to be located within 100 feet of the perimeter of such development, such building(s) shall be located so as to comply with the minimum yard dimensions for principal and accessory buildings for the applicable zoning district.

D. Minimum lot area shall be 12,000 square feet. Minimum frontage shall be 50 feet. Minimum side yards shall be 12 feet. Minimum front and rear yards shall be 20 feet. Lots having reduced area or frontage shall not have frontage on a street other than a street created by a subdivision involved.

E. All streets in a POS shall be improved in accordance with the requirements and specifications of the subdivision regulations. Driveways and other paved areas intended to remain in private ownership shall be approved as to design and construction standards by the Planning Board.

F. A written agreement or contract to be executed between the developer and the Town of Chelmsford shall be submitted at the final stage of the subdivision review stating that:

(1) The owner or developer will construct the development and install improvements, both public and private, in accordance with the approved plan. A bond shall be posted to guarantee completion.

(2) In the event of failure of the owners, successors or assigns to maintain any common open space, recreation areas, landscaping features or other required improvements, the town may enter said development and perform such necessary maintenance work and charge the cost, including attorney fees, to the owner, successor or assigns.

(3) This contract shall be binding upon the heirs, assigns, successors or receivers of the development and shall constitute a lien on the property in the development.

(4) Any other conditions required by the Planning Board.

G. A site plan, in addition to the final subdivision plan, shall be recorded after the POS is approved. As a minimum this site plan shall show the entire development, indicating lots, roads, easements, open space, phases for development, any recreational uses or buildings to be constructed in the open space and any ponds, streams or wetlands. This plan shall be approved by the Planning Board before it is recorded.

Section 195-94. Open space requirements.

A. minimum of 25% of the site shall be contiguous open space, excluding required yards and buffer areas. Such open space may be separated by the road(s) constructed within the site. The percentage of the open space which is wetlands, as defined pursuant to MGL c. 131, Section 40, shall not normally exceed the percentage of the tract which is wetlands; provided, however, that the applicant may include a greater percentage of wetlands in the open space upon a demonstration that such inclusion promotes the purposes set forth in this article.

A. The required open space shall be used for conservation, historic preservation and education, outdoor education, recreation, park purposes, agriculture, horticulture, forestry or for a combination of these uses and shall be served by suitable access for such purposes.

B. The required open space shall remain unbuilt upon, provided that 10% of such open space may be paved or built upon for structures accessory to the dedicated use or uses of such open space, pedestrian walks and bike paths.

C. Underground utilities to serve the site may be located within the required open space.

D. The required open space shall, at the Planning Board's election, be conveyed to:

(1) The Town of Chelmsford or its Conservation Commission;

(2) A nonprofit organization, the principal purpose of which is the conservation of open space and any of the purposes for such open space set forth above; or

(3) A corporation or trust owned jointly or in common by the owners of lots within the site. If such corporation or trust is utilized, ownership thereof shall pass with conveyance of the lots in perpetuity. Maintenance of the open space and facilities shall be permanently guaranteed by such corporation or trust, which shall provide for mandatory assessments for maintenance expenses to each lot.

(a) Each such trust or corporation shall be deemed to have assented to allow the Town of Chelmsford to perform maintenance of the open space and facilities if the trust or corporation fails to provide adequate maintenance and shall grant the town an easement for this purpose. In such event, the town shall first provide 14 days written notice to the trust or corporation as to the inadequate maintenance, and, if the trust or corporation fails to complete such maintenance, the town may perform it. The owner of each lot shall be deemed to have assented to the town filing a lien against each lot in the development for the full cost of such maintenance, which liens shall be released upon payment to the town of the same.

(b) Each individual deed, and the deed or trust or articles of incorporation, shall include provisions designed to effect these provisions. Documents creating such trust or corporation shall be submitted to the Planning Board for approval and shall thereafter be recorded in the Registry of Deeds.

E. Any proposed open space, unless conveyed to the town or its Conservation Commission, shall be subject to a recorded restriction enforceable by the town, provided that such land shall be perpetually kept in an open state, that it shall be preserved for exclusively agricultural, horticultural, educational or recreational purposes and that it shall be maintained in a manner which will ensure: its suitability for its intended purposes.

Section 195-95. Homeowners association.

The applicant or, developer shall provide for and establish a homeowners association as a nonprofit organization or other legal entity under the laws of Massachusetts for the use, care and maintenance of lands and improvements. Membership in the association shall be mandatory for all landowners within the POS, and each lot shall be entitled to equal representation. The association shall be formed prior to conveyance of the first lot, in a form acceptable to the Planning Board.

Section 195-96. Certificates or documents.

The following certificates or documents shall be submitted to the Planning Board:

A. Copies of any proposed management policies and existing or proposed deed restrictions or covenants running with the land in the development.

B. A description of any existing easement, covenants or restrictions affecting land within the development and an instrument conveying any easements required as a condition of approval to the town.

Section 195-97. Purchase and sale agreement.

A. Prior to approval by the Planning Board, the developer must file and have approved by the Planning Board a sample purchase and sale agreement which shall be used for the purchase of individual lots and dwellings. Said agreement shall include in conspicuous type the following:

The property is part of a POS subject to the Zoning Bylaw and the Subdivision Regulations of the Town of Chelmsford. The purchaser and subsequent owners of the property are subject to the requirements therein contained. The purchaser shall be required to be a member of a homeowners association, shall be subject to rules and regulations of said association and shall be liable for any applicable assessment made by or against said association. The ultimate liability for the open space falls on the individual lot owner.

B. The purchase and sale agreement shall further contain a statement by the seller that the purchaser has been provided with a copy of the documents pertinent to the POS and a prospectus which shall summarize in layman's language the information contained therein.

Section 195-98. Decision by Planning Board.

A. The Planning Board shall not approve a POS development in an established single-family neighborhood where, in its determination, such land use will be inconsistent with or will CP have a detrimental effect upon the surrounding property. If the Planning Board denies a POS based on this section it shall identify this as the reason for denial.

B. Approval under this article does not relieve the applicant from conformance with the Subdivision Control Law. No part of the construction of a FOS shall begin until the plan of such development has been granted final approval by the Planning Board in accordance with the subdivision regulations. The developer shall submit with the request for a POS an alternate plan(s) for developing the site as a conventional subdivision at the presubmission review and preliminary plan stages of the subdivision process which shall adhere to all subdivision requirements. The Planning Board may establish additional rules and Regulations to govern the POS and the filing of additional material or information.

OSRD is allowed by special permit in RA and RB.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board ARTICLE XVIII Planned Open Space Development
Section 195-92. Purpose.

Planned open space developments, hereinafter known as "POS," may be allowed by special permit by the Planning Board for the purpose of providing attractive, convenient, efficient neighborhoods and to promote the conservation of open space and the efficient use of land in harmony with its natural features.

Has any housing been built under the cluster/flexible provisions?

Yes 7/22/04 Email response from Andy Sheehan, Chelmsford Community Development Coordinator -- "Chelmsford adopted open space residential subdivision provision in 1987. It has been a used about 8 times, but has only resulted in one project that provided beneficial open space."

Chelsea

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

No Section 7.2 PLANNED DEVELOPMENT

7.2.1 Purpose. Planned Development may be authorized by special permit for the following purposes:

1. to encourage intensive development in the waterfront area along Chelsea Creek;
2. to provide a mix of uses and activities, which in turn provide a healthy economic environment;
3. to provide and preserve views of the Boston skyline and waterfront activity;
4. to provide waterfront access and view areas;
5. to assure development which is compatible with the Waterfront Plan;
6. to maximize the locational advantage of proximity to Boston and to Logan International Airport;
7. to encourage appropriate development;
8. to encourage efficient allocation, distribution, and maintenance of open space; to assure economical and efficient street, utility and public facility installation, construction, and maintenance;
10. to assure land use harmonious with natural features:
11. to promote purpose enumerated in the Everett Avenue Urban Renewal Project.

7.2.2 Special Permit. A special permit may be granted for a planned development, subject to the provisions of this Section 7.2 and subject to site plan approval, for the following purposes; provided, however, that where the planned development is located in the Everett Avenue Urban Renewal Area, it shall be subject to the provisions of Section 7.2.2 to 7.2.9.

7.2.3 Eligible Uses. Any combination of the following uses is eligible for consideration

1. Apartment buildings and town houses;
2. Residential Care Facility;
3. Hotels; motels;
4. Restaurants with or without alcoholic beverages;
5. Trade and craft shops;
6. Professional, business and governmental offices;
7. Retail and personal service establishments;
8. Live/Work Studio; Work/Live Studio and Work only studio's
9. Uses accessory to permitted uses, including accessory business uses, onsite parking, and off- street loading.

7.2.4 Minimum Acreage.

1. The site for a planned development shall have a minimum of four (4) contiguous acres above the high water line in Residential 1 and Residential 2 Districts outside of the Everett Avenue Urban Renewal Area.
2. The site for a planned development shall have a minimum of two (2) contiguous acres above the high water line in all other Districts and in the Everett Avenue Urban Renewal Area.
3. Such acreage shall be of a shape deemed reasonable for the purpose by the Department of Planning and Development in accord with the provisions of Sections 7.2.7 and 7.2.8, or in the case of a planned development in the Everett Avenue Urban Renewal District, Section 7.2.7.

7.2.5 Intensity of Use. Intensity of use shall be determined by the Zoning Board of Appeals after a recommendation from the Department of Planning and Development in accordance with the provisions of Sections 7.2.7 and 7.2.8.

7.2.6 Miscellaneous Conditions.

1. The area shall be in one ownership and shall be developed as a single parcel under one ownership, by an individual, corporation, partnership or trust.
2. If the planned development is to be constructed in phases, each phase after the first must be constructed contiguous and adjacent to a preceding phase or phases. Phases separated only by streets or ways shall be considered contiguous.
3. Setback requirements for the district in which the planned development is located shall be applicable.

7.2.7 Procedures.

1. An applicant for approval of a planned development shall apply to the Department of Planning and Development for design review and recommendation in accordance with the provisions of Section 7.2.8, prior to submission to the Special Permit Granting Authority.
2. The application for site plan approval can be filed simultaneously with the application for design review, if in the opinion of the applicant such filing will expedite processing of the application.
3. A developer desiring to obtain a special permit to construct a planned development may, prior to submitting an application for the special permit, request a pre application conference. The purpose of the conference is for both parties to become familiar with the proposed planned development. The proponent shall not be required to present any written or graphic materials at the pre application conference.
4. At the pre-application conference, the Department shall familiarize the proponent with the process for obtaining a special permit for a planned development and explain issues that should be considered in planning the project. The proponent may discuss the range of options concerning development and inform the Department of the development concept.
5. A developer who wishes to apply for a Special Permit for a Planned Development must submit to the Department of Planning and Development an application obtained from the Department and a Development Proposal. The purpose of the Development Proposal shall be to provide the Department with an opportunity for a preliminary but substantive review of the Planned Development prior to making a recommendation to the Special Permit Granting Authority.
6. The written and graphic information specified in Section 7.2.8, and for Planned Development in the Everett Avenue Urban Renewal District, must be submitted for the entire proposed planned development when applying for a special permit.
7. No building permit shall be granted until the design approval and recommendations are given, site plan approval and a special permit have each been granted. Where the special permit attaches conditions which necessitate modification of site plan approval, a revised site plan must be approved.

7.2.8 Design Review. Design review shall be required for all uses in a planned development except for construction, reconstruction or repair which does not involve a change in design, material, color or the outward appearance of an existing building; or construction, reconstruction or alteration of any feature which the Inspector of Buildings shall certify is required for the public safety because of an unsafe or dangerous condition.

1. Within a period of thirty (30) days after the filing of the plans and application for the design review, the Department of Planning and Development shall determine whether the proposed construction, reconstruction, alteration, restoration, or moving of the buildings, structures or appurtenant fixtures involved will be appropriate in terms of the purposes and conditions contained in this Section, and will report to the Special Permit Granting Authority with or without recommendations.
2. In considering such application for a design review, the Department of Planning and Development may consult an architect, city planner or urban designer at the expense of the applicant, providing that in no case the applicant is charged by the Department of Planning and Development more than one (1) percent of the construction costs for the costs of processing an application for a Design Certificate.
3. Application for a design review shall be made on a form supplied by the Department of Planning and Development and shall be accompanied by the following items in addition to the items required for site plan and Special Permit submissions:
 - a. A performance bond of sufficient amount to install improvements which will be dedicated to the City; and a performance bond to guarantee landscaping plant material survival or a contract with a landscaping firm which adequately provides such guarantees.
 - b. A plan for the phasing of the development and the reasonable time of completion of each phase.
 - c. Hydrological, soil, flooding and subsurface studies evaluating the site for development.
 - d. A circulation plan showing the street system and circulation patterns within and adjacent to the proposed development including any special engineering features, such as, but not limited to, median strips, overpasses and underpasses and major pedestrian paths.
 - e. As built plans will be filed with the Inspector of Buildings within thirty (30) days after the completion of construction pursuant to a Design Certificate.

7.2.9 Design Standards. When considering plans submitted for design review for a planned development, the following factors shall be considered by the Department of Planning and Development:

1. Orientation and Views..
 - a. Heights of buildings shall be recommended by the Department of Planning and Development after consultation with the Chelsea Fire Department and shall be determined with due regard to maintaining existing view lines.

b. Buildings shall be sited to maintain existing view lines, and to relate to one another and adjacent developments to insure adequate light, air, and privacy.

2. Public Access to the Waterfront.

a. An area shall be provided at least fourteen (14) feet wide adjacent to the mean high tide water edge for the purpose of providing continuous access for pedestrian traffic along the waterfront and for the purpose of providing an easement for underground utilities unless the Department of Planning and Development determines that such an area would be hazardous. It shall be designed to connect with adjacent developments for this purpose. This corridor may not extend over piers, bulkheads, breakwaters or extensions into the Creek, where; in the opinion of the Department of Planning and Development the best interests of the public safety would not be served thereby.

b. A thirty (30) foot setback from the water edge as defined above shall be required. In relation to the waterfront pedestrian corridor, the Department of Planning and Development will encourage, but not require, an additional area adjacent to the thirty (30) foot required minimum setback to enhance the corridor by creating plazas, malls or green areas. The applicant will be encouraged to make maximum use of the waterfront and Boston skyline and also to respect these views for other affected developments.

c. Adequate privacy, light, air, and access will be considered in the development of side, rear and front yard setbacks.

3. Scale.

a. Arrangement of new facilities should be compatible with existing developments landward of the district. The building line should be maintained in infill projects.

b. In the Waterfront District and the Industrial District, from the shore line the silhouette shall follow the general slope of the topography so that on the shore, one or two story structures are to be desired.

4. Landscaping. There shall be a sufficient amount of landscaping; as determined by the Board of Aldermen upon recommendation by the Department of Planning and Development to insure protection of and to enhance the quality of the neighborhoods and, where applicable, to enhance the view from Boston and from the water.

5. Parking/Loading/Service.

a. Parking and loading areas shall be designed and landscaped in accord with the provisions of Section 5.1 to 5.3 unless otherwise recommended by the Department of Planning and Development to accommodate the mix of uses in the planned development.

b. Any point of vehicular access for delivery of goods will be encouraged to respect the character of the pedestrian corridor, where it exists.

c. In the Waterfront District and the Industrial District, water oriented commercial facilities requiring the movement of goods across the pedestrian corridor shall provide controlled points of access. Service may be permitted utilizing the pedestrian corridor. However, this service may be restricted to nonpeak pedestrian hours.

6. Signs. In addition to the provisions of Section 5.4, all signs must be reviewed by the Department of Planning and Development.

7. Activity.

a. When a Planned Development has more than one category of use, e.g., residential, business, industrial, the percentage of each use shall be determined by the Special Permit Granting Authority based on recommendations from the Department of Planning and Development. If necessary to determine the appropriate mix of uses, or in the case of residential use, the size and type of dwelling units, the Department of Planning and Development may require the applicant to submit supporting data and/or studies.

b. In appropriate cases, the Special Permit Granting Authority on a recommendation from the Department of Planning and Development may require a set aside of not more than ten (10) percent of the dwellings units, if any, for low and moderate income housing.

c. In the Waterfront District and the Industrial Districts, facilities which make provision for the periodic outdoor use of waterfront areas by the pedestrian public are desirable. Mixed uses should be encouraged. Activity corridors and linkages with Chelsea Square should be encouraged.

Which entity is the special permit granting authority for cluster/flexible zoning?

Has any housing been built under the cluster/flexible provisions?

Clinton

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Town of Clinton Zoning Bylaws (Amended 2001)

SECTION 7000. SPECIAL RESIDENTIAL REGULATIONS

7100. FLEXIBLE DEVELOPMENT

7110. Purpose. The purposes of this section, Flexible Development, are

7111 to encourage the preservation of open land for its scenic beauty and to enhance agricultural, open space, forestry, and recreational use,

7112 to preserve historical and archeological resources, to protect the natural environment, including Clinton's varied landscapes and water resources,

7113 to protect the value of real property,

7114 to promote more sensitive siting of buildings and better overall site planning,

7115 to perpetuate the appearance of Clinton's traditional New England townscape,

7116 to facilitate the construction and maintenance of streets, utilities, and public services in a more economical and efficient manner,

7117 to offer an alternative to standard subdivision development,

7118 to promote the development of housing affordable to low, moderate, and median income- families, and

7119 to promote the development of housing for persons over the age of fifty five

7120. Applicability. In accordance with the following provisions, a Flexible Development project may be created, whether a subdivision or not, from any parcel or set of contiguous parcels held in common ownership and located entirely within the Town

7130. Procedures. Flexible Development may be authorized upon the issuance of a special permit by the Planning Board Applicants for Flexible Development shall file with the Planning Board seven (7) copies of the following

7131 A development plan conforming to the requirements for a preliminary plan asset forth in the Subdivision Rules and Regulations of the Planning Board

7132 Where wetland delineation is in doubt or dispute, the Planning Board may require appropriate documentation

7133 Data on proposed wastewater disposal, which shall be referred to a consulting engineer for review and recommendation

7134 The Planning Board may also require as part of the development plan any additional information necessary to make the determinations and assessments cited herein

7140. Design Process. Each development plan shall follow the design process outlined below When the development plan is submitted, applicants shall be prepared to demonstrate to the Planning Board that this Design Process was considered in determining the layout of proposed streets, house lots, and contiguous open space

7141 Understanding the Site The first step is to inventory existing site features, taking care to identify sensitive and noteworthy natural, scenic and cultural resources on the site, and to determine the connection of these important features to each other

7142 Evaluating Site Context The second step is to evaluate the site in its larger context by identifying physical (e g , stream corridors, wetlands), transportation (e g , road and bicycle networks), and cultural (e g , recreational opportunities) connections to surrounding land uses and activities

7143 Designating the Contiguous Open Space The third step is to identify the contiguous open space to be preserved on the site Such open space should include the most sensitive and noteworthy resources of the site, and, where appropriate, areas that serve to extend neighborhood open space networks

7144 Location of Development Areas The fourth step is to locate building sites, streets, parking areas, paths and other built features of the development The design should include a delineation of private yards, public streets and other areas, and shared amenities, so as to reflect an integrated community, with emphasis on consistency with Clinton's historical development patterns

7145 Lot Lines The final step is to draw in the lot lines (if applicable)

7150. Modification of Lot Requirements. The Planning Board encourages applicants for Flexible Development to modify lot size, shape, and other dimensional requirements for lots within a Flexible Development, subject to the following limitations

7151 Lots having reduced area or frontage shall not have frontage on a street other than a street created by the Flexible Development, provided, however, that the Planning Board may waive this requirement where it is determined that such reduced lot(s) are consistent with existing development patterns in the neighborhood

7160. Basic Maximum Number of Dwelling Units. The Basic Maximum Number of dwelling units allowed in a Flexible Development shall not exceed the number of lots which could reasonably be expected to be developed upon the site under a conventional plan in full conformance with all zoning, subdivision regulations, health regulations, wetlands regulations and other applicable requirements The proponent shall have the burden of proof with regard to the design and engineering specifications for such conventional plan

7170. Density Bonus. The Planning Board may award a density bonus to increase the number of dwelling units beyond the Basic Maximum Number The density bonus for the Flexible Development shall not, in the aggregate, exceed fifty (50%) percent of the Basic Maximum Number All dwelling units awarded as a density bonus shall be two bedroom units Computations shall be rounded

to the lowest number A density bonus may be awarded in the following circumstances

7171 For each additional ten percent (10%) of the site (over and above the required twenty percent) set aside as contiguous open space, a bonus of five (5%) percent of the Basic Maximum Number may be awarded, provided, however, that this density bonus shall not exceed 25% of the Basic Maximum Number The 10% and 5% may be prorated

7172 For every two (2) dwelling units restricted to occupancy by persons over the age of fifty- five, one (1) dwelling unit may be added as a density bonus, provided, however, that this density bonus shall not exceed 10% of the Basic Maximum Number

7173 For every dwelling unit restricted as affordable to persons or families qualifying as low income, four (4) dwelling unit may be added as a density bonus For every dwelling unit restricted as affordable to persons or families qualifying as moderate income, three (3) dwelling unit may be added as a density bonus For every dwelling unit restricted as affordable to persons or families qualifying as median income, two (2) dwelling unit may be added as a density bonus Thus density bonus shall not exceed 15% of the Basic Maximum Number

7174 For every basic dwelling unit restricted to two (2) bedrooms, an additional two (2) bedroom unit may be added as a density bonus This density bonus shall not exceed 10% of the Basic Maximum Number

7180. Development Standards. The following standards shall apply in all Flexible Developments

7181 Types of Buildings The Flexible Development may consist of any combination of single-family two-family and multifamily residential structures A multifamily structure shall not contain more than twelve (12) dwelling units, provided, however, that not more than ten percent of the dwelling units may be in multifamily structures with more than five (5) units The architecture of all multifamily buildings shall be residential in character

7182 Roads The principal roadway(s) serving the site shall be designed to conform with the standards of the Town where the roadway is or may be ultimately intended for dedication and acceptance by the Town Private ways shall be adequate for the intended use and vehicular traffic and shall be maintained by an association of unit owners or by the Applicant

7183 Parking. Each dwelling unit shall be served by 1.5 of street exterior parking spaces Parking spaces in front of garages may count in this computation

7184 Contiguous Open Space A minimum of twenty percent (20%) of the parcel shown on the development plan shall be contiguous open space Any proposed contiguous open space, unless conveyed to the Town or its Conservation Commission, shall be subject to a recorded restriction enforceable by the Town, providing that such land shall be perpetually kept in an open state, that it shall be preserved for exclusively agricultural, horticultural, educational or recreational purposes, and that it shall be maintained in a manner which will ensure its suitability for its intended purposes

a The percentage of the contiguous open space which is wetlands shall not normally exceed the percentage of the tract which is wetlands, provided, however, that the applicant may include a greater percentage of wetlands in such open space upon a demonstration that such inclusion promotes the purposes set forth in Section 1, above In no case shall the percentage of contiguous open space which is wetlands exceed fifty (50%) of the tract

b The contiguous open space shall be used for conservation, historic preservation and education, outdoor education, recreation, park purposes, agriculture, horticulture, forestry, or for a combination of these uses, and shall be served by suitable access for such purposes

c The contiguous open space shall remain unbuilt upon, provided that the Planning Board may permit up to twenty (20%) percent of such open space to be paved or built upon for structures accessory to the dedicated use or uses of such open space, pedestrian walks, and bike paths

d Underground utilities to serve the Flexible Development site may be located within the contiguous open space

7185 Ownership of the Contiguous Open Space The contiguous open space shall, at the Planning Board's election, be conveyed to a the Town or its Conservation Commission,

b a nonprofit organization, the principal purpose of which is the conservation of open space and any of the purposes for such open space set forth above,

c a corporation or trust owned jointly or in common by the owners of lots within the Flexible Development If such corporation or trust is utilized, ownership thereof shall pass with conveyance of the lots in perpetuity Maintenance of such open space and facilities shall be permanently guaranteed by such corporation or trust which shall provide for mandatory assessments for maintenance expenses to each lot Each such trust or corporation shall be deemed to have assented to allow the Town to perform maintenance of such open space and facilities, if the trust or corporation fails to provide adequate maintenance, and shall grant the town an easement for this purpose In such event, the town shall first provide fourteen (14) days written notice to the trust or corporation as to the inadequate maintenance, and, if the trust or corporation fails to complete such maintenance, the town may perform it

Each individual deed, and the deed or trust or articles of incorporation, shall include provisions designed to effect these provisions Documents creating such trust or corporation shall be submitted to the Planning Board for approval, and shall thereafter be recorded

7186 Buffer Areas A buffer area of fifty (50) feet shall be provided at the perimeter of the property where it abuts residentially zoned or occupied properties, except for driveways necessary for access and egress to and from the site No vegetation in this buffer area will be disturbed, destroyed or removed, except for normal maintenance

7187 Drainage Stormwater management shall be consistent with the requirements for subdivisions set forth in the Rules and Regulations of the Planning Board

7190. Decision. The Planning Board may approve, approve with conditions, or deny an application for a Flexible Development after determining whether the Flexible Development better promotes the purposes of Section 7110 of this Flexible Development By-law than would a conventional subdivision development of the same locus

7191 Relation to Other Requirements The submittals and permits of this section shall be in addition to any other requirements of the Subdivision Control Law or any other provisions of this Zoning By-Law

7200. MILL CONVERSION/PLANNED DEVELOPMENT

7210. General. Existing mill structures of more than twenty thousand (20,000) square feet of floor area can be converted to a Planned Development which may include the following uses dwelling units, retail offices, artist's lofts and hand crafts, and any other uses authorized as of right or by special permit in any zoning district

7220. Uses. Within a Mill Conversion/Planned Development, dwelling units, retail offices, artist's lofts and hand crafts, and the like may be allowed by special permit from the Planning Board

7221 Accessory uses and recreation facilities for the use of the residents and/or employees of the area only to include golf course,

tennis courts, jogging trails, swimming pools and similar outdoor facilities, a community building not to exceed five (5) percent of the total floor area of the residential units, parking area and garages, storage sheds, cabanas, detached fireplaces and similar facilities for use by the residents of the Planned Development, but not including home occupations, taking of boarders or lodgers, renting of rooms or professional offices, incidental retail sales and services

7222 If there is more than one type of major land use (e.g., residential, institutional, office building, or research establishment), no one type shall constitute less than ten (10) percent or more than seventy (70) percent of the total dwelling units or gross floor area

7223 If the conversion is to dwelling units, at least ten (10) percent of the units shall be set aside for low and moderate income housing as defined by the Commonwealth of Massachusetts and the Clinton Housing Authority

7230. Structures

7231 Buildings shall be an architectural style which is compatible with the prevailing style in the area in which the Planned Development is located and shall be compatible with other buildings in the Planned Development

7232 Each dwelling unit shall have at least one (1) side with full exposures, and shall meet all fire codes

7233 No floor, except unfinished basement, of a dwelling unit shall be located beneath the average finished grade of the ground adjoining the building

7234 Any exterior change made to the original structure is in keeping with the architecture of the original structure and is subject to approval by the Planning Board

7235 Any new buildings must comply with Section 7240

7236 Except for an existing null building being adapted to a permitted use, no building or structure shall be located closer than one hundred (100) feet from the center line of any public way or other way utilized to meet the frontage requirements of this section, or within seventy-five (75) feet from the center line of any interior street, way, or driveway

7237 No building or structure shall be located within or closer than twenty-five (25) feet of an area which is required to be maintained in a natural state

7238 No building or structure shall be located within fifty (50) feet of a property or a lot line

7239 If there is more than one building containing dwelling units on a single lot, there shall be a minimum of twenty-five (25) feet between such buildings

7240. Site Development

7241 Buildings, open spaces, driveways, parking areas and other development features shall be located and designed in a manner which conforms to the existing natural terrain of the site

7242 Building placement which makes maximum use of solar energy should be encouraged

7243 All existing or proposed utilities shall be installed underground at the time of initial construction. When required, each structure or dwelling unit shall be equipped with fire protection systems approved by the Clinton Fire Department

7244 Lighting facilities, whether placed along service drives, in parking areas or on the exterior of buildings, shall be so arranged and shielded that they do not unreasonably distract the occupants of the buildings or shine directly upon abutting properties and/or public ways. In no case shall illumination upon the window surface of any buildings used for dwelling purposes exceed five-tenths (0.5) foot candles

7245 Provisions shall be made for the storage, collection and removal of garbage and trash. All necessary facilities shall be appropriately screened from view

7246 There shall be at least one (1) entrance road and one (1) exit road to each Planned Development, unless a divided entrance-exit road is approved by the Planning Board

7247 All interior roads, drives and parking areas shall be constructed to the roadway standards of the Planning Board as contained in the Subdivision Rules and Regulations of the Town of Clinton

7248 All areas not covered by pavement, curbing, buildings and/or structures including such facilities as playing area for court games, swimming pools, and plazas, shall be landscaped with grass, shrubbery, trees, flowers, or ground covers indigenous to the area. Along the length of each exterior wall of each principal building there shall be landscaped area

7249 All areas not required for parking and landscaping shall be kept in an open and natural state. Such natural area shall be subject to permanent restrictions

7250. Parking. Off street parking shall be provided in accordance with the provisions of Section 5100. All parking spaces, including any which may be in excess of those requirements, shall be subject to site plan reviews. Unless in an accessory garage within the structure, no parking space shall be located closer than twenty five (25) feet from a building used for dwelling purposes. All required parking spaces shall be provided within three hundred (300) feet of the dwelling units which they are required to serve

7260. Agreements. Any specified open area left substantially in its natural state shall be placed in an ownership which shall provide for its permanent retention and maintenance. The manner of ownership, use and maintenance of such permanent natural area shall be determined by the agreement of the applicant, the owner, and the Planning Board. The agreement, duly executed in a form suitable for recording by the owner or owners of such natural area, shall provide that, in the event the Planning Board shall grant a Special Permit under this Section, such permanent area shall be owned by a non-profit organization the principal purpose of which is the preservation of natural areas, or a corporation or trust owned or to be owned in common by the owners of the dwelling units within the development in which the ownership of the natural area runs with that title to the dwelling units and is not separably alienable

7261 An organization, corporation or trust owned or to be owned in common by the owners of the dwelling units within the development in a form approved by the Planning Board shall be responsible for the maintenance of all common areas, not otherwise provided in accord with section including, but not limited to lighting, plowing, roadway, sidewalks, recreation facilities and accessory structures

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board Town of Clinton Zoning Bylaws (Amended 2001)

7130. Procedures. Flexible Development may be authorized upon the issuance of a special permit by the Planning Board Applicants

for Flexible Development shall file with the Planning Board seven (7) copies of the following

Has any housing been built under the cluster/flexible provisions?

Yes Building Inspector Pete Pender (11/16/04) said that only one developer has taken advantage of their flexible zoning and that he used it to design clusters but did not take advantage of density bonuses that are offered for including affordable housing.

Cohasset

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes The Cluster Development in Cohasset is allowed by special permit granted by the planning board.

From ordinance.com:

SECTION 10 RESIDENTIAL CLUSTER DEVELOPMENT DISTRICT
Section 10 adopted in entirety 4-4-81 Art.26.

10.1 DEFINITIONS

CLUSTER DEVELOPMENT : An option which permits an applicant to build single family (and multifamily) dwellings with reduced lot area and frontage requirements so as to create a development in which the buildings and accessory uses are clustered together into one or more groups with adjacent common open land.

HOMES ASSOCIATION : A corporation or trust owned or to be owned by the owners of lots or residential units within a tract approved for cluster development, which holds the title to open land and which is responsible for the costs and maintenance of said open land and any other facilities to be held in common.

COMMON OPEN SPACE : A parcel or parcels of land or an area of water, or a combination of land and water within the site designated for a Residential Cluster Development, maintained and preserved for open uses, and designed and intended for the use or enjoyment of residents of the Residential Cluster Development. Common Open Space may contain such complementary structures and improvements as are necessary and appropriate for the benefit and enjoyment of residents of the Residential Cluster Development, but shall not include streets or parking areas except those incidental to open space uses.

WETLANDS Area characterized by vegetation described in General Laws, chapter 131, Section 40.

MULTI-FAMILY (For the purpose of this section only) Attached dwelling units or buildings designed for or occupied by two or more families.

10.2 PURPOSE

In addition to purposes set out in General Laws, Chapter 40A and the local zoning:

1 The Planning Board may grant a special permit for cluster development in the Residence B and Residence C District(s) upon the following terms and conditions:

- a. To encourage the more efficient use of land in harmony with its natural features;
- b. To encourage creativity in the design of developments through a carefully controlled process;
- c. To encourage a less sprawling form of development, a shorter network of streets and utilities, more economical development of land with less consumption of open space;
- d. To permanently preserve natural topography and wooded areas within development areas and to preserve usable open space and recreation facilities close to homes;
- e. To provide an efficient procedure to ensure appropriate high quality design and site planning to enhance the neighborhoods in

which they occur and to the Town as a whole;

f. To promote diverse and energy efficient housing at a variety of costs.

10.3 PROCEDURES

1 Filing of Application

Each application for a special permit to cluster shall be filed with the Planning Board, with a copy filed forthwith with the Town Clerk, and shall be accompanied by eight (8) copies of a preliminary plan of the entire tract under consideration, prepared by a professional architect, engineer, and landscape architect.

2 Contents of Application

Said application and plan shall be prepared in accordance with requirements for a preliminary subdivision plan in the Rules and Regulations of the Planning Board governing subdivision of land, whether or not the development constitutes a subdivision, and shall include proposed location, bulk, and height of all proposed buildings. In addition, the applicant shall provide the following information:

- a. The number dwellings which could be constructed under this bylaw by means of a conventional development plan, considering the whole tract, exclusive of waterbodies and land prohibited from development by legally enforceable restrictions, easements, or covenants. (Note: if areas such as wetlands, floodplains, or steep slopes are not counted in figuring the number of permissible units, the applicant should be required to exclude those areas in making his calculations).
- b. An analysis of the site, including wetlands, slopes, soil conditions, areas within the 100 year flood, trees over 8 inches diameter, and such other natural features as the Planning Board may request.
- c. A summary of the environment concerns relating to the proposed plan.
- d. A description of the neighborhood in which the tract lies, including utilities and other public facilities, and the impact of the proposed plan upon them.
- e. Evaluation of the open land proposed within the cluster, with respect to size, shape, location, natural resource value and accessibility by residents of the town or of the cluster.
- f. Design characteristics shall be stated in the application and shall include, but not be limited to, Building material, architectural design, streets, site and Building landscaping.

3 Review of Other Boards

Before acting upon the application, the board shall submit it with the plan to the following boards, which may review it jointly or separately: The Board of Health, the Design Review Board, the Conservation Commission, and other boards the Planning Board may deem appropriate. Any such board or agency to which petitions are referred for review shall submit such recommendations as it deems appropriate to the Planning Board. Failure to make recommendations within twenty (20) days of receipt shall be deemed lack of opposition.

4 Definitive Residential Cluster Development Plans

After the opportunity for review by other boards has taken place, the applicant shall submit to the Planning Board in accordance with Chapter 41 Section 81K-gg, eight (8) definitive plans and other plans heretofore mentioned within ten (10) days of the expiration of the previous twenty (20) days as set forth in Section 10.3.3.

5 Public Hearing

The Planning Board shall hold a hearing under this section, in conformity with the provisions of General Laws, Chapter 40A, Section 9 and of the Zoning Bylaw and Regulations of the Planning Board. The hearing shall be held within sixty- five (65) days after filing of the application and preliminary plans with the board and the clerk. Notice shall be given by publication and posting and by first-class mailings to "Parties in interest" as defined in General Laws, Chapter 40A, Section 11. The decision of the board, and any extension, modification, or renewal thereof, shall be filed with the board and clerk within ninety (90) days following the closing of the public hearing. Failure of the Board to act within (90) days shall be deemed a grant of the permit applied for. Issuance of the permit requires a 2/3 vote of all members of boards over five members, four members of a five member board, and unanimous vote of a three member board.

6 Relation to Subdivision Control Act

A Special Permit issued hereunder by the planning Board shall not be a substitute for compliance with the Planning Board Rules and Regulations or the Subdivision Control Act. The Planning Board, by granting a Special Permit is not obliged to approve any definitive plan nor reduce any time periods for the Board's consideration under the Subdivision Control Act. However, in order to facilitate processing, the Planning Board may accept a combined plan and application which shall satisfy this Section, the Planning Board Rules and Regulations, and the Subdivision Control Act.

10.4 USES

The permitted uses in the Residential Cluster Development may include single-family homes on separate lots and or multiple family homes together with open space.

10.5 MINIMUM DIMENSIONAL REQUIREMENTS

1 The area of the tract to be developed shall not be less than 10 acres in a Residence B or Residence C District.

2 Every Building shall be limited to thirty-five (35) feet in height.

3 Minimum width of open land between any group of lots and adjacent property shall be thirty (30) feet and between each group of clustered buildings shall be thirty (30) feet.

10.6 LOTS

1 The number of Building lots and/or the number of buildings to be constructed within may not exceed the number of Building lots of said parcel under this Bylaw. The applicant shall furnish plans to identify the number of lots which could be created on said parcel under this Bylaw without such permit.

2 Each Building lot shall contain a site which, subject to approval by the Board of Health, may be suitable for an on- site septic disposal system, or has adequate provision for sewerage.

3 Each lot shall be of a size and shape as shall provide a Building site which shall be in harmony with the natural terrain and other features of the tract.

4 The front, side, and rear yards of each lot shall be shown on said plan by dashed lines indicating the area within which a Building may be built.

5 If the tract falls within two zones, the area requirement for the larger zone shall be used.

10.7 DESIGN STANDARDS

1 The housing shall provide for an effective and unified treatment of the development possibilities on the project site making appropriate provision for the preservation of natural features and amenities of the site and the surrounding areas.

2 The housing shall be planned and developed to harmonize with any existing or proposed development in the area surrounding the project site.

3 All buildings in the layout and design shall be an integral part of the development and have convenient access to and from adjacent uses and roadways.

4 Individual buildings shall be related but not identical to each other in design, mass, material, placement, and connection to provide a visually and physically integrated development. Rigidity in design shall be avoided by variation in Building locations, landscaping, structural coverage, Building materials, floor area, and cost.

5 Treatment of the sides and rear of all buildings within the development shall be comparable in amenities and appearance to the treatment given to street frontage of these same buildings.

6 All buildings shall be arranged so as to preserve visual and audible privacy between adjacent buildings.

7 Multi-family dwelling units cannot exceed thirty (30%) percent of the units in a Residential Cluster Development.

8 The architectural theme of a multi-family dwelling shall be carried out by use of compatible Building materials, color, exterior detailing, bulk, and/or roof lines. Rigidity in design shall be avoided by variations in Building, location, planting, lot coverage, and Building materials.

9 No dwelling unit in any Building of two (2) or more dwelling units shall be designed, constructed, or altered to have more than two (2) bedrooms. For the purposes of this provision, each room in excess of four (4) rooms, exclusive of bathrooms, closets, or other small service rooms of less than forty-eight (48) feet, shall be considered a bedroom.

10.8 LANDSCAPE DESIGN STANDARDS

1 A maximum of twenty-five percent (25%) of the planned Residential Cluster Development may be covered by impervious waterproof surface. 4-8-85 Art. 33

2 Whenever appropriate, existing trees and vegetation shall be preserved and integrated into the landscape design plan.

3 Whenever possible, the existing terrain shall be preserved and earth moving shall be kept to a minimum.

4 For active recreation areas, the Planning Board may require a buffer zone of a minimum of 50', where said active recreation area adjoins land not part of the Cluster Residential Area.

5 Suitable indigenous shrubs and other plant material may be used for screening. Lands used for buffer may be maintained as common open space or as private open space subject to a deed restriction.

10.9 PARKING AND CIRCULATION DESIGN STANDARDS

1 There shall be an adequate safe and convenient arrangement of pedestrian circulation facilities, roadways, driveways, and off-street parking.

2 Off-street parking shall conform to the provisions of Section 7 of the Bylaw.

3 Parking facilities shall be designed with careful regard to arrangement, topography, landscaping, ease of access, and shall be developed as an integral part of an overall site design.

10.10 COMMON OPEN SPACE

1 Provision shall be made so that at least forty-five (45%) percent of the land area shall be Open Land, and that the Open Land shall include all land not dedicated to parking, roads or lots. 4-8-85 Art. 33

2 Areas which are considered by the Planning Board as marginal or unsuitable for Building, such as floodplains, inaccessible wetland and water areas, steep slopes, highly erodible or poorly drained areas, areas of very shallow bedrock, or of very high water table shall be included in the permanent open space; but no more than twenty-five (25%) percent of the required open space shall consist of such marginal or unbuildable areas.

3 Open spaces may be utilized as natural courses for disposal for storm drainage on the site. No conditions shall be allowed which are likely to cause erosion or flooding of any structures.

4 Such open space may be in one or more parcels of a size and shape appropriate for its intended use as determined by the Planning Board and shall be within easy access to all residents of the Residential Cluster Development.

10.11 OWNERSHIP

1 The open land, and such other facilities as may be held in common shall be conveyed in one of the following manners, as determined by the Planning Board.

2 (In general, valuable natural resource land such as wetlands not suitable for any public use, or suitable for extensive public recreational use, should be conveyed to the town or to a trust; whereas land which will be principally used by the residents of the cluster should be conveyed to a homeowner's association).

A. To a corporation or trust comprising a homeowner's association whose membership includes the owners of all lots or units contained in the tract. The developer shall include in the deed to owners of individual lots beneficial rights in said open land, and shall grant a conservation restriction to the Town of Cohasset over such land pursuant to Massachusetts General Laws, Chapter 184, Section 31-33, to insure that such land be kept in an open or natural state and not be built upon for residential use or developed for accessory uses such as parking or roadways. This restriction shall be enforceable by the Town through its Conservation Commission in any proceeding authorized -by Section 33 of Chapter 184 of the Massachusetts General Laws. In addition, the developer shall be responsible for the maintenance of the common land and any other facilities to be held in common until such time as the homeowner's association is capable of assuming said responsibility. In order to ensure that the association will properly maintain the land deeded to it under this section, the developer shall cause to be recorded at the Norfolk Registry of Deeds a Declaration of Covenants and Restrictions which shall, at a minimum, provide for the following:

1) Mandatory membership in an established homes association as 6 requirement of ownership of any lot in the tract;

2) Provisions for maintenance assessments of all lots in order to ensure that the open land is maintained in a condition suitable for the uses approved by the homes association. Failure to pay such assessment shall create a lien on the property assessed, enforceable by either the homes association or the owner of any lot;

3) Provision which, so far as possible under the existing law, will ensure that the restrictions placed on the use of the open land will not terminate by operation of law.

B. To a nonprofit organization, the principal purpose of which is the conservation of open space. The developer or charity shall grant a conservation restriction as set out in (a) above.

C. To the Conservation Commission of the Town for park or open space use, subject to the approval of the selectmen, with a trust clause insuring that it be maintained as open space.

3 Subject to the above, the open space may be used for recreational purposes including golf courses, riding trails, tennis courts, gardens, and swimming pools. The board may permit open land owned by a homeowner's association to be used for individual

septic systems, or for communal septic systems if it and the Board of Health are convinced that proper legal safeguards exist for proper management of a communally owned system.

4 Common Open Space and driveways shall be owned and maintained by the Homeowner's Association.

10.12 FURTHER REQUIREMENTS

1 No use other than residential or recreational shall be permitted, except that the Planning Board may authorize the use of a single unit at any one time as a model exclusively for the subject development and not as a sales unit.

2 No lot shown on a plan for which a permit is granted under this section may be further subdivided, and a notation to this effect shall be shown upon the plan.

3 No certificate of occupancy shall be issued by the Building Inspector until he has certified to the Planning Board that the premises have been built in accordance with the plan approved by the board hereunder.

4 The Planning Board may impose other conditions, safeguards, limitations on time and use pursuant to its regulations.

5 The Planning Board may grant a special permit hereunder for clustering if the developer conforms to the Subdivision Control Law.

6 Except insofar as the subdivision is given five (5) years protection under General Laws, Chapter 40A, Section 6, the special permits granted under this section shall lapse within two (2) years excluding time required to pursue or await the determination of an appeal from the grant thereof, if a substantial use has not sooner commenced or if construction has not begun, except that the Planning Board may grant an extension for good cause and shall grant an extension if the delay was caused by the need to seek other permits.

7 Subsequent to granting of the permit, the Planning Board may permit relocation of lot lines within the cluster. However, any change in overall density, street layout, or open space layout will require further hearings.

8 Except as specified in a Special Permit granted under this section, all requirements of the zoning bylaw shall be in full force and effect.

9 When any portion of a cluster lies within a water resource district, the number of dwelling units served by on-site sewage disposal systems within the district shall not exceed the number allowed under Section 5 - Area Regulations, of this Bylaw 4-7-86 Art. 39

10.13 FINDINGS OF THE BOARD

1 The Board may grant a special permit under this section only if it finds that the applicant has demonstrated the following: That the cluster plan will be in harmony with the general purpose of the bylaw and the requirements of General Laws, Chapter 40A, and the long range plan of the town (if any); that it will not have a detrimental impact on the neighborhood, will be designed with due consideration for health and safety, and is superior to a conventional plan in preserving open space, minimizing environmental disruption, allowing for more efficient provision of services, or allowing for greater variety in prices or types of housing.

2 In connection with issuing or denying a special permit under this section, the Planning Board shall issue to the applicant and shall file with the Town Clerk a written decision which shall include: a) A copy of the subdivision and site plans; b) A finding that the plan is in harmony with the purposes and intent of the Zoning Bylaw and this Section; c) A list of any conditions imposed by the planning Board.

3 If the Planning Board disagrees with the recommendations of the Conservation Commission or the Board of Health, it shall state its reasons therefor in writing.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board Town of Cohasset Zoning Bylaw, Section 10.2 (Adopted 1978, Last Amended 2003).
"1 The Planning Board may grant a special permit for cluster development in the Residence B and Residence C District(s) upon the following terms and conditions."

Has any housing been built under the cluster/flexible provisions?

Yes According to the Cohasset Master Plan and EO418 Community Development Plan, January 2004, most subdivisions in Cohasset are "Approval Not Required." (Page 61)

Page 68:

"Since 1980 Cohasset has provided a cluster development special permit option for subdivisions on sites of 10 acres or more. Three developers have taken advantage of this option. Disincentives to developers include the need for a special permit, which can increase development costs, the need for a development site of at least 10 acres, and the excellent market for conventional

subdivisions."

Concord

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes From ordinance.com:

SECTION 9. RESIDENTIAL CLUSTER DEVELOPMENT

9.1 Purpose

In order to encourage the conservation of significant open space and the efficient use of land in harmony with its natural features, Residential Cluster Development allows, by special permit from the Planning Board, a pattern of land development alternate to the standard subdivision permitted in the residential districts. In order to encourage the grant of land for affordable housing purposes, the Residential Cluster Development includes Optional Special Provisions for Affordable Housing by special permit from the Board.

9.2 Standards

9.2.1 Minimum Tract Size. Residential Cluster Development shall be permitted upon a single tract, in one ownership with definite boundaries ascertainable from a recorded deed or recorded plan, which has an area of not less than five (5) times the minimum lot area of the zoning district within which it is situated (Residence C: Fifty thousand (50,000) square feet; Residence B: One hundred thousand (100,000) square feet; Residence A: Two hundred thousand (200,000) square feet; Residence AA: Four hundred thousand (400,000) square feet). Existing public and private ways need not constitute boundaries of the tract but the area within such ways shall not be counted in determining tract size.

9.2.2 Number of Lots. The number of lots permitted within any Residential Cluster Development shall be determined by the Planning Board to assure compliance with the purposes of this Section, and shall not exceed the basic density. The basic density of a Residential Cluster Development shall be the number of lots upon which a single family dwelling could be constructed in the residential district in which the Residential Cluster Development is located without regard to the Residential Cluster Development, and without waivers of the design standards set forth in the Subdivision Rules and Regulations of the Planning Board.

9.2.3 Dimensional Regulations. Except as provided in this Subsection, all dimensions shall comply with the provisions of Section 6, Table III, Dimensional Regulations. However, to protect the surrounding neighborhood, the Planning Board may require that buildings within the development be set back from some or all of the boundaries of the development tract. The required setback from such boundaries shall be no more than fifty (50) feet.

9.2.3.1 Minimum lot area:

Residence AA 30,000 Sq. Ft. Residence A 15,000 Sq. Ft. Residence B 10,000 Sq. Ft. Residence C 7,500 Sq. Ft.

9.2.3.2 Minimum lot frontage: Each lot shall have a minimum frontage of fifty (50) feet.

9.2.3.3 Minimum lot width: Each lot shall have a lot width of not less than fifty (50) feet and the nearest point on the front wall of the dwelling shall be set back on its lot at least to a point where the lot width is a minimum of one hundred (100) feet in the Residence AA and A districts, eighty (80) feet in the Residence B district, and sixty-four (64) feet in the Residence C district,

9.2.4 Open Space. The area of the open space shall equal at least fifty (50) percent of the total area of the Residential Cluster Development tract.

9.2.4.1 The open space shall have a shape, dimension, character, and location suitable to assure its use for park recreation, conservation, or agricultural purposes by at least all the residents of the Residential Cluster Development. In determining whether the intent of this section has been satisfied, the Planning Board shall consider the extent to which land having one or more of the following characteristics is included in the proposed open space:

(a) Land abutting the Concord, Assabet or Sudbury Rivers, their tributaries, Elm Brook, or ponds of significant public interest, which enhance or protect wetlands or flood plain, or which provide public access to the water body, or which enhance or provide significant scenic vistas or views, or which provide water-related recreational opportunities;

(b) Land which currently is in agricultural use or land which is suitable in size, location and soil characteristics for agricultural use;

(c) Land which provides a significant wildlife habitat or which is a unique natural area;

(d) Land which provides recharge to Concord's current or future municipal wells and highly favored aquifer areas;

(e) Land which is to be developed for active recreational use including playing fields, boat launching areas, playgrounds, and neighborhood parks;

(f) Land which preserves existing trail networks or land on which new trails will be developed as part of the cluster for integration into an existing trail network;

(g) Land which enhances scenic roadside views;

(h) Land providing desirable public access to existing Town or State recreational or conservation land.

9.2.4.2 Provision shall be made so that the open space shall be readily accessible to the owners and occupants of the lots in the Residential Cluster Development, and owned by:

(a) a membership corporation, trust or association whose members are all the owners and occupants of the lots;

(b) by the Town; or

(c) otherwise as the Planning Board may direct.

9.2.4.3 In all cases, a perpetual restriction of the type described in G.L. c. 184, sec. 31 (including future amendments thereto and corresponding provisions of future laws) running to or enforceable by the Town shall be recorded in respect to such land. Such restriction shall provide that the open space shall be retained in perpetuity for one or more of the following uses: conservation, agriculture, recreation, or park. Such restriction shall be in such form and substance as the Planning Board shall prescribe and may contain such additional restrictions on development and use of the open space, as the Planning Board may deem appropriate.

9.2.5 Limitation of Subdivision. No lot shown on a plan for which a permit is granted under this Section may be further subdivided, and a notation to this effect shall be shown on the plan.

9.3 Procedure for Approval

9.3.1 Application. Any person who desires a special permit for a Residential Cluster Development shall submit an application in writing in such form as the Planning Board may require which shall include the following:

9.3.1.1 Plans meeting to the extent applicable the requirements set forth for a definitive plan in the Subdivision Rules and Regulations.

9.3.1.2 Proposed deed restrictions; and

9.3.1.3 Such additional information as the Planning Board may require.

9.3.2 Natural Resources Commission Report and Recommendations. The Natural Resources Commission shall review the proposed Residential Cluster Development plans and shall submit in writing to the Planning Board its report and recommendations upon the degree to which the Residential Cluster Development and proposed open space enhances the protection of environmental qualities including at least:

9.3.2.1 An evaluation and opinion upon the degree to which the development itself impinges upon critical environmental areas.

9.3.2.2 An evaluation and opinion upon the degree to which the common open space protects critical environmental areas and provides a valuable outdoor recreation resource.

9.3.2.3 An evaluation and opinion upon the degree to which any land intended to be conveyed to, or restricted for the benefit of, the Town:

(a) Enhances the protection of critical environmental areas, unique natural features, scenic vistas or potential or existing farmland; or

(b) Provides a valuable addition to the open space resources of the Town.

9.3.3 Special Permit. A special permit shall be granted under this Section only if the Planning Board finds:

9.3.3.1 The plan submitted is in harmony with the general purpose and intent of this Section;

9.3.3.2 The proposed Residential Cluster Development is designed in such a manner to ensure a suitable development for the neighborhood, adequate buffers for adjoining tracts, and suitable open space;

9.3.3.3 The plan submitted conforms with the standards for minimum tract size, number of lots, lot dimensions, frontage, and open

space area and characteristics as set forth herein; and

9.3.3.4 The Residential Cluster Development is designed in such a manner to make it sufficiently advantageous to the Town to depart from the requirements of this Bylaw otherwise applicable to the residential district(s) in which it is located.

9.3.4 Conditions. If a special permit is granted, the Planning Board shall impose as a condition that the open space shall be conveyed, free of any mortgage interest or security interest and subject to a perpetual restriction of the type described above, prior to the Planning Board's release of any lots from the subdivision restrictive covenant or, if there is no covenant, prior to the Building Inspector's issuance of a building permit for any lot. The petitioner shall provide satisfactory assurance of said conveyance and recording in the form of copies of the recorded instruments bearing the recording stamp, or otherwise as the Planning Board may direct.

9.4 Optional Special Provisions for Affordable Housing by the Board

9.4.1 Approval by the Board Where the proposed Residential Cluster Development provides for the granting of land for affordable housing purposes, the Residential Cluster Development special permit shall be granted by the Board and the Board may authorize limited exceptions to the number of lots permitted and the open space requirements.

9.4.2 Exceptions for Granting of Land for Affordable Housing Purposes. The Board may increase the basic density permitted within a Residential Cluster Development and may reduce the required open space area provided that a lot or lots within the development be donated to the Town for affordable housing purposes. For each lot so donated, the Board may increase the basic density by two (2) lots and may reduce the required open space area. In no case shall the total number of lots be increased by more than forty (40) percent, and in no case shall the open space area be reduced to less than forty (40) percent of the area of the development tract.

9.4.3 Procedure for Approval of Optional Special Provisions by the Board

9.4.3.1 Application. Any person who desires a special permit for a Residential Cluster Development with Optional Special Provisions for Affordable Housing shall submit an application in writing in such form as the Board may require.

9.4.3.2 Planning Board Report and Recommendations. The Planning Board shall review the proposed Residential Cluster Development plans and shall submit in writing to the Board its report and recommendations upon the technical quality of the proposed development, and at least the following:

(a) General descriptions of the natural terrain of the cluster tract and surrounding areas, and of the neighborhood in which the tract is situated.

(b) A review of the proposed development, including the design and use of the open space and of pedestrian and vehicular circulation.

(c) An evaluation and opinion upon the degree to which any land intended to be conveyed to, or restricted as open space for the benefit of the Town: provides or will in the future provide an addition to areas of open space between developed sections of the Town; makes available land desirable for other public use; and conforms to the Town's long-range land use plan.

(d) An evaluation and opinion upon the degree to which any land intended to be conveyed to the Town for affordable housing conforms to the Town's housing objectives and policy.

(e) Its opinion as to whether the proposed tract size, site design, development layout, number and location of lots constitute a suitable development for the neighborhood within which it is located.

(f) A statement that the developer's plans comply with the design standards of the Subdivision Rules and Regulations of the Planning Board, or wherever such plans do not comply, a statement of the respects in which they do not so comply.

(g) Recommendations for the granting or denial of the special permit, including recommendations for modifications, restrictions, or requirements to be imposed as a condition of granting the special permit.

9.4.3.3 Natural Resources Commission Report and Recommendations. The Natural Resources Commission shall review the Residential Cluster Development plans and shall submit in writing to the Board its report and recommendations as provided in Section 9.3.2 above.

9.4.3.4 Special Permit by Board for Optional Provisions for Affordable Housing. A special permit shall be issued under this Section for a Residential Cluster Development with Optional Provisions for Affordable Housing only if the Board shall find the development conforms with Section 9.3.3 and also finds the proposed Residential Cluster Development provides significant public benefits through the granting of land for affordable housing purposes.

9.4.3.5 Conditions. If a special permit is granted, the Board shall impose as conditions thereof the following:

(a) The open space shall be conveyed, free of any mortgage interest or security interest and subject to a perpetual restriction of the type described above, prior to the Planning Board's release of any lots from the subdivision restrictive covenant or, if there is no covenant, prior to the Building Inspector's issuance of the building permit for any lot. A petitioner shall provide satisfactory assurance of said conveyance and recording in the forms of copies of the recorded instruments bearing the recording stamp, or

otherwise as the Board may direct;

(b) All lots to be conveyed to the Town for affordable housing purposes shall be conveyed, free of any mortgage interest or security interest prior to the Planning Board's release of any lots from the subdivision restrictive covenant, or if there is no covenant, prior to the Building Inspector's issuance of a building permit for any lot. The petitioner shall provide satisfactory assurance of said conveyance and recording in the form of copies of the recorded instruments bearing the recording stamp, or otherwise as the Board may direct.

9.5 Amendments Without Public Hearing

Following the granting of a special permit under this Section, by either the Planning Board or the Board, the Planning Board may, upon application and for good cause shown, without public hearing, amend the plan solely to make changes in lot lines shown on the plan provided, however, that no such amendment shall:

9.5.1 Grant any reduction in the size or change in location of the open space as provided in the permit;

9.5.2 Grant any change in the layout of the ways as provided in the permit;

9.5.3 Increase the number of lots as provided in the permit; or

9.5.4 Decrease the dimensional requirements of any lot below the minima permitted by this Bylaw.

SECTION 10. PLANNED RESIDENTIAL DEVELOPMENT (PRD)

10.1 Purpose

Planned Residential Development allows by special permit from the Board an alternative pattern of residential land development. It is intended to encourage the conservation of open space, while at the same time providing for a mixture and diversity of housing types in the Town at somewhat greater dwelling unit densities than is otherwise permitted without a significant increase in Town-wide population density. In a PRD, dwelling units should be constructed in appropriate clusters that are harmonious with neighborhood development and will not detract from the ecological and visual qualities of the area. The overall site design and amenities should enhance the quality of living for the residents of the development, the immediate neighborhood and the Town generally. Attention, however, shall be given by the Board as to whether the proposed site design, development layout, number, type and design of housing constitute a suitable development for the neighborhood within which it is to be located.

10.2 Standards.

10.2.1 Minimum Tract Size. Planned Residential Developments shall be permitted upon a single tract, in one ownership with definite boundaries ascertainable from a recorded deed or recorded plan, which has an area of not less than four (4) times the minimum lot area of the zoning district within which it is situated (Residence C: Forty thousand (40,000) square feet; Residence B: Eighty thousand (80,000) square feet; Residence A: One hundred sixty thousand (160,000) square feet; Residence AA: Three hundred twenty thousand (320,000) square feet; Business: Forty thousand (40,000) square feet). Existing public or private ways need not constitute boundaries of the tract but the area within any such ways shall not be counted in determining minimum tract size.

10.2.2 Maximum Permissible Density. Maximum permissible density within a PRD tract shall not exceed two times the total number of dwelling units obtained through application of subsection 10.2.2.1 (basic density) in the Residence C and Business districts and shall not exceed three times the basic density in all other residential districts. In no case shall that portion of a PRD which lies outside the Flood Plain and Wetlands Conservancy districts contain less than five thousand (5,000) square feet of area for each dwelling unit.

10.2.2.1 Basic density: The basic density of the PRD shall not exceed the number of units obtained by applying the following calculation:

The number of dwelling units obtained by dividing the sum of (1) the area of the tract exclusive of land situated within the Flood Plain or Wetlands Conservancy districts, and (2) twenty-five percent (25 %) of the area of land situated within the Flood Plain or Wetlands Conservancy districts by the minimum lot size permitted in the zoning district(s) within which the tract is located.

10.2.2.2 Fractional Numbers: Where the computation of the basic density results in a fractional number, only a fraction of one-half or more shall be counted as one (1).

10.2.3 Diversity of Dwelling Units: A mix of diverse housing opportunities shall be provided in all Planned Residential Developments. Such diversity may consist of: a mix in the number of bedrooms available or the gross floor area of the units, a mix of single-family, two-family and multi-family units or a mix of the price or rental rates of the units. If all the units proposed in the Planned Residential Development are market-rate units, then only the basic density shall be permitted. Increases beyond the basic density within the Planned Residential Development may be authorized by the Board only if one or more units are made available as described in subsection 10.2.3.1 and 10.2.3.2. Any increases in density permitted by the Board shall not exceed the limits contained in subsection 10.2.2 and shall be based upon the degree to which the proposed PRD provides a range of low income and affordable

dwelling units, in addition to the mix of diverse housing opportunities.

10.2.3.1 Low income dwelling units are those units made available to the Concord Housing Authority, or other entity as the Board may direct, either for purchase within the cost limits allowed by the Commonwealth of Massachusetts Executive Office of Housing and Community Development, or for lease under federal or state rental-assistance programs, or through a long-term contractual agreement.

10.2.3.2 Affordable dwelling units are those units made available for sale, lease or rent at below market rates based on the following:

(a) Starter-priced housing. Dwelling units set aside for sale, lease or rental to households with incomes of less than one-hundred ten (110) percent of the median family income for the Boston Metropolitan Area as determined by the most recent calculation of the U.S. Department of Housing and Urban Development.

(b) Moderate-priced housing. Dwelling units set aside for sale, lease or rental to households with incomes of less than one hundred and fifty (150) percent of the median family income for the Boston Metropolitan Area as determined by the most recent calculation of the U.S. Department of Housing and Urban Development.

10.2.3.3 Unit size: A variety of units shall be provided within the PRD, which may include dwelling units of one, two, three or more bedrooms; with a minimum gross floor area of not less than four-hundred (400) square feet.

10.2.3.4 Exterior design: The exterior of low income and affordable dwelling units shall be designed to be indistinguishable from the market-rate units; however it is recognized that these units may be smaller and have fewer features than market-rate units. Any low income units and affordable units proposed shall be integrated into the PRD development.

10.2.3.5 Long-term availability: The Board, as a condition of a special permit, shall impose appropriate limitations and safeguards to insure the continued availability of the below market-rate units for a minimum of forty (40) years. Such limitations and safeguards may be in the form of deed restrictions, resale monitoring, requirements for income verification of purchasers and/or tenants, rent level controls or other method as the Board may direct.

10.2.4 Permitted uses. There shall be permitted in any PRD:

10.2.4.1 Single-family detached and semidetached dwellings, two-family dwellings; and multi-unit dwellings of all types without regard to dwelling unit configuration or form of ownership; however, no multi-unit dwelling shall contain more than eight (8) dwelling units. No more than eighty percent (80 %) of the dwelling units within the PRD shall be in buildings of the same type.

10.2.4.2 Accessory uses incidental to the principal uses indicated above.

10.2.5 Lot Area, Frontage and Yard Requirements. There shall be no minimum lot area, frontage or yard requirements within a PRD. However, no building shall be erected within twenty (20) feet of a public way or boundary line of the PRD in the Residence C and B districts, and within thirty (30) feet in the Residence A and AA districts.

10.2.6 Access to the Tract: Access to the tract shall be provided from an existing public or private way and shall be through the existing frontage on such public or private way.

10.2.7 Height. The maximum permitted height of any structure within a PRD shall be thirty-five (35) feet.

10.2.8 Area of Residential Development. The area developed for residential use, including buildings, parking and other areas paved for vehicular use, shall not exceed fifty (50) percent of the total area of the PRD tract. Foot and bicycle paths and recreational facilities, including buildings wholly devoted to recreation, shall not be counted in calculating the fifty-percent limitation.

10.2.9 Common Open Space. All land within the PRD tract which is not covered by buildings, roads, driveways, parking areas or service areas, or which is not set aside as yards, patios, gardens, or similar areas for exclusive or shared use by the residents, shall be common open space. The area of the common open space shall equal at least twenty-five (25) percent of the total area of the PRD tract.

10.2.9.1 The common open space shall have a shape, dimension, character and location suitable to assure its use for park, recreation, conservation, or agricultural purposes by at least all the residents of the Planned Residential Development. In determining whether the intent of this section has been satisfied, the Board shall consider the extent to which land having one or more of the following characteristics is included in the proposed open space:

10.2.9.2 Provision shall be made so that the common open space shall be readily accessible to at least all of the owners and occupants of the units in the Planned Residential Development, and owned by:

...

10.2.9.3 In all cases, a perpetual restriction of the type described in G.L. c.184, sec. 31 (including future amendments thereto and corresponding provisions of future laws) running to or enforceable by the Town shall be recorded in respect to such land. Such restriction shall provide that the common open space shall be retained in perpetuity for one or more of the following uses: conservation, agriculture, recreation, or park. Such restriction shall be in such form and substance as the Board shall prescribe and may contain such additional restrictions on development and use of the common open space as the Board may deem appropriate.

10.2.10 Limitation of Subdivision. No lot shown on a plan for which a permit is granted under this section may be further subdivided, and a notation to this effect shall be shown on the plan.

10.2.12 Special Provisions for an Alternative PRD to be submitted to and approved by a two-thirds (2/3) vote of Town Meeting - In the Limited Industrial Park (LIP) District, the limitations contained in Subsection 10.2 above shall not apply to any PRD submitted to and approved by a two-thirds (2/3) vote of Town Meeting prior to application for a special permit from the Board all in accordance with the following procedures (herein an "Alternative PRD"):

10.2.12.1 Purpose - The provisions applicable to an Alternative PRD are intended to:

(a) Permit an applicant to propose and for the Town to vote on a Preliminary Site Development and Use Proposal unique to a particular location;

(b) Permit flexibility in the development of specific site by requiring few predetermined standards;

(c) Encourage proposals responsive to the Town's housing goals including housing types which increase diversity and affordability; and

(d) Enable the Board to require adherence to the Primary Site Development and Use Proposal approved by Town Meeting in the granting of a special permit.

10.2.12.2 Preliminary Site Development and Use Proposal - Any person who desires to submit an Alternative PRD proposal to Town Meeting shall prepare a development statement and plans consisting of the following:

(a) A development statement consisting of a preliminary written proposal meeting the requirements of Section 10.3.1.1;

(b) Preliminary Site Development and Use Plans consisting of:

(i) Overview Plan showing all of the land proposed to be used as part of the Alternative PRD and showing other land and buildings located within 300 feet of the boundary of the Alternative PRD;

(ii) Site plan(s);

(iii) Typical Floor Plan(s); and

(iv) Architectural Rendering(s) or Elevation(s) of the principal building(s).

(c) A summary statement consisting of an overview of the proposed Alternative PRD with specific details of the provisions which will be made to enhance housing diversity and affordability.

10.2.12.3 Alternative PRD Submission, Public Hearing, Elevation, Changes and Town Meeting Vote.

(a) Before filing a Preliminary Site Development and Use Proposal, the applicant is encouraged to meet informally with the Planning Board to discuss the proposed Alternative PRD and the level of detail to be included in the Preliminary Site Development and Use Proposal.

(b) On or before the close of the Town Meeting warrant the applicant shall submit a proposed warrant article and file one (1) full copy of the Preliminary Site Development and Use Proposal with the Town Clerk and five (5) copies of the Preliminary Site Development and Use Proposal with the Planning Board.

(c) The Planning Board shall hold a public hearing on the proposed Alternative PRD. The Planning Board shall give notice of such hearing in accordance with Section 5 of Chapter 40A of the General Laws and shall also send copies of such notice to all Parties of Interest as determined by Section 11 of Chapter 40A.

(d) The Preliminary Site Development and Use Proposal may be amended after the Public Hearing if (i) the Planning Board approves such amendment and finds that there is good cause for such amendment and (ii) a copy of the amendment is filed with the Town Clerk and the Planning Board at least five (5) days before the day on which the Town Meeting votes on the proposed Alternative PRD. The Preliminary Site Development and Use Proposal may also be amended on the floor of Town Meeting.

(e) The Planning Board shall evaluate the Preliminary Site Development and Use Proposal and present its recommendation to the Town Meeting.

(f) Approval of the Preliminary Site Development and Use proposal shall require a two-thirds (2/3) vote of Town Meeting

10.2.12.4 Alternative PRD Application for Special Permit; Reports and Recommendations; and Issuance of a Special Permit by the Board -Generally, the application of a special permit, the Planning Board's and Natural Resources Commissions report and recommendations and issuance of a special permit by the Board shall follow the requirements of Section 10.3 provided however that in addition to the provisions contained in Section 10.3.4 the Board shall find:

(a) The proposed Alternative PRD is substantially consistent with the Preliminary Site Development and Use Proposal approved by Town Meeting;

(b) The minimum frontage, front yard, side yard and rear yard shall not be less than the minimum permitted in the Zoning District in which the Alternative PRD is located;

(c) The maximum permitted height of any structure shall not exceed the height permitted in the Zoning District in which the Alternative PRD is located.

(d) The maximum gross floor area permitted shall not exceed the gross floor area permitted in the Zoning District in which the Alternative PRD is located provided however that the gross floor area of any (i) low income or affordable dwelling units (ii) enclosed parking (iii) enclosed trash/recycling area and (iv) any basement area and unfinished attic area shall not be included in determining the maximum gross floor area as defined and permitted in accordance with this Bylaw

(e) The minimum Common Open Space shall be equal to at least fifty (50) percent of the total area of the PRD Tract; the Common Open Space shall be subject to a perpetual restriction of the type described in G.L.C. 184 Section 31 and the Common Open Space shall be owned by a membership corporation, trust or association whose members are all the owners of the units or owned by the Town or otherwise owned as the Board may direct;

(f) The special permit shall be granted within two (2) years of the date of the Town Meeting vote which approved the Preliminary Site Development Use Proposal. Said two (2) years shall not include any time required to pursue or await determination of any appeal applicable to the Alternative PRD.

10.3 Special Provisions

10.3.1 Special Provisions for the Concord Housing Authority and Town of Concord Projects. Except as provided for in subsection 10.2.6 and 10.2.7 above, the limitations contained in subsection 10.2 shall not apply to a PRD application submitted by the Concord Housing Authority or to a PRE) application submitted by the Concord Board of Selectmen in which seventy-five percent (75 %) of the units will be of the type described in subsection 10.2.3.1 and 10.2.3.2 provided that the Board shall find that the proposed design is generally in keeping with the purposes of this Bylaw and with Town of Concord Housing Partnership Guidelines and Procedures as in effect from time to time.

10.3.2 Special Provisions for Non-profit entity. Except as provided for in subsection 10.2.6 and 10.2.7 above, the limitations contained in subsection 10.2 shall not apply to a PRD application submitted by a Non-profit entity in which seventy-five percent (75 %) of the units will be of the type described in subsection 10.2.3.1 and 10.2.3.2 provided that the Board shall find that the proposed design is generally in keeping with the purposes of this Bylaw.

10.3.3 Special Provisions for Converted School Building and Municipal Building. The limitations contained in subsection 10.2 above shall not apply to applications for conversion of private or public school buildings and municipal buildings to residential use, provided that any such PRD conversion which varies from the aforesaid limitations shall be issued a special permit only in accordance with the following procedures:

10.3.3.1 An application for the proposed PRD conversion, in such form and containing such information as the Planning Board may require in order to evaluate the overall suitability of the proposed use in light of the purposes of Section 10 of this Bylaw, shall be submitted to the Planning Board. The Planning Board shall consider such Application and, if its evaluation thereof is favorable, shall submit to the Town Meeting such evaluation and its recommendations regarding the Application.

10.3.3.2 At such Town Meeting, approval of the Application for the PRD Conversion shall be by a two-thirds vote.

10.3.3.3 Not later than twenty-four (24) months from the date of Town Meeting approval, an application for a special permit shall be submitted to the Board for the PRD Conversion in accordance with the procedures for approval set forth in Subsection 10.4 below. A special permit shall be issued only if the Board shall find that the plans submitted to it for the PRD Conversion conform substantially to the terms of the approval granted by the Town Meeting and provided further that such permit shall be issued in conformance with the provisions of Subsection 10.4.4. The Board may, in its discretion, permit minor deviations from the Application as approved by the Town Meeting, so long as it finds that such deviations are not substantially inconsistent with the Town Meeting approval.

****Webmasters Note:** The previous section, Section 10, has been amended as per an ordinance approved at a town meeting held on 4/23/01.

Noted on survey received from Concord on 4/22/05:

What year was the first provision for flexible zoning adopted?

1962

What was the last year that the municipality amended the cluster/flexible provisions?

2001

Which entity is the special permit granting authority for cluster/flexible zoning?

**More
than one
entity**

Planning board for cluster; Board of Appeals for PRD.

SECTION 9. RESIDENTIAL CLUSTER DEVELOPMENT
9.1 Purpose

In order to encourage the conservation of significant open space and the efficient use of land in harmony with its natural features, Residential Cluster Development allows, by special permit from the Planning Board, a pattern of land development alternate to the standard subdivision permitted in the residential districts. In order to encourage the grant of land for affordable housing purposes, the Residential Cluster Development includes Optional Special Provisions for Affordable Housing by special permit from the Board.

SECTION 10. PLANNED RESIDENTIAL DEVELOPMENT (PRD)

10.1 Purpose

Planned Residential Development allows by special permit from the Board an alternative pattern of residential land development. It is intended to encourage the conservation of open space, while at the same time providing for a mixture and diversity of housing types in the Town at somewhat greater dwelling unit densities than is otherwise permitted without a significant increase in Town-wide population density. In a PRD, dwelling units should be constructed in appropriate clusters that are harmonious with neighborhood development and will not detract from the ecological and visual qualities of the area. The overall site design and amenities should enhance the quality of living for the residents of the development, the immediate neighborhood and the Town generally. Attention, however, shall be given by the Board as to whether the proposed site design, development layout, number, type and design of housing constitute a suitable development for the neighborhood within which it is to be located.

From definitions:

1.3.2 Board: The Town of Concord Board of Appeals.

Has any housing been built under the cluster/flexible provisions?

Yes On survey received from Concord on 4/22/05:

Has any housing been built under the cluster/flexible provisions? (none, 1-8 projects, more than 8)

"Yes, more than 8"

Danvers

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Cluster zoning appears to be allowed in Residence Districts I, II, and III -- Section 33 lists minimum lot size requirements only in these three districts.

Section 33 CLUSTER DEVELOPMENT

33.1 Purpose

The purpose of cluster development is to provide for single family residential development on lots smaller than permitted under normal zoning requirements, which development:

1. Results in the permanent preservation of open space which is of use and value to the Town and which would not normally be preserved under development undertaken according to other sections of the by-law.
2. Encourages creative site planning which is sensitive to the natural characteristics of the land.
3. Provides for economical development, efficient provision of public services and minimizes road and driveway construction and paving.
4. Promotes aesthetics and other amenities.

33.2 Conditions for Special Permits

No special permit for a cluster development shall be issued unless the requirements enumerated in this section, and other sections of this by-law are met and the Special Permit Granting Authority (SPGA) finds:

1. Preservation of the open space will be beneficial to the Town and/or the residents of the tract by virtue of the creation of usable open space for passive recreation, preservation of scenic areas or views, preservation of natural resources, contribution to a network of open space as part of an overall Town conservation plan, or other.
2. The cluster development will result in a development superior to the proposed conventional subdivision of the tract, from the standpoint of location of units with respect to topography of the site, efficient provision of public services, and reduction in the amount of roadway and driveway construction.
3. The cluster development will have no more adverse impact on nearby developed neighborhoods by virtue of increased traffic, impairment of privacy and views than would the proposed conventional subdivision of the tract.
4. Proper arrangements have been made for access to the open space by residents of the tract, emergency vehicles of the Town, and, if the open space is to be held by the Town, by the public.
5. The conservation easement or conservation restriction shall be acceptable as to both content and form. At the minimum, the instrument must comply with the provision of Massachusetts General Law (MGL), Chapter 184, sections 31-33, or Internal Revenue Code, section 170(h), as amended.
6. Suitable arrangements for management and maintenance of the open space have been made.

33.3 General Requirements for Cluster Development

1. A cluster development shall contain a minimum of two (2) acres of open space.
2. The number of building lots in the cluster development shall not be greater than the number of buildable lots which the Planning Board finds would be permitted by normal zoning requirements in the district.
3. In parcels located partly in more than one (1) district, no more than the total number of lots which would be permitted by normal zoning requirements in the combined districts and complying with Subdivision Rules and Regulations shall be permitted.
4. The minimum size of each such lot shall be determined on the following basis:

District Minimum Lot Size

Residence I 8,000 square feet

Residence II 12,000 square feet

Residence III 15,000 square feet

5. The frontage of each lot on a street within the cluster development shall not be less than thirty (30) feet. Four (4) contiguous lots shall not have less than a total of 300 feet frontage. For purposes of this section, lots separated by open space with frontage of sixty (60) feet or less shall be considered contiguous.
6. Any lot with frontage on a street not within the cluster development shall meet the frontage requirement of the district in which the lot is located.
7. Each lot within the tract shall be so configured as to accommodate within it a circle having a diameter of not less than the following dimensions:

District Requirement

Residence I 75 feet

Residence II 85 feet

Residence III 100 feet

8. The setback for each such lot shall be at least as follows:

Front Side Rear

District Setback Setback Setback

Residence I 20 feet 8 feet 8 feet

Residence II 25 feet 10 feet 15 feet

Residence III 30 feet 15 feet 15 feet

33.4 Requirements for Open Space

1. All land shown on a plan for which a special permit is granted under this section which is not included in building lots, streets, or easements, shall be established by conservation restriction or conservation easement as open space for conservation and/or recreation purposes, or by conveyance to the Town of Danvers for conservation purposes.

2. The total area of the open space parcel(s) shall equal or exceed the sum of the areas by which any individual lots are reduced below the minimum lot area normally required by other sections of the Town's zoning by-laws in their districts and shall, in any case comprise at least thirty percent (30%) of the total area of the tract.

3. At least fifty percent (50%) of the open space shall be preserved by easement or restriction for conservation purposes only.

4. Construction and use of tennis courts, vegetable gardens or floral gardens or other playing surfaces on not more than fifty percent (50%) of the total open space land shall be permitted. No more than twenty-five percent (25%) of the required open space shall be wetlands.

5. Each lot in the tract shall have direct access to one or more portions of the open space, unless the Planning Board finds that due to the topography or other conditions this requirement can be modified and further find that the lack of direct access will be offset by other mitigating factors.

6. All land areas used to meet the open space requirement shall be so configured as to accommodate within it a circle having a diameter of not less than seventy-five (75) feet.

7. The open space land area required shall be contained in more than two (2) non-contiguous parcels or, if more than two (2) parcels are to be utilized for this requirement, no parcel shall contain less than 15,000 square feet.

8. open space shall be located between the clustered lots and adjacent property in accordance with MGL, Chapter 40A, section 9.

9. The open land, and such other facilities as may be held in common, shall be conveyed as determined by the Planning Board subject to the following guidelines.

a. To a corporation or trust comprising a homeowners' association whose membership includes the owners of all lots or units contained in the tract. The developer shall include in the deed to owners of individual lots, beneficial rights in said open land and shall grant a conservation restriction to the Town of Danvers over such land pursuant to MGL, Chapter 184, sections 31-33, to ensure that such land be kept in an open or natural state and not be built upon for residential use or developed for accessory uses such as parking or roadways. This restriction shall be enforceable by the Town through its Conservation Commission in any proceeding authorized by section 33 of Chapter 184 of the MGL's. In addition, the developer shall be responsible for the maintenance of the common land and any other facilities to be held in common until such time as the homeowners' association is capable of assuming said responsibility. In order to ensure that the association will properly maintain the land deeded to it under this section, the developer shall cause to be recorded at the Essex County Registry of Deeds, Southern District, a Declaration of Covenants and Restrictions which shall, at a minimum, provide for the following:

1) Mandatory membership in an established homes association as a requirement of ownership of any lot in the tract.

2) Provisions for maintenance assessments of all lots in order to ensure that the open land is maintained in a condition suitable for the uses approved by the homes association. Failure to pay such assessment shall create a lien on the property assessed, enforceable by either the homes association or the owner of any lot.

3) Provision which, so far as possible under the existing law, will ensure that the restrictions placed on the use of the open land will not terminate by operation of the law.

b. The conservation restriction or easement shall be granted to a non-profit organization, the principal purpose of which is the conservation of open space, or to the Conservation Commission of the Town for park or open space use, with a trust clause insuring that it be maintained as open space. Both the non-profit organization and the Conservation Commission shall, under the terms of the restriction or easement, have concurrent powers of enforcement.

10. Some interim protection of open land must be provided by recorded covenant of the landowner where a large cluster will be developed in phases.

11. The covenant must be submitted to the SPGA for review and approval prior to recording.

33.5 Content of the Application

[...]

33.6 Procedures for special Permits for Cluster Development

1. Any person may make application to the Planning Board acting as Special Permit Granting Authority (SPGA) for a special permit excepting the building lots for single family dwellings from specific requirements of the zoning by-law as specified hereunder, but not any other requirements of the zoning by-law.

[...]

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board 33.2 Conditions for Special Permits

No special permit for a cluster development shall be issued unless the requirements enumerated in this section, and other sections of this by-law are met and the Special Permit Granting Authority (SPGA) finds:

2. The number of building lots in the cluster development shall not be greater than the number of buildable lots which the Planning Board finds would be permitted by normal zoning requirements in the district.

Has any housing been built under the cluster/flexible provisions?

Dedham

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes According to Kenneth Cimeno, there is a planned development district. No PUD development has taken place, but it is in the by-law.

According to Arthur Noonan, Town Planner, in the completed questionnaire sent back to researcher on 7-9-04, there is cluster zoning but it is not by special permit, but rather by town meeting approval.

According to the Town of Dedham Bylaw, Section II-7 PLANNED RESIDENTIAL DEVELOPMENT STANDARDS

All concept plans and the detailed development plans evolving therefrom shall conform to the following standards:

A. The overall density in dwelling units shall not exceed 1.5 times the number of dwelling units which could be located within the boundaries of the planned residential development tract in accordance with the applicable conventional zoning, and at least 20 percent of such tract shall be maintained as natural open space in which the existing vegetation and topography shall be preserved to the extent possible, subject only to additional planting and landscaping, but no paving, parking, or buildings.

B. A detailed site development plan conforming to the approved concept plan shall show and identify all changes and construction to the extent required for site plans, including all existing and proposed buildings and structures, and the plans, elevations, and use

of all buildings other than one and two family dwellings. The procedure for the review and approval of the detailed development plans shall follow, so far as apt, the approval regulations and procedures for a definitive subdivision plan, including the requirement for a covenant or security to guarantee the performance of all work in accordance with the plan and the schedule approved by the Planning Board. Plan changes not increasing the number, floor area or intensity or type of use of buildings and not reducing the open space may be approved from time to time by the Planning Board; other changes shall require submittal of a new concept plan for Town Meeting approval and of a revised development plan. Building and occupancy permits for each building shall be required in accordance with the applicable state and town regulations.

C. The construction of a planned residential development may proceed in phases, provided that higher intensity or occupancy uses shall not exceed at any time the overall ratio of such uses to one-family dwellings in the entire planned development, and conveyances or leases of all or any part of a planned residential development shall be subject to and shall refer to the conditions of approval of such planned residential development.

D. Performance bond or other security shall provide for the restoration so far as possible of the development or any part thereof not completed in accordance with the approved plan and schedule to pre-development condition.

E. Building facing residential lots conforming to conventional residential zoning across a street shall conform in type and spacing to the applicable conventional zoning standards or shall be located at least 100 feet from such conventional residential lots and be separated therefrom by a dense vegetation or other approved visual screen.

SECTION 7.0 SPECIAL RESIDENTIAL REGULATIONS

7.1 PLANNED RESIDENTIAL DEVELOPMENT STANDARDS

7.1.1 General. All concept plans and the detailed development plans evolving there from shall conform to the following standards.

7.1.2 Standards.

1. The overall density in dwelling units shall not exceed 1.5 times the number of dwelling units which could be located within the boundaries of the planned residential development tract in accordance with the applicable conventional zoning, and at least 20 percent of such tract shall be maintained as natural open space in which the existing vegetation and topography shall be preserved to the extent possible, subject only to additional planting and landscaping, but no paving, parking, or buildings.

2. A detailed site development plan conforming to the approved concept plan shall show and identify all changes and construction to the extent required for site plans, including all existing and proposed buildings and structures, and the plans, elevations, and use of all buildings other than one and two family dwellings. The procedure for the review and approval of the detailed development plans shall follow, so far as apt, the approval regulations and procedures for a definitive subdivision plan, including the requirement for a covenant or security to guarantee the performance of all work in accordance with the plan and the schedule approved by the Planning Board. Plan changes not increasing the number, floor area or intensity or type of use of buildings and not reducing the open space may be approved from time to time by the Planning Board; other changes shall require submittal of a new concept plan for Town Meeting approval and of a revised development plan. Building and occupancy permits for each building shall be required in accordance with the applicable state and town regulations.

3. The construction of a planned residential development may proceed in phases, provided that higher intensity or occupancy uses shall not exceed at any time the overall ratio of such uses to one-family dwellings in the entire planned development, and conveyances or leases of all or any part of a planned residential development shall be subject to and shall refer to the conditions of approval of such planned residential development.

4. Performance bond or other security shall provide for the restoration so far as possible of the development or any part thereof not completed in accordance with the approved plan and schedule to pre-development condition.

5. Building facing residential lots conforming to conventional residential zoning across a street shall conform in type and spacing to the applicable conventional zoning standards or shall be located at least 100 feet from such conventional residential lots and be separated there from by a dense vegetation or other approved visual screen.

Which entity is the special permit granting authority for cluster/flexible zoning?

Combination According to Arthur Noon of Dedham Planning, Planned Residential Development requires special permits from the Planning Board, Board of Selectmen, and Town Meeting. (3/21/05)

The procedure for the review and approval of the detailed development plans shall follow, so far as apt, the approval regulations and procedures for a definitive subdivision plan, including the requirement for a covenant or security to guarantee the performance of all work in accordance with the plan and the schedule approved by the Planning Board. Plan changes not increasing the number, floor area or intensity or type of use of buildings and not reducing the open space may be approved from time to time by the Planning Board; other changes shall require submittal of a new concept plan for Town Meeting approval and of a revised

development plan. Building and occupancy permits for each building shall be required in accordance with the applicable state and town regulations.

Has any housing been built under the cluster/flexible provisions?

No Arthur Noonan of Dedham Planning said that no Planned Residential Development has been built in Dedham. (3/21/05) He suggested that the process is quite burdensome, requiring approval of the Planning board, Selectmen and Town Meeting.

Dighton

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Conservation Subdivisions are allowed in areas zoned R or B. Special permit from board of appeals.

"4300. CONSERVATION SUBDIVISION

4310. Purpose

The purpose of this Section 4300, Conservation Subdivision Design, is to encourage the preservation of open land for its scenic beauty and to enhance agricultural, open space, forestry, and recreational use; to preserve historical and archeological resources; to protect the natural environment; to protect the value of real property; to promote more sensitive siting of buildings and better overall site planning; to perpetuate the appearance of Dighton's traditional New England landscape; to allow landowners a reasonable return on their investment; to facilitate the construction and maintenance of streets, utilities, and public services in a more economical and efficient manner; and to promote the development of housing affordable to low and moderate income families.

4320. Applicability

Any creation of five (5) or more lots, whether a subdivision or not, from a parcel or set of contiguous parcels held in common ownership and located entirely within the Residence District *** may proceed under this Section pursuant to the issuance of a special permit by the Planning Board. Such special permits shall be acted upon in accordance with the following provisions.

4330. Procedures

Applicants for a Conservation Subdivision shall file with the Planning Board six (6) copies of the following:

4331. A Development Plan conforming to the requirements for a preliminary subdivision plan under the Subdivision Regulations of the Planning Board. Such plan shall indicate proposed topography, wetlands, and, unless the development is to be sewered, the results of deep soil test pits and percolation tests at the rate of one per acre, but in no case fewer than four (4) per Conservation Subdivision. Where wetland delineation is in doubt or dispute, the Planning Board shall require the applicant to submit to the Conservation Commission a request for determination of applicability pursuant to G.L. c. 131, s.40 and 310 CMR 10.05(3). The Planning Board shall refer data on proposed wastewater disposal to the Board of Health for their review and recommendation. The Planning Board may also require as part of the Development Plan any additional information necessary to make the determinations and assessments cited herein.

4332. Four-Step Design Process. Each Development Plan shall follow a four-step design process, as described below. When the Development Plan is submitted, applicants shall be prepared to demonstrate to the Planning Board that these four design steps were followed by their site designers in determining the layout of their proposed streets, houselots, and open space.

a. Designating the Open Space. First, the open space is identified. The open space shall include, to the extent feasible, the most sensitive and noteworthy natural, scenic, and cultural resources on the property.

b. Location of House Sites. Second, potential house sites are tentatively located. House sites should be located not closer than 100 feet to wetlands areas, but may be situated within 50 feet of open space areas, in order to enjoy views of the latter without negatively impacting the former.

c. Street and Lot Layout. Third, align the proposed streets to provide vehicular access to each house in the most reasonable and economical way. When lots and access streets are laid out, they shall be located in a way that avoids or at least minimizes adverse impacts on open space. To the greatest extent practicable, wetland crossings and streets traversing existing slopes over 15% shall be strongly discouraged.

d. Lot Lines. Fourth, draw in the lot lines. These are generally drawn midway between house locations.

4340. Modification of Lot Requirements

The Planning Board may authorize modification of lot size, shape, and other bulk requirements for lots within a Conservation Subdivision, subject to the following limitations:

4341. Lots having reduced area or frontage shall not have frontage on a street other than a street created by a subdivision involved.

4342. Each lot shall contain not less than seven thousand five hundred square feet (7,500) of area, and have frontage of not less than 50 feet.

4343. Each lot shall have yards of at least fifteen (15) feet.

4350. Number of Dwelling Units

The maximum number of dwelling units allowed shall be equal to the number of lots which could reasonably be expected to be developed upon that parcel under a conventional plan in full conformance with all zoning, subdivision regulations, health regulations, wetlands regulations and other applicable requirements. The proponent shall have the burden of proof with regard to the design and engineering specifications for such conventional plan.

4360. Open Space Requirements

A minimum of 20% of the parcel shown on the Development Plan shall be contiguous open space, excluding required yards and buffer areas. Such open space may be separated by the road(s) constructed within the Conservation Subdivision. Not more than 25% of such open space shall be wetlands, as defined pursuant to G.L. c. 131, s. 40.

4361. The required open space shall be used for conservation, historic preservation and education, outdoor education, recreation, park purposes, agriculture, horticulture, forestry, or for a combination of these uses, and shall be served by suitable access for such purposes.

4362. The required open space shall remain unbuilt upon, provided that ten percent (10%) of such open space may be paved or built upon for structures accessory to the dedicated use or uses of such open space, pedestrian walks, and bikepaths, and agriculture.

4363. Underground utilities to serve the Conservation Subdivision site may be located within the required open space.

4364. The required open space shall, at the owner's election, be conveyed to

a. the Town or its Conservation Commission;

b. a nonprofit organization, the principal purpose of which is the conservation of open space and any of the purposes for such open space set forth above;

c. a corporation or trust owned jointly or in common by the owners of lots within the Conservation Subdivision. If such corporation or trust is utilized, ownership thereof shall pass with conveyance of the lots in perpetuity. Maintenance of the open space and facilities shall be permanently guaranteed by such corporation or trust which shall provide for mandatory assessments for maintenance expenses to each lot. Each such trust or corporation shall be deemed to have assented to allow the Town to perform maintenance of the open space and facilities, if the trust or corporation fails to provide adequate maintenance, and shall grant the town an easement for this purpose. In such event, the town shall first provide fourteen (14) days written notice to the trust or corporation as to the inadequate maintenance, and, if the trust or corporation fails to complete such maintenance, the town may perform it. The owner of each lot shall be deemed to have assented to the town filing a lien against each lot in the development for the full cost of such maintenance, which liens shall be released upon payment to the town of same. Each individual deed, and the deed or trust or articles of incorporation, shall include provisions designed to effect these provisions. Documents creating such trust or corporation shall be submitted to the Planning Board for approval, and shall thereafter be recorded in the Registry of Deeds.

4365. Any proposed open space, unless conveyed to the Town or its Conservation Commission, shall be subject to a recorded restriction enforceable by the Town, providing that such land shall be perpetually kept in an open state, that it shall be preserved for exclusively agricultural, horticultural, educational or recreational purposes, and that it shall be maintained in a manner which will ensure its suitability for its intended purposes.

4370. Buffer Areas

All dwellings and structures shall be located a minimum of 50 feet from adjacent properties, and 100 feet from adjacent surface waters or wetlands. Buffer areas shall be retained in their natural vegetative state to the maximum extent feasible, in accordance with G.L. c. 131, s. 40, the Wetlands Protection Act, except where adjacent to agriculturally used property.

4380. Decision

The Planning Board may approve, approve with conditions, or deny an application for a Conservation Subdivision, after assessing whether the Conservation Subdivision better promotes the objectives herein, than would orthodox development.

4390. Relation to other Requirements

The submittals and permits of this section shall be in addition to any other requirements of the Subdivision Control Law or any other provisions of this Zoning by-law."

From the Town of Dighton Zoning Bylaw, Section 4300

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board 4320. Applicability

Any creation of five (5) or more lots, whether a subdivision or not, from a parcel or set of contiguous parcels held in common ownership and located entirely within the Residence District *** may proceed under this Section pursuant to the issuance of a special permit by the Planning Board. Such special permits shall be acted upon in accordance with the following provisions.

Has any housing been built under the cluster/flexible provisions?

Yes Person at the planning board (12/16/04) said that there have been conservation subdivisions in Dighton.

Douglas

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Flexible zoning is allowed in R-A, RC-1, RC-2, VR.

Adoption date 10/25/04.

Town of Douglas Zoning Bylaw (Adopted 2004)

7.2 FLEXIBLE DEVELOPMENT

7.2.1 Purpose

The purposes of this section, Flexible Development, are:

1. to encourage the preservation of open land for its scenic beauty and to enhance agricultural, open space, forestry, and recreational use;
2. to preserve historical and archeological resources; to protect the natural environment, including the Town's varied landscapes and water resources;
3. to protect the value of real property;
4. to promote more sensitive siting of buildings and better overall site planning;
5. to perpetuate the appearance of the Town's traditional New England landscape;
6. to facilitate the construction and maintenance of streets, utilities, and public services in a more economical and efficient manner;
7. to offer an alternative to standard subdivision development;
8. to promote the development of housing affordable to low, moderate, and median income families; and
9. to promote the development of housing for persons over the age of fifty five.

7.2.2 Definitions

The following terms shall have the following definitions for the purposes of this section:

1. "Affordable to persons or families qualifying as low income" shall mean affordable to persons in the area under the applicable guidelines of the Commonwealth's Department of Housing and Community Development earning less than 50% of the median income.
2. "Affordable to persons or families qualifying as moderate income" shall mean affordable to persons in the area under the applicable guidelines of the Commonwealth's Department of Housing and Community Development earning more than 50% but less

than 80% of the median income.

3. "Affordable Unit" shall mean a dwelling unit reserved for occupancy affordable to persons or families qualifying as low or moderate income. Such dwelling units shall be restricted for a period not less than thirty (30) years and the restriction shall be approved as to form by the Board's legal counsel. The restriction shall contain a right of first refusal upon the transfer of such Affordable Unit in favor of the Town or its designee for a period not less than 120 days after notice thereof.

4. "Contiguous open space" shall mean open space suitable, in the opinion of the Planning Board, for the purposes set forth herein. Such open space may be separated by the road(s) constructed within the Flexible Development. Contiguous open space shall not include required yards.

7.2.3 Applicability

In accordance with the following provisions, a Flexible Development project may be created, whether a subdivision or not, from any parcel or set of contiguous parcels held in common ownership and located entirely within the Town.

7.2.4 Procedures

Flexible Development may be authorized upon the issuance of a special permit by the Planning Board. Applicants for Flexible Development shall file with the Planning Board seven (7) copies of the following:

1. A development plan conforming to the requirements for a preliminary plan as set forth in the Subdivision Rules and Regulations of the Planning Board.
2. Where wetland delineation is in doubt or dispute, the Planning Board may require appropriate documentation.
3. Data on proposed wastewater disposal, which may be referred to a consulting engineer for review and recommendation. The cost for which shall be borne by the Applicant.
4. The Planning Board may also require as part of the development plan any additional information necessary to make the determinations and assessments cited herein.

7.2.5 Design Process

Each development plan shall follow the design process outlined below. When the development plan is submitted, applicants shall be prepared to demonstrate to the Planning Board that this Design Process was considered in determining the layout of proposed streets, houselots, and contiguous open space.

1. Understanding the Site. The first step is to inventory existing site features, taking care to identify sensitive and noteworthy natural, scenic and cultural resources on the site, and to determine the connection of these important features to each other.
2. Evaluating Site Context. The second step is to evaluate the site in its larger context by identifying physical (e.g., stream corridors, wetlands), transportation (e.g., road and bicycle networks), and cultural (e.g., recreational opportunities) connections to surrounding land uses and activities.
3. Designating the Contiguous Open Space. The third step is to identify the contiguous open space to be preserved on the site. Such open space should include the most sensitive and noteworthy resources of the site, and, where appropriate, areas that serve to extend neighborhood open space networks.
4. Location of Development Areas. The fourth step is to locate building sites, streets, parking areas, paths and other built features of the development. The design should include a delineation of private yards, public streets and other areas, and shared amenities, so as to reflect an integrated community, with emphasis on consistency with the Town's historical development patterns.
5. Lot Lines. The final step is simply to draw in the lot lines (if applicable).

7.2.6 Modification of Lot Requirements

The Planning Board encourages applicants for Flexible Development to modify lot size, shape, and other dimensional requirements for lots within a Flexible Development, subject to the following limitations:

1. Lots having reduced area or frontage shall not have frontage on a street other than a street created by the Flexible Development; provided, however, that the Planning Board may waive this requirement where it is determined that such reduced lot(s) are consistent with existing development patterns in the neighborhood or best serves the intent of this by-law.
2. At least 50% of the required side and rear yards in the district shall be maintained in the Flexible Development.

7.2.7 Basic Maximum Number of Dwelling Units

The Basic Maximum Number of dwelling units allowed in a Flexible Development shall not exceed the number of lots which could reasonably be expected to be developed upon the site under a conventional plan in full conformance with all zoning, subdivision regulations, health regulations, wetlands regulations and other applicable requirements. The proponent shall have the burden of proof with regard to the design and engineering specifications for such conventional plan.

7.2.8 Density Bonus

The Planning Board may award a density bonus to increase the number of dwelling units beyond the Basic Maximum Number. The density bonus for the Flexible Development shall not, in the aggregate, exceed fifty (50%) percent of the Basic Maximum Number. The required Affordable

Units shall not be counted as density bonus units. Computations shall be rounded to the lowest number. A density bonus may be awarded in the following circumstances:

1. For each additional ten percent (10%) of the site (over and above the required forty percent) set aside as contiguous open space, a bonus of five (5%) percent of the Basic Maximum Number may be awarded; provided, however, that this density bonus shall not exceed 25% of the Basic Maximum Number.
2. For every two (2) dwelling units restricted to occupancy by persons over the age of fifty-five, one (1) dwelling unit may be added as a density bonus; provided, however, that this density bonus shall not exceed 20% of the Basic Maximum Number.
3. For each transfer lot, as defined in Section 10.0, two (2) dwelling units may be added as a density bonus; provided, however, that this density bonus shall not exceed 20% of the Basic Maximum Number.
4. For the construction of active recreation facilities that are available for public use, one (1) dwelling unit may be added per two (2) acres of recreation land or per two thousand five hundred (2,500) feet of trail meeting Planning Board Approval; however, this density bonus shall not exceed twenty percent (20%) of the Basic Maximum Number. The Planning Board shall establish minimum criteria for said recreation land and trails.
5. A density bonus may be permitted when the proposed subdivision provides permanently affordable housing opportunities, whether within the Open Space Residential Subdivision or elsewhere in Douglas. When located within the Open Space Residential Subdivision, affordable units shall be developed concurrently with the market rate units. For each affordable dwelling unit provided under this section, one additional dwelling unit may be permitted. For Open Space Residential Subdivisions with individual lots for each dwelling unit or structure, the increase in dwelling units shall correspond with an increase in the number of lots otherwise allowed to be created in the subdivision. A density bonus may be permitted when the proposed subdivision provides for public access to open space areas within the subdivision. For every five (5) acres of land that is donated to the municipality and open to public use, one additional building lot may be permitted, up to a maximum fifteen percent (15%) increase in the number of building lots beyond the basic maximum number. Open space that is open to public use shall be accessible from a public way and adequate parking shall be provided to meet anticipated demand for the use.
6. A density bonus unit shall be allowed for each contribution made of cash or cash equivalent for public purposes to the Town of Douglas by any developer, such as but not limited to:
 - �� Contribution to Douglas Public Library for purchase of books.
 - �� Purchase of Douglas Police or Douglas Fire equipment.
 - �� Contribution to a Douglas town property to update or renovate public facilities, such as Highway Garage, Skate Park, Sports field, etc.
 - �� For scholarships to Douglas High School Graduates.
 - �� To repave existing Douglas town roads, correcting drainage problem or other public preservation, purchase of open space or any other public purpose approved by the Planning Board.The cash or cash equivalent contribution shall be established by the Planning Board which may be amended from time to time and which shall initially be set at an amount equal to cost of a raw lot within the project locus.

The maximum number of bonus units through this option is 4 per Flexible Development Project.

7.2.9 Affordable Units

As a condition of the grant of any special permit for a Flexible Development, Affordable Units shall be provided as follows:

1. 10% of the units shall be affordable to persons or families qualifying as low income; OR
2. 15% of the units shall be affordable to persons or families qualifying as moderate income. Right of first refusal upon the transfer of such restricted units shall be granted to the local Housing Authority for a period not less than 120 days after notice thereof.

7.2.10 Types of Buildings

The Flexible Development may consist of any combination of single-family, two-family and multifamily residential structures. A multifamily structure shall not contain more than five (5) dwelling units. The architecture of all multifamily buildings shall be residential in character.

7.2.11 Roads

7.2.12 Parking

7.2.13 Contiguous Open Space

A minimum of forty percent (40%) of the parcel shown on the development plan shall be contiguous open space. Any proposed contiguous open space, unless conveyed to the Town or its Conservation Commission, shall be subject to a recorded restriction enforceable by the Town, providing that such land shall be perpetually kept in an open state, that it shall be preserved for exclusively agricultural, horticultural, educational or recreational purposes, and that it shall be maintained in a manner which will ensure its suitability for its intended purposes.

1. The percentage of the contiguous open space which is wetlands shall not normally exceed the percentage of the tract which is wetlands; provided, however, that the

applicant may include a greater percentage of wetlands in such open space upon a demonstration that such inclusion promotes the purposes set forth in Section 7.2.1 and 7.2.13.2. In no case shall the percentage of contiguous open space which is wetlands exceed fifty (50%) of the tract.

2. The contiguous open space shall be used for conservation, historic preservation and education, outdoor education, recreation, park purposes, agriculture, horticulture, forestry, or for a combination of these uses, and shall be served by suitable access for such purposes.

3. The contiguous open space shall remain unbuilt upon, provided that the Planning Board may permit up to ten (10%) percent of such open space to be paved or built upon for structures accessory to the dedicated use or uses of such open space, pedestrian walks, and bikepaths.

4. Underground utilities to serve the Flexible Development site may be located within the contiguous open space.

7.2.14 Ownership of the Contiguous Open Space

The contiguous open space shall, at the applicant's election, be conveyed to

1. the Town or its Conservation Commission;

2. a nonprofit organization, the principal purpose of which is the conservation of open space and any of the purposes for such open space set forth above;

3. a corporation or trust owned jointly or in common by the owners of lots within the Flexible Development. If such corporation or trust is utilized, ownership thereof shall pass with conveyance of the lots in perpetuity. Maintenance of such open space and facilities shall be permanently guaranteed by such corporation or trust which shall provide for mandatory assessments for maintenance expenses to each lot. Each such trust or corporation shall be deemed to have assented to allow the Town to perform maintenance of such open space and facilities, if the trust or corporation fails to provide adequate maintenance, and shall grant the town an easement for this purpose. In such event, the town shall first provide fourteen (14) days written notice to the trust or corporation as to the inadequate maintenance, and, if the trust or corporation fails to complete such maintenance, the town may perform it. Each individual deed, and the deed or trust or articles of incorporation, shall include provisions designed to effect these provisions. Documents creating such trust or corporation shall be submitted to the Planning Board for approval, and shall thereafter be recorded.

7.2.15 Buffer Areas

7.2.16 Drainage

7.2.17 Decision

The Planning Board may approve, approve with conditions, or deny an application for a Flexible Development after determining whether the Flexible Development better promotes the purposes of Section 7.2.1 of this Flexible Development By-Law than would a conventional subdivision development of the same locus.

7.2.18 Relation to Other Requirements

The submittals and permits of this section shall be in addition to any other requirements of the Subdivision Control Law or any other provisions of this Zoning By-Law.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board Town of Douglas Zoning Bylaw (Adopted 2004)

7.2.4 Procedures

Flexible Development may be authorized upon the issuance of a special permit by the Planning Board.

Has any housing been built under the cluster/flexible provisions?

No Flexible Development was adopted in 2004.

Email from Steve Zisk, Planning and Conservation Agent, 6/1/05:

"The Flexible Development was adopted in 2004 and we currently have two submittals in the Public Hearing process."

Dover

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

No

Which entity is the special permit granting authority for cluster/flexible zoning?

Has any housing been built under the cluster/flexible provisions?

Dracut

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Dracut Zoning Bylaw

4.14.00 Special Permit Open Space Residential Development

The Planning Board may grant a special permit for Open Space Residential Development in the RI and R2 District for single family detached dwellings and accessory structures subject to the provisions of this section.

4.14.10 Objectives

The objective of this section is to allow an optional scheme of development so as to encourage the preservation of common land for conservation, acquisition, open space and recreational use; to preserve historical or archaeological resources; to protect existing or potential municipal and private water supplies; to promote more sensitive siting of buildings and better overall site planning; to promote better utilization of land in harmony with its natural features and with the general intent of the zoning by-law through a greater flexibility in design; and to allow for the more efficient provision of municipal services.

4.14.20 Open Space Residential Regulations

The following regulations shall apply to all developments submitted under this section.

4.14.21 Minimum Parcel Size - Open space residential developments shall be located upon a parcel of land having a minimum of five acres in the RI District and ten acres in the R2 District.

4.14.22 Number of Building Lots Permitted - The total number of building lots in an Open Space Residential Development shall be no greater than the number of building lots that would otherwise be permitted in the district within which the land is located. The Planning Board shall require that the applicant provide satisfactory evidence that the number of lots shown on the Open Space Residential Plan is no greater than the number of lots that could otherwise be developed. All determinations of area for the purpose of determining the number of lots shall be based upon the criteria included in sections 2.12.20 and 2.12.30 and 2.12.40 through 2.12.48 of this By-law.

4.14.23 Dimensional Requirements - Where the requirements of this section differ from or conflict with the requirements of section 2.12.00 of this By-law, this section shall prevail. The following minimum dimensional requirements shall be met for all Open Space Residential Developments pursuant to this section.

1. Minimum lot area. In the RI District the minimum lot area will be 20,000 square feet, in the R2 District the minimum lot area shall be 30,000 square feet per building lot.

2. Frontage. The minimum frontage shall be 50 feet in both the R1 and R2 Districts.

3. Side and Rear Yards. The minimum side and rear yards in the R1 and R2 Districts shall be not less than 15 feet.

4. Front Yard. The minimum front yard in the R1 District shall be 50 feet; in the R2 District the minimum front yard shall be 60 feet.

5. Lot Width. The minimum lot width in both the R1 and R2 Districts shall not be less than 50 feet.

4.14.24 Common Land. Any development submitted pursuant to this section shall provide common land in area not less than the sum of the areas by which the building lots are reduced below the minimum lot area required for conventional development of the tract as per section 2.12.00 of this By-law. All common land must have access to a roadway within the subdivision.

All common land required herein shall be exclusive of land classified as wetland and shown on a map entitled "Wetland and Water Conservancy District, Town of Dracut 1977" consisting of twenty-five sheets and on file with the Town Clerk. Said land may be counted pursuant to the provisions of Section 2.12.21 of this By-law for the purposes of calculating "Minimum Land Area" and may be added to the "Common Land" only following the satisfaction of the basic requirements of this Section.

4.14.30 Legal Requirements for Common Land Ownership and Maintenance.

The common land and other facilities which may be held in common shall be conveyed to a mandatory homes association, whose membership includes the owners of all lots or units contained in the tract or if the development is a cooperative, then the owners of the shares in the cooperative association. The developer shall include in the deed to the owners of individual lots beneficial rights in said common land and shall grant a conservation restriction to the Town of Dracut over such land pursuant to Massachusetts General Laws Chapter 184 Sections 31-33, to insure that such land be kept in an open or natural state and not be built upon for residential use or developed for accessory uses such as parking or roadways. This restriction shall be enforceable by the Town through its Conservation commission in any proceeding authorized by Massachusetts General Laws Chapter 184, Section 33. In addition, the developer shall be responsible for the maintenance of the common land until such time as the homes association is capable of assuming said responsibility or in the case of a trust, for the benefit of the tenant upon the execution of the trust.

In order to ensure that the homes association will properly maintain the land deeded to it under this section, the developer shall prepare a Declaration of Covenants and Restrictions, which shall at a minimum provide for the following:

1. Mandatory membership in an established homes association as a requirement of residence or ownership of any lot in the tract.

2. Provisions for maintenance and tax assessment of all lots in order to insure that the common land is maintained in a condition suitable for the uses approved by the homes association. Failure to pay such assessment shall create a lien on the property assessed, enforceable by either the homes association or the owner of any lot.

3. Provisions which, so far as possible under the existing law, will ensure that the restrictions placed on the use of the common land will not terminate by operation of law. This Declaration of Covenants and Restrictions shall be reviewed and approved by the Planning Board and then shall be recorded with the Middlesex Registry of Deeds. A copy of said Declaration or trust shall also be filed with the Town Clerk. Prior to the Building Inspector's issuance of a building permit for any lot, the developer shall provide satisfactory assurance of the conveyance and recording as required above in the form of copies of the recorded instruments bearing the recording stamps.

4.14.40 Submissions Generally

The applicant for a special Permit pursuant to this section shall submit appropriate materials as per the regulations adopted by the Planning Board pursuant to section 1.16.00 of this By-law.

4.14.41 Specific Regulations - All submission made pursuant to this section shall include materials as per 4.14.40 as well as the following:

1. All applications and accompanying plans shall be in a form consistent with the requirements for a preliminary subdivision plan in the rules and regulations of the Planning Board governing subdivision of land and shall include proposed location, and bulk and height of all proposed buildings.

2. The number of dwellings which could be constructed under this By-law by means of a conventional development plan, considering the whole tract, and excluding from the lot and roadway layout those portions of the site which are not buildable due to flood plains, wetlands, and soils which are unsuitable for on-site sewage disposal systems, and slopes in excess of 20% gradient.

3. An analysis of the site, including wetlands, slopes, soil conditions, areas within the 100 year flood, trees over six inches and such other natural features as the Planning Board may request.

4. A summary of the environmental concerns relating to the proposed plan.

5. A description of the neighborhood in which the tract lies, including utilities and other public facilities, and the impact of the proposed plan upon them.

6. Evaluation of the open land proposed within the cluster, with respect to the size, shape, location, natural resource value, and

accessibility by residents of the Town or of the cluster.

4.14.50 Decision Criteria.

A special permit for open space residential development shall be approved only upon determination by the Planning Board that the requirements of Section 1.16.00

"Special Permit" including Section 1.16.14 Mandatory Findings of the Special Permit Granting Authority and the following additional criteria have been met.

1. The plan meets all requirements of this section.
2. The plan is in harmony with the general purpose of this By-law and the requirements of Massachusetts General Laws Chapter 40A and the long range plan of the Town.
3. The approval of the plan will not have a detrimental impact on the neighborhood, will be designed with due consideration for health and safety and is superior to a conventional plan in preserving open space, minimizing environmental disruption, allowing for more efficient provision of services, and or allowing for greater variety in prices and types of housing.

4.14.60 Relation to Subdivision Control Act.

Planning Board approval of a special permit hereunder shall not substitute for compliance with the Subdivision Control Act, nor oblige the Planning Board to approve any related definitive plan for subdivision, nor reduce any time periods for board consideration under the law. However, in order to facilitate processing, the Planning Board shall, insofar as practical under existing law, accept regulations establishing procedures for submission of a combined plan and application which shall satisfy this section and the Board's regulations under the Subdivision Control Act.

SPECIAL PERMIT RESIDENTIAL GOLF COURSE PLANNED DEVELOPMENT

Section 4.15 Special Permit Required

A. The Board of Selectmen (the "Board") acting as the Special Permit Granting Authority may grant a special permit for the utilization of a tract of land in a Residential-1 or Residential-2 district, as a Residential Golf Course Planned development, subject to the requirements and conditions contained in this section. Note: All applicants for a Special Permit under this Section are strongly encouraged to consult with the Board of Selectmen at a regularly convened meeting prior to formal application.

Section 4.15.2 Definition of a Residential Golf Course Planned Development

A. A Residential Golf Course Planned Development (RGCPD) is a tract of land which is developed as a planned golf course and single-family detached development and which is not subject to the table of dimensional density requirements and regulations, but which is governed instead by the requirements of this section. The Residential portion of the Development is to be governed by MGL Chapter 41, Section 81K through 81gg, commonly known as "Subdivision Control Laws".

Section 4.15.3 Purpose of RGCPD

A. The particular intent of this section is to provide for the development of single-family house lots in conjunction with a golf course on a tract of land which is in total at least 175 acres, which may not meet the zoning requirements of an R1 or R2 district. It is the intent of this chapter to provide for a unique type of living and to encourage:

1. the general purposes of the zoning by-law;
2. the preservation of open space and the promotion of more use of land;
3. a more creative approach to land development;
4. land use, which is harmonious with the environment and which preserves natural resources and scenic qualities;
5. the provision of a more desirable esthetic and functional space and the efficient allocation distribution, use and maintenance of land;
6. diversity and variety in the development pattern of the community;
7. better design and land planning resulting in the economic and efficient street utility and public facility installation, construction and maintenance; and
8. the development of real property value for the long-range future.

Section 4.15.4 Permitted

A. The following uses shall be permitted:

1. Residential single family detached dwellings

2. An 18-hole golf course with a minimum length of 6,000 yards, which may include easements, which shall be, at the option of the Applicant, semi-private or public, The Applicant must, as part of the initial submittal pursuant to Section 4.15.9A, negotiate with the Board of Selectmen for a residential preference for Dracut residents in the event that the Applicant or Owner elects to make the course private.

B. The following uses which are incidental to the golf course:

1. club house;
2. restaurant;
3. function hall;
4. putting or practice greens;
5. driving ranges;
6. tennis courts
7. swimming courts;
8. a pro shop;
9. lounge;
10. ancillary buildings which are incidental to golf course use;

11. other uses that the special permit granting authority may approve which are customarily incidental to a golf course.

Section 4.15.5 Dimensional Requirements

A. The requirements of Section 2.12.00 et. sec. of the zoning by-law shall prevail except as hereafter provided. The following minimum dimensional requirements shall be met for all single family detached residence lots pursuant to this section.

1. Minimum lot area. The lots will have a minimum lot area of 20,000 square feet, which may include easements for the benefit of the golf course.

2. Frontage - The minimum frontage shall be 100 feet.

3. Side/rear yards. The minimum side yard shall be not less than 15 feet. The minimum rear yard shall be not less than 25 feet.

4. Front yard. The minimum front yard shall be 30 feet.

5. Lot width. The minimum lot Width shall not be less than 50 feet.

6. Section 2.12.30 of this Bylaw shall not be applicable. [Amended 10/2/00]

Section 4.15.6 Decision Criteria

A. A special permit for residential golf course development shall be approved only upon determination of the special permit granting authority that the requirements of Section 1.16.00, Special Permits, including 1.16.14-18, Mandatory Findings of Special Permit Granting Authority and the following additional criteria. A Special Permit for Residential Golf Course Development shall also comply with Section 1.16.20 generally of this by-law concerning the preparation, submission and review of a site plan.

1. Minimum parcel size. The residential golf course development shall be located upon a parcel of land having a minimum 175 acres in an RI or R2 district.

2. The total number of building lots in the residential golf course development shall be no greater than 0.62 lots per gross acreage of the parcel.

3. There shall be public water and sewer available for both the golf course and the residential portion of the development. In the event that they are not currently available, the applicant shall construct them at no expense to the Town of Dracut.

4. The special permit shall contain the following mandatory conditions, with respect to the golf course.

a. Prior to the issuance of the first Occupancy Permit for a residential dwelling all land dedicated to the golf course shall be:

(1) deed restricted to use as a golf course or conservation uses if the golf course ceases to operate for a period of two years.

(2) deed restricted so that no structure shall be erected thereon except as incident to the uses in Section 4.15.4 above.

b. The golf course portion of the development shall be shown as separate parcel(s). In the event the parcels are sold or conveyed, the deed must state that they are subject to the conditions of the special permit, and a copy of the Special Permit must be attached to any and all deeds.

c. In the event that the owner files a statement with the Planning Board and the Special Permit Granting Authority that it will not

build in accordance with the special Permit prior to the issuance of a Building Permit for a Residential dwelling, then the Special Permit shall be deemed to be null and void and the land shall not be restricted by the terms of this Permit, and must further comply with the provisions regarding the underlying zoning.

d. All roads in the residential portion of the development shall be built to the specifications of the Construction Standards and Subdivision Regulations of the Town of Dracut.

Section 4.15.7 Security for the Development of the golf Course

A. The applicant shall secure its obligation to complete the 18-hole course by the following:

1. Entering into an agreement with the Town that no more than 50% of the single family residences shall be issued building permits and that no more than 50% of that sum shall be issued occupancy permits prior to substantial completion of 9 holes of the golf course. No building permits shall be issued for the remaining 50% of the residential development until such time as the second 9 holes of the golf course is either substantially completed or bonded as provided for in #2.

2. The posting of a bond, or the execution of a tri-partite agreement, both of which shall be reduced as the work is completed so that the amount secured shall be equal to the cost of completing the remaining work. In the event of a tri-partite agreement, the applicant shall inform the Board of the identity of the parties to the tri-partite agreement, and the Board shall not unreasonably withhold its assent to such agreement.

3. The applicant shall initially select between the methods in subsection 1 and 2.

4. No occupancy permits shall be issued on the accessory uses (Section 4.15.4, Subsection B) until completion of the first 9 holes of the golf course.

Section 4.15.8 Security for the Residential Subdivision

A. The Applicant shall secure the completion of the ways and utilities in accordance with MGL Chapter 41, Section 81U, Planning Board Subdivision Rules and Regulations and Town of Dracut Construction Standards. The copy of the proposed security shall be part of the applicant's submission to the Planning board.

Section 4.15.9 Submission Procedure

A. The Applicant shall submit to the Board of Selectmen applications for Special Permits for Overall Site Development and for Site Plan Review. The requirements and application contents as set forth in Section 1.16.00 through 1.16.23 are applicable to the applications.

B. If the Board grants the Overall Site Developments Special Permit, and the Site Plan Review Special Permit, the applicant shall comply with the Subdivision Control Law and submit an application for subdivision approval to the Planning Board for its approval along with a copy of the site plan. The applicant may, simultaneous with submission to the Board of Selectmen, submit an application for subdivision approval to the Planning board.

Section 4.15.10 Extension of Special Permit

The Board of Selectmen shall not unreasonably refuse a request for an extension of this Special Permit, if requested and if construction has not been commenced.

Survey received from Dracut on 4/29/04:

What year was the first provision for flexible zoning adopted?

"1987"

What was the last year the municipality amended the cluster/flexible provisions?

"1987"

Has any housing been built under the cluster/flexible provisions? (none, 1-8 projects, more than 8)

"1-8"

Which entity is the special permit granting authority for cluster/flexible zoning?

Combinati 4.14.00 Special Permit Open Space Residential Development
on

The Planning Board may grant a special permit for Open Space Residential Development in the R1 and R2 District for single family detached dwellings and accessory structures subject to the provisions of this section.

SPECIAL PERMIT RESIDENTIAL GOLF COURSE PLANNED DEVELOPMENT

Section 4.15 Special Permit Required

A. The Board of Selectmen (the "Board") acting as the Special Permit Granting Authority may grant a special permit for the utilization of a tract of land in a Residential-1 or Residential-2 district, as a Residential Golf Course Planned development, subject to the requirements and conditions contained in this section. Note: All applicants for a Special Permit under this Section are strongly encouraged to consult with the Board of Selectmen at a regularly convened meeting prior to formal application.

Has any housing been built under the cluster/flexible provisions?

Yes Survey received from Dracut on 4/29/04:

Has any housing been built under the cluster/flexible provisions? (none, 1-8 projects, more than 8)

"1-8"

Dunstable

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes SMRD - created 2002. Open Space - amended 1997. MUD - created 2004.

Dunstable Zoning Bylaw, 2004

Bylaws for SRMD, Open Space Development and Mixed Use District follow:

"Section 6.7. Uses Permitted by Special Permit of the Planning Board

6.7.1. Senior Residential Multifamily Development For the purpose of providing a variety of housing opportunities within the Town for people who are 55 years of age and older while promoting maximum efficiency in the use of land and the preservation of its natural features, in a context of encouraging better overall site planning, protecting the value of real property, promoting the more sensitive siting of buildings and other structures, preserving the natural and scenic amenities of the property, fostering provision for suitable areas for both active and passive recreation, and assuring a high level of environmental protection, an owner or owners of a tract of land situated within the R-1 Single Residence District, or a duly authorized agent of such owner, or owners, may make application to the Planning Board for a special permit for Senior Residential Multifamily Development (SRMD), exempting such land from the lot area and frontage, yard and width of lot requirements of Section 11 and from the requirements of Section 6.6.1.(a) in favor of the requirements of this section 6.7. relating to Senior Residential Multifamily Development. Such application shall be accompanied by a site plan in accordance with Section 14 of this bylaw, as well as specimen bylaws, rules and regulations required under subsection 6.7.3.(G), and sufficient information to demonstrate compliance with subsection 6.7.4.(A) through (G).

6.7.2. Application under this section shall be submitted in accordance with the requirements of the Massachusetts General Laws and any rules and regulations of the Planning Board in connection with special permits. [...]

6.7.3. After due consideration of the reports and recommendations of any referral board, and after notice and public hearing, the Planning Board may grant a special permit for such Senior Residential Multifamily Development (SRMD) provided that:

(A) It finds that the proposed Senior Residential Multifamily Development plan is in harmony with the purposes of this section.

(B) The area of the tract of land is not less than fifty (50) acres.

(C) The total number of dwelling units in an SRMD shall be no greater than the number of building lots that would otherwise be allowed on the tract, multiplied by $1 \frac{1}{4}$, and

rounded to the next higher integer, subject to the bonus provisions of subsection 6.7.6., below. In making the determination of the number of allowable units in the SRMD, the board shall require that the applicant provide evidence, satisfactory to the Board, that the number of such units on the proposed SRMD plan is no greater than the number of lots that could otherwise be developed, taking into consideration any limitations upon the buildability of the land arising from the character and condition of the land, the subdivision control laws including the rules and regulations adopted thereunder by the Dunstable Planning Board, other provisions of this bylaw, or other applicable laws, bylaws or regulations.

(D) The SRMD plan meets the following density, structure and dimensional requirements in lieu of the requirements of Sections 6.1.(a) and 11:

(i) Density. The number of units permissible shall not exceed the number of units ascertained pursuant to subsection 6.7.3.(C), above (subject to the bonus provisions of subsection 6.7.6.). For purposes of any SRMD, in order to be included in the calculations for density, or 6.7.3.(c), above, the land area must contain at least seventy-five (75%) percent dry land, and not more than twentyfive (25%) percent wetlands. Wetlands in excess of twenty-five (25%) percent of the entire parcel shall not be used for purposes of calculating density, but may be added to Open Space within the provisions of subsection 6.7.5(J), below.

(ii) Structures. A SRMD may consist of any combination of single family or multifamily residential structures. A multifamily structure shall not contain more than five (5) dwelling units. The architecture of all multifamily buildings shall be residential in character, particularly providing gabled roofs, predominantly wood or other material of good quality and function which simulates the look and feel of wood siding, an articulated footprint and varied facades. Residential structures shall be oriented toward the street or way serving the premises and not the required parking area.

(iii) Dimensional Controls. The following dimensional controls shall apply per building:

REQUIREMENT SRMD

Minimum Lot Area Two (2) acres

Minimum Frontage Two hundred (200) feet

Minimum Front Yard Setback Fifty (50) feet

Minimum Side and Rear Yards Forty (40) feet

provided that the Planning Board may approve reduced dimensional requirements where it finds that such modified dimensions will more effectively achieve the purposes set forth in subsection 6.7.1, above.

(iv) Buffer. A buffer area of one hundred (100) feet shall be provided at the perimeter of the property, except for driveways/roadways necessary for access and egress to and from the site; and two hundred (200) feet from all natural bodies of water one (1) acre or larger under normal conditions, and from all rivers or streams within the scope of or regulated under the Rivers Protection Act; provided, however, that existing structures and existing access roadways are exempt from the requirements set forth in this subsection (iv). No vegetation in this buffer area will be disturbed, destroyed or removed, except for normal and ordinary maintenance. The Planning Board may waive or limit the buffer requirement if it determines that a smaller buffer may suffice to accomplish the objectives set forth herein.

(E) The Planning Board finds that satisfactory provisions have been made and secured for Open Space within the project.

(F) The Planning Board finds that sufficient provision has been or will be made to ensure that each of the dwelling units is so restricted that at least one person fifty-five years of age or older (the "Senior Resident") is both an owner and a resident. A restriction to such effect, approved by counsel to the Planning Board, and having the longest available enforceability under applicable law, shall be recorded in the chain of title, and shall be enforceable both by an association of owners and by the Town of Dunstable. The restriction shall provide that insofar as any unit is occupied for dwelling purposes at all, it shall be occupied by at least one Senior Resident. In the event that any unit ceases to be occupied by a Senior Resident by reason of death, reasonable time shall be allowed, not to exceed eighteen months, to allow for such transfer of interest as is necessary in order to establish a Senior Resident in the unit. Furthermore, the continuing observance and enforcement of the age restriction described herein shall be a condition of compliance with this Zoning Bylaw. An exception to the requirement of a Senior Resident shall be allowed for purposes of the restriction and for purposes of compliance with the Zoning Bylaw, only in the case where a Senior Resident is deceased, and there is no surviving Senior Resident, and the unit is owned and occupied by the deceased Senior Resident's surviving spouse.

(G) The Planning Board has reviewed and approved specimen bylaws and rules and regulations of the proposed SRMD which shall be submitted by the applicant and which shall provide means and mechanisms for the maintenance and enforcement of the

restrictions required under this Section 6.7.

6.7.4. Design Process. [...]

6.7.5. Design Requirements. [...]

(E) Dwelling Units per Building. A SRMD may consist of any combination of single family, and multifamily residential structures meeting the requirements of subsection

6.7.3.(D)(ii), above.

(F) Dwelling Unit Space. All dwelling units within multiple unit buildings shall have a minimum floor space are of seven hundred eighty (780) square feet.

(G) Bedrooms. No dwelling unit may contain more than three (3) bedrooms. No SRMD shall have more than ten (10%) percent of the total number of dwelling units with three (3) bedrooms. A combined sleeping and living room in an efficiency or studio unit, so-called, shall be considered one (1) bedroom, and any other separate room in any unit which is not a single living room or equipped kitchen and is shown on a plan as being for other than bedroom use but which, because of location, size or arrangement could, in the opinion of the Board, be used or adapted for use as a bedroom shall be considered as a bedroom for density calculations. No attic, loft or other storage or similarly usable space shall be used as or altered to create bedroom space, nor shall the construction or other aspects facilitate such use or alteration.

[...]

(J) Open Space. All of the land within a SRMD which is not used to meet building separation requirements, and is not comprised of structures, roadways, driveways, necessary infrastructure or above ground utilities (including sewerage treatment or disposal and stormwater management) shall be considered as "Open Space". Open Space shall be laid out in such manner as to tend to assure compliance with the foregoing standards, to provide for pedestrian safety within the site and to provide an aesthetically pleasant setting for the SRMD within its neighborhood, and to be coordinated with other open or protected spaces in the vicinity. The Open Space shall be so designated, shall be at least two times the area of the land described in the first sentence of (J), above, and include no more than twenty (20%) percent of wetlands; provided that, a larger area of Open Space may be designated with a greater complement of wetlands, as long as the Applicant is able to show an area of Open Space at least twice as large as the developed area and including no more than twenty (20%) percent wetlands. Such Open Space shall be located and shall be laid out so as to provide for contiguous green areas uninterrupted to the degree practicable by roadways and structures. Such Open Space shall meet the ownership and maintenance and conservation restriction requirements as provided for under Sections 6.6.3.(H) and (I). Any restriction as described in Section 6.6.3.(I) shall meet all the requirements of G.L., c. 184, Sections 31 through 33.

[...]

(O) Affordable Units. As part of the site plan approval, a minimum of five (5%) percent of the total number of dwelling units shall be restricted for a period not less than thirty (30) years in one or more of the following ways:

a. The units shall be affordable to persons or families qualifying as low income;

b. The units shall be affordable to persons or families qualifying as moderate income; and

c. The units shall be affordable to persons or families qualifying as median income.

The thirty-year restriction shall be approved as to form by legal counsel to the Planning Board. Such affordable units shall be integrated into the overall development of the SRMD so as to prevent the physical segregation of such units. The Applicant shall be encouraged to seek designation of the units referenced in paragraphs a and b, above, as affordable units which qualify as part of the subsidized housing inventory as approved and compiled by the Department of Housing and Community Development (DHCD), or its successor. The Planning Board may require that the Applicant affirmatively take steps to utilize a public agency, a nonprofit agency, limited dividend organization, or other appropriate entity, and through a Local Initiative Petition or other similar mechanism or program, cause application to be made to the DHCD, so as to timely furnish all forms and information necessary to promote the designation of those units referenced in paragraphs a and b, above, as affordable units qualifying as part of the Town's subsidized housing inventory. The Planning Board may require submission of application, forms and appropriate information to the DHCD as a condition of approval.

6.7.6 Density Bonus. The Planning Board may award a density bonus to increase the number of dwelling units beyond the maximum number provided for herein. The density bonus for the SRMD shall not, in the aggregate, exceed ten (10%) percent of the maximum density. All dwelling units awarded as a density bonus shall be limited to not more than two bedrooms. Computations shall be rounded to the next higher integer. A density bonus may be awarded in the following circumstances:

(A) Open Space. For each additional ten (10%) percent of the site (over and above the required Open Space minimum set aside as contiguous Open Space), a bonus of five (5%) percent of the basic maximum number may be awarded;

(B) Affordable Units. For each additional one (1%) percent of the total number of dwelling

units restricted to affordable units (over and above the required percentage) pursuant to subsection 6.7.5.(O) a. and b., above, a corresponding one (1%) percent of total units (relative to the maximum number) may be awarded.
[...]

"6.6. Development Regulation - Open Space Development

6.6.1. For the purpose of promoting the more efficient use of land and the preservation of its natural features, an owner or owners of a tract of land situated within the R-1 Single Residence District, or a duly authorized agent of such owner or owners, may make application to the Planning Board for a special permit exempting such land from the lot area and frontage, yard and width of lot requirements of Section 11 and from the requirements of Section 6.1.(a) in favor of the requirements of this section relating to open space development. Such application shall be accompanied by a site plan in accordance with Section 14 of this bylaw.

6.6.2. Application under this section shall be submitted in accordance with the requirements of the Massachusetts General Laws and any rules and regulations of the Planning Board in connection with special permits. [...]

6.6.3. After due consideration of the reports and recommendations of any referral board, and after notice and public hearing, the Planning Board may grant a special permit for such open space development, provided that

(A) It finds that the proposed open space development plan is in harmony with the purposes of this section;

(B) The area of the tract of land is not less than fourteen (14) acres;

(C) The total number of building lots in an open space development shall be no greater than the number of building lots that would otherwise be allowed in the district in which the land is located. In making the determination of the number of allowable lots, the board shall require that the applicant provide evidence, satisfactory to the board, that the number of lots shown on the proposed open space development plan is no greater than the number of lots that could otherwise be developed, taking into consideration any limitations upon the buildability of the land arising from the character and condition of the land, the subdivision control laws including the rules and regulations adopted thereunder by the Dunstable Planning Board, other provisions of this bylaw, or other applicable laws, bylaws or ordinances.

(D) Each of the lots shown on the plan has reasonable frontage on a public or private way deemed adequate by the Planning Board.

(E) Insofar as possible, each lot shall be of a size and shape as shall provide a building site which shall be in harmony with the natural terrain and other features of the tract;

(F) The front and side and rear yards of each lot shall be shown on the site plan by dashed lines indicating the area within which a building may be sited;

(G) Provision shall be made so that at least thirty-five (35%) percent of the land area of the tract, exclusive of land set aside for road area, shall be open land, and that the open land shall include all land not dedicated to roads or lots; Furthermore, a portion of such open space free of land unsuitable for development as defined in Section 20 shall constitute at least thirty-five (35%) percent of the land area of the tract.

(H) Provision shall be made so that such open land shall be conveyed to and owned by:

1. The Town, to be held for park, conservation or open space use; or

2. Any not for profit land trust or non-profit or charitable corporation whose purpose in owning land is dedicated to conservation, wildlife protection, recreation and further that such trust or charitable corporation accept same subject to appropriate restrictions on said land; or

3. Any association of the owners of the land that may be approved by the Planning Board, with provision for limited easements for recreational use by residents of the town, provided that the town shall have sufficient rights to enable it to enforce compliance with the restrictions imposed by the Planning Board as conditions of its special permit;

(I) In any case where such open land is not conveyed to the town, a restriction enforceable by the town shall be recorded, providing that such land be kept in an open or natural state, and not be built upon for residential use or developed for accessory uses such as parking or roadway;

(J) All dwelling units shall be in detached buildings and there shall not be more than one dwelling unit in a building.

6.6.4. The Planning Board may, in appropriate cases, impose such further conditions,

safeguards and limitations as are reasonably ordered to the achievement and protection of the general purposes and intent of the bylaw and this section.
6.6.5. In connection with issuing or denying a special permit under this section, the Planning Board shall issue in the manner provided by applicable law and shall file with the Town Clerk a written decision which shall include as a minimum: [...]"

"Section 23. Mixed Use District.

A. Purposes:

The purposes of the Mixed Use District (MUD) are to:

- a. allow for greater variety and flexibility in development forms;
- b. encourage the development of affordable housing, rental and ownership;
- c. reduce traffic congestion and air pollution by providing opportunities for housing and employment in close proximity;
- d. encourage more compact and efficient developments.

B. General Description:

A "Planned Unit Development for Mixed Uses" shall mean development containing a mixture of residential uses and building types, including single family and multifamily dwellings, and other uses, as listed under the category "Uses Allowed within a Planned Unit Development for Mixed Uses". A Planned Unit Development for Mixed Uses may be allowed by Special Permit of the Planning Board. The Special Permit may allow the development to exceed the normal density requirements for the district to the extent authorized by this Bylaw provided that standards for the provision of affordable housing and other standards specified herein are met.

C. Uses Allowed within a Planned Unit Development for Mixed Uses:

Planned Unit Developments for Mixed Uses shall be permitted in the Mixed Use District only upon issuance of a Special Permit and Site Plan Approval from the Planning Board.

In a Planned Unit Development for Mixed Uses, the following uses may be allowed:

1. Two-family dwellings;
2. Townhouses, i.e., multiple single family dwellings connected by one or more walls, provided they meet the requirements of affordable housing, which shall be defined as housing meeting the requirements of Section 6.7.5.(O) of this Bylaw;
3. Multifamily dwellings;
4. Business uses which are permitted in the B-1 district;
5. Senior Center;
6. Affordable housing for the elderly (over 55 years).

D. Density and Dimensional Regulations:

The following density and dimensional requirements shall apply to any project in the MUD, subject to adjusted requirements as stated for projects including affordable housing as defined hereinabove:

1. The minimum area allocation for each dwelling unit shall be twenty thousand (20,000) square feet, subject to a reduction of up to twenty (20%) percent in the discretion of the Planning Board for projects including affordable housing;
2. The minimum total land area for a Planned Unit Development shall be (10) acres subject to a reduction of up to twenty (20%) percent in the discretion of the Planning Board for projects including affordable housing ;
3. There shall be no frontage requirements within a Planned Unit Development, provided that the applicant demonstrates to the Planning Board satisfactory legal access to the premises;
4. Minimum setback, rear and side yard requirements specified in the Table of Dimensional Requirements (Section 11 of this Bylaw) shall pertain only to the periphery of the Planned Unit Development;
5. The maximum number of dwelling units per structure shall not exceed eight (8);
6. Dwellings shall make up a minimum of seventy-five percent (75%) of the floor area of development in a Planned Unit Development; the balance of the area shall be business use;
7. Individual commercial areas shall not exceed one thousand five hundred (1,500) square feet each.

E. Utility, Parking, Landscaping and Open Space Requirements: [...]"

(1)(SRMD) Senior Residential Multifamily Development: minimum total area - 50 acres; lot - 2 acres; dwelling unit - 780 sf.; dwelling units per structure - max 5.

(2) MUD - Mixed Use District: minimum total area - 10 acres; lot - not specified; dwelling unit - 20,000 sf (w/ descretionary 20% reduction); dwelling units per structure - 8

(3) Open Space Development: minimum area - 14 acres; lot size - not specified; dwelling unit - not specified.

Survey received on 6/1/05 from Dunstable's Building Inspector's Office (Alanice):

What year was the first provision for flexible zoning adopted?

"1988"

What was the last year that the municipality amended the cluster/flexible provision?

"1997"

Can more units be built under cluster/flexible zoning than would be allowed through conventional zoning?

"No"

What types of structures are allowed under cluster/flexible zoning?

"SF"

Has any housing been built under the cluster/flexible provisions? (none, 1-8 projects, more than 8)

"Yes 1-8"

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board "Section 6.7. Uses Permitted by Special Permit of the Planning Board
6.7.1. Senior Residential Multifamily Development"

"6.6. Development Regulation - Open Space Development

6.6.1. For the purpose of promoting the more efficient use of land and the preservation of its natural features, an owner or owners of a tract of land situated within the R-1 Single Residence District, or a duly authorized agent of such owner or owners, may make application to the Planning Board for a special permit exempting such land from the lot area and frontage, yard and width of lot requirements of Section 11 and from the requirements of Section 6.1.(a) in favor of the requirements of this section relating to open space development. Such application shall be accompanied by a site plan in accordance with Section 14 of this bylaw."

Has any housing been built under the cluster/flexible provisions?

Yes To date, there have been no developments built under the SRMD or MUD provisions. - e-mail correspondence with Town Engineer, 11/23/04

In response to the question "Has any housing been built under the cluster/flexible provisions? (none, 1-8 developments, more than 8)" Cheryl Mann wrote in an email (6/1/05):

"Under Open Space Development - 1-8 developments"

Survey received on 6/1/05 from Dunstable's Building Inspector's Office (Alanice):

Has any housing been built under the cluster/flexible provisions? (none, 1-8 projects, more than 8)

"Yes 1-8"

Duxbury

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes 410 RESIDENTIAL COMPATIBILITY DISTRICT

410.3 Uses and Structures Permitted by Special Permit

The following uses and structures are permitted, and only to the extent authorized, by a Special Permit from the Board of Appeals. The Planning Board shall be the Special Permit Granting Authority for Residential Conservation Cluster Developments:

10. Residential Conservation Cluster Development in accordance with Section 540.

430 PLANNED DEVELOPMENT DISTRICTS

Planned Development District 1, Planned Development District 2, Planned Development District 3 are established by Section 201 of this Bylaw and land zoned Planned Development 1,2, or 3 are designated on the Duxbury Zoning Map dated March 13, 1973 as revised and amended to date.

430.1 Permitted Uses and Structures

Permitted uses and structures in a Planned Development District shall be those permitted by right and by Special Permit in a Residential Compatibility District, Section 410.1 and 410.3, and in accordance with all intensity, dimensional and coverage regulations of Section 410.4. If any portion of the land of the Planned Development is within the Aquifer Protection Overlay District as determined per Section 406.4, then the stricter intensity, dimensional and coverage regulation of Section 406 shall apply.

430.2 Special Permit Uses

Planned Development as outlined in Section 700 and Section 800 of this Bylaw.

No Planned Developments shall be undertaken without a Special Permit granted by the Board of Appeals as provided for in Section 808 and 906.2 and in accordance with the Design Standards enumerated in Section 700 and Procedures and Regulations for Planned Development as enumerated in Section 800 of this Bylaw.

ARTICLE 700 DESIGN STANDARDS FOR PLANNED DEVELOPMENTS

701 PURPOSE

This section of the Bylaw establishes standards for the design and review of a development application for a planned development. Guidelines are stated under which considerable design flexibility and evaluation can be exercised. Further, general municipal regulations governing the improvements on the site are identified to establish a basis upon which modifications may be substantiated.

702 UNDEVELOPABLE LAND

702.1 Classifications

Certain lands shall be classified as undevelopable as being in the Wetlands Protection Overlay District, and specifically located on the site and identified upon the Land Classification Map under Section 807.3.3. Applicants are encouraged to include the wetlands and waterbodies within the open space; however, they do not count towards the open space requirement.

702.2 Use Restrictions

The utilization of such undevelopable land shall be restricted and preserved in the manner provided as follows:

1. Common Open Space.

2. Concept and Implementation Method

Common open space shall be preserved by a method approved by the Board of Appeals (such as public donation, conservation or historical easement or restriction, covenants or deed restriction in conjunction with a trust or homeowners' or residents' association), whereby both the Town and the residents of a planned development are granted enforceable rights with respect to such preservation.

3. Maintenance Fees.

A fee structure for the preservation, improvement and maintenance of common open space shall be approved by the Town and contained in an agreement filed with the Town. The maximum and minimum fees shall be specified. Under no circumstances shall fees reflect the cost of land acquisition, improvements shown in the common open space analysis, or facilities for which public use is permitted on a regular basis.

4. Open Space Maintenance

In the event that the organization established to own and maintain common open space shall fail to maintain it in reasonable order and condition, the Board of Selectmen may serve written notice of such failure upon such organization or upon the residents within or owners of the planned development and shall include a demand for correction within thirty days and shall state the date, time and place of a hearing thereof which shall be held within fourteen days of the notice. If the deficiencies are not corrected or the Board's demand modified, the Town, acting through the Board of Selectmen, may enter upon the common open space and maintain the same for a period of one (1) year. Before the expiration of the year, a second public hearing shall be called by the Board at which time the organization or the residents shall show cause why such maintenance should not continue for a

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succeeding year. If the Board determines that the need of Town maintenance no longer exists, the Board shall cease to maintain the common open space. All costs incurred by the Town shall be assessed against the properties within the planned development and shall become a lien on those properties which may be collected and enforced in the manner fixed by law for the collection and enforcement in the manner fixed by law for the collection of taxes. Notice of lien shall be recorded in the Registry of Deeds.

702.3 Planning Requirements

Access shall be provided to undevelopable lands by means of trails or paths installed by the developer. Only land uses that are inseparable from waterfront locations and that do not diminish the present or prospective value of surface water for supply, recreation, land use policy for marshes, flood and water storage, wildlife habitat and fish spawning grounds shall occupy undevelopable lands subject to the Wetlands Protection Overlay District regulations. Land uses that do not diminish operation of the primary roles of marshes include recreation, cranberry bogs and certain other agricultural uses. Cranberry bogs along with associated ponds shall be included as natural elements in the open space system calculations. The aquifer or water-bearing stratum shall be protected and managed. All precautions shall be undertaken to accomplish these goals. Steep slopes, for reasons of erosion, are unsuitable for development and shall remain in their natural state when determined to be in the public interest by the Town. No paving shall be located on undevelopable land.

702.4 Nature Center

Nature centers requiring the establishment of permanent fixtures designed for use by the public may be installed on undevelopable land, provided this use has been indicated on the Open Space and Community Facilities Map and in the reports filed, and is consistent with the provisions of Article 400. A detailed plan of proposed improvements shall be filed indicating the manner in which the center shall be operated and funded. No paving shall be located on undevelopable land.

703 COMMUNITY CONSIDERATIONS

The following considerations shall be made in favor of the Town.

703.1 Buffer Widths

An open space buffer shall be preserved along boundaries of the site as follows:

1. Separating proposed detached single-family dwellings from a street line or land developed for residential uses at density (dwelling units/acre) twenty-five (25%) percent or more below that proposed: seventy-five (75) feet wide.
 2. Separating other proposed structures or their parking areas from any use (including undevelopable land) other than common or public open space or other developments in the same category of use: one hundred and twenty-five (125) feet wide.
 3. In the case of a residential or institutional structure in existence prior to March 13, 1973, on a tract of land zoned planned development district, a buffer shall be provided extending a distance of three hundred feet measured in all directions from the sides of such existing structure, except those areas in a neighborhood business district. Within this protective buffer, residential and institutional development shall
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be allowed as permitted in a residential compatibility district under the provisions of this Bylaw. This buffer may be reduced or waived upon the written recommendation of the Planning Board, which shall consider any unique historic, architectural, or visual qualities of that structure in determining the necessity for protection. At other locations, none are required.
4. Requirements for buffers adjacent to existing roads may be reduced, following the written recommendations of the Planning Board, if the surrounding area has been previously developed, and the existing character of the neighborhood will be retained.

703.2 Buffer Materials

1. Preferred landscaping is retained natural woodlands. Grass and mounds shall be approved buffer material provided suitable indigenous shrubs and other plant material are used for screening. Lands used for buffer may be maintained either as

common open space or as private open space subject to a suitable deed restriction.

2. On sites in which insufficient land is available for a landscaped buffer of the full width required, fences may be used in conjunction with a reduced width of landscaped area, provided the fencing material selected is compatible with the vicinity.

703.3 Setbacks

Buildings shall be setback from the property line by the buffer zone plus a distance equal to the height of the building. In the neighborhoods that are presently developed, the setbacks of new buildings may be reduced to conform to front yard and rear yard setbacks of existing buildings. Setback areas may be utilized for paving and non-structural community facilities.

703.4 Building Height

New buildings located beyond two hundred feet of existing buildings shall not exceed thirty-five (35) feet in height. New buildings located within two hundred (200) feet of existing buildings shall not exceed the roofline plane as increased by an angle of ten degrees at a point two hundred (200) feet from the lot boundary to a maximum of thirty-five (35) feet of building height. On development sites of less than ten acres, which are located in developed areas, the allowable building heights shall not exceed those shown to be typical of the neighborhood. In no case shall a planned development use type exceed thirty-fives (35) feet in height or two and one-half (2.5) stories. If any part of any floor level is more than four feet (4) above finished grade, it shall be considered as one story.

703.5 Neighborhood Access

No development site shall reduce vehicular access to an existing neighborhood. The extension of existing cul-de-sac streets to serve a planned development shall not be permitted.

703.6 Building Character

The proposed development shall be designed to retain and reflect certain characteristics of the neighborhood in which it is to be located. Design characteristics shall be stated in the development application and shall include, but not be limited to: building materials, architectural design, street furniture and site and building landscaping.

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704 RESIDENTIAL BUILDINGS

704.1 Single-Family Buildings

Single-family buildings shall have individual entrances. Each dwelling unit shall have its own front and rear yard. At least one yard shall be thirty-five (35) feet in width consisting of landscaped open space. No detached building shall be closer than its height to any other building.

704.2 Semi-Detached Buildings

Semi-detached buildings shall be designed around a common party wall. The separation between exterior building walls shall be a minimum of ten (10) feet if there are no windows or the building location of the adjacent buildings is changed by a minimum of eighty degrees. All other spacing shall be at least equal to the average height of the buildings. An architectural theme shall be carried out by use of common building materials, color, exterior detailing, bulk and/or roof lines. Rigidity in design shall be avoided by variations in building location, landscaping, planting and building coverage.

704.3 Three- and Four-Family Buildings

Three- and four-family buildings shall have a common rear yard of at least twenty (20) feet in depth. Direct access to a parking area shall be provided.

704.4 Multifamily Buildings

Multifamily buildings shall have a landscaped front yard as determined under Section 703. It is preferred that multifamily housing shall be only one dwelling unit deep or that each dwelling unit extend through the building.

704.5 Breaks In Multifamily Buildings

Attached buildings and multifamily buildings shall have breaks in both the roof line and the front and rear building walls as specified below. Breaks shall be utilized so as to minimize earth moving and removal or impacting due to cut or fill on adjacent existing vegetation.

1. Vertical Breaks

A total break footage of four vertical feet in minimum increments of eighteen inches shall be included in every one hundred and sixty horizontal building feet or within three firewalls.

2. Horizontals Breaks

A total break footage of eight (8) horizontal feet in minimum increments of three feet shall be included in every one hundred sixty (160) horizontal building feet or within three firewalls. In addition, angles in the building wall of twenty-two degrees or more shall be considered equivalent to a five-foot break. However, no building shall exceed one hundred sixty (160) feet in length. Breaks in walls shall be varied by a change in building texture provided a common architectural theme is carried out by means of consistent exterior detailing, materials and colors.

704.6 Bedroom Count

In any planned development, no dwelling unit in any building of two or more dwelling units shall be designed, constructed or altered to have more than two bedrooms. For the

purpose of this provision, each room in excess of three rooms, exclusive of bathrooms,
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closets or other small service rooms of less than sixty-eight square feet, shall be considered a bedroom. Adjacent enclosed floor areas separated by any common party partition exceeding 4% of their common dimension shall constitute separate rooms. In any cluster development, if a special permit has been granted as of July 1, 2001, the allowable number of bedrooms as defined above shall not exceed three times the number of dwelling units proposed, unless a larger number is authorized upon determination by the Board of Appeals, following recommendation by the Planning Board, that either visual overcrowding will be avoided and Town school facilities will not be unreasonable burdened, or that the larger number of bedrooms is appropriate in order to serve an important housing need.

704.7 Residential Use Types

A minimum of three different residential uses shall be required in any special permit application for a planned development. Residential use types are defined as (1) singlefamily detached building, (2) single-family attached building, semi-attached building or townhouse, and (3) multifamily or garden apartments. In no case shall there be any more than 70% of the total number of dwelling units in any residential use type in any planned development. In Planned Development Districts 1 and 2, detached single-family dwellings shall be at least 5% of the required mix.

705 NONRESIDENTIAL BUILDINGS

705.1 Office

Office buildings shall be designed with a parking area and access to a public way separate from that provided for residential buildings. A common architectural theme shall be reflected by means of building materials, architectural style and/or color coordination. No lighting system shall create a glare on adjacent residential buildings. No manufacturing or retail sale of goods shall be permitted, except those pertinent to office operations such as news-stands or cafeteria. No building shall exceed thirty-five feet or two and one-half stories in height.

705.2 Community Facilities

Community facilities involving a building or structural coverage of thirty-five hundred square feet or greater shall have a parking area and access to a public way separate from that provided for residential buildings. A separate pedestrian and/or bikeway access shall be provided to connect with common open space. Lighting shall be so designed that no glare extends onto residential buildings. Entrances and areas adjacent to residential buildings shall be landscaped with plantings. A common architectural theme shall be reflected by means of building materials, architectural style and/or color coordination.

706 COMMON OPEN SPACE

706.1 Land Qualities

Land credited towards meeting common open space requirements shall either be land which, because of its resource value to the Town, should be preserved in an undeveloped state, or land which has qualities making it useful to residents of the development for either passive or active recreation, and will be "developed" to serve that purpose, or land which serves an important visual role in separating the development from existing public ways or

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from other existing or potential developments, or which is of value in dividing the development into coherent sub-areas.

706.2 Location

Common open space shall be located so as to serve the qualities cited immediately above, and also so that all dwellings are close to, if not abutting, common open space and residents can reach it without long distances along streets, so that pedestrian and/or bikeway access separate from the street system interconnects all significant portions of the development, so that a major portion of the common open space is in one or two large areas of substantial depth rather than being fragmented and largely linear, and so that those large areas have public visibility.

707 DESIGN RATIOS

Design ratios are intended to provide a guide for the preparation of a development application and as a means of evaluation of a development application.

707.1 Coverage Ratio

The amount of impervious coverage shall depend on the land classification and evaluation standards as specified in Article 800. Maximum coverage by density shall be defined:

Use District

Maximum

Allowable

Coverage/Site

Maximum Allow./Coverage Site

(Residential Cluster Devel. Only if
a special permit has been granted
as of July 1, 2001)

Residential Compatibility 15% 10%

Planned Development 1 20% 14%

Planned Development 2 28% 17%

Planned Development 3 35% 20%

707.2 Common Open Space Ratio

The amount of common open space shall depend upon the residential category specified by Sections 708 and 807.3.3. Minimum common open space required shall be:

Standard No. Persons

Per Unit

Minimum Square Feet

of Common Open

Space Per Person

Single-family detached 3.5 1,000

All other single-family and
multi-family

2.0 1,000

In no case shall the common open space be less than twenty-five (25%) percent of the total site. The minimum common open space required herein shall be deed restricted against future structural development and shall be held in common open space uses pursuant to Printed August 10, 2004 97

one of the methods of holding common open space land set forth in definitions in Section 725.

707.3 Nonresidential Parking Ratio

The amount of parking for nonresidential uses shall depend upon the type of nonresidential land use intended for the site. The Planning Board may recommend adjustments in the paved area requirements except that the areas for the required spaces must be reserved and not included in any open space calculations. In case the actual use indicates that the reserved parking spaces are needed, the developer shall be responsible to improve those areas to the same character as the existing parking spaces. Maximum nonresidential parking space ratios shall be:

Parking Spaces per 1,000 Square

Non-Residential Use Feet of Floor Area

Office 4

Community Facility 2 per 1,000 square feet or 20

spaces, whichever is greater

707.4 Residential Parking Ratio

Minimum residential parking space ratios shall be:

Residential Use Parking Space Per Unit

Single-family detached:

With 4 or more bedrooms 3.0

With 2 or 3 bedrooms 2.0

Multifamily and attached:

With 2 bedrooms 2.0

With 1 bedroom 1.5

708 INTENSITY AND LOCATIONAL STANDARDS

Use intensity and location standards are intended to provide a guide for the preparation of a development application and as a means of evaluation of a development application.

708.1 Use Intensity Standards

The use intensity shall be the maximum number of dwelling units permitted per gross acre excluding Wetland Protection Overlay District land. This intensity shall depend upon the residential land use category specified in Section 708. Maximum use intensity shall be:

Residential

Land Use

Dwelling Units per

40,000 Sq. Feet and

60,000 Sq. Feet if in

an Aquifer Protection

Overlay District

Dwelling Units per

40,000 Sq. Feet and

60,000 Sq. Feet if

Outside the Aquifer

Protection Overlay

District

Cluster Development (if a

Special Permit has been

Issued as of July 1, 2001)

1 1

Planned Development 1 1 1 to 2.5

Planned Development 2 1 1 to 4

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Planned Development 3 1 1

708.2 Single-Family Detached Building Lot Standards

Single-family detached building lots shall be designed so that the depth shall be no less than one and one-half or more than three times the frontage at the building setback line. All lots shall have direct access only to ways classified as local streets.

708.3 Building Location Standards

Buildings shall be located substantially as indicated on the site plan as approved by the Board of Appeals. If departure is necessitated by site conditions not known at the time of approval, the building may be relocated or reoriented no more than ten feet in any direction from the location indicated on the approved site plan, in accordance with applicable dimensional requirements, following approval of the Zoning Enforcement Officer and consultation with the Design Review Board.

Building location and orientation shall reflect:

1. Relationship to the street line and to other buildings in the development if in close proximity, in order to protect privacy and create visual coherence.
2. Views, solar access, and access to open space, in order to reflect occupant's interest.
3. Organization of large developments into recognizable sub-areas in order to provide scale and identity.
4. Avoidance of topographic change and removal of native trees and vegetation, in order to protect the environment.
5. Reduction of visual intrusion into abutting premises, in order to protect existing character.

708.4 Road Location Standards

Roads shall be designed to converge traffic flows at convenient access points. Road design shall minimize traffic flows in residential areas. Gridiron arrangements shall not be allowed. To facilitate traffic flow at major intersections turning lanes shall be installed at offices and community centers and may be required at other impacted intersections. Specified construction regulations for ways are contained in Section 709.

540 RESIDENTIAL CONSERVATION CLUSTER

540.1 Purpose and Intent

1. Allow for greater flexibility and creativity in the design of residential developments.
2. Encourage the permanent preservation of open space, agricultural and forestry land, other natural resources including waterbodies and wetlands, and historical and archeological resources.

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3. Maintain the Town's traditional character and land use pattern in which small villages contrast with open land.
4. Protect scenic vistas from the Town's roadways and other places.
5. Encourage screening of new residential development from the Town's roads, open spaces and scenic areas.
6. Facilitate the construction and maintenance of streets, utilities and public services in a more economical and efficient manner.
7. Protect existing and potential municipal water supplies.
8. Encourage a less sprawling and more efficient form of development that consumes less open land and conforms to existing topography and natural features better than a conventional subdivision.
9. Minimize the total amount of disturbance on the site.
10. Preserve open space areas for active and passive recreational use, including the provision of neighborhood parks and trails.
11. Encourage the provision of diverse housing opportunities and the integration of a variety of housing types.
12. Further the goals and policies of the Duxbury Comprehensive Plan.

540.2 Definitions

In this Bylaw, the following words have the meanings indicated:

Residential Conservation Cluster (RCC) Development

A residential development in which the buildings are clustered together with reduced lot sizes and frontage. The land not included in the building lots is permanently preserved as open space. RCC Development is generally the preferred form of residential development and/or redevelopment in the Town for residential developments of five (5) or more acres and/or six (6) or more lots.

540.3 Applicability

A proposed subdivision of land into six (6) or more lots shall be filed in accordance with the provisions of Section 540.4, below. The Planning Board shall determine whether the proposed location is suitable for an RCC Development under the terms and provisions of this section. If the Planning Board determines that the proposed location is suitable for an RCC Development, any further subdivision of the land into six or more lots shall be accomplished only through the provisions of this Bylaw. If the Planning Board determines, after

discussion and analysis provoked by Section 540.4, that the location is best suited for subdivision under a conventional subdivision design, the Planning Board shall so inform the applicant and the applicant may then proceed to design a subdivision plan under the provisions of the Subdivision Control Law and the Duxbury Rules and Regulations Governing the Subdivision of Land (Subdivision Rules and Regulations) and the provisions of this section shall not apply. In cases where the Planning Board determines that the site is not suitable for an RCC Development, and where the proposed subdivision of land is for six (6) or more lots, the Planning Board's special permit powers shall be limited to enforcing the provisions of Section 560 of the Zoning Bylaw. In either case, however, a special permit from the Planning Board shall be required.

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Notwithstanding the provisions above, the Planning Board may grant a special permit for an RCC Development for any parcel or contiguous parcels of at least five (5) acres in any district permitting single-family dwellings subject to the regulations and conditions herein. Determination of whether the proposed location is not suitable for an RCC Development shall be based upon the opinion and judgment of the Planning Board, after consultation with its advisors and staff and may include the following criteria:

1. The degree to which the topography of the locus will not be preserved by a RCC Development;
2. The degree to which stormwater runoff and erosion will not be minimized by a RCC Development;
3. The degree to which the RCC Development will result in inappropriate site planning, subdivision design and/or damage to the site's natural features;
4. The degree to which the RCC Development will not preserve or protect abutting properties and associated views and vistas;
5. The degree to which public safety will be threatened by a RCC Development;
6. The degree to which other site specific attributes or site specific concerns are not appropriately addressed by a RCC Development.

540.4 Procedural Requirements

1. Pre-Application Meeting: A pre-application meeting between the Planning Board and/or Planning Department and the applicant is strongly encouraged.
2. Preliminary (Conventional) Plan/RCC Sketch Plan: Applicants proposing the subdivision of land into six (6) or more lots shall submit a Sketch Plan for an RCC Development along with a Preliminary (Conventional) Subdivision Plan for review by the Planning Board. One of the purposes of this review is to determine the number of lots possible in the RCC Development. For this reason, it is strongly recommended that a copy of the existing conditions plan required in Section 540.4.3 below be submitted at this stage. The Planning Board shall approve, approve with conditions, or disapprove the preliminary plan/RCC Sketch Plan within forty-five (45) days of receipt of a completed application. Upon receipt of the Planning Board's written decision regarding said plan, the applicant may submit a definitive subdivision and RCC Development plan in accordance with the Planning Board's written decision. If the above-noted forty-five (45) day time period has lapsed without a written decision being issued by the Planning Board, the applicant may submit a definitive subdivision and RCC Development plan in accordance with Section 540.4.3 of this Bylaw.
3. Definitive Subdivision and RCC Development Plan: The Definitive RCC Development Subdivision Plan shall show: location and boundaries of the site, proposed land and building uses, lot lines, location of open space, proposed grading, location and width of streets and ways, parking, landscaping, existing vegetation to be retained, water supply or approximate location of wells, drainage, proposed easements and methods of sewage disposal. A team including a Registered Civil Engineer, Registered Land Surveyor, and a Registered Landscape Architect shall prepare the plan. An accompanying Existing Conditions Plan shall depict existing topography, wetlands, waterbodies and the 100-year floodplain, all existing rights of way, easements, existing structures, the location of significant features such as woodlands, tree lines, open fields or meadows, scenic views, watershed divides and drainage ways, fences and stone walls, roads, driveways, and cart paths. Submission of photographs depicting existing conditions, views and vistas from various locations on the property and from public and private ways shall accompany the plan submission. The Site Analysis shall also show locations of soil test pits and percolation tests, with supporting documentation on test results. Applicants shall also include a statement indicating the proposed use and ownership of the open space as permitted by this Bylaw. Applicants should refer to the Subdivision Rules and Regulations for provisions regarding preparation and submittal of plans.
4. Density/Number of Dwelling Units: The total number of dwelling units in a Residential Conservation Cluster shall be determined by the following formula:
(a)
$$[Total\ area\ of\ land\ subject\ to\ the\ application] - [Area\ of\ wetlands\ and\ waterbodies] = Applicable\ Land\ Area$$

[[Applicable Land Area] x [.75]] Divided by Minimum Lot Area Established for the Zoning District = Total number of dwelling units.

The number of dwelling units permitted in a Residential Conservation Cluster shall not exceed that which would be permitted under a conventional subdivision that complies with the Zoning Bylaw and the Subdivision Rules and Regulations of the Planning Board and any other applicable laws and regulations.

5. Review and Decision: Upon receipt of the application and the required plans, the Planning Board shall transmit one copy each to the Board of Health, Historical Commission, and Conservation Commission. Within 45 days of their receipt of the application/plans, these agencies shall submit any recommendations to the Planning Board. The Planning Board shall act on applications according to the procedure specified in G. L. c. 40A, sec. 9. Notice shall be provided of hearings in accordance with Chapter 40A, sec. 11 and Chapter 41, sec. 81T. Public hearings for the subdivision application and the special permit application shall be conducted concurrently.

6. Criteria for Special Permit Decision:

(a) Findings: The Planning Board may approve the development upon finding that it complies with the purposes and standards of the RCC Development Bylaw and is superior in design to a conventional subdivision with regard to protection of natural features and scenic resources of the site. The Planning Board shall consider the following criteria in making its decision:

1. Upland open space as required by this Bylaw has been provided and generally conforms to the Design Requirements in Section 540.8 of this Bylaw.

2. Approximate building sites have been identified and are not located closer than 100 feet to wetlands and waterbodies.

3. Proposed streets have been aligned to provide vehicular access to each dwelling unit in a reasonable and economical manner. Lots and streets have been located to avoid or minimize adverse impacts on open space areas and to provide lots with views of and access to the open space.

4. All lots meet the applicable dimensional requirements of Section 540.5 of the RCC Development Bylaw and all other relevant provisions of the Zoning Bylaw.

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5. The provisions of Section 560 of the Zoning Bylaw will be met.

The Planning Board's findings, including the basis of such findings, shall be stated in the written decision of approval, conditional approval or denial of the application for special permit.

(b) Conditions: The Planning Board shall impose conditions in its decision as necessary to ensure compliance with the purposes of this Bylaw. Approval of an RCC Development shall be conditioned upon Definitive Subdivision approval and shall be conditioned to provide that no further division of land which increases the number of lots or results in an alteration to the area to be set aside as open space may occur without a modification of the special permit. Any alteration of lot lines or layout of ways shall require approval of the Planning Board and shall be in compliance with the requirements of the RCC Development Bylaw and the Subdivision Rules and Regulations.

(c) Time Limit: A special permit is granted for a period of two years from the date of its approval and shall lapse if substantial use or construction has not commenced by such date, except for good cause shown. In its sole discretion, the Planning Board may grant extensions to allow construction of subdivisions within the vested rights limits set forth in G.L. c. 40A, sec.6 except where such extension would derogate from the intent and purpose of this Bylaw.

(d) Relationship to Subdivision Control Law: Nothing contained herein shall exempt a proposed subdivision from compliance with other applicable provisions of these Bylaws or the Subdivision Rules and Regulations of the Planning Board, nor shall it affect the right of the Board of Health and of the Planning Board to approve, condition or disapprove a subdivision plan in accordance with the provision of such Rules and Regulations and of the Subdivision Control Law.

540.5 Standards and Dimensional Requirements

Where the requirements of this section differ from or conflict with the requirements found elsewhere in this Bylaw, the requirements of this section shall prevail.

1. Minimum Lot Size: The minimum lot size shall be one-half the square footage otherwise required by the Zoning District in which the project is located.

2. Minimum Frontage: The minimum frontage may be reduced from frontage otherwise required in the Zoning District, provided however that no lot shall have less than 50 feet of frontage and provided further that such frontage reduction shall apply only to lots fronting on proposed internal roadways.

3. Setbacks: Provided that no objection to the contrary is raised by the Fire Department, the Planning Board may reduce by up to one-half the setbacks

otherwise required by the Zoning Bylaw if the Board finds that such reduction will result in better design, improved protection of natural and scenic resources, and will otherwise comply with this Bylaw. Notwithstanding this provision or the requirements of the Zoning Bylaw, every dwelling fronting on the proposed roadways shall be set back a minimum of 15 feet from the roadway right-of-way, and a minimum of 50 feet from the outer perimeter of the land subject to the application. This 50-foot setback shall be maintained in a naturally vegetated state to screen and buffer the development and may be included within the open space. This setback may be eliminated where the proposed development abuts existing permanent open space. Wherever feasible, construction of the dwelling at the front setback line is encouraged.

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4. Required Open Space: All land area not utilized for lots, roads, and drainage shall be set aside as open space. A minimum of 60% of the upland area of the parcel ("applicable land area") shall be provided as open space. As an exception, where the open space is proposed to be deeded to the Town or a qualified land trust pursuant to 540.7 of this Bylaw, and in fact, such a transfer occurs, a minimum of 50% of the upland area of the parcel shall be provided as open space. Applicants are encouraged to include wetlands and waterbodies within the open space; however, they do not count toward the open space requirement. Roadway rights-of-way shall not count toward the area to be provided as open space.

540.6 Permissible Uses Of Open Space

1. Purposes: Open space shall be used solely for recreation, conservation, or agriculture purposes by residents and/or the public. Where appropriate, multiple use of open space is encouraged. At least half of the required open space may be required by the Planning Board to be left in a natural state. The proposed use of the open space shall be specified in the application. If several uses are proposed, the plans shall specify what uses will occur in what areas. The Planning Board shall have the authority to approve or disapprove particular uses proposed for the open space.

2. Leaching Facilities: Subject to the approval of the Board of Health, as otherwise required by law, the Planning Board may permit a portion of the open space to be used for components of sewage disposal systems serving the subdivision, where the Planning Board finds that such use will not be detrimental to the character, quality, or use of the open space, wetlands or waterbodies, and enhances the site plan. The Planning Board shall require adequate legal safeguards and covenants that such facilities shall be adequately maintained by the lot owners within the development. No portion of the open space containing components of a sewage disposal system(s) shall count toward the open space requirements of Section 540.5.4, nor shall any portion of said open space areas be accepted by the Town or conveyed to a nonprofit organization other than a corporation or trust described in Section 540.7(c).

540.7 Ownership Of Open Space

1. Ownership Options: At the developer's option and subject to approval by the Planning Board, all areas to be protected as open space shall be:

(a) Conveyed to the Town to be placed under the care, custody and control of the Conservation Commission, and be accepted by it for a park or open space use. Land conveyed to the Town shall be open for public use;

(b) Conveyed to a non-profit organization, the principal purpose of which is the conservation or preservation of open space, with a conservation restriction as specified below. Such organization shall be acceptable to the Town as a bona fide conservation organization; or

(c) Conveyed to a corporation or trust owned or to be owned by the owners of lots or residential units within the development (i.e. "homeowners' association") and placed under conservation restriction. If such a corporation or trust is utilized, as indicated herein, ownership thereof shall pass with conveyance of the lots or residential units. The developer is responsible for the maintenance of the open space and other facilities to be held in common until such time as the

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homeowners' association is capable of assuming such responsibility. Thereafter, the members of the association shall share the cost of maintaining the open space. The Planning Board shall require the applicant to provide documentation that the homeowners' association is an automatic (mandatory) association that has been established prior to the conveyance of any lots within the subdivision.

2. Permanent Restriction: In any case when open space is not conveyed to the Town, a permanent conservation or agricultural preservation restriction, in accordance with G. L. c. 184 sec. 31, approved by the Planning Board and Board of Selectman, and enforceable by the Town, conforming to the standards of the Massachusetts Executive Office of Environmental Affairs, Division of Conservation Services, shall be recorded to ensure that such land shall be kept in an open or natural state and not

be built for residential use or developed for accessory uses such as parking or roadways except as permitted by this Bylaw and approved by the Planning Board. Restrictions shall provide for periodic inspection of the open space by the Town. Such restriction shall be submitted to the Planning Board prior to approval of the project and recorded at the Registry of Deeds/Land Court simultaneously with recording of the definitive subdivision plan. A management plan may be required by the Planning Board that describes how existing woods, fields, meadows or other natural areas shall be maintained in accordance with good conservation practices.

3. Encumbrances: All areas to be set aside as open space shall be conveyed free of any mortgage interest, security interest, liens or other encumbrances.

4. Maintenance of Open Space: In any case where open space is not conveyed to the Town, the Town shall be granted an easement over such land sufficient to ensure its perpetual maintenance as conservation or recreation land. Such easement shall provide that in the event the trust or other owner fails to maintain the open space in reasonable condition, the Town may, after notice to the lot owners and public hearing, enter upon such land to maintain it in order to prevent or abate a nuisance. The cost of such maintenance by the Town shall be assessed against the properties within the development and/or to the owner of the open space. The Town may file a lien against the lot or lots to ensure payment of such maintenance expenses.

540.8 Design Process

Each development plan shall follow the design process outlined below. When the development plan is submitted, applicants shall be prepared to demonstrate to the Planning Board that this design process was considered in determining the layout of proposed streets, house lots, and contiguous open space.

1. Understanding the Site. The first step is to inventory existing site features, taking care to identify sensitive and noteworthy natural, scenic and cultural resources on the site, and to determine the connection of these important features to each other.

2. Evaluating Site Context. The second step is to evaluate the site in its larger context by identifying physical (e.g., stream corridors, wetlands), transportation (e.g., road and bicycle networks), and cultural (e.g., recreational opportunities) connections to surrounding land uses and activities.

3. Designating the Contiguous Open Space. The third step is to identify the contiguous open space to be preserved on the site. Such open space should include the most sensitive and noteworthy resources of the site, and, where appropriate, areas that serve to extend neighborhood open space networks.

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4. Location of Development Areas. The fourth step is to locate building sites, streets, parking areas, paths and other built features of the development. The design should include a delineation of private yards, public streets and other areas, and shared amenities, so as to reflect an integrated community, with emphasis on consistency with Duxbury's historical development patterns.

5. Lot Lines. The final step is to draw the lot lines.

540.9 Design Requirements

The location of open space provided through this Bylaw shall be consistent with the policies contained in the Duxbury Comprehensive Plan and the Open Space and Recreation Plan, as amended. The following design requirements shall apply to open space and lots provided through this Bylaw:

1. Open space shall be planned as large, contiguous areas whenever possible. Long thin strips or narrow areas of open space (less than 100 feet wide) shall occur only when necessary for access, as vegetated buffers along wetlands or the perimeter of the site, or as connections between open space areas.

2. Open space shall be arranged to protect valuable natural and cultural environments such as stream valleys, wetland buffers, unfragmented forestland and significant trees, wildlife habitat, open fields, scenic views, trails, and archeological sites and to avoid development in hazardous areas such as floodplains and steep slopes. The development plan shall take advantage of the natural topography of the parcel and cuts and fills shall be minimized.

3. Open space may be in more than one parcel provided that the size, shape and location of such parcels are suitable for the designated uses. Where feasible, these parcels shall be linked by trails.

4. Where the proposed development abuts or includes a body of water or a wetland, these areas and the 100-foot buffer to such areas shall be incorporated into the open space. Where appropriate, reasonable access shall be provided to shorelines.

5. The maximum number of house lots compatible with good design shall abut the open space and all house lots shall have reasonable physical and visual access to the open space through internal roads, sidewalks or paths. An exception may be made for resource areas vulnerable to trampling or other disturbance.

6. Open space shall be provided with adequate access, by a strip of land at least 20 feet wide, suitable for a footpath, from one or more streets in the development.

7. Development along existing scenic roads and creation of new driveway openings on

existing regional roadways shall be minimized.

8. Where a proposed development abuts land held for conservation purposes, the development shall be configured to minimize adverse impacts to abutting conservation land. Trail connections should be provided where appropriate.

9. Residential structures shall be oriented toward the street serving the premises.

540.10 Types of Buildings

The provisions of Section 410.1.1 notwithstanding, an RCC Development may consist of any combination of single-family, two-family and multifamily residential structures. A multifamily structure shall not contain more than three (3) dwelling units. The architecture of all multifamily buildings shall be residential in character, particularly providing gabled roofs, predominantly wood siding, an articulated footprint and varied facades.

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540.11 Affordable Component

As a condition of the grant of any special permit for a RCC Development containing six (6) or more lots or dwelling units, the Planning Board shall ensure compliance with the provisions of Section 560 ("Inclusionary Housing") of the Zoning Bylaw.

540.12 Special Permit Requirements

In reviewing an application under this Bylaw, the Planning Board shall rely, to the extent warranted, on the provisions of Section 906.2 of the Zoning Bylaw.

Survey received from Duxbury on 5/3/05 (completed by Christine Stickney, Planning Director)

What was the last year that the municipality amended the cluster/flexible provisions?

"2003"

Which entity is the special permit granting authority for cluster/flexible zoning?

Combination No Planned Developments shall be undertaken without a Special Permit granted by the Board of Appeals as provided for in Section 808 and 906.2 and in accordance with the Design Standards enumerated in Section 700 and Procedures and Regulations for Planned Development as enumerated in Section 800 of this Bylaw.

410 RESIDENTIAL COMPATIBILITY DISTRICT

410.3 Uses and Structures Permitted by Special Permit

The following uses and structures are permitted, and only to the extent authorized, by a Special Permit from the Board of Appeals. The Planning Board shall be the Special Permit Granting Authority for Residential Conservation Cluster Developments:

10. Residential Conservation Cluster Development in accordance with Section 540.

Has any housing been built under the cluster/flexible provisions?

No Survey received from Duxbury on 5/3/05 (completed by Christine Stickney, Planning Director)

Has any housing been built under the cluster/flexible provisions?

"No"

East Bridgewater

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Town of East Bridgewater Zoning Bylaw, Section 5(S) (Last Amended 2004).

"S. PLANNED OPEN SPACE RESIDENTIAL DEVELOPMENT (POSRD)

(65-4/11/1987)

The Planning Board acting as the Special Permit Granting Authority (SPGA) may grant a Special Permit for POSRD in the Residence A (RA) District for single family detached dwellings (but not mobile homes), and accessory structures, and in the Residence B (RB) District for attached units, subject to the standards that follow.

Purpose - The purpose of Planned Open Space Residential Development is to encourage the preservation of common land for conservation, agriculture, open space, and recreational use; to preserve historical or archeological resources; to protect existing or potential municipal water supplies; to protect and preserve value of real property, to promote more sensitive siting of buildings and better overall site planning; to promote better utilization of land in harmony with its natural features and with the general intent of the Zoning By-Law through a greater flexibility in design; to allow more efficient provision of municipal services and to encourage a diversity of housing types.

(1). GENERAL STANDARDS - The following standards shall apply to all POSRD Developments:

(a). Except for Attached Unit Development (AUD), each building shall be on a separate lot with frontage on an approved way. For an AUD, the Planning Board may allow more than one principle building to be located on a single lot.

(b). Minimum Tract Size - POSRD Developments shall be located upon a tract of land which has an area of at least ten (10) acres in the RA District of fifteen (15) acres in the RB District.

(c). Number of Building Lots Permitted - The total number of building lots in a POSRD Development shall be no greater than the total number of building lots that would otherwise be allowed in the District in which the land is located. In making the determination of the maximum number of allowable lots, the SPGA may require that the applicant provide evidence satisfactory to the SPGA, that the number of lots shown on the proposed POSRD Plan is no greater than the maximum number of lots that could otherwise be developed. In determining the number of building lots, the following shall be used in calculating the acreage available for development:

[1]. One hundred percent (100%) of the acreage contained within the following soil classifications as shown on the most recent Soil Survey Maps prepared by the Soil Conservation Service. Said Maps are hereby made part of this By-law.

AfA, AfB, CaA, CaB, CaC, CbA, CbB, CbC, EnA, EnB, EnC, HaA, HaB, HaC, McA, McB, McC, MfA, MfB, MfC, QuA, QuB, QuC, WbA, WbB, WbC, WcC, WnA, WnB, WnC,

[2]. Fifty percent (50%) of the acreage:

[a]. Contained in other soil classifications not elsewhere excluded.

[b]. Land defined as wetlands under the Massachusetts General Laws, Chapter 131, Section 40, as amended.

[c]. Land shown in an A or B zone on the Flood Insurance Rate Map.

[d]. Land with a slope in excess of Twenty five percent (25%) for a horizontal distance of fifty (50) feet or more.

[3]. None of the acreage included in the following shall be used in calculating building lot density:

[a]. Land subject to easements of record, or public or private rights of way.

[b]. Bodies of water.

[4]. The Planning Board reserves the right to require a detailed soil analysis to support any application under this section.

(2). SITE DEVELOPMENT STANDARDS

(a). A POSRD shall comply with the following minimum requirements. However, the SPGA may, in appropriate cases, impose further restrictions or increased dimensional requirements as a condition of the Special Permit.

(FN *) BUILDING SEPARATION FOR MULTI-FAMILY USES NOTE: The lot frontage on each lot may be variable provided that the average frontage for all lots within the development shall not be less than the minimum and further provided that no lot shall have a frontage, or any dimension less than forty (40) feet.

(b). The fronting of lots within the POSRD on existing streets or ways is strongly discouraged and will normally not be approved. In any event, all lots fronting on existing streets or ways shall maintain the frontage, area, and setbacks required in the conventional zones.

(c). A minimum one hundred (100) foot buffer zone shall be provided between the POSRD building lots and any adjoining lot or

existing street, unless the applicant can demonstrate to the SPGA that existing vegetation and topography provide sufficient buffering and screening. This buffer space may be figured in the open space area calculations that follow. Where vegetation is sparse, the SPGA shall require screen plantings.

(d). Unusually gerrymandered lot lines shall not be allowed, if, in the opinion of the SPGA, the shape is due solely to an attempt to meet the lot size requirements of this By-Law by evading the By-Law's intent to regulate building site density and promote the preservation of open space.

(e). Not more than four attached units shall be built in a row with the same, or approximately the same, front building line. No row of attached units shall contain more than six (6) units.

(f). Except as modified by this POSRD By-Law, all multi-family dwellings in a POSRD Development shall conform to the standards and restrictions set forth in the Zoning By-Law.

(3). OPEN SPACE/COMMON LAND

(a). Open space shall be integrated within and around the development at the rate of one (1) square foot for each one (1) square foot in reduced lot size from a conventional lot size. However, not less than thirty percent (30%) of the land area contained within the development shall be designated as open space/common land and further provided that not less than twenty percent (20%) of the open space land shall be usable for recreational purposes (i.e., no wetlands, or slopes in excess of five percent (5%). Open space shall be contiguous within the development and shall be provided with dry access to the street, with width of the access to be not less than twenty (20) feet.

(b). The applicant shall present evidence to the SPGA, that a functional relationship exists between the open land and the proposed cluster (s). Such land shall be of such size, shape, character and location as to assure its utility for park, conservation or recreation purposes.

(c). The ownership of common land shall either:

[1]. be conveyed to the Town of East Bridgewater and accepted by it for open space, conservation, agriculture, outdoor recreation or park use; if deemed appropriate by the SPGA, or;

[2]. be conveyed to a non-profit organization, the principal purpose of which is the conservation of open space, or;

[3]. be conveyed to a corporation or trust owned, or to be owned, by the owners of the lots within the POSRD.

In any case, a perpetual restriction enforceable by the Town of East Bridgewater shall be recorded providing that such land be kept in its open or natural state and not built on or developed except as provided for in the following paragraph.,

The common land shall be used only for open space, conservation, agriculture, outdoor recreation or park purposes. The common land shall be in one or more parcels of a size, shape and location appropriate for its intended use as determined by the SPGA. The common land shall remain unbuilt upon except that a maximum of five percent (5%) of such land may be devoted to paved areas or structures accessory to active outdoor recreation and consistent with the open space use of the land.

(4). PROCEDURES

(a). Filing of Application - Each application for a Special Permit shall be filed with the SPGA, with a copy of the application to be filed with the Town Clerk, and the application shall be accompanied by ten (10) copies of the site development plan of the entire tract under consideration, prepared by a professional Architect, Engineer, Land Surveyor or Landscape Architect or Land Planner.

(b). Contents of Application - Said application and plan shall be prepared in accordance with the requirements for a Preliminary Subdivision plan, as contained in the East Bridgewater Subdivision Rules and Regulations of Land, whether or not the POSRD constitutes a subdivision, and shall include proposed building locations. In addition the applicant shall provide the following information:

[1]. The number of dwellings that could be constructed under the Zoning By-Law by means of a conventional development plan, considering the whole tract, exclusive of waterbodies, and land prohibited from development by legally enforceable restrictions, easements or covenants.

[2]. An analysis of the site, including wetlands, slopes, soil conditions, areas within the one hundred (100) year flood plain, vegetative cover, and such other natural features as the SPGA may request.

[3]. A summary of information relating to environmental concerns associated with the proposed plan.

[4]. A description of the neighborhood in which the tract lies, including utilities and other public facilities, and the impact of the proposed plan upon them.

[5]. Evaluation of the open land within the development, with respect to size, shape, location, natural resource value, and accessibility by residents of the town or the development.

[6]. A detailed plan for long term maintenance of the open space.

(5). REVIEW OF OTHER BOARDS

Before acting on the application the SPGA shall submit the plan to the following boards, for review; the Board of Health, the Conservation Commission, and the Water Department. Any such board to which petitions are referred for review shall submit, in writing, any comments and/or recommendations as it deems appropriate to both the SPGA and the applicant within thirty five (35) days of receipt of said petition. If no response is received within the thirty five (35) days it shall be assumed by the SPGA that no response is required.

(6). RELATION TO THE SUBDIVISION CONTROL LAW

SPGA approval of a Special Permit hereunder shall not substitute for compliance with the Subdivision Control Law, nor oblige the Planning Board to approve any related Definitive Plan for subdivision, nor reduce any time periods for Planning Board consideration under that law. However, in order to facilitate processing, the Planning Board shall, insofar as practical under existing law, adopt regulations establishing procedures for submission of a combined plan and application which shall satisfy this section and the Planning Board's Rules and Regulations for the Subdivision of Land.

Also see ARPUD:

E. DISTRICT R-5 (RESIDENCE 5):

(16-5/8/89) (AN ADULT RETIREMENT PLANNED UNIT DEVELOPMENT (ARPUD) DISTRICT)

- This district is a residential overlay district applicable to all areas of the town in which a residential use is allowed, except for those areas within a WATERSHED PROTECTION DISTRICT. [Amended 10/30/00]

(0). INTENT: The intent of this Adult Retirement Planned Unit Development (ARPUD) is:

- To provide an alternative housing opportunity for the older population.

- To provide an attractive and suitable residential environment that is more amenable to the needs of people in their latter years, and in many cases with limited incomes.

- To encourage creative and innovative site planning and design, in order to enhance the attractiveness and suitability of smaller homes as a preferred alternative housing type, in order to better meet the specific housing needs of this segment of the population.

- And further, the intent of this ARPUD is to encourage the preservation of common land for open space and recreational use, by promoting better utilization of land in harmony with its natural features, and to retain the rural character of the Town.

(1). ALLOWED USES: There are no additional ALLOWED USES within this ARPUD district.

(2). SPECIAL PERMIT ALLOWED USES: The Planning Board acting as the Special Permit Granting Authority (SPGA) may grant a Special Permit for an ADULT RETIREMENT PLANNED UNIT DEVELOPMENT (ARPUD) per the standards and conditions set forth in Sections 5.E.(4)., (5)., (6)., and (7). that follow.

(3). PROHIBITED USES: All uses not expressly allowed as part of the Special Permit granted for an ADULT RETIREMENT PLANNED UNIT DEVELOPMENT (ARPUD) as defined under this By-Law are prohibited in the ARPUD.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board "S. PLANNED OPEN SPACE RESIDENTIAL DEVELOPMENT (POSRD)
(65-4/11/1987)

The Planning Board acting as the Special Permit Granting Authority (SPGA) may grant a Special Permit for POSRD in the Residence A (RA) District for single family detached dwellings (but not mobile homes), and accessory structures, and in the Residence B (RB) District for attached units, subject to the standards that follow.

Has any housing been built under the cluster/flexible provisions?

Easton

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Easton Zoning By-Law, Section 7-15 (adopted 1967): OPEN SPACE RESIDENTIAL DEVELOPMENT

7-15. OPEN SPACE RESIDENTIAL DEVELOPMENT

A. Purpose

The purposes of this section are:

- (1) to preserve open space for natural resource protection, recreation, agriculture and forestry;
- (2) to preserve significant natural, historical, and archaeological resources;
- (3) to preserve and foster the Town of Easton rural and scenic character;
- (4) to promote development that is in harmony with natural features and resources, the town's historic and traditional landscapes, the existing and probable future use of adjacent land, and the general intent of the Zoning By-law; and
- (5) to establish flexible residential development standards and procedures that will support these objectives

B. Special Permit

In the Residential District, the Planning and Zoning Board may grant a special permit for an Open Space Residential Development (OSRD) as an alternative to conventional subdivision.

C. Open Space Residential Development Standards

1. Permitted Uses

Land in an OSRD may be used for any purpose permitted in the Residential District.

2. Area and Dimensional Requirements

(a) Minimum Tract Size

- (1) The tract of land for an OSRD must contain at least five (5) acres, and have at least forty (40) feet of frontage on a public way.

(2) The Planning and Zoning Board may permit lots on directly opposite sides of a street to qualify as a single tract of land. To permit such division of a tract of land by a street, the Planning and Zoning Board must find that this would comply with the purposes of this section and not result in any more dwelling units than would be possible in accordance with the provisions of this By-law if the lots on either side of the street were developed separately. If the Board approves a tract of land divided by a street, it may permit the dwelling units to be concentrated on one side of the street and the Common Land to be concentrated on the opposite side of the street.

(b) Lot Area, Frontage, Width, and Yard Requirements

Residential building lots in an OSRD shall comply with the following dimensional requirements:

- (1) Minimum lot area: 10,000 square feet
- (2) Minimum lot frontage: no requirement
- (3) Minimum lot width: no requirement

(c) Building Location Requirements

- (1) No residential building shall be located within 20 feet of a public way, private way, or common drive; within 20 feet of a lot line within the OSRD; or within 30 feet of the boundary line of the OSRD; or within 30 feet of the Common Land.

(2) The Planning and Zoning Board may require larger setbacks and distances, and it may permit smaller setbacks and distances if it finds that such smaller setbacks will not detract from the purpose and intent of the OSRD.

(3) Where the tract contains a pre-existing residential structure, the area and frontage of the lot on which such structure is located after development of the OSRD shall not be reduced below the minimum lot size and minimum frontage required in the underlying zoning district.

(d) Number of dwelling units

The maximum number of dwelling units permitted in an OSRD shall be computed by dividing the developable area of the OSRD tract by the minimum lot size required in the underlying zoning district. For the purpose of this computation, the "developable" area shall be the total area of the tract, including the Common Land, but excluding all streams, ponds, wetlands as defined in Chapter 227 of the Code of the Town of Easton and Chapter 131, Sec 40 of the Massachusetts General Laws, floodplains, detention/retention basins, and areas subject to existing valid open space restrictions.

e) Streets and Utilities

Whether or not the OSRD is a subdivision, all streets whether public or private, and all sewage, drainage facilities and utilities, shall be designed and constructed in compliance with the Town of Easton Subdivision Rules and Regulations, except as specifically modified by the following design standards:

(1) The minimum widths of right-of-way shall be forty feet (40').

(2) The minimum widths of roadways (paved travel area) shall be twenty-two (22') for streets providing access to up to and including 40 dwellings, and twenty four feet (24') for streets providing access to more than 40 dwellings.

(3) Up to eight dwellings may be served by a Private Lane conforming to the requirements for such ways set forth in Rules and Regulations adopted by the Planning and Zoning Board.

Exceptions to the Subdivision Rules and Regulations may be authorized by the Planning and Zoning Board in granting a special permit hereunder provided that the Board determines such exceptions are in the public interest and are not inconsistent with the purposes of Section A.

3. Common Land

(a) Dimensional Requirements

In an OSRD, at least sixty percent (60%) of the total tract area shall be set aside as Common Land for the use of the OSRD residents or the general public. The following additional requirements shall apply:

(1) The minimum required area of Common Land shall not contain a greater percentage of wetlands (as defined in M.G.L. Chapter 131, Section 40, or in Chapter 227 of the Code of the Town of Easton) than the percentage of wetlands found in the overall tract of land on which the OSRD is located.

(2) Common Land shall be planned as large, contiguous parcels whenever possible. Strips or narrow parcels of Common Land shall be permitted only when necessary for providing access to the Common Land from a public or private way, or if the Planning and Zoning Board finds that a vegetated buffer strip along the site's perimeter is appropriate and consistent with the purpose of OSRD development.

(3) Common Land may be set aside in more than one parcel provided that the size, shape and location of such parcels are suitable for the designated uses.

(4) If the tract of land abuts adjacent Common Land, undeveloped lots or open space, the Common Land, wherever possible, shall be connected with such adjacent Common Land, undeveloped abutting lots or open space.

(5) The Common Land shall include adequate upland access from a way or street.

(b) Use of the Common Land

(1) The Common Land shall be dedicated and used for natural resource protection, recreation, park purposes, outdoor education, agriculture, horticulture, or forestry, or for any combination of such uses. No other uses shall be allowed in the Common Land, except as follows:

(i) A portion of the Common Land may be also be used for the construction of leaching areas associated with septic disposal systems serving the OSRD or for water supply wells serving the OSRD, if the Planning and Zoning Board determines that such use will enhance the specific purpose of Open Space Residential Development and promote better overall site planning. Septic disposal easements shall be no larger than reasonably necessary. If any portion of the Common Land is used for the purpose of such leaching areas or wells, the Planning and Zoning Board shall require adequate assurances and covenants that such facilities shall be maintained by the lot owners within the OSRD.

(ii) A portion of the Common Land may also be used for ways serving as pedestrian walks, bicycle paths and emergency access or egress to the OSRD or adjacent land, if the Planning and Zoning Board determines that such a use will enhance the specific purpose of Open Space Residential Development and promote better overall site planning, and if the Planning and Zoning Board finds that adequate assurances and covenants exist to ensure proper maintenance of such facilities by the owner of the Common Land.

(iii) The Common Land may be subject to easements for the construction, maintenance, and repair of utility and drainage facilities serving the Open Space Residential Development or adjacent parcels.

(2) The Common Land shall remain unbuilt upon, provided that an overall maximum of five (5) percent of such land may be subject to pavement and structures accessory to the dedicated use or uses of the Common Land or as otherwise permitted herein.

(3) The proposed use of the Common Land shall be specified, and appropriate dedications and restrictions shall be part of the deed to the Common Land.

(4) The Planning and Zoning Board shall have the authority to approve or disapprove particular uses proposed for the Common Land in order to enhance the specific purposes of Open Space Residential Development, and to further efforts to equitably distribute a variety of open space benefits throughout the community.

(c) Ownership of Common Land

(1) The Common Land shall be conveyed in whole or part to the Town of Easton and accepted by it; or to a nonprofit organization, the principal purpose of which is the conservation of open space and/or any of the purposes and uses to which the Common Land is to be dedicated; or to a corporation or trust owned or to be owned by the owners of the dwelling units within the Open Space Residential Development. The Planning and Zoning Board shall approve the form of ownership of the Common Land.

(2) If any portion of the Common Land is not conveyed to the Town of Easton, a perpetual restriction, approved by the Planning and Zoning Board and enforceable by the Town of Easton, shall be imposed on the use of such land, providing in substance that the land be kept in its open or natural state and that the land shall not be built upon or developed or used except in accordance with provisions of an OSRD as set forth herein and, if applicable, as further specified in the decision of the Planning and Zoning Board governing the individual OSRD.

(3) The proposed ownership of all Common Land shall be specified on a plan required by the Board.

(4) At the time of its conveyance, the Common Land shall be free of all encumbrances, mortgages or other claims, except as to easements, restrictions and encumbrances required or permitted by this bylaw.

(d) Maintenance of Common Land

If the Common Land is to be held by a homeowners association, or other approved entity, a management plan shall be prepared establishing responsibilities and schedules for maintenance of the Common Land.

4. Additional Design Criteria

(a) Four-Step Design Process. Each plan for Open Space Residential Development shall follow a four-step design process, as described below. When the application is submitted, applicants shall be prepared to demonstrate to the Planning and Zoning Board that these four design process, as described below. When the application is submitted, applicants shall be prepared to demonstrate to the Planning and Zoning Board that these four design steps were followed by their designers in determining the layout of their proposed streets, house lots, and open space.

(1) Designating the Open Space. First, identify the open space to be protected. The open space shall include, to the extent feasible, the most sensitive and noteworthy natural, scenic and cultural resources on the property.

(2) Location of House Sites. Second, locate the potential house sites. House sites shall be located not closer than 100 feet to wetlands areas (as defined in M.G.L. Chapter 131, Section 40, or in Chapter 227 of the Code of the Town of Easton), but may be situated within 50 feet of open space areas (other than the wetlands defined above), in order to enjoy views of the latter without negatively impacting the former.

(3) Street and Lot Layout. Third, align the proposed streets to provide vehicular access to each house in the most reasonable and economical way. When lots and access streets are laid out, they shall be located in a way that minimizes adverse impacts on open space. To the greatest extent practicable, wetland crossings shall be strongly discouraged, in order that the maximum number of homes in new developments may enjoy views of open space.

(4) Lot Lines. Fourth, draw in the lot lines (where applicable). These are generally drawn midway between house locations.

(b) In addition to the standards set forth in previous sections of this Section 7-15, the OSRD shall be designed in accordance with the following objectives, in order of priority:

(1) Septic systems shall be placed on the most suitable soil for subsurface septic disposal.

(2) Buildings shall be sited within any woodland contained in the parcel or along the edges of the open fields adjacent to any woodland as to reduce any impact upon the site's natural, scenic and cultural resources, and to enable new construction to be visually absorbed by the natural landscape features.

(3) Buildings shall be sited in locations where the greater number of units can be designed to take maximum advantage of solar heating opportunities.

(4) Buildings shall be sited on locations where the greatest number of units can be designated to take maximum advantage of solar heating opportunities.

(5) Buildings shall be sited to avoid sensitive environmental features, including wildlife habitat, wetlands (as defined in M.G.L. Chapter 131, Section 40, or in Chapter 227 of the Code of the Town of Easton), water bodies, steep slopes or other important site features.

(6) New buildings may be sited in clusters close to an existing public road to reflect the traditional locations, patterns and setbacks of nearby buildings. Such roadside clusters shall be compatible with the scale of the surrounding neighborhood and shall maintain at least 75% of the existing undeveloped road frontage in conservation. Architectural design of new buildings (proportions, roof pitches, exterior materials and fenestration) shall reflect the character of nearby existing structures.

D. Special Permit Applications and Procedures

An application for an Open Space Residential Development special permit shall cover the entire Open Space Residential Development.

1. Pre-submission Meeting

Prior to submission of the Special Permit application, the applicants strongly advised to meet with the Town Planner or other Board designee review the proposed development of the parcel of land, in order to explore general conditions involving the site and to discuss potential problems. Pencil sketches, which need not to be professionally prepared, will assist in this discussion, and should show the critical features to be included in the special permit application as set forth in section 2, below.

2. OSRD Requiring Subdivision Approval

If the Open Space Residential Development requires approval under the Subdivision Control Law, the "Open Space Residential Development Site Plan" shall contain a plan in the form and with the contents required of a Definitive Subdivision Plan by the Easton Subdivision Rules and Regulations. The applications for an OSRD Special Permit and for approval of a Definitive Subdivision Plan shall be filed concurrently. To the extent permitted by law, the Planning and Zoning Board shall consider both applications at the same time.

3. Planning and Zoning Board Action

(a) In evaluating the proposed OSRD, the Planning and Zoning Board shall consider:

- (1) the general purpose and objectives of this by-law;
- (2) the existing and probable future development of the surrounding areas;
- (3) the appropriateness of the proposed layout of streets, ways, lots and structures; and

(4) the proposed layout and use of the Common Land in relation to the proposed dwelling units in the OSRD, adjoining public or private common land or open space or the topography, soils and other characteristics of the tract of land in question; and

(5) to the extent reasonable, whether the areas designated as Common Land are consistent with the objectives stated in the Town of Easton Open Space and Recreation Plan then in effect, if any.

(b) The Planning and Zoning Board may grant a special permit for an OSRD if it finds that the OSRD:

(1) complies with the requirements of this Section 7-15, other applicable requirements of the Zoning By-laws and where applicable, the construction and design standards of the Easton Subdivision Rules and Regulations.

(2) is consistent with the purposes of this section; and

(3) is in harmony with the existing and probable future uses of the area and with the character of the surrounding area and neighborhood.

(c) In addition, in order to grant a special permit for an OSRD, the Planning and Zoning Board must find that the number of housing units to be developed in the OSRD will not exceed by more than ten percent (10%) the number of house lots that could be developed under standard lot area frontage requirements.

4. Special Permit Conditions

As a condition of approval, the Planning and Zoning Board may require such changes in the proposed development plans and may impose such conditions and safeguards as it deems necessary to secure the objectives of this bylaw, and to protect the health, safety and welfare of the inhabitants of the neighborhood and of the Town of Easton. The Special Permit shall specify the timing for conveyance of the Common Land.

D. Change in Plans After Grant of Special Permit

No change in any aspect of the approved plans shall be permitted unless approved in writing by the Planning and Zoning Board. A new or amended special permit will be required if the Planning and Zoning Board determines any proposed change to be substantial.

E. Building Permits

No building permit shall be issued for any structure within an OSRD unless such structure is in compliance with this by-law and the terms and conditions of any special permit thereunder.

The Planning and Zoning Board is the Special Permit Granting Authority (SPGA) for this By-law.

Also, the Adult Retirement Development is a type of cluster:

7-14. ADULT RETIREMENT DEVELOPMENT

A. Purpose: The purposes of this section are:

1. To provide an alternative housing opportunity for persons 55 years of age and older;
2. To provide an attractive and suitable residential environment that is more amenable to the needs of people in their later years;
3. To encourage creative and innovative site planning and design, in order to enhance the attractiveness and suitability of this alternative housing type, and to better meet the specific housing needs of this segment of the population; and
4. To encourage the preservation of common land for open space and recreational use by promoting the highest and best utilization of land in harmony with its natural features, and to retain the rural character of the town.

B. Special permit: In the Residential, Business and Industrial Districts, the Planning and Zoning Board may grant a Special Permit for an ADULT RETIREMENT DEVELOPMENT (ARD) as an alternative to conventional subdivision. Subdivision approval pursuant to Chapter 41 MGL is also required.

C. Definitions: For the purpose of this section only, certain terms, words and phrases are herein defined as follows:

1. ADULT RETIREMENT DEVELOPMENT (ARD) , a self-contained alternative residential community constructed expressly for and specifically limited to use and residency by persons who have achieved a minimum age requirement for residency of at least fifty-five (55) years. Such developments shall comply in all respects to the requirements of MGL Chapter 151B, as it may be amended.
2. COMMUNITY FACILITY(IES) - Developed common areas, constructed solely for the use of the residents of the ARD and their guests. The Community Facility(ies) may include buildings housing activities and amenities such as game room, entertainment room, sewing room, library, kitchen, laundry facilities, exercise room, toilet facilities, locker rooms for men and women, etc. Facility(ies) may also include outdoor activities and amenities such as swimming pools, gardens, paths and walkways, putting greens, and the like. All Community Facility(ies) shall be designed and maintained in conformance with the latest Massachusetts standards for handicap accessibility.

D. Adult Retirement Development General Standards:

1. Permitted Uses

Land in the ARD is specifically limited to use, residence and occupancy by persons who have achieved a minimum age of fifty-five (55) years of age, in accordance with MGL Chapter 151B, as it may be amended, and community facilities for residents of the ARD and their guests.

2. Area and Dimensional Requirements

(a) Minimum Tract Size: The Tract of land for an ARD must contain at least twenty-five (25) acres and have at least forty (40) feet of frontage on a public way.

(b) Lot Area, Frontage, Width and Yard Requirements:

- (1) Minimum Lot Area: nine-thousand (9,000) square feet

(2) Minimum lot frontage: seventy-five (75) feet

(3) Minimum lot width: seventy-five (75) feet

(4) Minimum yard requirements - see Table 6-3

3. Building Location Requirements:

(a) No building (except accessory structures not in excess of 65 square feet) shall be located within 25 feet of a public way or private way; within 30 feet of the boundary line of the ARD; or within 30 feet of any designated Common Land.

(b) The Planning and Zoning Board may require larger setbacks and distances, and it may permit smaller setbacks and distances if it finds that such smaller setbacks will not detract from the purpose and intent of the ARD.

4. Number of Dwellings:

(a) The maximum number of ARD dwelling units in the Town of Easton shall be limited to a number equivalent to five percent (5%) of the existing single-family residential housing units (excluding ARD units) location in the Town of Easton. The number of single-family residential housing units for the purpose of this By-law shall be established by the Board of Assessors as of January 1 of the calendar year, in which the special Permit application is filed.

(b) The maximum number of dwelling units permitted in an ARD shall be computed by dividing the developable area of the ARD tract (in square feet) by one-half () of the minimum lot size required in the underlying zoning district. For the purpose of this computation, the "developable" area shall be the total area of the tract, including the Common Land, but excluding all streams, ponds, wetlands, 100 year floodplains, drainage easements, and areas subject to existing valid open space restrictions.

(c) The maximum number of dwelling units in any one (1) ARD shall be one hundred fifty (150).

(d) The minimum number of dwelling units in any one (1) ARD shall be forty (40).

[-]

Which entity is the special permit granting authority for cluster/flexible zoning?

More than one entity The Planning and Zoning Board is the Special Permit Granting Authority (SPGA) for this By-law.

Has any housing been built under the cluster/flexible provisions?

Yes Email from Marc Rousseau, Town Planner, on 6/1/05:

"2. The Adult Retirement Development section of the Zoning By Law was adopted in 2/2000.

3. There have been three Adult Retirement Developments approved consisting of approximately 160 total units.

[...]

5. The Open Space Residential Development section of the Zoning By Law was adopted in 2/2000. It has not been amended since.

6. use 1-8 development category"

Questions posed:

1) Does Easton allow mixed use - apartments over retail or commercial?

2) What year was Adult Retirement Development adopted?

3) Has any housing been built under the Adult Retirement provisions?

4) If not through ARD, has any other age-restricted development been built in Easton?

5) What year was Open Space Residential Development adopted? Last amended?

6) Has any housing been built under the OSRD provisions? (none, 1-8 developments, more than 8?)

Essex

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

No

Which entity is the special permit granting authority for cluster/flexible zoning?

Has any housing been built under the cluster/flexible provisions?

Everett

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

No

Which entity is the special permit granting authority for cluster/flexible zoning?

Has any housing been built under the cluster/flexible provisions?

Foxborough

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes According to Mark Resnick, Planning Administrator, (7/19/04) Open Space Residential Design is allowed by special permit. Mr. Resnick stated that it is not difficult to obtain a special permit for OSRD; a lot of units have been developed through this mechanism in the past two decades.

Town of Foxborough Zoning Bylaw, Section 9.0 (Last Amended 2004).

ARTICLE 9 Special Regulations
SECTION 9.00 SPECIAL USE (S-1) DISTRICT

A. Planning Goals and Objectives

1. To promote economic development of the Route One corridor and to increase real estate tax revenue;
2. To maintain good planning and site review principles for new development proposals (i.e., encourage commercial cluster development approaches (PD), reinforce front yard buffers, provide performance standards and more definitive criteria for the Special Permit process, etc.);
3. To attract better land uses (e.g., Professional Office/R and D uses) along the Route One corridor, and to discourage strip (or "ribbon") type of commercial development;
4. To assure environmental protection and preservation, and to preserve the Town's rural character;
5. To minimize the number of access points onto Route One and to lessen traffic congestion;
6. To minimize development demands placed on town services and infrastructure; and
7. To implement proper procedures to assure that future development surrounding Foxborough Stadium and the raceway will be completed in accordance with the above planning objectives. (Art. 27, 5/13/91 ATM)

B. Lot Requirements

1. Lots with access to Route One shall have a minimum of 300 feet of frontage and 80,000 square feet.
 - (a). Lots with access onto streets off Route One shall have 200 feet of frontage. (Art. 5, 02/07/94 STM)
 - (b). By Special Permit, lots may be allowed which have 100 feet of frontage; provided that the portion of the lot to be built upon is a minimum of 600 feet from Route One. (Art. 5, 02/07/94 STM)
 - (c). Structures on those Specially Permitted lots with 100 feet of frontage shall maintain all setback requirements from that portion of the lot to be built upon. (Art. 5, 02/07/94 STM)
2. Maximum impervious surface coverage shall not exceed seventy percent (70%).
3. Yards: Front yards shall not be less than seventy-five (75) feet. Side yards shall not be less than seventy-five (75) feet but may be waived by the Planning Board in connection with the issuance of a Special Permit provided that: (1) the 25 foot buffer is maintained; and (2) the total of both side yards equals or exceeds 150 feet.
4. Building height shall not exceed forty (40) feet.
5. There shall be a landscaped buffer strip comprising a minimum 50 feet of the front yard and 25 feet of the side yard for all uses. Under no circumstances shall parking be allowed within these required buffer zones. These requirements may not be waived. Insofar as there may be inconsistencies with Article 6, the provisions of this section shall apply in all cases.
6. Parking is allowed in the front yard provided that a 50 foot buffer strip and the 75 foot minimum building set back is maintained. Side and rear yard parking is preferred.

C. All mercantile/retail uses, except restaurants with seating shall not use more than twenty-five percent (25%) of the gross floor area of a structure. Lots of five (5) acres or less recorded or shown on a plan endorsed by the Planning Board prior to March 23, 1989 are allowed to have fifty percent (50%) of the total floor area used for retail.

D. Applicants seeking Special Permits in the S-1 District shall comply with the following standards and requirements:

1. The Planning Board acting as the Special Permit Granting Authority (SPGA) shall obtain with each submission a deposit sufficient to cover any expenses connected with the public hearing and review of the plans. The SPGA is authorized to retain a professional engineer, architect, or landscape architect, or other professional consultant to advise the Board on any or all aspects of the site plan. The cost of these services shall be borne by the applicant.
2. Prior to the required public hearing before the SPCA, the applicant shall meet informally with the Board of Selectmen. The Board of Selectmen may present its comments to the SPGA before the public hearing date.

3. The development shall be integrated into the existing terrain and surrounding landscape. Building sites shall, to the extent feasible:

- (a). Minimize use of wetlands, steep slopes, floodplains, and hilltops;
- (b). Preserve natural and historic features;
- (c). Maximize open space retention;
- (d). Minimize obstruction of scenic views from publicly accessible locations;
- (e). Minimize tree, vegetation, and soil removal, blasting and grade changes; and
- (f). Screen objectionable features from neighboring properties and roadways.

4. The development shall be served with adequate water supply and waste disposal systems. If the lot, or any portion thereof, falls within the Water Resource Protection District, the Special Permit request shall state such. The criteria necessary for the granting of this Special Permit shall apply and be incorporated into the design of the plan. The Special Permit shall fulfill the requirements of both sections and shall be noted as such by the SPGA.

5. The development shall incorporate measures that are adequate to prevent pollution of surface or groundwater, to minimize erosion and sedimentation, and to prevent changes in groundwater levels, increased rates of runoff and potential for flooding. Drainage shall be designed so that peak flow rates shall not be increased above pre-development levels, and groundwater recharge is maximized.

6. To the extent feasible, development shall minimize demands placed on Town services and infrastructure.

7. The development shall maximize the convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent ways.

8. Building design and landscaping shall be harmony with the prevailing character and scale of buildings in the neighborhood through the use of appropriate building materials, screenings, and other architectural techniques. Variation in detail, form and siting shall be used to provide visual interest and to avoid monotony. Proposed buildings shall relate harmoniously to one another.

9. Electric, telephone, cable TV and other such utilities shall be underground except where this cannot be accomplished because it is physically or environmentally not feasible, in which case a waiver from such will be requested by the applicant.

10. Exposed storage areas, machinery, service areas, truck loading areas, utility buildings and structures and other unsightly uses shall be set back and/or suitably landscaped.

11. The SPGA may require that the principal access road be laid out and constructed in accordance with Town standards, as listed in the Foxborough Subdivision Regulations.

12. Buildings shall be sited so that obstruction of views from the access ways will be minimized.

13. No land use or establishment shall be permitted to produce a strong dazzling light or reflection of that light beyond its lot lines onto neighboring properties or onto any town way so as to impair the vision of the driver of any vehicle upon that way. All such activities shall also comply with applicable federal and state regulations.

14. Excessive noise at unreasonable hours shall be muffled so as not to be objectionable due to intermittence, beat frequency, shrillness or volume. Hours of operation may be regulated to ensure that the peace and tranquillity of abutting residential neighborhoods is maintained.

SECTION 9.06 OPEN SPACE RESIDENTIAL DEVELOPMENTS

A. Purpose

1. To permit maximum flexibility and creativity in design for the development of single family subdivisions which will be superior to conventional plans.

2. To promote the most harmonious use of the land's natural features, resources and topography which will promote the general health and safety of the public.

3. To discourage sprawled development, minimize environmental disruption, and provide a shorter network of streets and utilities which will promote a more efficient distribution of services.

4. To encourage the preservation of open space by permanently preserving open and wooded areas within the parcel.

B. General Requirements

1. Tracts of land consisting of a minimum of seven and one half (7.5) acres may be developed as an Open Space Residential Development (OSRD). (Art. 14, 5/10199)
2. OSRD's may only be authorized by a Special Permit as granted by the Planning Board ("the Board").
3. The number of building lots may not exceed the number of building lots of the tract as permitted by Board of Health and Conservation Commission regulations, existing zoning and a conventional subdivision per the Foxborough Subdivision Regulations ("subdivision regulations").
4. For parcels situated in a Primary Resource Area, the maximum number of building lots allowed in the Special Permit definitive plan filing shall be determined by compiling the total sewage flow allowed for the total upland area within each of the building lots as approved in the conventional, preliminary plan. Minimum lot sizes of 30,000 square feet of upland area shall be required in these areas.
5. For parcels situated in Zone III, the maximum number of building lots allowed in the Special Permit definitive plan filing shall be determined by compiling the total sewage flow allowed within each of the building lots as approved in the conventional, preliminary plan. Minimum lot sizes of 20,000 square feet shall be required in these areas.
6. All lots and structures shall comply within the dimensional requirements of Table 9-1. Whenever possible, the Planning Board will require septic systems and housing units to be located outside of those areas protected by Zone II regulations.

C. Application Process

A pre-application review and public hearing are required. The intent of such is to allow the Town the opportunity to discuss with the applicant and review each proposal prior to the Special Permit process. After the pre application review, an applicant may then proceed to the Special Permit process. A pre-application review will be conducted in accordance with the following procedure:

1. An application, a preliminary set of plans, illustrating a conventional subdivision plan and proposed OSRD shall be filed with the Town Clerk and the Planning Board. The application shall be accompanied by eleven (11) copies of the plans and any other supporting materials which must be prepared and stamped by a registered, professional architect, civil engineer or landscape architect. This submittal shall comply with Section 3.01 of the subdivision regulations.
 - (a). This plan shall be employed by the Board to determine the maximum number of lots which could be created via a conventional plan. This number will be the maximum allowed in an OSRD definitive subdivision plan submittal.
 - (b). The burden of proof shall be upon the applicant to prove the proposed lot(s) are suitable for building. The Board reserves the right to challenge the status of any lot and not allow such to be included in any definitive plan filing.
 - (c). Formal percolation and depth to groundwater tests shall be conducted for each building lot unless town sewerage is available. The results of these tests shall be submitted with the application. Due to seasonal testing requirements, the Planning Board may accept an application without these certified tests. However, the applicant would proceed at his or her own risk and no development of a building lot could commence until it has been approved by the Board of Health.
2. A preliminary sketch plan of the proposed Open Space Residential Development shall be submitted. It shall contain the proposed location of the road(s), lots, drainage, and dedicated open space. General topography, (with 10' contours) major site features and adjacent streets shall also be shown.
3. The Board shall hold a public hearing and act on the preliminary plan within forty-five (45) days after the receipt of the application.
 - (a). The conceptual OSRD shall also be reviewed and discussed during the hearing process. Comments and recommendations shall be incorporated in plans included in any subsequent filings.
4. If the preliminary conventional and conceptual OSRD plans are approved, the Board shall, in so far as practical under the law, allow the submittal of a combined Special Permit and definitive subdivision plan. A combined submission will not be authorized in those cases where either the conventional preliminary plan or proposed OSRD sketch plan is disapproved by the Board.

D. Special Permit Application and Filings

1. A Special Permit application for an Open Space Residential Development, shall include a definitive subdivision plan with eleven (11) copies. It shall be prepared in accordance with Section 3.02 of the subdivision regulations. In addition, the applicant shall provide the following information:
 - (a). A detailed analysis of the site, including wetlands, soil conditions, areas within the one hundred (100) year flood plain, trees over six inches in diameter in areas identified by the Planning Board, Water Resource Protection District delineations and natural, and/or man-made features and other items as the Planning Board may request;
 - (b). A description of the proposed design characteristics of the site pursuant to these regulations;

(c). Engineering data showing effects of proposed development on both on and off-site water resources (within 100 feet of the property line) wetlands and natural recharge of the groundwater, yield from abutters' private wells and possible impacts upon the quality of surface and groundwater; and

(d). A copy of any restrictive covenant(s) for the required buffer strips, association rules and regulations and/or other documentation relating to the creation of a Homeowners Association or similar entity.

E. Dimensional- and Design Requirements

1. The requirements noted in Table 9-1 shall apply to all lots and dwelling units located within an OSRD. All accessory structures and uses shall comply with the requirements of Article 5 of these zoning By-Laws unless otherwise provided for herein.

2. Lots approved at the preliminary plan stage may be located on existing streets in the Special Permit filing and shall comply with the requirements of Table 9-1.

3. Strong emphasis shall be placed upon preserving and integrating the existing topography, natural features (such as rock outcrops, specimen trees and clumps of trees) and man-made features such as stone walls into the plan.

TABLE 9-1 DIMENSIONAL REGULATIONS

[Table]

4. Screening and Buffering: The intent of this provision is to ensure and preserve the visual privacy between abutting dwellings and new lots within the OSRD. To accomplish this, 50 feet of screening & buffering is required in those locations where dwellings abut the OSRD. This is in addition to the required 25 feet of dedicated open space. The Board may alter the width of this screening if it determines that the existing vegetation and/or topography, or the proposed method of screening fulfills the intent of these requirements. The distance between existing homes and the OSRD shall also be considered.

(a). Screening/buffering may consist of; landscaped berms, evergreen plantings, solid walls or fences complemented by suitable plantings, "no cut" provisions (for existing vegetation), or a combination of these items.

(b). Buffer strips(s) on individual building lots, shall have a written deed restriction permanently preserving such. This document shall be submitted for review by the Board and recorded at the Registry of Deeds with any approval.

(c). In those situations where the width of the screening/buffering is reduced, plantings and/or landscaped berms may be located within the dedicated open space. No walls or fences shall be allowed within the dedicated open space.

(d). The exact location of the screening/buffering and species type(s) of vegetation shall be noted on the definitive plan. All new plantings shall consist of evergreens and be situated in a manner acceptable to the Board.

5. The Board may place limitations on the types and location of accessory structures which may be located within the buffer strips. Existing/proposed screening, distances between the OSRD and existing abutters and the topography shall all be considered. The intent is to minimize impacts on existing abutters. A deed restriction may be required if such limitations are applied.

(a). Swimming pools may not be located within 30 feet of a property line of an existing single-family dwelling abutting the OSRD. The Board may increase this distance after considering those items noted in #5 above.

F. Special Permit Review

1. The Planning Board shall conduct a public hearing in accordance with the provision of these By-Laws.

2. The Board may grant a Special Permit under this Section only if it finds that; the proposed plan will be in harmony with the intent and requirements of this Section and these zoning By-Laws and that the development will not have a detrimental impact on the neighborhood or abutting properties.

3. If the Planning Board disagrees with any recommendations of another Board, it shall state its reasons therefore in writing.

4. The Planning Board may impose conditions as a part of any approval which further the purposes of this Section and these By-Laws.

5. The Board shall require a performance guarantee to secure the proper completion of all infrastructure as well as the fulfillment of any conditions of approval.

G. Dedicated Open Space

1. A minimum of forty-five percent (45%) of the parcel shall become dedicated open space pursuant to MGL, Ch. 40A, Section 9. It shall not include land for paved parking lots, roads or for building lots. The Board may reduce this figure to a minimum of thirty-five percent (35%) if it determines there are unique circumstances (re: shape of parcel, topography, wetlands, etc.) which would individually or together preclude the construction of the OSRD.

(a). The minimum width of dedicated open space between abutting property and the OSRD shall be twenty-five (25) feet. Other than new screening/buffering, this area shall remain in a natural state. The Board may increase the width of this dedicated open space. When considering such, it shall review, among other things, the width of the required buffer strip, the density and type of existing vegetation, the location of, distance and topography between existing structures abutting the OSRD.

(b). Unless required by the Board, dedicated open space is not required between an existing dwelling(s) which is located within the OSRD and parcels abutting the OSRD.

2. Areas which have been designated as unsuitable for building (as per Chapter 131, MGL, Title V, or Zone AI through the National Flood Insurance Program, or otherwise) may be included in the dedicated open space. However, a minimum of seventy percent (70%) of the required, dedicated open space shall consist of upland areas.

3. Dedicated open space may be utilized as natural courses for disposal for storm drainage from impervious surfaces. Other than minor berming (maximum 3-1 slopes which shall blend into the landscape) and rip rap at pipe outflows, no significant disruptions of the land (contour changes greater than three feet) for drainage are permitted.

4. Dedicated open space may be in one or more parcels of a size and shape appropriate for its intended use. The parcels shall be laid out so as to promote convenient access by the homeowners within the OSRD, the general public or both, whatever the case may be. Wherever practical, parcels shall be accessible via upland areas. These items shall be agreed upon by the Board and applicant.

H. Ownership of Dedicated Open Space

1. As agreed upon by the applicant and the Board, dedicated open space shall either be conveyed to the Town and accepted by it for park or open space, or be conveyed to a non-profit organization, the principal purpose of which is the conservation of open space, or to be conveyed to a corporation or trust owned or to be owned by the owners of all building lots within the development. If such a corporation or trust is utilized, ownership thereof shall pass with conveyances of the lots or residential units. In any case, where such land is not conveyed to the Town, a restriction enforceable by the Town pursuant to (MGL, Ch. 40A, Section 9) shall be recorded providing that such land shall be kept in an open natural state and not be developed or built upon.

(a). If necessary, such restrictions shall further provide for maintenance for the common land in a manner which will ensure its suitability for its function, appearance, cleanliness, and proper maintenance of drainage, utilities, and the like.

2. Subject to the above, the dedicated open space may be kept in an open and natural state or may be used for recreational uses including, but not limited to, golf courses, riding trails, athletic fields or gardens.

I. Revisions to Special Permit

Subsequent to granting of a Special Permit, the Planning Board may permit the relocation of lot lines or changes to landscaping within the project. However, any change in the number of lots, street layout, square footage or composition of dedicated open space or disposition thereof, will require further review and a public hearing.

SECTION 9.07 PLANNED DEVELOPMENT-HOUSING

A. All Planned Development-Housing (PD-H) shall occur on parcels with a minimum of 200 acres and 100 feet of frontage within the R-40 Residential District.

B. One dwelling unit shall be permitted for every 40,000 square feet of area. This figure shall be attained by using the gross square footage of the parcel.

C. The gross number of bedrooms within the Development shall not exceed twice the number of dwelling units permitted. Within each Development, not more than ten percent (10%) of the permitted dwelling units shall contain three or more bedrooms. Single-family units are exempt from this three (3) bedroom limitation, however, the limitation on the gross number of bedrooms within the PD-H shall still remain in effect.

D. Twenty-five percent (25%) of the parcel shall remain as open space.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board 2. OSRD's may only be authorized by a Special Permit as granted by the Planning Board ("the Board").

Has any housing been built under the cluster/flexible provisions?

Yes According to Mark Resnick, Planning Administrator, (7/19/04) Open Space Residential Design is allowed by special permit. Mr. Resnick stated that it is not difficult to obtain a special permit for OSRD; a lot of units have been developed through this mechanism in the past two decades.

Framingham

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Framingham allows both a Planned Unit Development (PUD) District and Open Space Residential Development by special permit.

From definitions in ordinance.com:

MIXED USE COMPLEX : A parcel or contiguous parcels (whether or not in common ownership) of at least five (5) acres with adaptive reuse of historic manufacturing structures for multifamily residential and allowed non-residential uses within the existing historic structures. Such Mixed Use Complex shall have shared parking and integrated facilities and infrastructure. Residential and non-residential uses may be in the same or separate buildings, provided however that neither the total residential uses nor the total non-residential uses shall exceed 80 percent of the gross floor area of the buildings in the Mixed-Use Complex, excluding parking facilities.

****Webmasters Note:** The previous definition has been added as per an update approved at a town meeting held on 11/19/02.

J. PLANNED UNIT DEVELOPMENT DISTRICT

1. Purpose and Intent

The purpose and intent of a Planned Unit Development (PUD) District is to allow by special permit from the Planning Board an alternative use and pattern of land development for large tracts of land zoned for manufacturing, light manufacturing or business, by allowing single-family and multi-family clustered residential development and other uses as permitted in this Section while encouraging the conservation of significant open space in the district and providing affordable housing opportunity, all in conformance with the provisions of M.G.L. Chapter 40A, Section 9. The PUD is a flexible zoning tool designed to meet the following public objectives:

- a. to preserve significant areas of open space in perpetuity;
- b. to encourage housing and land development which is harmonious with natural features and the environment;
- c. to encourage a variety of housing types, sizes, characteristics, and price ranges;
- d. to provide affordable housing to meet the housing needs of persons of low and moderate income;
- e. to allow a limited neighborhood commercial area for the convenience of residents within the PUD District;
- f. to provide recreational facilities within the District;
- g. to promote more efficient uses of land and to preserve and protect natural resources such as wetland areas, woodlands, fields, natural habitats, significant vegetation, water bodies, and water supplies; and,
- h. to preserve sites and structures of historical importance.

In the PUD, dwelling units should be constructed in appropriate clusters which are harmonious with neighborhood development and will not detract from the ecological and visual qualities of the environment. The overall site design and amenities should enhance the quality of living for the residents of the development and the town generally. Attention shall be given by the Planning Board as to whether the proposed site design, development layout, number, type and design of housing constitutes a suitable development for the neighborhood within which it is to be located.

2. Applicability

The Planned Unit Development District is an overlay district that may be superimposed upon a parcel or contiguous parcels of land having an area of at least fifty (50) acres and located within a "M" Manufacturing, "B" Business, or "M-1" Light Manufacturing, district by a vote of at least two-thirds of an annual or special town meeting. The area to be included within the PUD District may include

strips of land not to exceed one-hundred (100) feet in width through any zoning district solely for the purpose of providing access to the parcel from public streets, Any roadway within said access strip shall include suitable plantings or materials to provide a visual buffer between the road and adjacent uses. In the event Town Meeting votes to place such a parcel of land in an overlay PUD District, the applicant thereof may file an application for a special permit with the special permit granting authority in accordance with the requirements of Section III.J.9. of this By-Law. The application for a PUD Special Permit shall include the entire parcel or parcels placed into the PUD District by vote of Town Meeting. The Special Permit Granting Authority shall not accept applications for a special permit under this Section which do not include the entire parcel or parcels of land designated as a PUD District. In the event a PUD Special Permit is issued pursuant to this Section and the rights granted pursuant thereto are exercised by the owner/applicant, no land included within said district may be removed from the provisions of this Section and used in accordance with the underlying zoning district.

3. Definitions

a. Terms Defined

For the purpose of this PUD by-law, the following terms shall have the meanings given in the following clauses:

AFFORDABLE HOUSING UNIT : A housing unit offered for either sale or rental at such terms, conditions and restrictions so as to be qualified as affordable to persons or families of low or moderate income by the Executive Office of Communities and Development of the Commonwealth of Massachusetts (EOCD). Said units shall be offered for sale or rental by or through one or more of the following: a program administered by the EOCD; the Framingham Housing Authority; a non-profit land trust or limited dividend entity; each such affordable housing unit shall be governed by adequate and enforceable deed restrictions or other agreements acceptable to the Planning Board ensuring the continuing affordability of the unit. Affordable housing units shall be compatible with and nearly indistinguishable from the exterior appearance of the market-rate units in the PUD district and should be located throughout the PUD district.

APPLICANT : The person or persons, including a corporation or other legal entity, who applies for issuance of a special permit hereunder. The applicant must own, or be the beneficial owner of, all the land included in the planned development site proposed, or have authority from the owner(s) to act for him or hold an option or contract duly executed by the owner(s) and the applicant giving the latter the right to acquire the land to be included in the site within a period of sixty days from the time that the applicant shall notify the owner(s).

CONGREGATE HOUSING : Housing units designed for elderly occupants in a facility which permits persons who do not require constant supervision or intensive health care as provided by an institution, to maintain a semi-independent life-style while providing services such as common dining facilities, a nursing staff, and other services and amenities as needed. Each such housing unit may provide one or more bedrooms and may have a separate living room, kitchen, dining area and bathroom. The total number of congregate housing units within the PUD District shall not exceed twenty-five percent of the total allowable housing units within the PUD District.

DEVELOPABLE LAND : All land located within the PUD District exclusive of wetlands as said terms is defined in the Wetlands Protection Act (Chapter 131, Section 40 of Massachusetts General Laws).

FLOOR AREA RATIO : As used in this Section, the floor area ratio is the ratio of the gross floor area of all buildings within the PUD District to the area of developable land within the PUD District provided, however, that the gross floor area of garages, attics and basements which are not designed to be used or occupied as living areas shall be excluded.

HOUSING UNIT : A room, group of rooms, or dwelling forming a habitable unit for one family with facilities for living, sleeping, cooking and eating, and which is directly accessible from the outside or through a common hall without passing through any other dwelling unit.

LONG TERM HEALTH CARE CENTER : A nursing home or similar geriatric health care facility accessory to and operated in conjunction with congregate housing for the elderly within the PUD District. The number of beds contained within said facility shall not exceed twenty-five percent of the total number of congregate housing units within the PUD District.

NEIGHBORHOOD COMMERCIAL USES : Commercial uses intended for the primary use and convenience of the residents within the PUD District, including retail sales and services (except automotive sales or services which are not permitted); restaurants (except drive-through or take-out window service which is not permitted); branch banks and financial services; business and professional offices; personal services and day-care centers.

b. Terms Not Defined

Any terms not defined in this Section but defined elsewhere in the By-Law or in the State Building Code or in Massachusetts General Laws shall have the meanings given therein to the extent the same are not inconsistent with this Section.

4. Basic Requirements

a. Notwithstanding anything contained in this By-Law to the contrary, no building permit shall be issued for, and no person shall undertake, any use or improvement in a PUD District unless an application for a special permit has been prepared for the proposed development in accordance with the requirements of this Section, and unless such special permit has been approved by the Special Granting Authority (SPGA). The SPGA for a special permit granted under this Section shall be the Planning Board.

b. No occupancy permit shall be granted by the Building Commissioner until the Planning Board has given its approval that the development or any phase thereof and any associated off-site improvements conform to the approved application for a special permit under this Section including any conditions imposed by the Planning Board. No temporary occupancy permits shall be granted under this PUD by-law.

c. If a PUD special permit is not applied for within 3 years of the Town Meeting vote to create a PUD overlay zone for a parcel of land, such land shall, after said three years, not be eligible for a PUD special permit. Town Meeting may, by two-thirds vote, extend this time limit.

5. Permitted Uses

No building or structure shall be constructed, used or arranged or designed to be used in any part and no change shall be made in the use of land or premises except for one or more of the following purposes:

a. Single-family detached and attached residences, multifamily residential buildings and congregate housing for the elderly, including a long term health care facility associated therewith. Not less than ten percent (10.00%) of all such housing units, including units for both sale and rental, shall qualify as affordable housing as said term is defined in Section III.J.3. of this By-Law. Each phase of the development shall have approximately ten percent (10%) of its units qualify as affordable, and said affordable units shall be dispersed throughout the development and in various housing types. Not more than twenty percent of the housing units within the PUD District, exclusive of any congregate housing units for the elderly and affordable housing units, shall be rental units. The remainder of the units shall be owner-occupied.

b. Neighborhood commercial uses intended for the primary use and convenience of the residents within the PUD District as defined in Section III.J.3. of this By-Law. As a general rule, no such establishment shall occupy more than 2,500 square feet and shall be subject to reasonable restrictions and conditions relating to size and hours of operation imposed by the Planning Board. The Planning Board may refuse to authorize a commercial use which in its judgment is inappropriate for location within the PUD District. The Planning Board may permit larger neighborhood commercial establishments, up to a limit of 4,000 square feet, based on a clear demonstration by the applicant and a finding by the Planning Board that such larger size meets the needs of the residents in the PUD District.

c. Recreational facilities intended for the primary use and convenience of the residents thereof, such as swimming pools, exercise facilities, tennis courts and athletic fields (but not including driving ranges, miniature golf, or commercial amusement parks which are not permitted).

6. Dimensional and Area Regulations

a. Applicability

The dimensional and area regulations set forth in this Section shall apply to the total area of developable land within the PUD District and shall not regulate individual lots therein.

b. Maximum Allowable Density

The total number of residential housing units shall not exceed seven (7) per acre of developable land within the PUD District. For purposes of this density calculation, every two bedrooms within a congregate housing facility as defined in Section III.J.3. shall be counted as one residential housing unit. Notwithstanding the aforesaid density limitations, the Planning Board may reduce the maximum allowable density within a PUD District; provided, however, that any such reduction be limited to that which is reasonably necessary to satisfy the objectives of a PUD District as defined in Planning Board may also take into consideration the density of development on land surrounding the PUD District and the presence, or lack thereof, of undevelopable land and open space contained within and abutting the PUD District.

c. Floor Area Ratio Requirement

The ratio of the gross floor area of all buildings, residential and commercial, within the PUD District, to the total area of developable land within the District shall not exceed 32% (0.32).

d. Ground Coverage Requirement

(1) The ground coverage of all residential and commercial buildings and parking lots and impervious landscaping within the PUD District shall not exceed 40% of the total area of developable land within the District. The ground coverage of all roadway areas and associated sidewalks shall be excluded from this requirement.

(2) The ground coverage of all land and buildings used for commercial purposes, including associated parking lots, loading areas and impervious landscaping within the PUD District shall not exceed 2% of the developable land area of the District.

e. Setback Requirements

Setbacks within PUD Districts shall conform to the following requirements; provided, however, that the Planning Board may reduce the setback requirements or may require greater setbacks to provide additional buffers to residences abutting the PUD District or to

enhance the aesthetic appearance or planning objectives of this project.

(1) Setbacks Abutting Other Districts

All structures within a PUD District shall have a minimum setback requirement of 50 feet from the PUD District boundary line.

(2) Front Setback Requirements

All structures within a PUD District shall have a minimum setback from any front lot line or any street line of 30 feet.

(3) Separation of Buildings

All buildings within the PUD District shall have a setback of at least 30 feet from any other building therein. The required setback for any building which exceeds forty feet in height shall equal to the height of that building.

f. Maximum Height Requirement

The maximum height of any building in a PUD District shall not exceed three (3) stories or forty (40 ft.) feet except for accessory structures or appurtenances normally built above the roof level and necessary for the operation of the building or use. Such structures shall not be intended for human occupancy and shall be erected only to serve the purpose for which they are intended. Except for chimneys and penthouses for stairways and mechanical installations, no such accessory structure or appurtenance shall exceed a height of 40 feet from the average grade.

g. Solar Orientation of Buildings

Spacing of buildings and landscaping, wherever possible and practical, shall be oriented to optimize solar exposure for buildings within the PUD District.

7. Open Land Requirements

a. Basic Requirement

Open space shall be provided in a PUD District in accordance with the requirements of this section.

b. Public Open Space

Significant areas of land within the PUD District which are not developable and are classified as wetlands in accordance with the Massachusetts Wetlands Protection Act (M.G.L. Ch. 131 Section 40) and the Regulations of the D.E.Q.E. promulgated thereunder, including the wildlife protection regulations, shall be designated as "Public Open Space". Said areas shall be preserved as open space in perpetuity and either conveyed to the Conservation Commission of the Town of Framingham, or to a non-profit organization whose principal purpose is the conservation of open space, or shall be protected by means of a conservation restriction imposed on the land pursuant to M.G.L. Chapter 184, Section 31.

c. Common Open Space

A minimum of 25% of the total developable land within the PUD District, exclusive of land set aside for streets within the district, shall be designated "Common Open Space". Common Open Space shall include all developable land not dedicated to roads, parking areas, buildings and structures. At least 50% of the required common open space shall be suitable for passive or active recreational use by residents of the PUD District. Common Open Space may be used for recreational facilities, as delineated in Section III.J.4.(c); and for passive open space and buffer areas. Common open space shall have a shape, dimension, character and location suitable to assure its use for park, recreation, conservation or agricultural purposes by residents of the PUD district; and, where possible, be located such that significant areas of continuous open space are distributed throughout the PUD District. There shall also be significant areas of common open space near areas containing high concentrations of housing units. The approximate location of major areas of Public Open Space and Common Open Space shall be identified as part of the Preliminary Development Plan. The granting of a special permit for this plan shall include as a condition that the large areas of open space identified on the Preliminary Development Plan be preserved approximately as shown, with the understanding that the precise definition of such open space might be altered with the submittal and approval of Definitive Development Plans.

d. Ownership of Common Open Space, Restrictions Thereon

The required open land shall be conveyed to a non-profit corporation or trust comprising a condominium or homeowner's association. In order to ensure that the association will properly maintain the land deeded to it under this section, the developer shall cause to be recorded at the Middlesex South District Registry of Deeds a Declaration of Covenants and Restrictions which shall, at a minimum, provide for the following:

(1) mandatory membership in an established association, as a requirement of ownership of any condominium unit, rental unit, building or lot in the tract.

(2) provisions for maintenance, assessments of the owners of all condominium units, rental units, buildings or lots in order to ensure that the open land is maintained in a condition suitable for the uses approved by the home's association. Failure to pay such

assessment shall create a lien on the property assessed, enforceable by the association.

(3) provisions which, so far as possible under the existing law, will ensure that the restrictions placed on the use of the open land will not terminate by operation of law.

(4) provisions for limited easements to significant areas of open space and natural resources for recreational use by residents of the Town, and to provide linkages to open space of abutting properties.

The developer shall be responsible for the maintenance of the common land and any other facilities to be held in common until such time as the association is capable of assuming said responsibility.

8. Design Standards, Off-Street Parking and Loading Requirements

a. Basic Requirements

The Project shall be designed and constructed in accordance with the Design Standards and Specifications set forth in Section VII of the "RULES AND REGULATIONS GOVERNING THE SUBDIVISION OF LAND IN THE TOWN OF FRAMINGHAM".

b. Off-Street Parking

Off-street parking facilities for structures and uses within a PUD District shall conform to all regulations and design standards set forth in Section IV.B. of the Zoning By-Law. In addition to the setback and landscaping requirements set forth in Section IV.B., the Planning Board may require that any parking lot which contains more than 12 parking spaces be suitably screened by a landscaped area with trees which are of a type that may be expected to form a permanent screen.

c. Off-Street Loading

Off-street loading facilities for structures and uses within a PUD District shall conform to all regulations and design standards set forth in Section IV.C. of the Zoning By-Law.

d. Garages

The construction of individual garages attached to or within housing units is encouraged where feasible, taking into consideration the topography, layout, type, architectural design and price of the unit.

9. Special Permit Applications and Review Procedure

a. It is the intent of this section to allow for phased construction of buildings and improvements within a Planned Unit Development district over a period of years, and to permit the phased submittal of certain plans and information. The Special Permit application, review and approval process provides for filing of a "Preliminary Development Plans" followed by one or more "Definitive Development Plans" together with the reports and information required by Section III.J.9.

b. The Applicant shall submit to the Planning Board a letter of intent to apply for a Special Permit for a Planned Unit Development. The Planning Board shall set up a Pre-Application Conference with department heads within the Town, including representatives of the Planning Board, Planning Department, Engineering Department, Department of Public Works, Police Department, Fire Department, Parks and Recreation, Building Department, Conservation Commission and Board of Health. The Pre-application Conference allows the Applicant the opportunity to present to town officials a description of the proposed project with a sketch plan of the entire tract, and to receive comments; regarding important areas of concern to be addressed in the planning process for the development.

c. The Applicant shall file with the Planning Board ten copies of the Application for a PUD Special Permit, a Preliminary Development Plan and, at the option of the applicant, one or more Definitive Development Plans for the initial phases of the development, conforming to the requirements of Section III.J.10. The Application shall be accompanied by the required filing fee as established by the Planning Board. One copy of the application shall be filed simultaneously with the Town Clerk. The Planning Board shall immediately review the applications for completeness and shall, within 14 days, notify the applicant if it finds the application to be incomplete. Failure of the applicant to complete the application within 14 days of Planning Board notice will result in disapproval of the special permit without prejudice.

d. Upon receiving a completed application as set forth above, the Planning Board shall forthwith transmit one copy each to the Building Commissioner, the Engineering Department, the Planning Department, the Police Department, the Fire Department, the Board of Public Works, the Board of Health and such other departments and boards at the Planning Board may determine appropriate.

e. Such agencies shall, within 35 days of receiving said copy, report to the Planning Board on (1) the adequacy of the data and the methodology used by the applicant to determine the impacts of the proposed development and (2) the effects of the projected impacts of the proposed development. Said agencies may recommend conditions or remedial measures to accommodate or mitigate the expected impacts of the proposed development. Failure by any such agency to report within the allotted time shall constitute approval by the agency of the adequacy of the submittal and also that, in the opinion of that agency, the proposed project will cause no adverse impact. If reasonably necessary to properly evaluate the proposal, the Planning Board may require additional reports or studies to be performed by an outside consultant and to be paid for by the applicant. If necessary, the Planning Board

shall request the written consent of the applicant to extend the time allowed to hold a public hearing or take action on the application.

f. The Planning Board shall not render a decision on said application until it has received and considered all reports requested from town departments and boards, or until the 35-day period has expired, whichever is earlier. Where circumstances are such that the 35-day period is insufficient to conduct an adequate review, the Planning Board may, at the written request of the applicant, extend such period.

g. The Planning Board shall hold a public hearing on any properly completed application within 65 days after filing of a complete application, shall properly serve notice of such hearing, and shall render its decision within 90 days of the close of said hearing. The hearing and notice requirements set forth herein shall comply with the requirements of G.L.c.40A, Sections 9 and 11, and with the requirements of Section V.J. of this By-Law. All costs of the notice requirements shall be at the expense of the applicant.

h. Within 30 days after receiving a letter of intent to apply for a special permit for a Planned Unit Development, the Planning Board shall appoint an ad hoc Design Review Committee after consideration of recommendations for membership from the Planning Director. The Committee shall consist of seven residents of the town and whenever possible shall be composed as follows:

(1) two residents of the general area surrounding the proposed PUD,

(2) a land use planner or similar consultant,

(3) an architect or similar consultant,

(4) a landscape architect or similar consultant,

(5) a civil engineer or similar consultant, and

(6) a town meeting member from the precinct in which the land is located. No committee member may have a financial interest of any kind in the PUD. At the direction of the Planning Board, the committee shall meet with the Applicant and the Applicants consultants to discuss and review the land planning and architectural features of the proposed development, including site layout, roadway system, location and design of recreational areas and open space, architectural design and groupings of buildings. During the special permit process, the committee shall make recommendations and/or comments to the Planning Board. The Planning Board shall adopt rules and regulations governing the selection process of committee members and its function in the hearing and review process in accordance with this Section.

i. In reviewing the impacts of a proposed Planned Unit Development, the Planning Board shall consider the information presented in the Application for a PUD Special Permit, including all items specified in Section III.J.10., all reports of Town departments submitted to the Planning Board pursuant to Section III.J.8.(d); reports, comments or recommendations of the ad hoc Design Review Committee, and any additional information available to the Planning Board, submitted to the Planning Board by any person, official or agency, or acquired by the Planning Board on its own initiative or research.

j. The Planning Board shall grant the special permit only if it finds that the application satisfies the objectives of a PUD as defined in Section III.J.1, and only if it can make the specific findings required by Section IV.I.7. of the Zoning By-Law.

k. A PUD Special Permit granted pursuant to this Section shall establish and regulate the following as conditions for approval:

(1) location of all primary streets and ways within the development, including access to existing public ways, with the layout, design, construction and other relevant standards for such streets and ways to conform to the Rules and Regulations Governing the Subdivision of Land in the Town of Framingham;

(2) locations of significant areas of public open space and common open space;

(3) boundaries of lots to be created within the development, if any;

(4) overall project density, including the distribution of housing units to avoid undue concentration of development, as well as maximum number of housing units that may be built within the development, including maximum number of building permits that may be issued within any twelve month period;

(5) location and boundaries of each development phase;

(6) location of commercial establishments;

(7) development timetable;

(8) off-site traffic improvements and environmental mitigation measures, if any to be performed by the Applicant, including timetables and procedures for implementation of the same;

(9) requirements for instruments to be executed by the owners of the land and recorded with the Registry of Deeds waiving all rights to previously issued permits and approvals for commercial or industrial buildings and uses for the land, if any, and to future uses of the land which would be otherwise permitted by the zoning district in which it is located, except as specifically allowed by

this PUD By-Law;

(10) such other terms, conditions or restrictions as the Planning Board may deem appropriate.

10. Contents and Scope of Application

An application for a PUD Special Permit under this section shall be prepared by qualified professionals, including a Registered Professional Engineer, a Registered Architect and a Registered Landscape Architect, and shall include the following items and information:

a. Pre-application Conference Submittal

The following materials are to be provided for the Pre-Application Conference by the Applicant. An approximately scaled sketch plan of the entire tract which shows in schematic detail the location of proposed uses and major buildings, proposed development density, housing types, layout of roads by function, location of entrances, and layout of common and public open spaces. The sketch should be accompanied by a brief narrative that describes general design and architectural policies for the PUD, location and treatment of environmentally sensitive land located in the project tract, and the proposed time frame for phased development.

b. Preliminary Development Plan

(1) A legal description of the land, including ownership.

(2) A narrative of the project, including a statement of planning objectives, size of the parcel, number of residential units proposed, proposed coverage and densities, amount of non-residential construction proposed, recreational facilities planned for the development, construction schedule and a description of how the project satisfies the objectives of the PUD by-law set out in Section J.1.

(3) A plan to be entitled "Preliminary Site Plan of Planned Unit Development for (identity of project)" prepared at a scale of one inch equals forty feet (1"=40') or such other scale as may be approved by the Planning Board containing the following information: site boundaries and names of all abutters, site area, location of all primary streets and ways within the site, including access points to existing public ways, the proposed system of drainage, including adjacent existing natural waterbodies, location of significant natural features and vegetation of the site, including wetland areas, water bodies and floodplain areas, boundary lines of existing and any proposed lots within the site, designation of each proposed phase of development, location of major recreational areas and open space, location of amenities such as swimming pools and tennis courts, and setting forth the total number of residential units to be constructed within the development.

(4) A locus plan at a scale of one inch equals 100 feet (1"= 100') showing the entire development and its relation to existing areas, buildings and roads for a distance of 1,000 feet from the project boundaries, or such other distance as may be approved or required by the Planning Board.

(5) A Development Impact Statement prepared in accordance with the requirements of Section IV.1.5.(f) (Site Plan Review) of this Zoning By-Law, to be evaluated in accordance with the "Development Impact Standards" of Section IV.1.6. of said By-Law, and subject to the requirements and conditions of Sections IV.1.7. and IV.1.8. of said By-Law.

c. Definitive Development Plan

Each phase or sub-phase of a Planned Unit Development shall require the filing and approval by the Planning Board of a Definitive Development Plan prepared by qualified professionals, including a Registered Professional Engineer, a Registered Architect and a Registered Landscape Architect, and shall include the following items and information:

(1) A site plan at a scale of one inch equals forty feet (1"=40'), or such other scale as may be approved by the Planning Board, containing all items and information normally required to be included in an Off-Street Parking Plan under Section IV.B.7.(d) of this By-Law, except for items 2 and 11 thereof, and also indicating water service, sewer, waste disposal, and other public utilities on and adjacent to the site. For convenience and clarity, this information may be shown on one or more separate drawings.

(2) A landscape plan at the same scale as the site plan, showing the limits of work, existing tree lines, and all proposed landscape features and improvements including planting areas with size and type of stock for each shrub or tree.

(3) An isometric line drawing (projection) at the same scale as the site plan, showing the entire project and its relation to existing areas, buildings and roads for a distance of 100 feet from the project boundaries.

(4) Building elevation plans at a scale of one-sixteenth inch equals one foot (1/16"=1'-0") or one-eighth inch equals one foot (1/8"=1'-0"), showing all elevations of all proposed buildings and structures and indicating the type and color of materials to be used on all facades.

(5) Condominium documents and/or other instruments to be reviewed and approved by Town Counsel and which

(a) adequately provide for and ensure the preservation and maintenance of public and common open space within each phase or sub-phase shown on the aforesaid site plans and

(b) provide that no more than twenty percent of the housing units, exclusive of any congregate housing units for the elderly and affordable housing units, shall be rental units and that the remainder shall be owner-occupied.

11. Relation to Subdivision Control Law

In the event the Applicant seeks subdivision approval for streets and lots within the PUD District pursuant to the Subdivision Control Law M.G.L. Chapter 41, Section 81), the Applicant shall file an "Application for Approval of Definitive Plan" pursuant to the RULES AND REGULATIONS GOVERNING THE SUBDIVISION OF LAND IN THE TOWN OF FRAMINGHAM. In order to facilitate processing the Planning Board shall consider said application simultaneously with the application for a PUD Special Permit, and may adopt regulations establishing procedures for the simultaneous submission and consideration of the applications; provided, however, that nothing contained herein shall be deemed to require approval of streets and ways within a PUD District under the Subdivision Control Law. Any subdivision of land within the PUD District shall in no way diminish the effect of any conditions, agreements or covenants imposed or made as part of the grant of a PUD special permit.

12. Administration

a. The Planning Board shall establish and may periodically amend rules and regulations relating to the administration of this Section, including additional regulations relating to the scope and format of reports required hereunder.

b. The Planning Board shall establish and may periodically amend a schedule of fees for all applications under this Section. No application shall be considered complete unless accompanied by the required fees.

c. The Planning Board shall be responsible for deciding the meaning or intent of any provision of this Section which may be unclear or in dispute.

d. Any person aggrieved by a decision of the Planning Board with regard to a PUD Special Permit shall have the rights of appeal set forth in M.G.L. Ch.40A, Section 17.

13. Separability

The invalidity of one or more provisions or clauses of this Section III.J. shall not invalidate or impair the Section as a whole or any other part hereof

M. OPEN SPACE RESIDENTIAL DEVELOPMENT

1. Purpose and Intent

The purpose of this Section is to allow, by special permit from the Planning Board, an alternate pattern of land development to the standard subdivision permitted in the single family residential districts (R-3 and R-4) in order to provide for the public interest:

- a. by encouraging the preservation of open space and natural landscape features in perpetuity;
- b. by encouraging creative site planning and the efficient use of land in harmony with its natural features through development which is designed to accommodate a site's physical characteristics such as topography, vegetation and wildlife habitat, wetlands and other water resources, and open spaces such as farmlands and meadows; and
- c. by preserving significant natural, historical or archaeological resources, including major scenic views.

The intent of this Section is to guide development consistent with the Town's Comprehensive Land Use Plan and the Town's Open Space Plan, and the Town's Preservation Plan and to establish flexible residential development standards and procedures that will support these objectives.

2. Applicability

Open Space Residential Development (OSRD) shall be allowed, by special permit, within "Single Residence R-3" and "Single Residence R-4" Zoning Districts, subject to the requirements of this By-Law for those districts, and in accordance with the additional requirements and standards specified herein. The Planning Board shall be the Special Permit Granting Authority (SPGA) for all special permits issued under this Section. The Planning Board may issue a special permit under this Section, subject to the requirements of this By-Law, and in accordance with the additional requirements and standards specified within this Section IV.M., only if no variances have been issued from the requirements of this Section IV.M.

3. General Requirements

a. Any parcel or parcels of land containing ten (10) or more acres, in one ownership, or any combination of parcels of land consolidated under a Purchase and Sale agreement containing ten (10) or more acres, or any combination of contiguous parcels of land containing ten (10) or more acres under ownership by two or more property owners where all such owners jointly apply for an OSRD Special Permit, in all cases, with definite boundaries ascertainable from a recorded deed or recorded plan, located within a zone permitting Open Space Residential Development and which may be developed as a conventional subdivision, may be

considered for an Open Space Residential Development subject to a special permit. Such parcel or parcels to be included in an Open Space Residential Development Special Permit shall be defined herein as the OSRD tract

b. After an Open Space Residential Development application has been submitted, no tree removal, no utility installation, no ditching, grading or construction of roads, no grading of land or lots, no excavation except for purposes of soil testing, no dredging or filling, and no construction of buildings or structures shall be done on any part of the development site until the application has been reviewed and a decision issued, as provided by these regulations.

4. Open Space Residential Development Standards

a. Permitted Uses: Permitted Uses in an OSRD shall be detached single family dwellings, accessory uses associated with residential uses as may be permitted in the Single Residence District, and accessory facilities owned and operated by the owner of the OSRD or the residents, such as building and grounds maintenance facilities, and recreation facilities and other uses noted under subsection 4.g. Use of Common Open Space, herein.

b. Minimum OSRD Tract Size:

(1) The total area of the OSRD tract proposed for Open Space Residential Development shall be at least ten (10) contiguous acres. The OSRD tract must have at least 40 feet of frontage on an existing Town way. While existing public and private ways need not constitute boundaries of the OSRD tract, the area within such ways shall not be counted in determining its size.

(2) The Planning Board may permit lots on directly opposite sides of a street to qualify as a single OSRD tract of land. To permit such division of an OSRD tract of land by a street, the Planning Board must find that this would comply with the purposes of this section and not result in any more dwelling units than would be possible in accordance with the provisions of this Bylaw if the lots on either side of the street were developed separately. If the Planning Board approves an OSRD tract of land divided by a street, it may permit the total number of permitted dwelling units to be constructed on either side of the street, subject to the Dimensional Regulations and Design Standards under subsection 4. herein.

c. Density: The number of dwelling units in an OSRD shall be calculated via a Density Yield Plan.

(1) Density Yield Plan: The number of building lots which the Planning Board finds would be permitted by a conventional subdivision under the zoning requirements of the Zoning By-Law (other than the Special Permit provisions under this Section IV.M.) and all applicable land use regulations in the district (including wetlands protection), and complying with the Subdivision Rules and Regulations, as demonstrated by a preliminary subdivision density yield plan. Major site features and constraints to development should be delineated on this plan. In parcels located in areas not serviced by public sewer, and not proposed for extension of public sewer, the applicant must certify that each lot identified on the plan is buildable, as evidenced by a soils test, consistent with Title 5. In parcels located partly in more than one district, no more than the total number of lots which would be permitted under the zoning requirements of the Zoning By-Law (other than the Special Permit provisions under this Section IV.M.) in the combined districts, and complying with Subdivision Rules and Regulations, shall be permitted. Such Density Yield Plan shall be submitted, as provided under Section 5 Special Permit Application and Procedures, herein. The applicant is encouraged to submit such material to the Planning Board office early in the development process, prior to submittal of a completed application, for verification and acceptance of the proposed development density.

d. Dimensional Regulations: The Planning Board may grant a reduction of all dimensional regulations, specified in Section IV.G. for the zoning district, for all portions of an Open Space Residential Development, if the Planning Board finds that such reduction will result in better design, improved protection of natural and scenic resources, and will otherwise comply with these regulations, provided that in no instance shall any residential building lot deviate from the following Requirements:

(1) Minimum Lot Area: Each lot within an OSRD shall have a minimum lot area of 12,000 square feet in the R-3 Single Residence District, and shall have a minimum lot area of 20,000 square feet in the R-4 Single Residence District where public sewer or a community sewage collection and treatment system is provided.

(2) Minimum Frontage and Width: Each lot within an OSRD shall have a minimum frontage and width requirement of forty (40) feet.

(3) Minimum Lot Width at Building Line: Each lot within an OSRD shall have a lot width of not less than sixty-five (65) feet in all directions where residential buildings or accessory structures are located.

(4) Minimum Front Setback Requirement: The minimum front setback within an OSRD shall be thirty (30) feet.

(5) Building Location Requirements: No structure shall be located within thirty (30) feet of a residential structure on another lot in the OSRD tract in an R-3 zone, or within forty-five (45) feet of a residential structure on another lot in the OSRD tract in an R-4 zone, or within thirty (30) feet of the nearest point of the layout of a common drive, or within thirty (30) feet from the sideline of a street, or within thirty (30) feet of the Common Open Space (as set forth under subsections f., g., and h. herein), or within fifty (50) feet of the side boundaries of the OSRD tract. The Planning Board may require increased setbacks of buildings within the OSRD from some or all of the boundaries of the OSRD tract. A landscaped or natural vegetative area along the OSRD tract boundaries may be required, as appropriate, in order to provide a physical or visual separation between abutting uses. Natural vegetation should be retained in this vegetative area, whenever possible.

(6) Building Height Requirements: The maximum building height shall not exceed the building height requirements as specified for

the district under Section IV.G. herein.

(7) Maximum Building Lot Coverage: The maximum building lot coverage shall not exceed twelve (12) percent.

e. Streets and Utilities: All streets, whether public or private, and all drainage facilities and utilities, shall be designed and constructed in accordance with the Design Standards and Specifications set forth in the of the "Rules and Regulations Governing the Subdivision of Land in the Town of Framingham", as amended. Waivers to the Subdivision Rules and Regulations may be authorized by the Planning Board in granting a special permit hereunder, in accordance with Massachusetts General Laws, Chapter 41, Section 81R, provided the Board determines such exceptions are in the public interest and are not inconsistent with the purposes of this Section, the Subdivision Rules and Regulations, and the Zoning By-Law.

f. Common Open Space Design Standards

(1) Within an Open Space Residential Development, no less than forty percent (40%) of the land area shall be devoted to Common Open Space in an R-4 District, and no less than twenty-five percent (25%) of the land area shall be devoted to Common Open Space in an R-3 District. The Common Open Space shall not include land set aside for roads or residential parking, nor shall it include the residential building lots. No more than fifty percent (50%) of the Common Open Space shall contain wetlands as defined by Massachusetts General Laws, Chapter 131, Section 40.

(2) Common Open Space shall be designed and planned as large, contiguous units, whenever possible, with logical boundaries. Strips or narrow parcels of Common Open Space shall be permitted only when necessary for access, when necessary to connect to other significant areas, when they are designed to protect linear resources such as trails or streams, or as vegetated buffer strips along the site's perimeter where the Planning Board finds that such strips are deemed appropriate and consistent with the purpose of the OSRD.

(3) Common Open Space may be set aside in more than one parcel provided that the size, shape and location of such parcels are suitable for the designated uses.

(4) Common Open Space shall be designed as part of larger continuous and integrated open space systems. Whenever possible, it should connect with existing or potential conservation or open space areas on adjoining parcels.

(5) The Common Open Space shall include adequate upland access from a way or street.

(6) The Common Open Space shall generally be directly accessible to each dwelling unit in the OSRD, unless the Planning Board finds that, due to topography or other conditions, this access is not practical.

(7) The Common Open Space shall have a shape, dimension, character and location suitable to assure its use for park, recreation, conservation, or agricultural purposes. The Common Open Space shall include the most sensitive resource areas of a property. In determining whether the intent of this section has been satisfied, the Planning Board shall consider the extent to which land having one or more of the following characteristics is included in the proposed open space:

(a) Land which enhances or protects wetlands or floodplain adjacent to a water body, or which provides public access to the water body, or which provides water related recreational opportunities;

(b) Land which currently is in agricultural use or land which is suitable in size, location and soil characteristics for agricultural use;

(c) Land which provides a significant wildlife habitat or which is a unique natural area;

(d) Land which is to be developed for active recreational use including playing fields, boat launching areas, playgrounds, and neighborhood parks;

(e) Land which preserves existing trail networks or land on which new trails will be developed, for integration into an existing trail network;

(g) Land which enhances or provides significant scenic vistas or views, or which provides scenic roadside views;

(h) Land providing desirable public access to existing recreational or conservation land.

g. Use of Common Open Space

(1) Common Open Space shall be identified as such on the Concept Plan, and submitted in accordance with Section 5 herein and, subject to appropriate municipal approvals as needed, shall be dedicated for conservation, active and passive recreation, park purposes, outdoor and/or environmental education, forestry, agriculture, or horticultural uses, natural buffers, maintenance structures necessary for approved uses, utilities, and other facilities necessary for the convenience and enjoyment of the residents of the OSRD tract.

(2) A portion of the Common Open Space may also be used for ways serving as pedestrian walks, bicycle paths and emergency access or egress to the OSRD or adjacent land, if it is determined that such a use is consistent with the purpose and intent of the Open Space Residential Development.

(3) A portion of the Common Open Space may also be used for the construction of leaching areas associated with septic disposal systems serving the OSRD or for water supply wells serving the OSRD, if the Planning Board determines that such use will enhance the specific purpose of Open Space Residential Development and promote better overall site planning. Septic disposal easements shall be no larger than reasonably necessary.

(4) The Common Open Space shall be subject to easements for the construction, maintenance, and repair of utility and drainage facilities serving the OSRD or adjacent parcels.

(5) The Common Open Space shall remain unbuilt upon, except that an overall maximum of five percent (5%) of such land may be subject to pavement and structures accessory to the dedicated use or uses of the Common Open Space.

(6) The proposed use of the Common Open Space shall be specified on a Land Use Plan, and appropriate dedications and restrictions shall be part of the deed to the Common Open Space.

h. Common Open Space Ownership and Maintenance

(1) Common Open Space may be conveyed in whole or in part:

(a) to the Town of Framingham (subject to approval by Town Meeting and all other appropriate municipal authorities), and may be accepted by it for park, recreation, open space and/or conservation use;

(b) to a nonprofit organization, the principal purpose of which is the conservation of open space and/or any of the purposes and uses to which the Common Open Space is to be dedicated; and/or

(c) to a corporation, homeowners association or trust owned or to be owned by all of the owners of lots or dwelling units within the OSRD. If such a corporation, homeowners association, or trust is utilized, ownership thereof shall pass with conveyances of the lots or residential units

(2) The proposed ownership of all Common Open Space shall be shown on the Land Use Plan for the OSRD.

(3) If any portion of the Common Open Space is not to be conveyed to the Town of Framingham, then a perpetual restriction of the type described in M.G.L. Chapter 184, sections 31 - 33 (as may be amended), approved by the Planning Board and running to and enforceable by the Town or such department or official who may be delegated this authority, shall be imposed on the use of such land, providing in substance that the land be kept in its open or natural state and that the land shall not be built upon or developed or used except in accordance with provisions of an OSRD as set forth herein.

(4) Common Open Space shall not be permitted to be divided into individual backyard areas.

(5) At the time of its conveyance, the Common Open Space shall be free of all encumbrances, mortgages or other claims (including pre-existing conservation easements or restrictions), except as to easements, restrictions and encumbrances required or permitted by this OSRD By-Law.

(6) If any portion of the Common Open Space is conveyed to a corporation, homeowners association, or trust of the homeowners of the dwelling units in the OSRD, then, the following shall be required. In order to ensure that the grantee will properly maintain the land deeded to it under this section, the developer shall cause to be recorded in the appropriate Registry of Deeds, a Declaration of Covenants and Restrictions which shall, at a minimum, provide for

(a) mandatory membership in an established corporation, homeowners association, or trust, as a requirement of ownership of any residential unit or lot in the OSRD tract;

(b) provisions for maintenance assessments of all owners of residential units or lots in order to ensure that the open land is maintained in a condition suitable for the approved uses, and failure to pay such assessment shall create a lien on the property assessed, enforceable by the corporation, association or trust;

(c) provision which, so far as possible under the existing law, will ensure that the restrictions placed on the use of the open land will not terminate by operation of law. The developer of the OSRD shall be responsible for the maintenance of the common land and any other facilities to be held in common until such time as the grantee is capable of assuming said responsibility.

(7) Areas of the Common Open Space which are to remain as naturally-existing woods, fields, meadows, and wetlands shall be maintained in their current state, or managed in accordance with good conservation practices, all in accordance with existing regulations and laws.

(8) If any portion of the Common Open Space is used for the purpose of construction of leaching areas associated with septic disposal systems or for water supply wells serving the OSRD, the Planning Board shall require adequate assurances and covenants that such facilities shall be maintained by the owners of the lots within the OSRD, individually or in common, as applicable, including the requirement that all shared septic tanks to be located within the Common Open Space must be pumped at least every two years by the homeowners' association and must be maintained in accordance with good septic system maintenance practices. Adequate assurances for access rights for maintenance and repair of such systems shall be noted in the affected deeds. Wells and septic tanks serving individual lots should generally be located on the residential building lot for the house being served, and not on the Common Land.

(9) All required covenants, grants of easements, or conveyance, must be submitted to the Planning Board for review and approval prior to the recording and the deeding out of any of the OSRD lots.

i. Additional Design Criteria for Siting of Residential Buildings and Ways

In addition to the standards set forth above, the following objectives are encouraged in the design of the OSRD:

- (1) Buildings and streets should be placed in a manner which maximizes the usable area remaining for Common Open Space.
- (2) Buildings should be sited within any woodland contained in the parcel or along the edges of the open fields adjacent to any woodland, in order to enable new construction to be visually absorbed by the natural landscape features.
- (3) Buildings should be sited in locations least likely to interrupt scenic vistas, as seen from the public roadways, with significant public road frontage left undeveloped.
- (4) Buildings should be sited, where possible, to take maximum advantage of solar exposure.
- (5) Buildings shall be sited to avoid sensitive environmental features, including wildlife habitat, wetlands, water bodies, steep slopes or other important site features.
- (6) In the vicinity of existing historic structures on public roads, new buildings may be sited in groups close to the road to reflect the traditional locations, patterns and setbacks of nearby existing historic buildings. Such roadside groupings of residential and accessory structures should be compatible with the scale of the surrounding neighborhood. Architectural design (proportions, roof pitches and fenestration) should reflect the character of nearby existing structures.
- (7) Buildings should be sited to maximize the number of house lots with open space views and with convenient nearby access to usable open space.
- (8) Buildings should be sited so that they will not have an undue adverse impact on the surrounding neighborhood.
- (9) Buildings and ways shall be sited in order to provide for and maintain convenient and safe emergency vehicle access to all buildings and structures at all times.
- (10) Buildings and ways shall be sited, to the extent feasible, within the existing topography in order to minimize the amount of soil removal, tree cutting and general disturbance to the landscape and to preserve the natural features of the site.

5. Special Permit Application and Procedures

An application for an Open Space Residential Development Special Permit shall be submitted as outlined below and shall cover the entire Open Space Residential Development tract. The applicant is strongly encouraged to meet with the Planning Board for an OSRD Pre-Application Conference, as provided under subsection 5.a., below. Such a Pre-Application Conference is optional and is advisory only. An application for an OSRD Special Permit shall be accompanied by an OSRD Site Plan, as provided under subsection 5.b., below. The OSRD Site Plan shall contain a plan in the form and with the contents required of a Definitive Subdivision Plan as set forth by the Town of F

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board J. PLANNED UNIT DEVELOPMENT DISTRICT

1. Purpose and Intent

The purpose and intent of a Planned Unit Development (PUD) District is to allow by special permit from the Planning Board an alternative use and pattern of land development for large tracts of land zoned for manufacturing, light manufacturing or business, by allowing single-family and multi-family clustered residential development and other uses as permitted in this Section while encouraging the conservation of significant open space in the district and providing affordable housing opportunity, all in conformance with the provisions of M.G.L. Chapter 40A, Section 9. The PUD is a flexible zoning tool designed to meet the following public objectives:

M. OPEN SPACE RESIDENTIAL DEVELOPMENT

1. Purpose and Intent

The purpose of this Section is to allow, by special permit from the Planning Board, an alternate pattern of land development to the standard subdivision permitted in the single family residential districts (R-3 and R-4) in order to provide for the public interest:

Has any housing been built under the cluster/flexible provisions?

No Answer based on 7/23/04 Phone Conversation with Joseph R. Mikielian, Building Commissioner --There has only been 1 attempted in Framingham and it is still being held up in court. He did not know whether it is a PUD or OSRD because it has not yet reached the stage for his office to review it.

Franklin

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Town of Franklin Zoning Bylaw, Section 185.48 (Last Amended 2001).
§185-48. Senior Village Overlay District.

[Added 5-2-2001 by Bylaw Amendment 01-461]

A. Purpose. The purpose of the Senior Village Overlay District is to encourage development of master-planned residential communities for persons 55 years of age and older, by allowing for a greater variety of uses and building types at a higher density than would normally be allowed, and allowing greater flexibility in site planning so as to promote affordable housing and the preservation of open space and historic resources within the development. It is intended that a senior village development provide a range of housing types and facilities that are responsive to the socio-cultural, health care, and recreational needs of senior residents. The intent of a senior village is to achieve, to the greatest possible degree, land development that is responsive to an analysis of the environmental assets and constraints of a site, both natural and man-made. The senior village should be a well-integrated development in terms of land use, functional systems, and major design elements such as buildings, roads, utilities, wastewater treatment and disposal, drainage systems and open space. Design standards should be supportive of a New England character, with a cohesive center and a sense of neighborhood. A senior village is allowed greater design flexibility so that site planning for a development may protect natural features and take into consideration the surrounding land use and development context. This may allow for development to be more highly concentrated on one portion of a site than would otherwise be the case, with a resulting lower intensity of development and preservation of open space elsewhere on the site. Development should be concentrated in the most suitable and least environmentally sensitive areas of the landscape. Preservation of natural open space is strongly promoted, as is provision and enhancement of additional open space for recreational use and enjoyment of residents. It is intended that the benefits of senior village development will act to encourage property owners/developers to consolidate land parcels so that comprehensive and responsible site planning will occur.

B. General requirements.

(1) Location. The Senior Village Overlay District is an overlay zoning district that shall be superimposed on the Rural Residential I District, Rural Residential II District, Single-Family Residential III District, Single-Family Residential IV District, General Residential V District, Residential VI District, Commercial I District, and Commercial II District of the Town of Franklin.

(2) Special permit. Senior villages will be authorized only by special permit granted by the Planning Board (hereinafter referred to as "the Board").

C. Permitted uses.

(1) Uses allowed as of right. The following uses shall be allowed as of right within a Senior Village Overlay District:

(a) All uses permitted as of right in the underlying base zoning district.

(2) Uses allowed by special permit. The following uses may be permitted within a Senior Village Overlay District upon the granting of a special permit: (a) A senior village planned unit development (senior village). ..."

In addition, Franklin also has flexible zoning in the 185-43. Open space development:

§185-43. Open space development.

[Added 11-4-1987 by Bylaw Amendment 87-105; amended 7-5-1995 by Bylaw Amendment 95-294]

A. The purpose of this section is to provide for the public interest by permanently preserving specific land in its natural state and natural landscape features, to provide land for active and passive recreation and to promote variety in single-family residential housing patterns by encouraging development which is designed to accommodate and, preserve a site's physical characteristics such as topography, vegetation, water bodies, wetlands, open spaces including farmlands and meadows, major scenic views and wildlife habitats. In making determinations under this bylaw, the Planning Board shall compare the impact of an open space

development with potential conventional development and may approve open space development only if the Planning Board determines that the proposal is superior to a conventional development and in the best interests of the town. It is not the intent of this bylaw to make undevelopable land developable or to permit, an increase in the number of building lots that would otherwise be permissible on a conventional plan, but rather to encourage the preservation of important site features and to enhance recreational opportunities

B. General requirements.

(1) Any parcel of land consisting of not less than five acres located within Rural Residential: I, Rural Residential II and Residential VI Districts may be considered for an open space development subject to a special permit issued by the Planning Board:

(2) The basic number of lots or dwelling units allowed shall equal .the number of lots which could reasonably be expected to be developed under a conventional plan in full conformance with zoning, subdivision regulations and health codes, as determined by the Planning Board, following consultation with or review by the Conservation Commission, as set forth in 185-43F.

(3) The lot, area, frontage and yard requirements which must be met for individual lots shall be no less than 1/2 those required under the Schedule of Lot, Area, Frontage, Yard and Height Requirements of the underlying zoning district. The exception to this requirement is that the proposed front yard must meet 100% of the minimum yard dimensions for the underlying zoning district. [Amended 1-11-1999 by Bylaw Amendment 98-394]

(4) After an open space development application has been submitted, no tree removal, utility installation, ditching, grading, construction of roads, grading of land or lots, excavation except for purposes of soil testing, dredging or filling or construction of buildings or structures shall be done on any part of the open space parcel until the application has been reviewed and approved as provided by this section.

(5) Open space areas should not be areas known to contain or suspected of containing hazardous wastes. The Planning Board shall require a 21-E report to be submitted prior to approval of an open space development if the presence of hazardous materials is suspected.

C. Criteria for critical land to be preserved. The Planning Board shall make a determination, with the advice of the Conservation Commission, that the land to be preserved or deeded for open space preservation is of critical importance for retention, as specified below, or hat the land of the parcel that is being developed is not of critical importance for retention. Any one of the following shall be deemed land of critical importance:

(1) Land within the Water Resource District.

(2) Land from which or across which there are important scenic views from publicly accessible points.

(3) Land of special habitat or ecological value and fragility.

(4) Land abutting publicly owned land to which the public has rights of access, or land abutting land which is under a conservation easement or agricultural easement, or land abutting land which is owned by a nonprofit corporation, the principal purpose of which is the conservation of open space.

(5) Land within two hundred (200) feet of existing roads.

(6) Land which is proposed to be developed by the applicant for active recreational use, including playing fields, boat launching areas, playgrounds and neighborhood parks.

(7) Land which preserves existing trail networks or land on which new trails will be developed as part of the development for integration into an existing trail network.

D. Performance standards. Prior to the issuance of a special permit for an open space development, the Planning Board shall find and the applicant shall submit the information necessary to demonstrate that the following standards have been met:

(1) The natural landscape is preserved in large, contiguous areas, except when part of the open space is to be used for active recreational use as approved by the Planning Board.

(2) Open space is used to protect valuable natural environments, avoiding the development of geographically unsuitable land, or to provide active recreation land.

(3) Extensive topographic changes necessitating vegetation and tree removal are minimized. The site design shall preserve and, where possible, enhance the natural features of the property, including scenic views, by adapting the location and placement of structures, if any are approved, and ways to the existing topography in order to minimize the amount of soil removal, tree cutting and general disturbance to the landscape and surrounding properties.

(4) Scenic views from public ways are preserved. Driveway cuts on existing. public ways shall be at the discretion of the Planning Board and become a condition of the special permit.

(5) At the discretion of the Planning Board, a landscape easement may be imposed on the outer perimeter lot lines of all perimeter

lots which abut developed land or developable land, which easement shall be; at a maximum, forty (40) feet and in which no alteration of the natural vegetative and topographical state shall occur and no structures may be placed, except that the Planning Board may require additional plantings sufficient to provide screening if the abutting land is developed. This area shall not be included in the calculations for open space.

(6) There is a variation in lot sizes, shapes and building locations.

(7) The development will provide acceptable levels of pedestrian and vehicular safety within the site and will not cause unreasonable traffic congestion or unsafe conditions.

(8) The development will provide for and maintain convenient and safe emergency vehicle access to all buildings and structures at all times.

(9) Anticipated stormwater runoff from the site shall, not exceed peak runoff from the site prior to development. The applicant shall submit formal drainage calculations by a registered professional engineer for this purpose.

(10) Proper soil erosion and sedimentation control measures shall be employed to minimize sedimentation and siltation of existing surface water bodies and wetlands, as approved by the Franklin Conservation Commission.

E. Open space.

(1) Design and use. The open space shall be designed and maintained in accordance with the following standards:

(a) At least twenty percent (20%) of the original parcel area must be preserved open space. This shall not include land set aside for roads and/or parking uses or buffer zones. No more than fifty percent (50%) of the proposed open space may contain land considered as wetland resource areas; other than "isolated lands subject to flooding," as defined in any regulations promulgated by the Department of Environmental Protection pursuant to MGL C. 131, 40, as such regulations or statute may from time to time be amended.

(b) Open space shall be planned as large, contiguous parcels whenever possible, although open space may be in more than one (1) parcel, provided that the size, shape and location of such parcels are suitable for the designated uses. Strips or narrow parcels of open space shall be permitted only when necessary for access or as vegetated buffers along the site's perimeter, other than the landscaped easement requirement in 185-43D(5).

(c) No more than ten percent (10%) of the open space shall be covered by man-made impervious surfaces, and only at the discretion of the Planning Board and by specific condition of the special permit.

(d) Open space may be used for passive recreation, conservation, forestry, agriculture, natural buffers, structures necessary to approved uses, utilities and other facilities necessary for the convenience and enjoyment of the residents, subject to approval by the Planning Board. Open space may be used for active recreation if the Planning Board determines the use is compatible with existing site features.

(e) Unless otherwise approved by the Planning Board in its special permit decision, open space shall be maintained in its natural open state. Maintaining such land in its natural open state shall mean that the land shall remain in its natural state without the removal or disturbance of trees, vegetation or earth. Neither temporary site access nor temporary structures associated with construction activity shall be permitted on reserved open space, nor shall open space areas be used as staging areas during construction. Detention/retention ponds shall not be located in open space areas. Maintaining such land in its natural open state shall be the obligation of the owner and the applicant from the date of application through to the date of conveyance in accordance with the terms of the special permit.

(f) Prior to the beginning of any work on the site, wetlands and the perimeter of open space areas shall be flagged. The Conservation Commission shall review the open space and provide a baseline report to the Planning Board, to establish the present condition. As a condition of each special permit granted, the applicant shall provide complete monumentation of the open space, in accordance with Land Court standards, prior to the construction of any lots.

(2) Ownership and management.

(a) Open space in an open space development shall be conveyed to the Town of Franklin for park or open space use; a nonprofit corporation, the principal purpose of which is the conservation of open space; or to a corporation or trust owned or to be owned by the owners of lots within the development. A corporation or trust owned or to be owned by the owners of lots within the development shall be utilized for the temporary ownership and management of the open space, until such time as the open space is offered to and accepted by the Town of Franklin, or a nonprofit corporation as identified above. If a corporation or trust owned by the owners of lots is utilized for purposes of permanent ownership and management, the timing, or the event which shall cause ownership thereof to pass, shall be specified in the special permit. In any case, where such land is not conveyed to the town, an easement, running to the benefit of and enforceable by the town, shall be recorded providing that such land shall be retained in perpetuity in an open and natural state and shall not be built upon for residential use or developed for accessory uses such as parking or roadways.

(b) If the open space is not to be conveyed to the town, then the applicant shall submit a land use management plan to the Board, which plan shall specify the work to be accomplished prior to conveyance.

(c) If the open space is not to be conveyed to the town, the application for an open space development special permit shall also provide as part of the open space proposal an agreement authorizing but not obligating the town to perform maintenance of the open space in the event of failure to comply with the program included in the application pursuant to the preceding section, providing that, if the town is required to perform any maintenance work, the owners shall pay the cost thereof.

(d) Forms of all documents necessary to convey or restrict the open space shall be submitted to the Planning Board, and the Board shall consult with Town Attorney as to the adequacy of the forms prior to the close of the public hearing. Failure to provide forms satisfactory to the Planning Board shall be grounds for denial of the permit.

F. Procedures. The application process for open space development is comprised of two (2) steps, as outlined below.

(1) Concept plan/preliminary plan. Applicants for an open space special permit and development shall first file the following.

(a) Ten (10) copies each of an open space development concept plan and a conventional subdivision plan, each conforming to the requirements for a preliminary subdivision plan under the Subdivision Regulations of the Planning Board. In addition to the preliminary plan content requirements, the plans shall show the following. The preliminary plan shall also state how and by whom the open space plan shall be maintained to standards satisfactory to the Planning Board.

(1) Existing landscape features such as existing topography, vegetative cover, wetlands, springs, lakes, ponds, streams, rock outcroppings, stone walls, cliffs, forest glades, drumlins, high points, hill tops, ridges, farm fields, meadows and scenic vistas; also, zoning boundaries and, unless proposed for public sewerage, the results of deep soil test pits and percolation tests at the rate of not less than one (1) per every five (5) acres;

(2) Approximate location of existing and proposed structures; and

(3) The open space concept plan shall also show open space, indicating proposed use of open space, recreation areas, parking areas and existing and proposed trails and accompanying land use management plan.

(2) Concept approval: Approval of the open space development concept plan may be granted if the Planning Board, following consultation with or review by the Conservation Commission, determines an open space development would be preferable to a conventional subdivision. based on the criteria set forth in 185-43C.

(3) Special permit/definitive plan. If the concept/preliminary plan is approved for an open space development, the applicant shall submit a special permit application and. a definitive plan in conformity with the requirements and procedures for definitive plan submission and review under the Subdivision Rules and Regulations of the Planning Board. The following may also be required:

(a) An environmental .analysis, if required by the Franklin Subdivision Regulations, 300-8D.

(b) Any additional information necessary to make the determinations and assessments for 185-43B.

(c) In the event that the proposed development is also being considered for a Residential VI District, then the conditions in 185-38 shall also apply.

(4) Special permit decision.

(a) The Planning Board may grant a special permit under this section only if it finds that the open space development proposal will be in harmony with the general purpose and intent of this bylaw; meets all general requirements, criteria and performance standards of this bylaw; will not have a detrimental impact on the neighborhood or abutting properties; and is superior to a conventional plan in preserving open space, minimizing environmental disruption and allowing for more efficient provision of services.

(b) The Planning Board may impose any conditions and/or safeguards which further the purposes of this section.

(c) If the Planning Board disagrees with any recommendations of the Conservation Commission or any other board or department, it shall state its reasons therefor in writing.

(d) If the open space is to be conveyed to the town or to a nonprofit corporation as specified in 185-43E(2)(a), it shall be free of any mortgage interest or security interest and subject to a perpetual restriction of the type described above; and so conveyed, prior to the Planning Board's final release of the surety. The applicant shall provide satisfactory evidence of said conveyance and recording in the forms of copies of the recorded instrument bearing the recording stamp, or otherwise as the Board may direct.

(e) Any other penalties notwithstanding, the violation of any term of the special permit or this bylaw shall be deemed to be sufficient grounds for the Planning Board to conduct a public hearing, on its own motion, to modify or rescind approval of the subdivision approval, and further to seek zoning enforcement through the offices of Building Commissioner, the Board of Appeals and Superior Court.

§185-38. Multifamily and flexible development.

[Amended 10-886 by Bylaw Amendment 86-71; 11-4-87 by Bylaw Amendment 87-102]

Multifamily dwellings and more than one (1) single-family or two-family dwelling on a single lot may be authorized on special permit from the Planning Board in a Residential VI District, but only as follows:

A. Intensity of use requirements.

(1) The maximum number of dwelling units permitted shall not exceed the number which could reasonably be expected to be developed under a conventional subdivision plan in full conformance with zoning, subdivision regulations and health codes of the Town of Franklin, as determined by the Planning Board following consultation with or review by the Conservation Commission. All calculations of dwelling units resulting in a fractional unit of one-half (1/2) or more shall be rounded up, to the next whole number, all others being rounded down.

(2) To assist the Planning Board in such determination, applicants shall submit a conventional plan conforming to the requirements for a preliminary subdivision plan.

(3) Buildings shall be separated from side and rear lot lines by a distance at least equal to the building height. In all other respects, the requirements of the Schedule of Lot, Area, Frontage, Yard and Height Requirements must be met.

B. Serving housing needs.

(1) Not fewer than twenty-five percent (25%) of the dwelling units authorized shall be assured for at least twenty (20) years, through covenant, repurchase agreement or other means, to be sold or leased at costs and subject to occupant income limitations meeting the guidelines of state or federal housing assistance programs, such as the MHFA First-Time Homebuyer Loans.

(2) To assure consistency with the objectives of Chapter 40B of the General Laws and of Executive Order 215, this subsection shall, from time to time, be reviewed and, if appropriate, amended by Town Council action.

(3) All calculations of dwelling units resulting in a fractional unit of one-half (%) or more shall be rounded' up to the next whole number, all others being rounded down.

C. Site plan review. The requirements of 185-31, Site plan review, shall be complied with at the time of application for a special permit.

D. Development scale. There shall be no more than one hundred (100) dwelling units in any development. Contiguous developments shall be distinct in terms of site arrangement, building design, and overall character of the development.

E. Building design requirements. To minimize departure from single-family residential scale, no single structure shall contain more than six (6) dwelling units; not more than two (2) dwelling units shall be served from a single building entrance; there shall be no more than twelve (12) parking spaces in any single parking area and no parking area of eight (8) or more spaces, shall be located within fifty (50) feet of another such area.

F. Multifamily by conversion. In an RVI District, an existing nonresidential structure may be authorized to be converted to multifamily use subject, at the applicant's option; either to the above requirements or to the following in place of the requirements of Subsections A, D and E:

(1) The structure being converted must have been in existence for five (5) more years, and there must have been no reduction in lot area within that period or in the proposal.

(2) Proposed additions to that must not increase lot coverage by more than twenty-five percent (25%) of the lot area.

(3) The Planning Board must make a determination that the likely impacts upon the environs would be better through such conversion than is likely to be the case given denial; considering the alternative uses or nonuse the premises may be put to.

(4) All requirements of this section other than Subsections A, D and E must be complied with:

G. Development timing schedule. A development timing schedule shall be incorporated, in the special permit, limiting the number of dwelling units to be authorized building permits each calendar year, taking into consideration:

(1) The responsibility of the town to accommodate at least its historic share of regional residential development and to provide for the housing needs of all population groups. The development timing schedule shall be consistent with the schedule, if any; incorporated into the concept plan by Town Council vote approving such plan in creating the RVI District. The Building Department shall provide data to the Town Council, on the relationship of committed development authorizations and historic town growth each time that a Zoning Map amendment authorizing multifamily housing is to be acted upon and shall provide such data to the Planning Board each time that the Board is to act on a development schedule or a special permit authorizing units beyond usual development rate limitations.

(2) The ability of the town, to adequately service the proposed development with schools, streets, protective services and utilities, including consideration of items listed in the most recently published Capital Improvements Program.

(3) The number of dwelling units authorized on building permits in the preceding six (6) months and scheduled to be authorized

under special permits previously granted.

(4) The demonstrated ability of the regional housing market to absorb additional units.

(5) The applicant's requested phasing.

H. Concept plan.

(1) Except as part of a comprehensive reconsideration of the Zoning Map, the Planning Board shall neither sponsor nor favorably recommend any Zoning Map amendment to create a Residential VI District unless at a public hearing it has had presented to it, by proponents of the amendment, a concept plan and supporting materials, including the following:

(a) A concept plan of the district, showing use, general shape and location of structures, parking, retained vegetation, wetlands and points of egress onto public ways.

(b) Materials indicating proposals for methods of water supply and sewage disposal; tabulation of the number of dwelling units, distinguishing single-family vs. multifamily, and indicating occupancy (family, elderly; handicapped, etc.) and number of bedrooms, a development timing schedule for dwellings and improvements; proposed form of tenure, whether rental, condominium, cooperative or other; means, if any, of providing for design control; and means, if any, of providing assurance of long-term conformity to present proposals.

(c) Analysis of the consequences of the proposed development; evaluating the following impacts at a level of detail appropriate to the number of units proposed and; 'using analysis - materials provided by the Planning Board:

[1] Natural environment: groundwater and surface water quality, groundwater level, stream flows, erosion and siltation, vegetation removal (especially unusual species and mature trees) and wildlife habitats.

[2] Public services: traffic safety and congestion, need for water system improvements, need for public sewerage and sewerage system improvements, need for additional public recreation facilities and need for additional school facilities.

[3] Economics: municipal costs and revenues, local business activity and local jobs.

[4] Social environment: rate of town population growth and range of available housing choice.

[5] Visual environment: visibility of buildings and .parking and visual consistency with existing development in the area.

(2) Concept plan approval shall be granted only upon a determination that the proposed plan is at least as beneficial to the town as conventional development would be, based upon the criteria of 185-45E(3), and 300-9B of the Subdivision. Regulations of the Franklin Planning Board.

I. Town Council action. Concept plan and supporting materials shall also be presented to the Town Council at its hearing on the proposed rezoning, in which case, at the time of acting upon the rezoning, the Town Council shall approve, conditionally approve or disapprove the concept plan by the same vote required for a zoning amendment. In the event of lack of approval of a concept plan concurrent with approval of the rezoning, a new or revised concept plan shall later be submitted to the Town Council for its approval.

J. Special permit decision. A special permit for multifamily dwellings or more than one single-family or two-family dwelling on a lot shall be granted only if the Planning Board determines that the proposal is consistent with the concept plan previously approved or conditionally approved by the Town Council in its decision on rezoning.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board (2) Special permit. Senior villages will be authorized only by special permit granted by the Planning Board (hereinafter referred to as "the Board").

§185-43. Open space development.

B. General requirements.

(1) Any parcel of land consisting of not less than five acres located within Rural Residential: I, Rural Residential II and Residential VI Districts may be considered for an open space development subject to a special permit issued by the Planning Board:

Has any housing been built under the cluster/flexible provisions?

Yes According to Dave Roche, Building Commissioner, Franklin is currently looking at changing the flexible development, even for seniors because "the density is exceeding what we thought."

Freetown

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

No

Which entity is the special permit granting authority for cluster/flexible zoning?

Has any housing been built under the cluster/flexible provisions?

Georgetown

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes According to the table of uses, PUD is allowed by special permit from the planning board in the RC district.

Georgetown Zoning Bylaw, Chapter 165, last revised 2002

ARTICLE VII Planned Unit Developments
[Added 3-3-1970 ATM, Art. 48 (Amdt. No. 24)]
Section 165-47. Adherence to requirements required.

A planned unit development is permissible in the RB or RC District under special permit from the Board, provided that the following requirements are adhered to:

Section 165-48. Tract size:
The tract shall be of twenty (20) acres or more in area, to be developed and constructed by a single owner or group of owners jointly.

Section 165-49. Number of building lots:
The number of building lots permitted on the planned unit development plan shall not exceed the number of buildable lots determined from the conventional plan which could be permitted if the land were subdivided into lots conforming the minimum lot requirements of Section 165-11 of this chapter applicable to the district. Said conventional plan shall be a preliminary plan conforming to the latest provisions of Chapter 365, Subdivision Regulations.

Section 165-50. Minimum yard and lot requirements.
MINIMUM LOT REQUIREMENTS: Area (sf)/Frontage/Depth
RB: 20,000/125'/100'
RC: 40,000/150'/120'

[Table]

At least 50% of the required lot area shall be Continuous Building Area (CBA) as defined in Par. 165.7

Section 165-51. Open space and recreation areas.

Any area proposed for conservation or recreation use shall be open space consisting of a single parcel containing not less than six (6) acres for every twenty (20) acres; such area shall be acceptable to the Board; and such area shall be deeded to the town to be managed and controlled by the Conservation Commission for the purposes of MGL C. 40, Section 8C, or if accepted by town meeting to be managed and controlled by the Park and Recreation Commission for the future development of playing fields and neighborhood parks, or said area is otherwise preserved as open space. The land shall be deeded prior to the sale of any abutting lots. Access strips, at least thirty (30) feet in width, shall be provided to each parcel of unsubdivided land from one (1) or more public streets.

At least forty percent (40%) of the open space shall have in the opinion of the Board soils, topography, size and shape suitable and accessible for active recreational use at the time of its acceptance.

In no case shall such recreational land contain less than five (5) acres in one (1) parcel, nor shall it be necessary for the town to fill in land to make it usable.

Section 165-52. Use of lot for uses servicing neighborhood.

If so designated at the time of original application, and if the development contains at least two hundred (200) dwelling units, one (1) lot, with a building containing not more than such number of square feet of floor space as may be determined by the Board, may be used for a purpose approved by the Board, such as for retailing, offices or services intended to service the immediate neighborhood, provided that all intensity requirements of the Intensity of Use Schedule of Section 165-11(10) applicable to the CA Business and Commercial District shall apply to this lot, and that there not be more than one (1) such lot per two hundred (200) planned dwelling units. Any change of use of such building shall be granted only if a special permit is granted by the Board.

Section 165-53. Logical arrangement and design of streets and utilities.

The design of land uses, street pattern and utilities shall be logical, orderly and contribute to the protection of public health, safety and welfare.

Section 165-54. Subdivision approval required.

No part of such planned unit development may be developed prior to approval of the definitive subdivision plan by the Planning Board and receipt of any contracts, covenants or agreements or bonds required under the Subdivision Control Law.

Section 165-55. Percolation tests.

No lot having a percolation test longer than fifteen (15) minutes per inch or having a slope of twenty percent (20%) or greater or which does not meet the provisions of Article XI of the State Department of Public Health Sanitary Code shall be deemed a buildable lot.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board According to the table of uses, PUD is allowed by special permit from the planning board in the RC district.
Georgetown Zoning Bylaw, Chapter 165, last revised 2002

Has any housing been built under the cluster/flexible provisions?

Gloucester

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

Yes OPEN SPACE RESIDENTIAL DEVELOPMENT - Adopted 2002

Permitted with site plan approval of the Planning Board in districts R-1; R-RA; R-RB; R-2; R-2A; R-3; R-4; CCD, NB and VB.

City of Gloucester Zoning Ordinance (Adopted 1950, Amended 2002)

Section 5.15:

OPEN SPACE RESIDENTIAL DEVELOPMENT

5.15 OPEN SPACE RESIDENTIAL DEVELOPMENT

5.15.1. PURPOSE & INTENT

5.15.1.1 Primary purposes for Open Space Residential Development, hereafter OSRD, are:

(a) To advance and be consistent with the goals, objectives and strategies of The Community Development Plan for the City of Gloucester, 2001: A Comprehensive Plan, August 2001.

(b) To encourage permanent preservation of open space, agricultural land, forest, forestry land, wildlife habitat, other natural resources including aquifers and watershed, water bodies and wetlands, and historical and archeological resources.

- (c) To encourage a more efficient form of development that is less sprawling, consumes less open land, and conforms to existing topography and natural features better than a grid subdivision.
- (d) To minimize the total amount of disturbance on a site and to preserve the natural topography of a site.
- (e) To allow greater flexibility and creativity in design of residential developments.
- (f) To facilitate the construction and maintenance of housing, ways, utilities and services in a more economical and efficient manner.

5.15.2. ELIGIBILITY.

5.15.2.1 OSRD is permitted in the following zoning districts: R-1; R-RA; R-RB; R-2; R-2A; R-3; R-4; CCD, NB and VB.

5.15.3. DESIGN OVERVIEW

5.15.3.1 The Four Step Design Process:

(a) Identify and delineate the following:

1. Primary Conservation Areas which include wetlands, riverfront areas, and floodplains; and Secondary Conservation Areas which are unregulated features of the natural landscape, such as: steep slopes, mature woodlands, prime farmland, meadows, additional wildlife habitats and cultural features such as historic and archeological sites, and scenic views; and
2. Potentially Developable Areas which is all other land outside identified Primary and Secondary Conservation Areas.

(b) Locate house sites, providing the approximate sites of individual houses within the Potentially Developable Area along with delineation of private yards and shared amenities, so as to reflect an integrated community, with emphasis on consistency with the city's historical development patterns. The number of homes enjoying the amenities of the development should be maximized.

(c) Align Streets and Trails. Align streets in order to access the house lots. Trails should be laid out to create internal and external connections to existing and/or potential future streets, sidewalks and trails.

(d) Draw in the lot lines.

5.15.3.2 Generic Design Standards.

(a) OSRD shall promote permanent preservation of open space, agricultural land, forestry and, natural resources, historical and archeological resources better than a grid subdivision.

(b) OSRD shall consume less open land than a grid subdivision.

(c) OSRD shall conform to existing topography and natural features of the land.

(d) OSRD shall have less total amount of disturbance on the site than a grid subdivision.

(e) OSRD shall facilitate the layout, construction and maintenance of ways, utilities, and public services in a more economical, safe and efficient manner than a grid subdivision.

(f) The landscape shall be preserved in its natural state. Tree and soil removal shall be minimized. Any grade changes shall be in keeping with the general appearance of neighboring developed areas. Individual building sites shall be oriented to maintain natural topography, soils and vegetation.

(g) Ways shall be designed and located in such a manner as to maintain and preserve natural topography, significant landmarks, and trees; to minimize cut and fill; and to preserve and enhance views and vistas on or off the subject parcel.

(h) Proposed buildings and associated development shall be compatible with surroundings, terrain, other existing uses, scale, and architecture of nearby buildings and possess a functional and visual relationship to the nearby environment.

(i) All open space that is not set aside for wildlife habitat and resource protection shall be designed to add to the visual amenities of the area by maximizing its visibility for persons passing the site or overlooking it from nearby properties.

(j) The removal or disruption of historic, traditional or significant uses, structures, or architectural elements shall be minimized insofar as practicable.

(k) The proposal should protect the adjoining premises and general neighborhood from any detrimental impact resulting from the use of the subject property, including but not limited to the production of a nuisance by virtue of noise, odor, unsightliness, or vibration.

5.15.3.3 Detailed Design Standards are further defined in the OSRD Rules and Regulations.

5.15.3.4 In approving an OSRD Site Plan, Planning Board, hereinafter referred to as the Board, may impose conditions to ensure that a site plan complies with OSRD detailed design standards.

5.15.4. OPEN SPACE REQUIREMENTS

5.15.4.1 Open Space. A minimum of fifty percent (50%) of the site shall be open space with no more than twenty-five percent (25%) defined as Resource Area and at least fifteen percent (15%) of the remaining open space shall not consist of 'Buffer Zone' as defined by the City of Gloucester General Wetlands Ordinance (Article 12, Gloucester Code of Ordinances) or slope of more than twenty percent (20%).

(a) Open space shall not include driveways, roads or ways necessary for access and egress to the site.

(b) One third (1/3) of the twenty (20) foot site perimeter setback, as required in 5.15.5.1(c), may be used towards the required open space.

(c) One hundred percent (100%) of the open space, shall either be:

1. Conveyed to the City of Gloucester and accepted by it for open space use with an assignment for the perpetual care and custody of the site under the jurisdiction of the Conservation Commission; or
2. Conveyed to the Commonwealth of Massachusetts as part of a state forest, park, or wildlife management area; or
3. Conveyed to a nonprofit corporation, the principal purpose of which is the conservation of open space, and made subject to a conservation restriction prepared in accordance with provisions of Section 31 and 33, inclusive, of MGL Chapter 184; or
4. Made subject to a conservation restriction prepared in accordance with the provisions of Section 31 and 33, inclusive, of MGL Chapter 184 running in favor of either the City or, upon the approval of the Board, a nonprofit corporation, the principal purpose of which is the conservation open space. The conservation restriction shall provide that such land shall be kept, in perpetuity, in an open or natural state, in accordance with the above noted sections of MGL Chapter 184.

(d) Open space shall be a large contiguous parcel.

(e) Open space shall be used for conservation purposes, including wildlife habitat, watershed protection, historic preservation, education, outdoor education, passive recreation, park purposes, agriculture and horticulture/ forestry.

(f) Provided that the Board finds that such uses will not be detrimental to the character, quality or use of the open space, wastewater and stormwater management systems, and underground utilities serving the site may be located within open space. Surface systems, such as retention and detention ponds, shall not qualify towards the minimum required open space.

5.15.5. DIMENSIONAL REQUIREMENTS

5.15.5.1. Applicants for OSRD development are encouraged to modify lot size, shape and other dimensional requirements for lots within an OSRD development. Section 3.2 of the City of Gloucester Zoning Ordinance setting forth the minimum lot requirements shall not apply to lots within OSRD. The minimum requirements for such lots are:

- (a) Minimum lot area shall be five thousand (5,000) square feet.
- (b) Minimum frontage shall be twenty (20) feet.
- (c) A site perimeter setback of at least twenty (20) feet shall be provided at the perimeter of the overall site subject to OSRD except that driveways necessary for access and egress to the site may be allowed within the site perimeter setback for the overall site subject to OSRD. No vegetation in this buffer shall be disturbed, destroyed or removed, except for normal maintenance. (See OPEN SPACE REQUIREMENTS).
- (d) New lots shall not have frontage on a way other than one created within an OSRD.
- (e) The minimum frontage for the overall site subject to OSRD shall be fifty (50) feet.
- (f) Maximum building height shall not exceed thirty (30) feet.
- (g) The maximum lot coverage for an individual lot shall not exceed fifty (50) percent.

5.15.6. PRE-APPLICATION

5.15.6.1 Prior to submitting an OSRD site plan, the applicant shall make a written request for an informal preapplication review by the Board at a regular meeting.

5.15.6.2 Submittals under this category of review shall be labeled 'PRE-APPLICATION'.

5.15.6.3 Pre-application Site Visit. The Board shall hold a site visit as soon as possible with the applicant and/or its agents in attendance.

5.15.7. SITE PLAN

5.15.7.1 For the purposes of this ordinance the Planning Board is the site plan review authority.

5.15.7.2 The Site Plan shall consist of a Yield Plan and a Sketch Plan:

5.15.7.3 The Yield Plan shows the maximum number of lots that can be placed on a site under a grid subdivision plan.

- (a) Sites with access to municipal sewer. The Basic Maximum Number of Allowed Lots is the sum of total area, which is all acreage within a site being considered for development, minus wetland resource area, plus twenty-five percent (25%) times resource area, with a figure of ten percent (10%) of the total area subtracted from the earlier product. That result is divided by the applicable zoning district minimum lot area as defined in the Zoning Ordinance Intensity of Use Schedule. The resulting figure is rounded down to the next whole number. Formula #1, shows this equation used to calculate Basic Maximum Number of Allowed Lots: Formula #1: Basic Maximum Number of Allowed Lots $[(\text{Total Area} - \text{Resource Area}) + (\text{Resource Area} \times 0.25)] - (0.10 \times \text{Total Area}) / \text{District Minimum Lot Area}$
- (b) Sites served by individual or shared onsite wastewater systems governed under 310 CMR 15.00 The State Environmental Code, Title 5 and The City of Gloucester Onsite Wastewater Regulations. The Basic Maximum Number of Allowed Lots shall be derived by submittal of a yield calculation using Formula #1 accompanied by a plan that provides evidence, acceptable to the Board, confirming the number of dwelling units that could be served by onsite wastewater treatment and disposal systems and which probably could be permitted to serve a set number of dwelling units based on site soil evaluations and consideration of relevant state and local laws. The applicant shall have a burden of proof to supply soils analysis and engineering information on the plan that defines, with reasonable certainty, the number of allowable dwelling units that can be safely sited on a lot. At a minimum, standard soil and percolation testing specified in state and local regulations shall be completed for each proposed area which might be suitable for an onsite wastewater treatment and disposal system with such testing witnessed by the agents of the Board of Health. A site plan showing calculations and possible locations of suitable areas for onsite systems shall be compiled. The City of Gloucester Onsite Wastewater Regulations should be reviewed and the Board of Health consulted for additional information. Within twenty one (21) days of receiving written request from Planning Board, the Board of Health shall provide written input to the Planning Board regarding this determination.
- (c) Sites served by on-site shared wastewater systems governed under 314 CMR 3 (Surface Water Discharge Permit) or 314 CMR 5 (Groundwater Discharge Permit) shall take into consideration the carrying capacity of the land and receiving water(s). In no instance shall yield calculation be greater than that which could be calculated under 5.15.7.3(a) and (b). Within twenty one (21) days of receiving written request from the Planning Board, the Board of Health shall provide written input to the Planning Board regarding this determination.

5.15.7.4 The Sketch Plan shall:

- (a) Be prepared and signed by a certified Landscape Architect, or by a multidisciplinary team of which one member must be a certified Landscape Architect; and
- (b) Provide specific reference to the Yield Plan; and
- (c) Address the general features of the land, give approximate configurations of the open space, roads, lots, and include the information, as appropriate, as listed in OSRD Rules and Regulations; and
- (d) Include detailed narrative regarding the layout of open space, stormwater management, wastewater management, utilities, landscaping, and other aspects of infrastructure and building design; and
- (e) Reflect the four step design process as set forth in Section 5.15.3.1; and
- (f) Comply with the design standards set forth according to sections 5.15.3.2. and 5.15.3.3.

5.15.7.5 A Site Plan may be a fully engineered plan, conforming with the provisions of this ordinance. The Site Plan shall incorporate the features of the sketch plan and include stormwater management, wastewater management, utilities, and all other information as required within this ordinance and referenced regulations.

5.15.7.6 OSRD definitive subdivision approval shall be conditional upon approval of the Site Plan.

5.15.8 PROCEDURE FOR SUBMITTAL & APPROVAL OF SITE PLAN

5.15.8.1 A complete application shall be filed with the City Clerk and the Planning Board. Thirty (30) copies shall be filed.

5.15.8.2 Review by municipal entities. The Board of Health, Conservation Commission, Building Inspector, Fire Department, Police Department, and Engineering/DPW shall consider, review and report to the Board in writing on the application. Reports from other boards and officials shall be submitted to the Board within thirty-five (35) days of receipt of the City Clerk of a complete application. Failure of these reviewing parties to make recommendations after receiving the applicable materials shall be deemed a lack of opposition thereto. In the event that a public hearing by the Board is held prior to the expiration of the thirty-five (35) day period, the Board shall continue the public hearing to permit the formal submission of reports and recommendations.

5.15.8.3 Public hearing. The Board shall hold a public hearing within thirty-five (35) days of receipt of a complete application.

5.15.8.4 Board decision. The Board shall issue a written site plan decision within sixty five (65) days of the submittal of a complete site plan. In reviewing a site plan, the Board may impose conditions to ensure that the site plan complies with generic and detailed design standards, requirements of OSRD Rules and Regulations. The decision shall contain written explanation for any significant departures from the recommendations of any reviewing party. The decision shall be upon a majority of the Board and a written decision shall be endorsed by the Board Chair. The appeal of any decision of the Board shall be made in accordance with the provisions of MGL Ch. 41 81BB. A copy of the decision shall be filed with City Clerk and shall be forwarded to the applicant by registered mail.

5.15.8.5 Site plan approval shall lapse one (1) year from the date that the Board votes to endorse a site plan unless the applicant has submitted an OSRD definitive plan application, or within three (3) years unless building permits have been issued, whichever is less. Prior to the lapse of this period an applicant may make a written application requesting a time extension for the site plan, by providing a rationale for said request for a time extension. For good cause such approval may be granted by the Board by issuing a written extension following a public hearing.

5.15.9. Relationship Between the OSRD Site Plan & OSRD Definitive Subdivision Plan.

5.15.9.1 The issuance of OSRD Site Plan Approval allows the applicant to submit an OSRD Definitive Subdivision Plan to the Board for consideration under the Subdivision Control Law.

5.15.9.2 The OSRD definitive subdivision plan shall substantially comply with the OSRD Site Plan. Substantial compliance is deemed to exist providing that there is no:

- (a) Increase in the number of building lots or units;
- (b) Significant decrease in open space area;
- (c) Significant change in site layout;
- (d) Significant change in the general development pattern which adversely affects natural landscape features and open space preservation; and
- (e) Significant change to stormwater and wastewater management.

5.15.9.3 If the Board determines that the OSRD Definitive Subdivision Plan does not substantially comply with the OSRD Site Plan, the Board may disapprove the definitive subdivision plan.

5.15.9.4 The Board may conditionally approve an OSRD Definitive Subdivision Plan that does not substantially comply with the Site Plan. The Board shall issue a written decision identifying where the plan does not substantially comply with the Site Plan and shall require that the Site Plan be amended to be in compliance. The Board shall also require that the applicant file an application to amend the Site Plan within a specified time period. The public hearing on the application to amend the Site Plan shall be limited to the significant changes identified by the Board in their conditional approval of the OSRD Definitive Subdivision Plan. These are the only considerations that the Board may take into account in deciding whether to amend the Site Plan.

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes CLUSTER DEVELOPMENT

Allowed by approval of the Planning Board in districts R-1, R-RA, R-RB, R-2A, R-2, R-3, & S.

City of Gloucester Zoning Ordinance (Adopted 1950, Amended 2002)

5.9 CLUSTER DEVELOPMENT

5.9.1 Purpose

The cluster development is intended to accomplish all of the following:

- (a) Encourage the efficient and creative use of land in harmony with its natural features;
- (b) Minimize the consumption of open space by limiting the network of streets and utilities;
- (c) Preserve natural topography and wooded areas within developed areas;
- (d) Provide usable open space and, where appropriate, recreational facilities;
- (e) Preserve the visual character of the neighborhood;
- (f) Ensure high-quality design and site planning of developments to enhance the neighborhoods in which they occur and the city as a whole;
- (g) Preserve sites and structures of historical importance.

5.9.2 Applicability

The Planning Board may grant a special permit for a Cluster Development on a parcel of land of a size equivalent to five times the minimum lot size in the District, but no less than three acres of contiguous land not separated by a roadway or utility easement at the time of application, in the R-1, R-RA, R-RB, R-2, R-2A and R-3 residential districts, subject to the following regulations and conditions.

5.9.3 Preliminary Cluster Development Plan

5.9.3.1 Submittal Requirements

To facilitate the review process, applicants are encouraged to submit a Preliminary Cluster Development Plan and application to the Planning Board. Such submittal shall include the following information:

- (a) A plan prepared in accordance with the requirements for a preliminary subdivision plan, as described in Section 3.1.2 and 3.1.3 of the Rules and Regulations Governing the Subdivision of Land in Gloucester, whether or not the development constitutes a subdivision, and shall include proposed location, bulk, and height of all proposed buildings and structures.
- (b) An evaluation of the open space proposed within the cluster, with respect to size, shape, location, natural resource value and accessibility by residents of the city or of the cluster.

5.9.3.2 Review By Other Boards

Upon its receipt of the Preliminary Cluster Development Plan, the Planning Board shall transmit one copy each to the Board of Health, Conservation Commission, Fire Department, and the Building Inspector for review and comment.

5.9.3.3 Approval or Disapproval

The Board shall act on the Preliminary Cluster Development Plan within forty-five (45) days of the date of submission. The Board may approve the Plan, with or without modification, or disapprove it, in accordance with section 3.1.4 of the Rules and Regulations Governing the Subdivision of Land in Gloucester.

5.9.4 Definitive Cluster Development Plan

5.9.4.1 Submittal Requirements

An applicant seeking approval of a Definitive Cluster Development shall submit a plan and application to the Planning Board. Such submittal shall include the following: (a) A plan prepared in accordance with the requirements for a definitive subdivision plan, as described in Section 3.2.2, 3.2.3, and 3.2.4 of the Rules and Regulations Governing the Subdivision of Land in Gloucester, whether or not the development constitutes a subdivision, and shall include proposed location, bulk, and height of all proposed buildings and structures.

(b) An evaluation of the open space proposed within the cluster, with respect to size, shape, location, natural resource value and accessibility by residents of the city or of the cluster.

(c) All materials required by Section 3.2.1 of the Rules and Regulations Governing the Subdivision of Land in Gloucester.

(d) A program for the permanent maintenance of all open space.

(e) A development schedule which, at minimum, describes the phases of construction, proposed commencement dates, and the anticipated completion date for all road and utility improvements.

5.9.4.4 Approval or Disapproval

The Board shall hold a public hearing and act on the Definitive Cluster Development Plan within ninety (90) days of the date of submission, or within one hundred thirty-five (135) days if such Plan did not properly evolve from a Preliminary Cluster Development Plan. The Board may approve the Plan, with or without modification, or disapprove it, in accordance with Sections 3.5 and 3.6 of the Rules and Regulations Governing the Subdivision of Land in Gloucester.

5.9.5 Design Criteria

(a) The Planning Board, in order to grant a special permit for a Cluster Development, must find that the proposed design and layout of the development is superior to a conventional one in preserving open space for conservation and recreation; in preserving natural features of the land; and in allowing more efficient provision of streets, utilities and other public services.

(b) In its consideration of a Cluster Development, the Planning Board shall give particular attention to, and shall use as a basis for its decision, all of the following:

1. Lots, streets, off-street parking, sidewalks, pathways and buildings which achieve the harmonious integration of the proposed development with surrounding properties;
2. The overall layout and design that achieves the best possible relationship between the proposed development and the land;
3. Appropriately sized and configured open spaces for active or passive recreation;
4. Protection of natural features such as streams, mature trees or clusters of trees, rock outcrops, bluffs, slopes, and historic or archeological features;
5. Provision of access to open spaces for the physically handicapped, elderly, and children;
6. Use of open spaces for preserving, enhancing, or providing scenic vistas;
7. Preservation and protection of historic resources;
8. Adequacy of provisions for public safety, protection from fire and flood, and maintenance of public facilities, streets, utilities, and open space.

5.9.6 Allowable Uses

A Cluster Development may include any residential use permitted in that zoning district. The Planning Board may grant special permits required for any such structures located in a Cluster Development. These structures may be situated on separate lots, or situated on a single lot together with open space. Lots created under this provision with more than one dwelling unit under separate ownership thereon shall be in compliance with applicable M.G.L. c. 183A, or with the charter and by-laws of a land trust whose purpose is the provision of affordable housing. Cluster Developments that do not involve the subdivision of land shall comply with all of the design criteria and improvement requirements of the Rules and Regulations Governing the Subdivision of Land in Gloucester, MA.

5.9.7 Development Density

(a) The maximum number of dwelling units allowed in a Cluster Development shall be derived by dividing the parcel of land by 90% of the normal minimum lot area or square footage per unit requirements in that district.

(b) Where the Cluster Development includes more than one ownership and/or lies in more than one district, the number of units allowed shall be calculated as above for each district and summed to give an overall allowable total, which may be located on the plan without respect to allowable subtotals by district or ownership areas.

5.9.8 Density Bonus

The Planning Board may authorize an increase in lots or dwelling units up to 20% above that allowed under Section 5.9.7 of this Ordinance, if either of the following conditions are met:

(a) The applicant deeds to the city or restricts under a conservation restriction a portion of the Applicable Land Area, if that land is determined by the Planning Board to be of critical importance for the public good. Applicable Land Area shall be calculated by a registered land surveyor, and equals the total area encompassed by the Cluster Development minus land subject to either inland or coastal wetland regulations (Article 12, Gloucester Code of Ordinances), and minus land otherwise prohibited from development by other local ordinances or regulations.

(b) The applicant sets aside a portion of the dwelling units on the site as affordable units, as defined by Section 5.11.2 of this Ordinance. For each affordable unit the applicant shall receive a density bonus of one added lot or dwelling unit for each 1.5 permanently affordable dwelling units built.

5.9.9 Dimensional Requirements

(a) The minimum size of lots in a Cluster Development shall be 10,000 square feet for a single or two-family house, and 20,000 square feet for a multi-family dwelling.

(b) The Planning Board may waive up to fifty percent of the minimum requirements for frontage and/or yard requirements of each lot in the Cluster Development in order to achieve maximum open space area.

(c) More than one single or two-family dwelling may be located on a lot in a Cluster Development, provided that the minimum lot area per dwelling unit is no less than 10,000 square feet.

(d) Clusters of housing shall contain no more than ten single-family or two-family dwellings, and no more than four multi-family dwellings.

(e) The minimum width of open space between clusters of dwellings, and between the Cluster Development and adjacent property, shall be fifty feet in each case.

(f) Except as noted above, each lot in a Cluster Development shall comply with the dimensional requirements of the district within which it is located.

5.9.10 Common Open Space

(a) Common open space is that land so designated by the applicant and approved by the Planning Board.

(b) Common open space shall comprise not less than 30% of the Applicable Land Area within the Development Plan.

(c) Such open space may be in one or more parcels of a size and shape appropriate for its intended use as determined by the Planning Board and shall be within easy access to its intended users.

(d) Common open space land shall be used only for the following purposes:

1. Conservancy in its natural, undisturbed state. At least fifty percent of the common open space must be used in this manner;

2. grazing and agriculture;

3. walking, horseback riding and/or bicycle riding;

4. playing fields and courts;

5. swimming pools and other recreational facilities and structures for the use of the owners of the building lots; or

6. any combination of the above.

7. structures and parking specifically for the maintenance and use of the open space, provided that they occupy no more than five percent of said open space.

(e) The common open space shall be conveyed in one of the following ways, as approved by the Board:

1. To a corporation or trust comprising a homeowners association whose membership includes the owners of all lots or units contained in the development. The developer shall include in the deed to owners of individual lots beneficial rights in said open land, and shall grant a conservation restriction to the city of Gloucester over such land to insure that it be kept in an open state and not be built upon for residential use or developed for accessory uses such as parking or roadways.

2. To a non-profit organization, the principal purpose of which is the conservation of open space. The developer or non-profit organization shall grant a conservation restriction as set out above.

3. To the city for park or open space use, subject to the approval of the City Council, for management by the Conservation Commission, with a trust clause insuring that it be maintained as open space.

(f) The removal of material, including groundwater, minerals and trees over four inches basal diameter, except as necessary to comply with conditions of the Planning Board's approval, is prohibited.

5.9.11 Future Change

Any Cluster Development approved by the Planning Board under the provisions of this Section shall incorporate by reference the Cluster Development Plan and development schedule submitted by the developer with application. Minor amendments to such Cluster Development may be approved by the Planning Board, upon application and for good cause shown, but without necessity of public hearing; provided, however, that any of the following shall be considered a major amendment, and shall be acted upon only under the procedures applicable to the initial approval for a Cluster Development:

(a) Reduction in the amount or change in the use of common open space, or any change in the general location of the common open space as provided in the permit; or

(b) Any change in the general layout of the ways as provided in the permit; or

(c) Any increase in the number of lots or dwelling units as provided in the permit; or

(d) Altering the location of any building or structure by more than ten feet.

5.9.12 Changes Not Permitted

Lots and dwelling units created under this provision shall not be modified in any manner other than as indicated in Section 5.9.11.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board Cluster development requires special permit from the planning board.

5. Cluster Development (2)
(see section 5.9)

(2) Subject to approval by the Planning Board (PB) for the Cluster Development in accordance with the requirements of Section 5.9.

City of Gloucester Zoning Ordinance (Adopted 1950, Amended 2002)

Has any housing been built under the cluster/flexible provisions?

Grafton

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Town of Grafton Zoning Bylaw, Amended 2003

Flexible Development: A Flexible Development shall mean a Major Residential Development in which the single family dwelling units are clustered together into one or more groups on the lot and the clusters are separated from each other and adjacent properties by permanently protected open space (T.M. 5/13/91)

5.3 Major Residential Development

5.3.0 General

Major Residential Development shall be permitted in the residential districts (R-20, R-40, Agricultural, RMF) only upon issuance of a Special Permit from the Planning Board, as specified in Sections 1.3.3, 1.5 and 3.2.3.1 of this Bylaw, and in accordance with the additional requirements specified herein. (TM 10-18-99)

5.3.1 Definition

Flexible Development as set forth in this Section is authorized by The Zoning Act, M.G.L. c. 40A, Section 9, and is based on the general concept of "Cluster Development" described therein. A Flexible Development shall mean a Major Residential Development in which the single family dwelling units are clustered together into one or more groups on the lot and the clusters are separated from each other and adjacent properties by permanently protected open space.

5.3.2 Purpose

Major Residential Developments shall be designed to:

- a) allow for greater flexibility and creativity in the design of residential developments;
 - b) encourage the permanent preservation of open space, agricultural and forestry land, and other natural resources;
 - c) maintain the Town of Grafton's traditional New England rural character and land use pattern in which small villages contrast with open space and farmlands;
 - d) protect scenic vistas from Grafton's roadways and other places;
 - e) preserve unique and significant natural, historical and archeological resources;
 - f) facilitate the construction and maintenance of streets, utilities and public services in a more economical and efficient manner;
 - g) protect existing and potential municipal water supplies;
 - h) encourage a less sprawling form of development;
 - i) minimize the total amount of disturbance on the site.
- (TM 10-18-99)

5.3.3 Applicability:

- a) In order to further the purposes enumerated above, Major Residential Development shall only be allowed after issuance of a Flexible Development Special Permit, hereinafter referred to as "FDSP", or a special permit for Major Residential Development utilizing Conventional Development, hereinafter known as "CDSP", by the Planning Board. (T.M. 3-16-87, 10-18-99)
- b) At the owner's option, an application can be made for a FDSP for a Minor Residential Development. (TM 10-18-99)

5.3.4 Data Submission - Requirements for All Major Residential Developments:

- a) Pre-Application Review: To promote better communication and to avoid misunderstanding the applicant is encouraged to meet with the Planning Board prior to filing its Application for a special permit for a Major or Minor Residential Development.
- b) Applicants for Major Residential Special Permits shall file with the Town Clerk, one (1) copy, and with the Planning Board, twelve (12) copies, of the following documents to have been prepared by an interdisciplinary team including a registered land surveyor, a registered professional engineer, and a registered landscape architect:
 - 1. A Conventional Development Plan conforming to the requirements of a preliminary subdivision plan under the Subdivision Rules showing a conventional lot layout. Such plan shall also indicate wetlands, proposed topography and, except where Town sewers will be utilized, the results of deep soil test pits and percolation tests (whose locations may be designated by the Board of Health or its agent) at a rate of one per every five acres or more as may be required by the Board of Health, but in no case fewer than five per Major Residential Development.
 - 2. A Flexible Development Plan in the same detail as the Conventional Development Plan but showing development of the lots so as to maximize the purposes of Flexible Development.
 - 3. A Land Use Plan, as required under Section 5.3.11.a, showing the proposed use of the Common Land.
 - 4. A brief comparison of the impacts of a Flexible Development Plan to those that would result from the Conventional Development Plan, or if the application is for a CDSP, the analysis should discuss the specific site characteristics which make the Conventional Development Plan the best development option, including but not limited to the purpose and design guidelines for Flexible

Development.

5. A list of requested waivers from the Subdivision Rules.

6. A lesser number of copies of the required plans and/or reports may be allowed by vote of the Planning Board. (TM 10-18-99)

5.3.5 Major Residential Development Standards

The following standards shall apply to all Major Residential Developments:

5.3.5.1 Number of Dwelling Units Permitted: The maximum number of dwelling units allowed shall equal the number of dwelling units which could reasonably be expected to be developed on the property under a Conventional Development Plan in full conformance with zoning, Subdivision Rules, health codes, wetlands bylaws, and other applicable requirements.

5.3.5.1.1 Where the property lies in more than one zoning district, the number of dwelling units allowed shall be calculated as above for each district and added to give an overall allowable total.

5.3.5.1.2 The Planning Board shall consider the recommendations of the Board of Health, the Conservation Commission and the Engineering Department of the Town of Grafton in making said determination.

5.3.5.2 Bonus Provision: The Planning Board shall issue a FDSP containing more than the number of dwelling units permitted under Section 5.3.5.1 above, upon the Board's determination that the proposed development, through the quality of its site selection, programming and design, displays a conscious effort to comply with the purposes of Flexible Development. The increase over the number of dwelling units permitted under Section 5.3.5.1 shall be: (a) 15% of the total permitted under that section if the proposed development complies with at least 6 of the Design Guidelines specified in Section 5.3.13; (b) 20% of the total permitted under that section if the proposed development complies with at least 9 of the Design Guidelines; and (c) 25% if the proposed development complies with all of the Design Guidelines. Design Guidelines which are not applicable to the site shall not be counted in determining the bonus. (TM 10-18-99)

5.3.6 Minimum Dimensional Requirements for Lots within a Flexible Development

a) Average Lot Area: In the R-20 District not less than 10,000 square feet; in the R-40 District not less than 20,000 square feet (with public sewer and water, 15,000 square feet); and in the Agricultural District not less than 30,000 square feet (with public sewer and water, 25,000 square feet).

b) Minimum Lot Area: The minimum lot area for all building lots in a Flexible Development in the R-20 District shall not be less than 8,000 square feet; in the R-40 District not less than 12,500 square feet and in the Agricultural District not less than 20,000 square feet.

c) Minimum Frontage: Not less than 80 feet. Lots located on the turnaround of a dead-end street shall have a minimum of fifty (50) feet of street frontage providing a front building line is designated on the Plan for such a lot and the width of the lot at this building line is at least equal to the minimum frontage requirement.

d) Front Yard Setbacks: Front Yards may be staggered to provide a variety in the size of such yards. The minimum average of all front yards shall be twenty (20) feet; however, no front yard shall be less than fifteen (15) feet. The front yard setback shall be measured from the nearest edge of pavement or sidewalk as appropriate.

e) Side Yard Setbacks: Side Yards shall be a minimum of seven (7) feet.

f) Rear Yard Setbacks: Rear Yards shall be a minimum of fifteen (15) feet, except that in no case may a rear yard setback line be within 50 feet of property which is not part of the flexible development. (T.M. 10-17-94)

g) The front, side and rear setback lines shall be shown on the Definitive Subdivision and or Approval Not Required plan.

h) Buffer Areas: All dwellings and structures shall be located a minimum of 50 feet from adjacent tracts of land and adjacent or on site farmland.

i) The portions of the buffer strip between the residential and farmland portions of a Flexible Development may be counted as usable Common Land for Flexible Development purposes, provided such use will not impact adversely on adjacent farming activity and is consistent with Section 5.3.2 of the Bylaw.

j) Accessory Uses: Accessory uses are not allowed in front yards. Accessory uses such as storage sheds and swimming pools can be located within the rear setback. No accessory uses may be located within ten (10) feet of the rear lot line.

5.3.7 Required Amount of Common Land - Not less than 40% in the R-20 District, 40% in the R-40 District, and 50% in the Agricultural District of the total area of the tract of land to be developed as a Flexible Development shall be dedicated as Common Land. The following additional restrictions shall apply:

a) At least 50% of the required amount of Common Land shall be Upland and shall be dedicated and used for a purpose listed in 5.3.11.

b) Up to 50% of the required Common Land may be composed of land classified as bordering vegetated and isolated wetlands, as defined by M.G.L. c. 131 Section 40 or the Town of Grafton Wetlands Bylaw, or areas designated for stormwater management, as long as the proposed uses of this Common Land are found to be consistent with Section 5.3.11. (T.M. 10-17-94)

c) Rights of Way for streets or common drives, and the perimeter separating the development from adjacent properties, shall be excluded from counting as Common Land unless the perimeter land contains land uses consistent with Section 5.3.11 and such uses are approved by the Planning Board. (T.M. 10-17-94)

5.3.8 Major Residential Development Considerations

In evaluating the proposed Major Residential Development the Planning Board shall consider the general objectives of the Bylaw and of Major Residential Development including, but not limited to, the existing and probable future development of surrounding areas; the appropriateness of the proposed layout of the lots and the proposed layout and use of the Common Land in relation to the topography, soils and other characteristics and resources of the tract of land in question. The Planning Board shall grant a FDSP if it finds that the Flexible Development and the proposed uses:

- a) comply in all respects to the requirements of the Bylaw and enhance the purpose and intent of this bylaw.
 - b) are in harmony with the existing and probable future uses of the area and with the character of the surrounding area and neighborhood,
 - c) are on balance more beneficial to the Town than the development likely without such approval,
 - d) comply with the requirements of Section 1.5.5 for granting special permits.
 - e) will be connected to public sewer except in such instances, when in the opinion of the Board of Health, the development can be adequately served by the use of on-site subsurface sewage disposal systems and in furtherance of the purposes of this zoning bylaw and protection of the environment.
- (TM 10-18-99)

5.3.9 Requirements for Major Residential Development

The Planning Board shall review the data required in Section 5.3.4 above, and shall hold a public hearing within 65 days of a complete filing as defined in Section 1.3.3.5 (Plan Acceptance) and comply with the procedures for special permits as required under M.G.L. Chapter 40A, Section 9 and Section 1.5 of the Bylaw. Prior to the close of the public hearing, the Board shall recommend the development plan that it considers the most beneficial to the Town. Within seven days, the Applicant shall then elect which plan he wishes to pursue and communicate this choice in writing to the Board, prior to the close of the public hearing. The Board may approve such plan with or without conditions. The Board shall disapprove both plans only if it determines that either the Conventional Development Plan or the Flexible Development Plan is not a good-faith design, or that the plan the Applicant elects to pursue does not conform to the requirements of the Bylaw.

5.3.10 Procedural Requirements

- 5.3.10.1 When a Major Residential Development Special Permit is approved for a Conventional Development Plan (CDSP) submitted in accordance with Section 5.3.4.b.1 above, all subsequent submissions, requirements and approvals will be specified in the Subdivision Rules, as applicable. No development of land within a Major Residential Development shall occur unless the land is in fact subdivided into lots with each dwelling having a separate lot described on an approved subdivision or approval not required plan.
- 5.3.10.2 When a Major Residential Development Special Permit is approved for a Flexible Development Plan (FDSP) submitted in accordance with Section 5.3.4.b.2-5, all subsequent submissions, requirements and approvals will be governed by the requirements of the Subdivision Rules. If Definitive Subdivision approval is required, the FDSP shall contain a condition that a Definitive Subdivision Plan complying with the Subdivision Rules subsequently submitted to the Planning Board. Where applicable, the provisions of Flexible Development shall supersede any other provisions of the Bylaw and the Subdivision Rules to the contrary. No development of land within a Flexible Development shall occur unless the land is in fact subdivided into lots with each dwelling having a separate lot described on an approved subdivision or approval not required plan.
- 5.3.10.3 The Planning Board may require changes to the "Flexible Development Plan" or Conventional Development Plan and impose additional conditions, safeguards, and limitations as it deems necessary to secure the objectives of the Bylaw.
- 5.3.10.4 Revisions and Amendments of Flexible Development Plans and Conventional Development Plans" - Subsequent to granting of a FDSP or CDSP and approval of a Definitive Plan of subdivision, the Planning Board may permit without initiating a new Special Permit proceeding the relocation of lot lines within the development. Any change in the layout of streets; in the use, ownership and layout of the Common Land; or any other conditions stated in the original Special Permit shall require written approval of the Planning Board. The Planning Board may, upon its determination, require a new Special Permit if it finds that the proposed changes are substantial in nature and of public concern.

5.3.11 Use of the Common Land

The Common Land shall be dedicated and used for conservation, historic preservation and education, outdoor education, recreation, park purposes, agriculture, horticulture, forestry, or for a combination of those uses. No other uses shall be allowed in the Common Land except as provided herein:

- 5.3.11.a) The proposed use of the Common Land shall be specified on a Land Use Plan and appropriate dedications and restrictions in a form satisfactory to the Planning Board shall be recorded in the Worcester District Registry of Deeds. The Planning Board shall have the authority to approve or disapprove particular uses proposed for the Common Land in order to enhance the specific purpose of Flexible Development.
- 5.3.11. b) The Common Land shall remain unbuilt upon, provided that an overall maximum of five (5) percent of such land may be subject to pavement and structures accessory to the dedicated use or uses of the Common Land, and provided that the Common Land may be subject to temporary easements for the construction, maintenance, and repair of roads, utilities serving the Flexible Development, and sewer or drainage facilities serving the Flexible Development or adjacent land.
- 5.3.11. c) The Common Land may be in one or more parcels and shall be reasonable usable for the allowed uses. Access at least forty (40) feet wide shall be provided to each parcel of Common Land from one or more streets in the development and shall be contiguous across proposed rights of way.
- 5.3.11. d) A portion of the Common Land may also be used for the construction of retention and detention facilities and leaching areas, if associated with drainage or septic disposal systems serving the Flexible Development, and if such use, in the opinion of the Planning Board, enhances the specific purpose of Flexible Development to promote better overall site planning. Easements shall be no larger than reasonably necessary and the Planning Board shall require adequate assurances and covenants that such facilities shall be maintained by the lot owners within the Flexible Development.
- 5.3.11. e) A portion of the Common Land may also be used for ways serving as pedestrian walks and bicycle paths, if such a use, in the opinion of the Planning Board, enhances the general purpose of Flexible Development and enhances better site and community planning, and if the Planning Board finds that adequate assurances and covenants exist, to ensure proper maintenance of such

facilities by the owner of the Common Land.

5.3.12 Ownership of the Common Land

The Common Land shall, at the owner's election, be:

5.3.12. a) Conveyed in whole or in part to the Town of Grafton and accepted by it for one of the uses specified in 5.3.11;

5.3.12. b) Conveyed to a nonprofit organization, the principal purpose of which is the conservation of open space and/or any of the purposes and uses to which the Common Land may be dedicated;

5.3.12. c) Conveyed to a corporation or trust to be owned jointly or in common by the owners of lots or dwelling units within the Flexible Development. If such a corporation or trust is utilized, ownership thereof shall pass with conveyances of the lots or dwelling units in perpetuity. Maintenance of the Common Land and facilities shall be permanently guaranteed by such corporation or trust which shall provide for mandatory assessments for maintenance expenses to each lot or residential unit. Each such trust or corporation shall be deemed to have assented to allow the Town of Grafton to perform maintenance of the Common Land and facilities, if the trust or corporation fails to provide adequate maintenance, and shall grant the town an easement over Common Land to do so. In such a case, the Town of Grafton shall first provide fifteen days written notice to the trust or corporation as to the maintenance that is lacking, and, if the trust or corporation fails to complete said work, the Town may perform it. The owner of each lot or residential unit shall be deemed to have assented to the Town filing a lien against each lot or residential unit in the development for the full cost of such maintenance, which liens shall be released upon payment to the Town of same. Each individual deed, as well as the deed of trust or articles of incorporation, shall include provisions to carry these provisions into effect. Documents creating such trust or corporation shall be submitted to the Planning Board for approval and shall be recorded in the Registry of Deeds as a condition of the FDSP.

5.3.12. d) Retained by the owner or other entity for use or lease for one of the purposes specified in 5.3.11 provided that the owner conveys the development rights of that open space in a conservation restriction prohibiting further development of the property. If the Common Land or any portion thereof is not conveyed "to the Town of Grafton, a perpetual conservation restriction conforming to the standards of the State Division of Conservation Services, approved by the Planning Board and enforceable by the Town of Grafton, shall be imposed on the use of such land, providing that the land be kept in its open or natural state and that the land shall not be built upon, developed or used except in accordance with the provisions of the FDSP. Such restrictions shall further provide for maintenance of the Common Land in a manner which will ensure its suitability for its function, appearance, cleanliness and proper maintenance.

The proposed ownership of all the Common Land shall be shown on the Land Use Plan for Flexible Development. At the time of its conveyance, the Common Land shall be free of all encumbrances except as permitted by the Planning Board, or other claims except as to easements, restrictions and encumbrances required by this bylaw.

5.3.13 Design Guidelines

In evaluating the layout of lots and Common Land, the following criteria will be considered by the Planning Board as indicating design appropriate to the natural landscape and meeting the purpose of Flexible Development.

5.3.13. a) Preserve and maintain existing fields, pastures, other land in agricultural use and sufficient buffer areas to minimize conflict between residential and agricultural use. For example, tucking house lots and driveways into wooded areas is recommended.

5.3.13. b) Maintain or create a buffer of natural vegetation of at least 100 feet in width adjacent to surface waters and wetlands.

5.3.13. c) Leave unblocked or uninterrupted scenic views and vistas, particularly as seen from public roads, special places as designated in the Town of Grafton Open Space and Recreation Plan, or scenic roads. For example, a 100 foot deep "no build buffer" is recommended to screen homes from the street (and vice versa).

5.3.13. d) Protect the habitat areas of species listed as endangered, threatened or of special concern by the Massachusetts Natural Heritage Program.

5.3.13. e) Preserve historic and prehistoric sites and their environs in so far as needed to protect the character of the site.

5.3.13. f) The elements of the Flexible Development Plan (buildings, circulation, Common Land, landscaping, etc.) are arranged favorably with and so as to protect valuable natural environments such as stream valleys, outstanding vegetation, water bodies or scenic views.

5.3.13. g) Protection of major street appearance and capacity by avoiding development fronting such streets while contributing to the overall aesthetic quality of the development.

5.3.13. h) Landscaping screens areas of low visual interest such as utility boxes, trash containers, and parking areas, and treats pedestrian systems and open space areas in a manner which contributes to their use and visual appearance.

5.3.13. i) Active recreational areas are suitably located and accessible to the residential units and adequate screening ensures privacy and quiet for neighboring residents. Where called for in the Town of Grafton Open Space and Recreation Plan and where warranted by the criteria established in that plan, and where feasible on a site, a large playing field is to be provided for recreational use.

5.3.13. j) The pedestrian circulation system is designed to assure that pedestrians can move safely and easily on the site and between properties and activities within the site and neighborhood.

5.3.13. k) The Common Land shall be reasonably contiguous, coherent and if the tract of land abuts adjacent Common Land or other permanently protected open space, the Common Land shall be connected with such adjacent Common Land and with such permanently protected open space.

5.3.13. l) Access to the Common Land shall be delineated by the use of design elements such as stone walls, woodland paths surfaced with bark mulch, etc.

5.3.13. m) Provisions for affordable housing, as defined by M. G. L. Chapter 40B, Sections 20 through 23 inclusive, comprising at least 10% of the total number of dwelling units in the project and interspersed throughout the development, and in a manner and through instruments satisfactory to the Planning Board. (T.M. 10-17-94)

5.3.14 Ways, Interior Streets, and Utilities

The construction of all ways, interior streets and utilities shall be in accordance with the standards specified in the Subdivision Rules. The Planning Board is strongly encouraged to

waive those sections of the Subdivision Rules in the interests of good design if it determines that adequate access will be provided to all lots in the development by ways that will be safe and convenient for travel. While each development proposal is unique the Planning Board is encouraged to waive standards for cartway width (5.2.2.1), curbing (4.2, 5.7.3), Right of Way (4.1.4.1), Dead End Streets (4.1.6), Sidewalks (4.1.4.3), Drainage (4.7.9.2), Common Driveway (4.12 and 5.14) and to use a 25 mile per hour Design Speed to establish engineering criteria for minimum grade (4.1.5.1), maximum grade (4.1.5.2), minimum tangent length between reverse curves (4.1.3.3) and maximum grade within 50 feet of an intersection (4.1.5.6). (T.M.5-13-91)

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board 5.3 Major Residential Development

5.3.0 General

Major Residential Development shall be permitted in the residential districts (R-20, R-40, Agricultural, RMF) only upon issuance of a Special Permit from the Planning Board, as specified in Sections 1.3.3, 1.5 and 3.2.3.1 of this Bylaw, and in accordance with the additional requirements specified herein. (TM 10-18-99)

Has any housing been built under the cluster/flexible provisions?

Yes Town Planner Wayne Nicholas (11/04) said that the results of their flexible zoning have been "mixed." He said that they have had a few clusters and that the town benefitted in one case from a "big chunk" of land that was left as open space for the public. He said that the permit process that is required for a major residential development (more than 5) means that some of the developers like to stay under 5 units. He said that water and sewer regulations limit cluster zoning in areas where lot requirements have to be bigger to accommodate their own water and sewage disposal.

Groton

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Town of Groton Zoning Bylaw, Chapter 218 (Adopted and Amended 1987)

~218-26. Open space residential development. [Amended 4-30-1988 STM, Art. 6; 4-29-1989 ATM, Art. 36; 10-15-1990 STM, Art. 1]

A. Purpose. The purpose of this section is to encourage the preservation of open land for its scenic beauty and to enhance agricultural, open space, forestry and recreational use; to protect the natural environment; to protect the value of real property; to promote more sensitive siting of buildings and better overall site planning; to perpetuate the appearance of Groton's traditional New England landscape; to facilitate the construction and maintenance of streets, utilities and public services in a more economical and efficient manner; and to promote the development of housing affordable to low- and moderate-income families.

B. Applicability. Any creation of lots, whether a subdivision or not, from a parcel or contiguous parcels held in common

ownership in existence as of October 15, 1990, may proceed under this section pursuant to issuance of a special permit by the Planning Board. No parcel created after October 15, 1990, pursuant to endorsement under MGL C. 41, ~ 81P (Plan Not Requiring Approval Under the Subdivision Control Law) or MGL C. 41, ~ 81U (Definitive Plan) shall be eligible for open space residential development, unless the Planning Board determines that the development upon said parcel(s) does not substantially derogate from the purposes of Subsection A. Owners of contiguous parcels may submit joint applications for open space residential development, provided that the parcels were created before October 15, 1990, or provided that such parcels are deemed suitable for open space residential development as set forth above. Such special permits shall be acted upon in accordance with the following provisions.

C. Basic number of units. The basic number of units allowed on any parcel shall be equivalent to the number of lots into which the parcel could be divided under normally applicable zoning and subdivision regulations. These provisions shall apply to all parcels of all sizes in the Residential-Agricultural (R-A) District.

(1) Computation of units. The basic number of units shall be determined by the number of lots shown on a preliminary subdivision plan conforming to the requirements of Chapter 346, Subdivision of Land, adopted by the Planning Board. Such preliminary plan shall include a perimeter survey prepared by a registered land surveyor, location of wetlands delineated by a botanist and topography based upon the most recent United States Geological Survey map. The applicant shall demonstrate to the satisfaction of the Board and its consulting engineer that the preliminary plan is buildable without reliance on waivers of the subdivision regulations and without extraordinary engineering techniques. The Planning Board determination of the basic number of units shall be conclusive for all purposes.

(2) Documentation. All lots to be developed under the provisions of this section shall be shown on a recorded plan stating that this section applies. A notation shall be placed on the plan indicating that no additional dwelling units are to be constructed on the parcel in excess of the number of units allowed in the special permit and that no additional building lots are to be created through future land division of such developed lots.

D. Open space. The proposed open land, unless conveyed to the Conservation Commission in the name of the Town of Groton, shall be made subject to a permanent conservation restriction held by the town pursuant to MGL C. 184, to ~ 31 to 33, provided that such land shall be retained in its natural, scenic and open condition; in agricultural, farming or forest use; or to permit public recreational use. Any proposed open land shall be served by suitable access for the purposes of agricultural cultivation, forest management or recreational use.

E. Procedures. Applicants for open space residential development shall file with the Planning Board 10 copies of the following. The required submittals, unless waived by the Planning Board because of the simplicity of the application, shall be in addition to any other requirements of the Subdivision Control Law[15] or any other provisions of this chapter.

F. Modification of lot requirements. Any reduction of lot size below 80,000 square feet shall be predicated upon a finding by the Planning Board that such reduction will better promote the objectives set forth in Subsection A than construction on eighty-thousand-square-foot lots. Such a finding shall not be deemed conclusive that the proposal is entitled to a special permit approval pursuant to Subsection H herein.

(1) [Amended 10-6-1994 STM, Art. 16] Flexible development. Any parcel may be divided into lots and such lots may be built upon for a single-family or permitted accessory use under the following alternative requirements rather than those otherwise applicable. The lots or lot created under the provisions of ~ 218-26F(1)(f), Affordable housing requirements, may be built upon for single-family, two-family (duplex) or three-family (triplex) and permitted accessory use:

(a) Lot frontage. The minimum frontage of any lot shall not be less than 100 feet. Lots having reduced area or frontage shall have frontage on the subdivision road and not on an existing street.

(b) Individual lot area. The minimum area of any individual lot shall not be less than 40,000 square feet.

(c) Lot shape. Lots created under these circumstances must be so shaped that they can contain a circle of one-hundred-fifty-foot diameter within which there is no area subject to protection under the Wetlands Protection Act, MGL C. 131, ~ 40, and within which any principal building shall be located.

(d) Setbacks. No principal structure shall be located within 100 feet of an existing street. A buffer of a minimum of 50 feet from the existing street shall be left in its natural state or suitably landscaped to provide adequate screening.

(e) Mandatory open space. A minimum of 25% of the total area of the parcel being developed shall be preserved as open land in accordance with Subsection D, Open space, for all parcels exceeding 20 acres. Land restricted under this provision does not qualify as incentive lots under Subsection F(1)(g) below or under Subsection G, Transfers.

(f) Affordable housing requirements. For every 10 lots created under the provisions of this subsection, one additional lot, located within the development, shall be made available for a minimum of 30 years via sale, lease or deed restrictions at terms affordable to persons or families qualifying as low or moderate income as defined by the Executive Office of Communities and Development of the commonwealth. Such additional lot shall not count toward the calculation of the basic number of units nor shall such lot count as an incentive lot below. Such lots shall be subject to the approval of the Planning Board and the Board of Health. In lieu of providing the affordable lots, the applicant may negotiate an agreed-upon payment equal to 1.5 times the fair-market value of the applicable number of such lots with the Planning Board in consultation with the Groton Housing Authority. Such lots or lot may contain a single-family, a duplex or a triplex to be agreed upon by the Planning Board and the applicant when the special permit is granted. [Amended 10-6-1994 STM, Art. 16; 4-24-2000 ATM, Art. 36]

(g) Incentive lots. The number of lots may be increased over the basic number of units determined in Subsection C, up to a limit of twenty-percent increase, by utilization of incentive lots created under Subsection G, Transfers.

(2) Cluster development. Any parcel may be divided into lots and such lots may be built upon for residential or permitted accessory use under the following alternative requirements. The Planning Board may authorize modification of lot size, shape, frontage, setbacks and other bulk requirements for lots within an open space residential development, subject to the following limitations:

(a) Lot frontage. The minimum frontage of any lot shall not be less than 100 feet. Lots having reduced area or frontage shall

have frontage on the subdivision road and not on an existing street.

(b) Lot area. The minimum area of any lot shall be not less than 30,000 square feet for the first dwelling unit plus 15,000 square feet for each additional dwelling unit, whether attached or detached, on the lot. More than one dwelling unit may be located on a lot.

(c) Access. All within the open space residential-development providing access must be constructed in conformance with Chapter 346, Subdivision of Land, adopted by the Planning Board. A shared driveway shall serve no more than 10 dwelling units. The center lines of such shared driveways must be separated by not less than 200 feet.

(d) Design of development. Cluster developments shall be designed to promote the sensitive siting of buildings and to preserve the appearance of Groton's scenic landscape.

[1] Dwelling units. Not more than four dwelling units shall be contained in a single structure. No fewer than 50% of the total dwelling units shall be detached single-family unless, in the opinion of the Planning Board, the size and topography of the parcel warrants waiving this percentage.

[2] Setbacks. No principal structure shall be located within 100 feet of an existing street or within 75 feet of the property lines of the parcel to be developed. A buffer of a minimum of 50 feet from an existing street and from the property lines of the parcel shall be left in its natural state or suitably landscaped to provide adequate screening.

[3] Parking areas for multifamily structures. Each multifamily structure shall be served by a parking area which shall be screened from public ways by building location, grading, fencing or plantings. Such parking area(s) shall contain a total of two spaces per dwelling unit in the structure plus two additional spaces, unless waived by the Planning Board.

[4] Building height. No structure shall exceed 35 feet in height or 2 1/2 stories, whichever is less.

(e) Mandatory open space. All wetland areas as defined in the Wetlands Protection Act, MGL c. 131, ~ 40, but excluding wetland area within the road right-of-way as depicted on the development plan, and a minimum of 35% of the total upland area of the parcel shall be preserved as open land in accordance with Subsection D, Open space.

(f) Affordable housing requirements. For every 10 dwelling units proposed under the provisions of this subsection, one additional unit, within the development, shall be made available for a minimum of 30 years via sale, lease or deed restrictions at terms affordable to persons or families qualifying as low or moderate income as defined by the Executive Office of Communities and Development of the commonwealth. Such additional unit shall not count toward the calculation of the basic number of units. Such units shall be subject to the approval of the Planning Board and the Board of Health. In lieu of providing the affordable units, the applicant may negotiate an agreed-upon payment equal to 1.5 times the fair-market value of the applicable number of such units with the Planning Board in consultation with the Groton Housing Authority. [Amended 10-6-1994 STM, Art. 16; 4-24-2000 ATM, Art. 36]

G. Transfers. By agreement of its owner, land may be used to establish incentive lots at a rate of one incentive lot per 80,000 square feet whether or not contiguous with or in the same ownership as the premises being developed, but only as follows:

(1) Such land must be determined by the Planning Board to be of special importance to remain in a natural state because of its visual prominence or potential vista blockage, because of its ecological significance and fragility, because it has special importance as farmland, because of its value for recreation or for future town water supply, or because it is important to the town's open space plan.

(2) The credited land must not be wetlands (as defined in MGL C. 131 ~ 40) or be used to satisfy lot area requirements for any other development.

(3) The land being developed must not itself have the qualities specified under Subsection G(1) above or be within a Primary Water Resource District, except in instances where such incentive lots are to be utilized solely for the purpose of accelerating growth pursuant to ~ 218-28A(2).

(4) Prior to building permit issuance, such land shall be made subject to a permanent conservation restriction in accordance with Subsection D, Open space.

H. Decision.

(1) The Planning Board may approve, approve with conditions or deny an application for an open space residential development in accordance with ~ 218-32.1 of this chapter (governing special permits) and upon a finding that such open space residential development better promotes the objectives set forth in Subsection A than would development under otherwise applicable rules.

(2) After a special permit for open space residential development has been granted by the Planning Board, an application may be filed for approval of a definitive subdivision plan based upon the special permit approval and conditions and following the normal procedures specified in Chapter 346, Subdivision of Land, for definitive plans.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board According to the table of use regulations:

Flexible development or cluster development is allowed by special permit by the planning board in R-B.

Town of Groton Zoning Bylaw, Chapter 218 (Adopted and Amended 1987)

Has any housing been built under the cluster/flexible provisions?

Yes According to Michelle Collette, Planning Administrator, the cluster and flexible provisions have been in the Zoning Bylaw since 1980, and about 90% of Groton's development has been implemented through flexible and cluster zoning. (10/04)

Groveland

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Groveland Zoning Bylaw (Adopted 1996)

SECTION 500 CONSERVATION SUBDIVISION DESIGN BYLAW (CSD)
SECTION 700. PLANNED UNIT DEVELOPMENT

SECTION 300. RESIDENTIAL DISTRICT USES

301.30. R-A, R-B, and R-C Residential District uses requiring special permits for which the planning board is designated as the special permit granting authority.

301.30.1. Cluster developments for single-family dwellings. Refer to Section 500 for specifications and procedures. Deleted April 26, 1993

APPENDIX B. DEFINITIONS

PLANNED UNIT DEVELOPMENT . Land used for dwellings (single, multiple or apartments) having reduced area or frontage or both, subject to a variance issued by the board of appeals in accordance with the provisions of Section 700 of the Zoning By-laws.

SECTION 500 CONSERVATION SUBDIVISION DESIGN BYLAW (CSD)

****Webmasters Note:** The previous Section has been amended as per an update approved at a town meeting held on 4/29/02.

SECTION 700. PLANNED UNIT DEVELOPMENT

****Webmasters Note:** The previous subsection has been amended as per an ordinance approved at a town meeting held on 4/30/01.

SECTION 500 CONSERVATION SUBDIVISION DESIGN BYLAW (CSD)

I. PURPOSE AND INTENT

The Primary Purposes for CSD are the following:

- a) To allow for greater flexibility and creativity in the design of residential developments;
 - b) To encourage the permanent preservation of open space, agricultural land, forestry land, wildlife habitat, other natural resources including aquifers, water bodies and wetlands, and historical and archeological resources in a manner that is consistent with a municipality's master and open space plan, if any;
 - c) To encourage a less sprawling and more efficient form of development that consumes less open land and conforms to existing topography and natural features better than a conventional or grid subdivision;
 - d) To minimize the total amount of disturbance on the site;
 - e) To further the goals and policies of the master and open space plans;
- To facilitate the construction and maintenance of housing, streets, utilities, and public service in a more economical and efficient manner.

2. The Secondary Purposes for CSD are the following:

- a) To preserve and enhance the community character;
- b) To preserve and protect agriculturally significant land;
- c) To protect the value of real property;
- d) To protect community water supplies;
- e) To provide for a diversified housing stock;
- f) To provide affordable housing to persons of low and moderate income.

II. ELIGIBILITY

1. Minimum Size of Tract. To be eligible for consideration as a CSD, the tract shall contain a minimum of five (5) acres.

2. Zoning Classification. Only those tracts Located within the Residential Districts RA & R-B shall be eligible for consideration as a CSD.

3. Contiguous Parcels. To be eligible for consideration as a CSD, the tract shall consist of a parcel or set of contiguous parcels.

4. Land Division. To be eligible for consideration as a CSD, the tract may be a subdivision or a division of land pursuant to G.L. c. 41, s. 81P, provided, however, that CSD may also be permitted where intended as a condominium on land not so divided or subdivided.

III. SPECIAL PERMIT REQUIRED

The Planning Board may authorize a CSD pursuant to the grant of a special permit. Such special permits shall be acted upon in

accordance with the following provisions:

IV. PRE-APPLICATION

1. Conference. The applicant is very strongly encouraged to request a pre-application review at a regular business meeting of the Planning Board. If one is requested, the Planning Board shall invite the Conservation Commission, Board of Health, Road Commissioner, Water and Sewer Board, Fire Department, Police Department, and Municipal Light Department. The purpose of a pre-application review is to minimize the applicant's costs of engineering and other technical experts, and to commence negotiations with the Planning Board at the earliest possible stage in the development. At the pre-application review, the applicant may outline the proposed CSD, seek preliminary feedback from the Planning Board and/or its technical experts, and set a timetable for submittal of a formal application. At the request of the applicant, and at the expense of the applicant, the Planning Board may engage technical experts to review the informal plans of the applicant and to facilitate submittal of a formal application for a CSD special permit.

2. Submittals. In order to facilitate review of the CSD at the pre-application stage, applicants are strongly encouraged to submit the following information:

A. Site Context Map. This map illustrates the parcel in connection to its surrounding neighborhood. Based upon existing data sources and field inspections, it should show various kinds of major natural resource areas or features that cross parcel lines or that are located on adjoining lands. This map enables the Planning Board to understand the site in relation to what is occurring on adjacent properties.

B. Existing Conditions/Site Analysis Map. This map familiarizes officials with existing conditions on the property. Based upon existing data sources and field inspections, this base map locates and describes noteworthy resources that should be left protected through sensitive subdivision layouts. These resources include wetlands, riverfront areas, floodplains and steep slopes, but may also include mature un-degraded woodlands, hedgerows, farmland, unique or special wildlife habitats, historic or cultural features (such as old structures or stone walls), unusual geologic formations and scenic views into and out from the property. By overlaying this plan onto a development plan the parties involved can clearly see where conservation priorities and desired development overlap/conflict.

C. Other Information. In addition, applicants are invited to submit the information set forth in Section VI. I in a form acceptable to the Planning Board.

3. Site Visit. Applicants are encouraged to request a site visit by the Planning Board and/or its agents in order to facilitate pre-application review of the SCD. If one is requested, the Planning Board shall invite the Conservation Commission, Board of Health, Road Commissioner, Water & Sewer Board, Fire Department, Police Department, and Municipal Light Department.

4. Design Criteria. The design process and criteria set forth below in Section V should be discussed by the parties at the pre-application conference and site visit.

V. DESIGN PROCESS

At the time of the application for a special permit CSD in conformance with Section VI.1, applicants are required to demonstrate to the Planning Board that the following Design Process was performed by a certified Landscape Architect and a Certified Professional Engineer and considered in determining the layout of proposed streets, house lots and open space.

1. Step One: Identifying Conservation Areas. Identifying preservation land by two steps. First, Primary conservation Areas (such as wetlands, riverfront areas, and floodplains regulated by state or federal law) and Secondary Conservation Areas (including unprotected elements of the natural landscape such as steep slopes, mature woodlands, prime farmland, meadows, wildlife habitats and cultural features such as historic and archeological sites and scenic views) shall be identified and delineated. Second, the Potentially Developable Area will be identified and delineated. To the maximum extent feasible, the Potentially Developable Area shall consist of land outside identified Primary and Secondary Conservation Areas.

2. Step Two: Locating House Sites. Locate the approximate sites of individual houses within the Potentially Developable Area and include the delineation of private yards and shared amenities, so as to reflect an integrated community, with emphasis on consistency with the Town's historical development patterns. The number of homes enjoying the amenities of the development should be maximized. □

3. Step Three: Aligning the Streets and Trails: Align streets in order to access the house lots. Additionally, new trails should be laid out to create internal and external connections to existing and/or potential future streets, sidewalks, and trails.

4. Step Four: Lot Lines: Draw in the lot lines, unless the CSD is utilizing Condominium Ownership.

VI. APPLICATION PROCESS

1. Application

An application for a special permit for a CSD shall be submitted on the form(s) provided by the Planning Board in accordance with the rules and regulations of the Board. Applicants for CSD shall also file with the Planning Board eight (8) copies of the following: Concept Plan

The Concept Plan shall include a Sketch Plan and a Yield Plan (see section VII). The applicant shall submit both the Site Context Map and Existing Conditions/Site Analysis Map prepared according to Section IV.2 above. Additional information reasonably necessary to make the determinations and assessments cited herein shall be provided, including existing site contour maps and existing current soil maps.

A. Sketch Plan. The Sketch Plan shall be prepared by a certified Landscape Architect, or by a multi-disciplinary team of which one member must be a certified Landscape Architect, and shall address the general features of the land, and give approximate configurations of the lots, open space, and roadways. The Sketch Plan shall incorporate the Four-Step Design Process, according to Section V above, and the Design Standards according to Section X below, when determining a proposed design for the development.

(1) Quality Standards

The conceptual plan shall be drawn at a scale of one hundred feet (100') to the inch or such other scale as the Board may accept. The plan shall be designated as a "conceptual plan".

(2) Required Content.

The Sketch Plan shall include the following:

a. The subdivision name, boundaries, north point, date, legend, title "Concept Plan," and scale.

b. The names of the record owner and the applicant, and the name of the Landscape Architect that prepared the plan.

c. The names, approximate location, and widths of adjacent streets.

- d. The proposed topography of land shown at a contour interval no greater than ten (10) feet. Elevations shall be referred to mean sea level.
- e. The location of existing landscape features including forests, farm fields, meadows, wetlands, riverfront areas, water bodies, archeological and historic structures or points of interest, rock outcrops, boulder fields, stone walls, cliffs, high points, major long views, forest glades, major tree groupings, noteworthy tree specimens, and habitats of endangered or threatened wildlife, as identified as primary and secondary resources according to Section V.1. Proposals for all site features to be preserved, demolished, or moved shall be noted on the Sketch Plan.
- f. All on-site local, state, and federal regulatory resource boundaries and buffer zones shall be clearly identified and all wetland flag locations shall be numbered and placed upon the Sketch Plan.
- g. Lines showing proposed private residential lots, as located during Step-Four, Section V.4, with approximate areas and frontage dimensions.
- h. All existing and proposed features and amenities including trails, recreation areas, pedestrian and bicycle paths, communities buildings, off-street parking areas, etc., shall be shown on the plan and described in a brief narrative explanation where appropriate.
- i. The existing and proposed lines of streets, ways, common driveways, easements and any parcel of land intended to be dedicated for public use or to be reserved by deed covenant for use of all property owners in the subdivision, or parcels of land or lots to be used for any purpose other than private residential shall be so designated within the subdivision in a general manner.
- j. Proposed roadway grades
- k. Official soil percolation tests for the purpose of siting wastewater treatment options are not required for the Concept Plan. However, a narrative explanation shall be prepared by a certified Professional Engineer detailing the proposed wastewater systems that will be utilized by the development and its likely impacts onsite and to any abutting parcels of land. For example, the narrative will specify whether individual on-site or off-site systems, shared systems, alternative to Title V systems, or any combination of these or other methods will be utilized.
- l. A narrative explanation prepared by a certified Professional Engineer proposing systems for storm water drainage and its likely impacts on-site and to any abutting parcels of land. For example, the narrative will specify whether non-structural or structural engineering methods will be used and the number of any detention/retention basins or infiltrating catch basins, it is not intended to include specific pipe sizes. Any information needed to justify this proposal should be included in the narrative. The approximate location of any storm water management detention/retention basins shall be shown on the plan and accompanied by a conceptual landscaping plan.
- m. A narrative explanation prepared by a certified Professional Engineer, detailing the proposed drinking water supply system.
- n. A narrative explanation of the proposed quality, quantity, use and ownership of the open space. Open space parcels shall be clearly shown on the plan.
- o. All proposed landscaped and buffer areas shall be noted on the plan and generally explained in a narrative
- p. A list of all legal documents necessary for implementation of the proposed development, including any Conservation Restrictions, land transfers, and Master Deeds, with an accompanying narrative explaining their general purpose.
- q. A narrative indicating all requested waivers, reductions, and/or modifications as permitted within the requirements of this bylaw.
- r. If the municipal sewer system is to be used a narrative explanation prepared by a certified Professional Engineer, detailing the proposed sewer extension system shall be submitted.
- B. Yield Plan. Applicant shall submit a narrative explanation detailing the results of the determination of any proposed allocation of yield determined according to Section VII, Basic Maximum Number (of lots/units/bedrooms).
- C. Relationship between Concept Plan and Definitive Subdivision Plan. The Concept Plan special permit shall be reconsidered if there is substantial variation between the Definitive Subdivision Plan and the Concept Plan. If the Planning Board finds that a substantial variation exists, it shall hold a public hearing on the modifications to the Concept Plan. A substantial variation shall be any of the following:
 - (1). an increase in the number of building lots;
 - (2). a significant decrease in the open space acreage;
 - (3). a significant change in the lot layout;
 - (4). a significant change in the general development pattern which adversely affects natural landscape features and open space preservation;
 - (5). significant changes to the storm water management facilities; and/or
 - (6). significant changes in the wastewater management systems;
 - (7). significant changes in the wetlands and/or wildlife habitat resource areas.□

2. Procedures

Whenever an application for a CSD special permit is filed with the Planning Board, the applicant shall also file within five (5) working days of the filing of the completed application, copies of the application accompanying the development plan, and other documentation, to the Board of Health, Conservation Commission, Building Inspector, Department of Public Works, Water and Sewer Department, Police Chief, Fire Chief, Town Engineer and/or Consultant, Board of Selectmen, Road Agent, and Municipal Light Department for their consideration, review and report. The applicant shall furnish the copies necessary to fulfill this requirement. Reports from other boards and officials shall be submitted to the Planning Board within thirty-five (35) days of receipt of the reviewing party of all the required materials; failure of these reviewing parties to make recommendations after having received copies of all such required materials shall be deemed a lack of opposition thereto. In the event that the public hearing by the Planning Board is held prior to the expiration of the 35-day period, the Planning Board shall continue the public hearing to permit the formal submissions of reports and recommendations within that 35-day period. The Decision/Findings of the Planning Board shall contain, in writing, an explanation for any departures from the recommendations of any reviewing party.

3. Site Visit. Whether or not conducted during the pre-application stage, the Planning Board shall conduct a site visit during the public hearing. At the site visit, the Planning Board and/or its agents shall be accompanied by the applicant and/or its agents.

4. Other Information.

The submittals and permits of this section shall be in addition to any other requirements of the Subdivision Control Law or any other provisions of this Zoning Bylaw. To the extent permitted by law, the Planning Board shall coordinate the public hearing required for any application for a special permit for a CSD with the public hearing required for approval of a definitive subdivision plan.

VII. BASIC MAXIMUM NUMBER (OF LOTS/UNITS/BEDROOMS)

The Basic Maximum Number shall be derived from a Yield Plan. The Yield Plan shall show the maximum number of lots (or dwelling units) that could be placed upon the site under a conventional subdivision. The Yield Plan shall contain the information required for a Sketch Plan, as set forth above in Section VI. The proponent shall have the burden of proof with regard to the Basic Maximum Number of lots (or dwelling units) resulting from the design and engineering specifications shown on the Yield Plan.

VIII. REDUCTION OF DIMENSIONAL REQUIREMENTS

The Planning Board may authorize modification of lot size, shape, and other bulk requirements for lots within a CSD, subject to the following limitations:

1. Lots having reduced area or frontage shall not have frontage on a street other than a street created by a subdivision involved, provided, however, that the Planning Board may waive this requirement where it is determined that such reduced lot(s) are consistent with existing development patterns in the neighborhood.□
2. Lot frontage shall not be less than 50 feet. The Planning Board may waive this requirement where it is determined that such reduced frontage will further the goals by this bylaw.
3. Each lot shall have at least 2/3 of the required setbacks for the district unless a reduction is otherwise authorized by the Planning Board.
4. Lots may be reduced in area according to the following schedule 3:

IX. OPEN SPACE REQUIREMENTS

1. Open Space. A minimum of fifty percent (50%) of the tract shown on the development plan shall be open space. Any proposed open space, unless conveyed to the Town or its Conservation Commission, shall be subject to a recorded restriction enforceable by the Town, providing that such land shall be perpetually kept in an open state, that it shall be preserved exclusively for the purposes set forth herein, and that it shall be maintained in a manner which will ensure its suitability for its intended purposes.

A. The percentage of the open space that is wetlands shall not normally exceed the percentage of the tract, which is wetlands; provided, however, that the applicant may include a greater percentage of wetlands in such open space upon a demonstration that such inclusion promotes the purposes of this bylaw.

B. The open space shall be contiguous. Contiguous shall be defined as being connected. Open Space will still be considered connected if it is separated by a roadway or an accessory amenity. The Planning Board may waive this requirement for all or part of the required open space where it is determined that allowing non-contiguous open space will promote the goals of this bylaw and/or protect identified primary and secondary conservation areas.

C. The open space shall be used for wildlife habitat and conservation and the following additional purposes : historic preservation, education, outdoor education, recreation, park purposes, agriculture, horticulture, forestry, a combination of these uses, and shall be served by suitable access for such purposes. The Planning Board may permit up to 10% of the open space to be paved or built upon for structures accessory to the dedicated use or uses of such open space (i.e., pedestrian walks and bike paths).

D. Wastewater and storm water management systems serving the CSD may be located within the open space. Surface systems, such as retention and detention ponds, shall not qualify towards the minimum open space required.

2. Ownership of the Open Space. The open space shall be conveyed to:

- (a). the Town or its Conservation Commission;
- (b). a nonprofit organization, the principal purpose of which is the conservation of open space and any of the purposes for such open space set forth above; or
- (c). a corporation or trust owned jointly or in common by the owners of lots within the CSD. If such corporation or trust is utilized, ownership thereof shall pass with conveyance of the lots in perpetuity. Maintenance of such open space and facilities shall be permanently guaranteed by such corporation or trust, which shall provide for mandatory assessments for maintenance expenses to each lot. Each such trust or corporation shall be deemed to have assented to allow the Town to perform maintenance of such open space and facilities, if the trust or corporation fails to provide adequate maintenance, and shall grant the town an easement for this purpose. In such event, the town shall first provide fourteen (14) days written notice to the trust or corporation as to the inadequate maintenance, and, if the trust or corporation fails to complete such maintenance, the town may perform it. Each individual deed, and the deed or trust or articles of incorporation, shall include provisions designed to effect these provisions. Documents creating such trust or corporation shall be submitted to the Planning Board for approval, and shall thereafter be recorded.

X. DESIGN STANDARDS

The following Generic and Site Specific Design Standards shall apply to all CSD's and shall govern the development and design process:

Generic Design Standards

(a) The landscape shall be preserved in its natural state, insofar as practicable, by minimizing tree and soil removal. Any grade changes shall be in keeping with the general appearance of the neighboring developed areas. The orientation of individual building sites shall be such as to maintain maximum natural topography and cover. Topography, tree cover, and natural drainage ways shall be treated as fixed determinants of road and to configuration rather than as malleable elements that can be changed to follow a preferred development scheme.

(b) Streets shall be designed and located in such a manner as to maintain and preserve natural topography, significant landmarks, and trees; to minimize cut and fill; and to preserve and enhance views and vistas on or off the subject parcel.

(c) Mixed-use development shall be related harmoniously to the terrain and the use, scale, and architecture of existing buildings in the vicinity that have functional or visual relationship to the proposed buildings. Proposed buildings shall be related to their surroundings

(d) All open space (landscaped and usable) shall be designed to add to the visual amenities of the area by maximizing its visibility for persons passing the site or overlooking it from nearby properties.

(e) The removal or disruption of historic, traditional or significant uses, structures, or architectural elements shall be minimized insofar as practicable, whether these exist on the site or on adjacent properties.

2. Site Specific Design Standards

(a) Mix of Housing Types. The CSD may consist of any combination of single family, two-family and multifamily residential structures. A multifamily structure shall not contain more than four (4) dwelling units. Residential structures shall be oriented toward the street serving the premises and not the required parking area.

(b) Buffer Areas. A buffer area of twenty-five (25) feet may be provided at the following locations: (a) perimeter of the property where it abuts residentially zoned and occupied properties; (b) certain resource areas on or adjacent to the tract like ponds, wetlands,

streams and riverfront areas, rock outcrops, ledge, agricultural or recreational fields, and land held for conservation purposes; and (c) existing public ways. Driveways necessary for access and egress to and from the tract may cross such buffer areas. No vegetation in this buffer area will be disrobed, destroyed or removed, except for normal maintenance of structures and landscapes approved as part of the project. The Planning Board may waive the buffer requirement in these locations when it determines that a smaller buffer (or no buffer) will suffice to accomplish the objectives set forth herein.

(d) Drainage. The Planning Board shall encourage the use of "soft" (non-structural) storm water management techniques (such as swales) and other drainage techniques that reduce impervious surface and enable infiltration where appropriate.

(e) Common/Shared Driveways. A common or shared driveway may serve a maximum number of three (3) single-family units.

(f) Screening and Landscaping. All structural surface storm water management facilities shall be accompanied by a conceptual landscape plan.

(g) On-Site Pedestrian and Bicycle Circulation. Walkways and bicycle paths shall be provided to link residences with parking areas, recreation facilities (including parkland and open space) and adjacent land uses where appropriate.

(h) Disturbed Areas. Not more than twenty five (25) % of the total tract shall be disturbed areas. A disturbed area is any land not left in its natural vegetated state.

XI. DECISION OF THE PLANNING BOARD

The Planning Board may grant a special permit for a CSD if it determines that the proposed CSD has less detrimental impact on the tract than a conventional development proposed for the tract, after considering the following factors;

1. Whether CSD achieves greater flexibility and creativity in the design of residential developments than a conventional plan; .
2. Whether the CSD promotes permanent preservation of open space, agricultural land, forestry land, other natural resources including water bodies and wetlands, and historical and archeological resources;.
3. Whether the CSD promotes a less sprawling and more efficient form of development that consumes less open land and conforms to existing topography and natural features better than a conventional subdivision;
4. Whether the CSD reduces the total amount of disturbance on the site;
5. Whether the CSD furthers the goals and policies of the [choose] open space and master plan(s);
6. Whether the CSD facilitates the construction and maintenance of streets, utilities, and public service in a more economical and efficient manner
7. Whether the Concept Plan and its supporting narrative documentation complies with all sections of this zoning bylaw.

XII. INCREASE IN PERMISSIBLE DENSITY

The Planning Board may award a density bonus to increase the number of dwelling units beyond the Basic Maximum Number. The density bonus for the CSD shall not, in the aggregate, exceed thirty percent (30)% of the Basic Maximum Number. Computations shall be rounded to the lowest number. A density bonus may be awarded in the following circumstances:□

1. For each additional ten percent (10%) of the site (over and above the required 50%) set aside as open space, a bonus of five percent (5%) of the Basic Maximum Number may be awarded; provided, however, that this density bonus shall not exceed ten percent (10%) of the Basic Maximum Number.
2. For every two (2) dwelling units permanently restricted to occupancy by persons over the age of fifty-five, by a recorded restriction enforceable by the Town, one (1) dwelling unit may be added as a density bonus; provided, however, that this density bonus shall not exceed 10% of the Basic Maximum Number.□
3. For every two (2) dwelling units permanently restricted to occupancy by persons or families who qualify as low or moderate income, as those terms are defined for the area by the Commonwealth's Department of Housing and Community Development, by a recorded restriction enforceable by the Town, one (1) dwelling unit may be added as a density bonus; provided, however, that this density bonus shall not exceed 10% of the Basic Maximum Number.

****Webmasters Note:** The previous Section has been amended as per an update approved at a town meeting held on 4/29/02.

SECTION 700. PLANNED UNIT DEVELOPMENT

701. Purpose.

701.1. These are specifications and procedures only. The specifications and procedures shall apply in zoning districts, if any, allowing such special permit. For the purpose of the planned unit development By-law, the planning board is designated as the special permit granting authority.

701.2. Any planned unit development of four (4) living units or more shall be governed by this regulation in order to protect and promote the health, safety, convenience and general welfare of the inhabitants of the town.

702. General.□

702.1. Work on a planned unit development shall not begin until twenty (20) days have elapsed after the granting of a special permit by the planning board after a public hearing.

702.2. The planning board's public hearing shall be held within sixty-five (65) days after the filing of one (1) application and one (1) set of plans each with the planning board, the board of health and the town clerk. The planning board filing date shall be used to begin the sixty-five day period. The planning board shall render a decision within ninety (90) days following the public hearing for which notice has been given in accordance with Massachusetts General Laws, Chapter 40A, Section 11, and by mailing to all parties of interest. Failure of the planning board to take final action upon an application for a special permit within said ninety (90) days following the date of public hearing shall be deemed to be a grant of the permit applied for. A vote of four (4) members of the five-member planning board shall be required to grant a special permit for a planned unit development.

702.3. Such special permit, or any extension, modification or renewal thereof, shall not take effect until a copy of the decision bearing the certification of the town clerk that said twenty (20) days have elapsed and no appeal has been filed or that if such appeal has been filed, that it has been dismissed or denied, is recorded in the Essex County Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The fee for recording or registering shall be paid by the applicant.

702.4. A special permit for a planned unit development shall lapse within two (2) years after the granting date of the special permit (the granting date being included in the two-year period), and including such time required to pursue or await the determination of an appeal referred to in Massachusetts General Laws, Chapter 40A, Section 17, from grant thereof, if substantial construction has not begun except for good cause.□

702.5. The content of a planned unit development plans shall be in conformance with Groveland's current Subdivision Rules and Regulations and the Aquifer Protection By-law to the extent considered necessary and appropriate by the planning board. Amended May 22,1989

702.6. Any planned unit development shall require the written recommendations of town boards and/or agencies as specified in Groveland's Subdivision Rules and Regulations. Any such board or agency to which petitions are referred for review shall make such recommendations as they deem appropriate and shall sent copies thereof to the planning board and to the applicant; provided, however, that failure of any such board or agency to make recommendations within thirty-five (35) days of receipt by such board or agency of the petition shall be deemed lack of opposition thereto.

702.7. Upon the granting of a special permit or any extension, modification or renewal thereof, the planning board shall issue to the owners and to the applicant, if other than the owner, a copy of its decision, certified by the planning board, containing the name and address of the owner, identifying the land affected, setting forth compliance with the statutory requirements for the issuance of a special permit and certifying that copies of the decision and all plans referred to in the decision have been filed with the planning board and town clerk.□

702.8. No planned unit development petition which has been unfavorably and finally acted upon by the planning board shall be acted favorably upon within two (2) years after the date of final unfavorable action unless the planning board, by a favorable vote of four (4) members, finds specific and material changes in the conditions upon which the previous unfavorable action was based, and describes such changes in the record of its proceedings, and after notice is given to parties in interest of the time and place of the proceedings when the question of such consent will be considered.□

702.9. Any petition for a planned unit development special permit which has been transmitted to the planning board may be withdrawn without prejudice by the petitioner prior to the publication of the notice of a public hearing thereon, but thereafter be withdrawn without prejudice only with the approval of the planning board.

702.10. The planning board shall have overall responsibility for project supervision and shall use Groveland Zoning By-laws, including the Aquifer Protection By-law, Subdivision Rules and Regulations, and other sources, both written and professional, as are considered necessary and appropriate. Amended May 22,1989

702.11. If any of the regulations in this section are in conflict with other regulations contained in the zoning by-laws, the most stringent regulation shall apply.

703. Regulations.

703.1. After following the specified procedures, the planning board may grant a special permit for a planned unit development, provided that the following regulations are met:

703.1.1. The maximum height of any building shall be thirty five (35) feet. Height shall be measured from the mean finished ground level to the highest point on the roof of the building. The maximum number of stories shall be two and one-half (2-1/2).

703.1.2. There shall be at least two (2) parking spaces of appropriate size per dwelling unit. Parking areas shall be illuminated by a light intensity of 0.60 foot candles (average maintained). The lighting uniformity on parking areas shall be 4 to 1. All illumination on parking lots must be shielded so as not to shine upon abutting property.□

703.1.3. The number of dwelling units per building shall not exceed four (4).

****Webmasters Note:** The previous subsection has been amended as per an ordinance approved at a town meeting held on 4/30/01.

703.1.4. No dwelling unit shall be below mean finished ground level. No dwelling unit or part thereof shall be in the attic.□

703.1.5. Each dwelling unit shall have its own cooking and sanitary facilities.

703.1.6. Fire alarm and emergency lighting systems shall be installed. Said systems shall be subject to the approval of the town's fire chief.□

703.1.7. Provisions shall be made for fire protection, specifically fire hydrants. Said provisions shall be subject to the approval of the town's fire chief.

703.1.8. Provisions shall be made for access to all buildings by emergency vehicles at all times.

703.1.9. At least seventy (70) percent of the total land area shall be green space which shall be exclusive of buildings, drives and parking.

703.1.10. The floor-area ratio shall be 0.15 maximum. The floor-area ratio is defined as the gross floor area of the buildings less cellars, to the total land area.

703.1.11. No structures shall be built within thirty (30) feet of any way. No structure shall be built within fifty (50) feet of any property line. No structure shall be built within fifty (50) feet of any other structure.

703.1.12. When access to a state highway is involved, no building permit shall be issued until the applicant submits to the town building inspector a copy of an approved permit for entrance to the state highway as issued by the Massachusetts Department of Public Works.

703.1.13. Responsibility for maintenance of roads, drives, and parking areas, which shall include but not be limited to repair, snow removal, and general maintenance, shall be the responsibility of the owners of the buildings, unless and until such roads are accepted by the town. The town road commissioner shall be delegated to inspect the conditions of the drives, roadways, and parking areas at least annually and insure that appropriate action is taken to protect the inhabitants.

703.1.14. Any sewerage treatment facility shall be subject to the approval of the town board of health, the Massachusetts Department of Public Health, and the Massachusetts Department of Natural Resources. Such facility shall be the responsibility of the owner of the building, unless such facility is accepted by the town. A plan of the approved system shall be filed with the town board of health and the planning board.

703.1.15. No building shall be erected in a possible flood plain as determined by the planning board after consultation with appropriate agencies.

703.1.16. No building shall be erected within three hundred (300) feet of the perimeter of any body of water (including wetlands, streams, ponds, etc.) as measured at its highest point within the last ten (10) years.□

703.1.17. Dwelling area requirements shall be consistent with the intent of the facility, and shall be subject to the approval of the planning board.

703.1.18. The average number of dwelling units per acre in any planned unit development shall not exceed four (4).□

703.1.19. There shall be a minimum of ten (10) acres of land, within any parcel to be developed for a planned unit development.□□

703.1.20. Commercial business establishments are expressly prohibited.

703.1.21. All signs of a commercial nature are expressly prohibited.
703.1.22. All future accessory use buildings shall be subject to approval by the planning board.
703.1.23. In zones 2 and 3 of the Aquifer Protection District (see section 1700 of these By-laws), no storage tank or associated pipe systems for hazardous materials, including fuel oils for domestic use, shall be in direct contact with the ground. Adopted May 22, 1989
703.1.24. All buildings/dwelling units shall be connected to the Groveland Sewer System.

****Webmasters Note:** The previous subsection has been added as per an ordinance approved at a town meeting held on 4/30/01.

703.1.25. For the purpose of traffic control each new PUD shall be located a minimum distance of one (1) mile (5,280 feet) from an existing PUD.

****Webmasters Note:** The previous subsection has been added as per an ordinance approved at a town meeting held on 4/30/01. □

703.1.26. The area (square footage) of all wetlands and steep slopes in excess of 20% within the parcel shall be excluded from the total area (square footage) of the entire parcel for the purpose of calculating the total number of units/dwellings that could be developed.

****Webmasters Note:** The previous subsection has been added as per an ordinance approved at a town meeting held on 4/30/01.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board Groveland Zoning Bylaw (Adopted 1996)

SECTION 500 CONSERVATION SUBDIVISION DESIGN BYLAW (CSD)
III. SPECIAL PERMIT REQUIRED

The Planning Board may authorize a CSD pursuant to the grant of a special permit. Such special permits shall be acted upon in accordance with the following provisions:...

Has any housing been built under the cluster/flexible provisions?

Yes ZBA Chairman James Doyle (11/2/04) said that after the last cluster development, a lot of people in the town did not like it and have been discussing removing cluster zoning from the books.

Halifax

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

No

Which entity is the special permit granting authority for cluster/flexible zoning?

Has any housing been built under the cluster/flexible provisions?

Hamilton

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Growth and Change: Hamilton, Massachusetts
Master Plan Phase 1 Report
Produced for the Hamilton Citizens Action Planning Committee
July 2002

Community Opportunities Group, Inc.
Boston Massachusetts

According to its 2002 Master Plan, the flexible plan subdivision bylaw has not been as effective as the town thought it would be.

"Zoning regulations can be an effective vehicle for preserving open space and scenic views, but Hamilton has not had the success that many other communities have have with 'cluster' planned development and other techniques. Hamilton's bylaw provides for a 'flexible plan subdivision,' which is similar to cluster development bylaw, yet only one project in Hamilton has resulted from the flexible-plan approval process. A flexible-plan subdivision requires a special permit from the Planning Board, which means the permit is discretionary.

The lack of interest from developers in using the flexible-plan subdivision process may be attributable to several factors. One possibility is that the flexible-plan regulations were unsuitable for sites that developed since the bylaw was adopted in 1985. Second, applicants may have believed the Planning Board would impose unreasonable demands on a special permit, so they relied on the conventional subdivision or approval-not-required (ANR) process instead. Third, the bylaw may contain features which unwittingly discourage developers from using it, making conventional development more palatable even for a site that could meet flexible-plan requirements. . . . Assumint the accuracy of data used to develop Hamilton's recent build-out study (EOEA, 2000), 10 out of 18 tracts that were subdivided between 1986-1998 met the 10-acre minimum for a flexible plan subdivision. One of these parcels resulted in Taft Woods Row, Hamilton's only flexible plan development. Though a few more developers considered cluster projects in Hamilton, they opted for the simpler - and guaranteed - procedure of ANR." (p. 41-42)

The Land Use Ordinance of Hamilton
ESSEX COUNTY, MASSACHUSETTS
ZONING BY-LAW
FIRST ADOPTED 1954 INCLUDING AMENDMENTS THROUGH OCTOBER, 2000

SECTION V. USE REGULATIONS

A. Permitted Use:

2. Subject to a Special Permit from the Planning Board, as provided in Sec. VIII.C, Flexible Plan Subdivisions in compliance with the following purpose and provisions.

a. Purpose. Flexible Plan Subdivision is intended to provide the option of an alternative pattern of land development which preserves significant natural or agricultural open space or historic or scenic views, and to create a density incentive to encourage the use of that alternative pattern on parcels being developed in Hamilton. These intentions are to be carried out by a development design that clusters the dwelling units in a manner that shall be environmentally and visually preferable to a conventional single family lot layout on the same site, and shall not have adverse effects on the immediate neighborhood or the Town as a whole by comparison with a conventional lot layout. Site and building design shall be compatible with the semi-rural and single-family character of Hamilton, consistent with the health, safety and general welfare of the Town.

b. Minimum Parcel Size for the total Flexible Plan Subdivision shall be ten acres.

c. Number of Dwelling Units. The maximum number of dwelling units in a Flexible Plan Subdivision shall be from 1 to 1.5 times the number of units achievable in a conventional single-family-lot plan of the same parcel as set forth below. The Planning Board shall determine the allowable density within that range based on the quality of the Flexible Plan, considering whether the plan accomplishes significant preservation of open space, vistas and Historic District, and whether the design and siting of buildings contribute to this effect. The conventional subdivision concept plan shall show a plausible lot layout that could reasonably be approved under Hamilton's Zoning, Subdivision, Health and Wetlands regulations, and that does not involve large-scale filling or regrading. The Planning Board shall determine, with the advice of the Conservation Commission and the Board of Health, whether said concept plan represents the parcel's conventional development capacity. Flexible Plan Subdivision is not intended to render developable any parcels that would not otherwise be developable. In evaluating the conventional development capacity of the site, the Board may take account of data and decisions on prior subdivision plans for the parcel. However, the conventional subdivision concept plan does not require Definitive Subdivision Approval under MGL Ch. 41, S.81U, and may differ from any approved subdivision plan now in effect on the development parcel. (Ed. Note: In Groundwater Protection District, development capacity calculations must be based on the 80,000 s.f./D.U. requirement.)

d. Types of dwelling units allowed in a Flexible Plan Subdivision shall be single family (i.e. each dwelling unit on separate lot) attached and detached, and multi-unit structures, consistent with the stated purpose and design guidelines for Flexible Plan

Subdivisions, and subject to the stipulation that all dwelling units in Flexible Plan Subdivisions, including any plans under consideration, shall not total more than 5% of the total number of dwelling units in Hamilton, as stated by the Town Clerk at the time of application.

e. Dimensional and Design Requirements, Except as set forth below, all requirements of the Zoning By-law shall continue to apply to Flexible Plan Subdivisions.

1. Lot Size. The lot on which any structure is located shall contain not less than 10,000 square feet for each dwelling unit in said structure.

2. Frontage, lot coverage, and lot width requirements are waived for Flexible Plan Subdivisions. Yard requirements shall apply except that side yards may be waived for attached dwelling units. Every dwelling unit shall have adequate access to a public or private way.

3. Buildable lot area shall be 5,000 square feet per dwelling unit on a lot, but all other provisions of Section VI.B.2. shall apply.

4. Parking. Two off-street parking spaces shall be provided per dwelling unit.

5. Buffers. In order to maintain privacy and visual quality of the neighborhood, Flexible Plan Subdivision designs shall use setback and natural or landscaped buffers to screen buildings from any pre-existing street or property line.

6. Design Guidelines. The shapes, scale, location and materials of all buildings, lighting, roads and parking in a Flexible Plan Subdivision shall be consistent with the character of the neighborhood, and with the terrain and vegetation of the site. Buildings which utilize design features of single-family and farmhouse buildings in the neighborhood are encouraged.

7. Sewerage Disposal. Individual or communal septic systems are permissible subject to approval as to type and location by the Board of Health. Septic systems may be installed in the open space area of the Flexible Plan Subdivision if the Board of Health so allows, and if such installation would not detract from the usability or quality of said open space. Proper legal safeguards shall be provided for management and communal ownership of communal septic systems.

8. Water Supply may be provided by the municipal system or private facilities. In the event that dwelling units share private water facilities, proper legal provisions shall be made for communal ownership and management.

9. Utilities shall be installed underground, and may be located in the open space if such installation would not detract from the usability or quality of said open space, and if proper legal instruments providing for access and maintenance are arranged.

f. Open Space

1. All areas of the Flexible Plan Subdivision not devoted to private lots and facilities, or to roads, services and utilities shall be dedicated as Open Space.

2. Minimum Area and Quality of Open Space shall be not less than forty percent (40%) of the total cluster tract area, and furthermore, the area being counted toward this minimum percentage shall not include more than twenty-five percent (25%) Conservancy District, or wetlands under Ch. 131, Sec. 40, M.G.L.

3. Contiguity. The Open Space need not be in one large piece, as long as the selection meets the overall quality stipulation below.

4. In addition to the above specific provisions, the Open Space must be deemed by the Planning Board to successfully protect the scenic and natural resource values of the site, and to be of a size, shape, location and general quality and accessibility that constitute a significant benefit for the residents of the development and the Town, and that meet the overall purposes of this section.

5. Ownership of Open Space. The open space, and such other facilities as may be held in common, shall be conveyed to one or more of the ownership groups allowed below, subject to the requirements set forth below.

a. Interim Responsibility. The applicant is responsible for the Open Space and its maintenance until said land is fully conveyed to one of the allowed ownership options. At the time of Flexible Plan Subdivision approval, the applicant shall execute a covenant with the Town, binding himself to own and maintain the Open Space until such conveyance is accomplished.

b. Use Limitations and Conditions. Whichever ownership method is selected, the legal instruments creating and restricting ownership shall limit use of the Open Space of conservation, recreation, grazing and agricultural uses that are consistent with the primary function of the open space as a scenic natural area, but shall make provision allowing access to and maintenance of any septic systems and utilities located within the Open Space, and shall specify that any facilities, structures and accessory uses permitted above and not prohibited under MGL Ch. 40A, Sec. 9, which were not contained in the original Flexible Plan Subdivision Permit shall require further special permit from the Planning Board.

1. Conveyance to a corporation or trust comprising a homeowners association whose membership includes the owners of all lots or units contained in the tract. The applicant shall include in the deed to owners of individual lots beneficial rights in said Open Space, and shall grant a Conservation Restriction to the Town of Hamilton over such land pursuant to M.G.L. Ch. 184, a. 26 or M.G.L. Ch. 184, Sec. 31-33, referring to the use limitations and conditions specified in Item b., immediately above, and stating that the land shall not be built upon for residential or accessory uses such as parking or roadways. This restriction shall be enforceable by the Town through its Conservation Commission in any proceeding authorized by Sec. 33 of M.G.L. Ch. 184. In addition, the applicant

shall be responsible for maintenance of Open Space and any other facilities to be held in common until such time as the homeowners association is capable of assuming said responsibility. They shall be deemed capable of taking over when 60% of the dwelling units have been sold. In order to ensure that the association will properly maintain the land deeded to it under this section, the applicant shall cause to be recorded at the Registry of Deeds a Declaration of Covenants and Restrictions which shall, at a minimum, provide for the following: a) mandatory membership in the homeowners association to run with the deed to the lot and not be separately alienable; b) provisions for maintenance assessments of all lots in order to ensure that the Open Land is maintained in a condition suitable for the uses approved thereon, and provisions to ensure the payment of said assessment; c) provision that will ensure, so far as possible under the existing law, that the restrictions placed on the use of the Open Land will not terminate by operation of law.

2. Conveyance to a nonprofit organization, the principal purpose of which is the preservation of open space. The applicant or said organization shall grant a Conservation Restriction as set forth in the immediately preceding Item 1. If this method of ownership is selected, conveyance shall be made at the time of issuance of initial building permits.

3. Conveyance to the Hamilton Conservation Commission for park or open space use, subject to the approval of the Selectmen, with a trust clause referring to the use limitations and conditions specified in f.5.b. above, ensuring that the land be maintained as open spaces. If the Selectmen do not accept the open land, the applicant shall convey the land to one of the other groups authorized above.

g. Limitation of Subdivisions. No lot shown on a plan for which a permit is granted under this section may be further subdivided, and a notation to this effect shall be shown on the Flexible Plan Subdivision plan.

h. Approval Process.

1. Relation to Subdivision Review under M.G.L. Ch. 41. Planning Board approval of a Flexible Plan Subdivision permit shall not substitute for compliance with the Subdivision Control Act. All Flexible Plan Subdivisions shall be designed to comply with the Hamilton Subdivision Rules and Regulations. The Planning Board shall consolidate Subdivision review under Ch. 41 with Special Permit Review under this section to the greatest extent possible, given the differing review periods set by M.G.L. Ch. 41 and M.G.L. Ch. 40A. The Planning Board may hold the Special Permit and the Subdivision Review public hearings simultaneously, and may grant a subdivision approval conditional upon later approval of the Flexible Plan Subdivision Special Permit.

2. Planning Board approval of any Flexible Plan Subdivision permit shall be conditional upon compliance with applicable Town and State wetland protection regulations, and upon approval of all sewerage disposal and surface and subsurface drainage by the Board of Health.

3. Pre-Application Conference. In order to arrive at a consensus as to allowable density and general design concepts, before the applicant invests in detailed plans, the applicant is strongly encouraged to file preliminary plans of both the conventional single-family subdivision and the Flexible Plan Subdivision of the parcel. These preliminary plans shall meet the requirements for and be processed as Preliminary Plans under the Subdivision Rules and Regulations.

4. Application for a Flexible Subdivision Plan Permit shall be made to the Planning Board as set forth in Sec. VIII.C. The application shall be accompanied by two subdivision plans for the entire site, prepared by a registered architect, landscape architect or engineer; one of said plans shall show a conventional single family subdivision of the site, drawn to meet all requirements for a preliminary subdivision plan under the Subdivision Rules and Regulations, for purposes of determining maximum permissible density if site were developed without benefit of Flexible Plan Subdivision provisions. The other subdivision plan shall show the proposed Flexible Plan Subdivision meeting the requirements of this section and for a Definitive Plan under the Subdivision Rules and Regulations. The Flexible Plans shall also show:

a. which lots are to be used as building lots, proposed open space, proposed location, height and bulk of all buildings, proposed landscaping, exterior lighting, parking and driveways;

b. for every proposed building, floor plans, principal elevation, building sections showing construction materials, and sufficient perspective drawings or models to satisfy the Board that it understands the three-dimensional appearance of the buildings from the relevant streets;

c. a statement as to proposed method of ownership of the open space; the proposed legal instruments to be used to ensure preservation and maintenance of open space and any communal facilities;

d. a statement as to proposed phasing and timing of construction.

The Planning Board may require the applicant to pay a review fee to cover the reasonable costs of consultants engaged by the Planning Board to assist in review of the proposed plans, as authorized and limited by M.G.L. Ch. 44 Sec. 53G and Sec. IX.H. of this Zoning By-law. (Added November 13, 1990)

6. Following a Flexible Plan Subdivision approval, all building designs submitted to the Building Inspector for a permit under Sec. VIII.B. shall be consistent with the designs shown in the Flexible Plan Subdivision special permit plan submissions.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board SECTION V. USE REGULATIONS
A. Permitted Use:

2. Subject to a Special Permit from the Planning Board, as provided in Sec. VIII.C, Flexible Plan Subdivisions in compliance with the following purpose and provisions.

Has any housing been built under the cluster/flexible provisions?

Yes According to its 2002 Master Plan, the flexible plan subdivision bylaw has not been as effective as the town thought it would be.

"Zoning regulations can be an effective vehicle for preserving open space and scenic views, but Hamilton has not had the success that many other communities have with 'cluster' planned development and other techniques. Hamilton's bylaw provides for a 'flexible plan subdivision,' which is similar to cluster development bylaw, yet only one project in Hamilton has resulted from the flexible-plan approval process. A flexible-plan subdivision requires a special permit from the Planning Board, which means the permit is discretionary."

Hanover

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes The Land Use Ordinance of Hanover (Town of)
PLYMOUTH COUNTY, MASSACHUSETTS
ZONING BY-LAW

SECTION 2 DEFINITIONS
2.000 Standard Interpretations

PLANNED RESIDENTIAL DEVELOPMENT FOR SENIORS : A unified, self contained, residential retirement community, constructed expressly for and specifically limited to use and residency by persons who are fifty five (55) years of age or older, and including one or more types of residential dwellings, undertaken in accordance with an overall plan, incorporating a consistent architectural concept and incorporating the preservation of natural areas within the development.

SECTION 6 USE REGULATIONS
6.000 Residence A District
6.040 Uses Permitted by Special Permit and with Site Plan Approval.

A. The establishment of a Planned Residential Development for Seniors (PRDS) subject to all of the requirements, regulations, provisions, and procedures of subsections 1. through 7., below. Failure on the part of the applicant to comply with any of said requirements, regulations, provisions, and procedures may be cause for the denial of the project by the Planning Board.

1. Purpose: The purpose of a PRDS is to provide alternative housing for residents who are 55 years in age or older.

2. General Requirements:

a. Any PRDS shall contain a minimum area of not less than twenty (20) acres, of which at least ten (10) acres shall be exclusive of any and all Wetlands Resource Area or floodplains and any and all easements or covenants restricting in any way the use of said minimum area. (Amended ATM 5/1/00)

b. Included as a portion of the minimum area required above, any PRDS shall contain a minimum area of not less than five (5) acres to be dedicated as common open space. Said minimum area shall be exclusive of any and all wetlands Resource Area or floodplains and any and all easements or covenants which would restrict or prohibit the use of said minimum area as common open space. Said common open space shall be distinctly separate from land used for the construction or dwellings, shall be landscaped or left in a natural state, and shall be for the use and enjoyment of the residents of the PRDS. (Amended ATM 5/1/00)

c. Except for the Height Regulations of Section 7. 100, the PRDS shall not be subject to the Dimensional Regulations of Section 7, but shall be subject to the Area and Dimensional Regulations of Section 3., below.

d. Any PRDS shall contain a Community Center for the use, recreation, and enjoyment of the residents of the PRDS. Said facility shall be subject to the design requirements of Section 5., below, and shall be constructed and fully functional in accordance with the provisions of Section 6.f., below.

e. Any PRDS shall be serviced by a minimum of two (2) access roads or drives unless a divided access road or drive is approved by the Planning Board.

f. Any P.R.D.S. shall include adequate provisions for the disposal of septic waste. Said provisions shall be in compliance with the regulations of both the Department of Environmental Protection (314 CMR 2.00 through 7.00 and 310 CMR 15.00) and the Hanover Board of Health.

- g. Recreational facilities and accessory structures, along with their associated uses, for the use of the residents of a PRDS shall be permitted but home occupations, the taking in of boarders, or the renting of rooms shall not be allowed nor permitted.
- h. Any person who resides in a PRDS shall be fifty-five (55) years in age or older.
- i. The maximum number of dwelling units in any specific PRDS shall not exceed four percent (4%) of the total number of dwelling units in the Town as shown on the records of the Board of Assessors for the year in which the application is filed.
- j. On any parcel of land utilized for the development of a PRDS, no other uses, except for accessory uses, shall be allowed or permitted.

3. Area and Dimensional Regulations:

- a. A PRDS shall have a minimum frontage of a distance not less than that required in the underlying zoning district. Said frontage shall be contiguous and uninterrupted for the required distance.
- b. In addition to the minimum area requirements of Section 2.b., above, there shall be provided for each dwelling unit in a PRDS a minimum area of eleven thousand (11,000) square feet, said minimum area to be as follows:
 - (1.) A minimum area of eight thousand (8,000) square feet shall be reserved for the construction of said dwelling units and garages associated with said dwelling units and said area shall be in accordance with the provisions of Section 2.a., above, relative to wetlands Resource Areas, floodplains, easements and/or covenants. (Amended ATM 5/1/00)
 - (2.) A minimum area of three thousand (3,000) square feet shall be added to the minimum area required in Section 2.b., above and said area shall be in accordance with the provisions of that Section relative to wetlands Resource Areas, floodplains, easements and/or covenants.
- c. The minimum area requirements of Sections 2.b and 3.b (1.) & (2), above, shall be exclusive of all paved surfaces such as roads, drives and parking areas.
- d. Except for accessory structures, no structure containing dwelling units and no structure containing a Community Center shall be located closer than forty (40) feet to another such structure nor closer than seventy-five (75) feet to any property line.
- e. A buffer area shall be provided around the entire perimeter of a PRDS in accordance with the following:
 - (1.) Said buffer area shall be continuous and shall be of a minimum width of not less than fifty (50) feet.
 - (2.) Said buffer area shall be landscaped in accordance with the provisions of Section 8 of this Zoning By-Law.
 - (3.) Access Roads or drives may be permitted within said buffer area provided that said buffer is maintained along any abutting lots. However, roads or drives internal to the PRDS shall not be so permitted.

4. Dwelling Unit Design Requirements:

- a. Dwelling units in a PRDS may be comprised of either of the following:
 - (1.) All single family dwellings.
 - (2.) All duplex dwellings.
 - (3.) All town houses. A town house structure shall contain not more than ten (10) dwelling units per structure.
 - (4.) A mix of single family dwellings, duplex dwellings, and/or town houses containing not more than ten (10) dwelling units per structure provided that, if any PRDS is comprised of a mix of dwelling types, no one dwelling type shall constitute more than sixty percent (60%) nor less than thirty percent (30%) of the total number of dwelling units.
- b. For the purposes of conserving the value of land and buildings, promoting the aesthetic qualities of the Town, and protecting residential neighborhoods from potential despoliation, all dwellings shall be constructed in accordance with the following:
 - (1.) All dwellings shall be of wood, lightweight metal or steel frame construction and shall be constructed on site.
 - (2.) No dwellings or dwelling units shall be of pre-fabricated, factory made, or modular construction, including, but not limited to, mobile homes, modular homes or manufactured homes.
- c. Individual dwelling units shall contain not more than two (2) bedrooms per unit.
- d. Each dwelling unit shall have two (2) exterior means of access and egress, as such are defined in the Massachusetts State Building Code, 780 CMR, and such exterior means of access and egress shall be separate from those of any other dwelling unit.
- e. Each dwelling unit shall have, at a minimum, two (2) sides with full exterior exposure.
- f. No floor of a dwelling unit, except for the floor of an unfinished basement, shall be located below the average finished grade of the land abutting said dwelling unit.
- g. Each dwelling unit in a structure containing four (4) dwelling units or more shall be equipped with a fire protection residential sprinkler system approved by the Hanover Fire Department.

5. Other Design Requirements:

- a. All buildings and structures shall be designed in an architectural style consistent with that of a rural suburban New England environment. Said architectural style shall be aesthetically pleasing and compatible with the surrounding neighborhood. Failure to comply with this provision may be cause for the denial of the project by the Planning Board.
- b. The Community Center required in Section 2.d., above, shall be designed and constructed in such a fashion so as to provide, at a minimum, a gross floor area equivalent to one hundred (100) square feet for each dwelling unit in the PRDS.
- c. All buildings, structures, open spaces, roads and drives, parking areas and other development features shall be designed and located in such a fashion so as to conform, to the greatest extent possible, to the existing natural terrain on the site.
- d. All exterior lighting, whether placed along roads, drives, or walks, in parking areas, or on structures or other facilities, shall be arranged and shielded so as not to distract in an unreasonable manner the occupants of any dwelling(s) nor shine directly upon abutting properties and/or public ways. In no instance shall illumination upon the window surface of any dwelling exceed one-half (1/2) foot candle. All exterior lighting shall be of a mercury vapor type.
- e. All access roads and drives and all interior roads and drives shall be designed and constructed in accordance with the provisions of the Planning Board Rules & Regulations Governing the Subdivision of Land unless specific provisions are waived by the Board.
- f. The placement of structures so as to allow the maximum utilization of direct and passive solar energy shall be encouraged.
- g. A minimum of one-half (1/2) of the area required for open space in Sections 2.b. and 3.b. (2), above, shall be left in, or allowed to return to, its natural state unless, in the opinion of the Planning Board, additional landscape measures are required.
- h. All developed areas not covered by pavement, curbing, buildings and/or structures shall be landscaped with grass, shrubbery, trees, flowers and/or ground covers indigenous to the area. In addition, along the length of each exterior wall of every principal structure, there shall be an area landscaped with bushes, shrubbery and/or flowers indigenous to the area.
- i. There shall be two (2) numbered parking spaces for each dwelling unit for the use of the occupants thereof. In addition, there

shall be one parking space for each dwelling unit for visitors. All parking spaces shall be a minimum of ten (10) feet in width by twenty (20) feet in length and within reasonable proximity to the dwelling units which they serve. Numbered parking spaces may be located in garage facilities either attached to, or detached from, the principal structure.(s).

j. All existing or proposed utilities and municipal services shall be installed underground at the time of initial construction.

k. Provisions shall be made for the storage, collection and removal of all solid waste. All necessary facilities shall be screened appropriately.

l. All dwellings, structures, and other facilities shall be designed, constructed, and maintained in accordance with the latest Massachusetts' standards for accessibility for the handicapped.

6. Special Provisions:

a. All access roads and drives, interior roads and drives, drainage systems, provision for underground utilities and municipal services, and other site improvements shall be shown on a plan prepared in accordance with the provisions of the Planning Board Rules and Regulations Governing the Subdivision of Land as said provisions relate to a Definitive Subdivision Plan.

b. All design requirements, all elements of the PRDS, all site improvements and all other amenities shall be shown on a Site Plan prepared in accordance with Section 10, Site Plan Approval, of this Zoning By-Law. Included on said Site Plan shall be all dwelling units, the Community Center and all of the elements required under Section 10.100, Site Plan Contents, of this Zoning By-Law, unless the inclusion of specific elements is waived by the Planning Board.

c. Architectural Plans showing elevations of all typical principal structures shall be prepared by a Registered Professional Architect. All structures shall be designed in a compatible architectural style consistent with that of a rural suburban New England environment. Architectural Plans, as well as the Site Plan required in Section 6.b., above, shall be submitted to the Hanover Design Review Board for review. Failure on the part of the applicant to comply with the recommendations of the Design Review Board may be cause for the denial of the project by the Planning Board. Said Architectural Plans shall also be submitted to the Planning Board.

d. During any calendar year, the maximum number of dwelling units that may be constructed in a PRDS shall not exceed one and one half percent (1-1/2%) of the total number of dwelling units in the Town as shown on the records of the Board of Assessors for the year during which the application is approved by the Planning Board.

e. Building permits may be issued for twenty percent (20%) of the dwelling unit in a PRDS prior to construction of the Community Center. However, no additional building permits shall be issued until construction of said community center has been completed to the satisfaction of the Planning Board.

f. The area of land required in Sections 2.b. and 3.b.(2.), above, to be dedicated as common open space shall be placed in the common ownership of all of the individual owners of the dwelling units in the PRDS. Said ownership and the use and maintenance of such common open space shall be determined by an agreement, duly executed in a form suitable for recording by the owner, or owners, of such common open space. Such agreement shall provide for the permanent retention of said common open space and shall provide that, in the event that the Planning Board shall grant a Special Permit hereunder, such permanent common open space shall be owned by the owner, or owned in common by the owners, of the dwelling units within the PRDS and such ownership shall run with the title to the dwelling units and shall not be separately alienable. The format and content of said agreement shall be reviewed by Town Counsel and shall be such as to be acceptable to the Planning Board.

g. In addition to the agreement required in Section 61, above, Covenants or Deed Restrictions, reviewable by Town Counsel and acceptable to the Planning Board, shall be prepared to ensure the following:

(1.) The dwelling units in the PRDS shall be occupied only by persons fifty-five (55) years of age or older except for guests visiting for short durations, not to exceed thirty (30) days in a calendar year.

(2.) That responsibility for the upkeep, maintenance, plowing and sanding of roads, drives, walks and parking areas within the PRDS shall fall to the owner, or owners, of the dwelling units in the PRDS.

(3.) That adequate provisions are in place to accomplish the collection and removal of solid waste and that the associated cost, as well as any costs associated with septic waste disposal, shall be borne by the owner, or owners, of the dwelling units in the PRDS.

h. Evidence, satisfactory to the Planning Board, that agreements, covenants and/or deed restrictions required by Sections 61 & g., above, have been recorded at the Registry of Deeds shall be submitted to the Board prior to the issuance of any occupancy permit by the Building Inspector. The Planning Board shall so notify the Building Inspector of satisfactory compliance with this provision and the Building Inspector shall not issue occupancy permits until so notified.

i. In addition to the information required in Section 6.b., above, the Site Plan shall include the following:

(1.) Total area of the parcel.

(2.) Total area of all wetlands Resource Areas, floodplains and land restricted by covenants or easements. (Amended ATM 5/1/00)

(3.) Total area to be reserved for the construction of dwelling units and the Community Center.

(4.) Total area to be dedicated as Common Open Space.

(5.) Total area to be devoted to paved surfaces to include roads, drives and parking areas.

j. The Planning Board shall require as a condition of approval and as a requisite for the granting of a Special Permit that, prior to the issuance of building permits, the construction of access ways and drives, the installation of municipal services, and the provisions for landscaping and other amenities shall be secured by a deposit of money or negotiable securities sufficient in the opinion of the Board to secure said performance.

7. Procedure:

a. The applicant shall submit an application for Special Permit and Site Plan Approval in accordance with the provisions of Section 10 of this Zoning By-Law and in accordance with the following:

(1.) Prior to submitting a formal application, the applicant shall meet at least twice with the Planning Board in order to discuss the concept of the proposal.

(2.) The Planning Board may request an outline of the concept and/or a limited plan of the proposal. The Planning Board shall determine whether additional meetings are required and shall so notify the applicant in a timely fashion, not to exceed thirty (30) days.

(3.) At the conclusion of said meetings, the Planning Board shall indicate whether, in the opinion of the Board, the concept does, or does not, have merit. A positive indication is not a guarantee that the formal application will be approved nor is a negative indication a determination that a formal application shall not be approved.

(4.) If the applicant desires to proceed with the proposal, he/she shall submit a formal application within sixty (60) days of the date upon which the Planning Board issues the positive or negative indication referenced in Section (3), immediately above.

(5.) Within one (1) week of submitting a formal application to the Planning Board, the applicant shall submit to the Design Review Board the Site Plan and Architectural Plans in accordance with Section 6.c., above.

b. The Planning Board shall review said application for Special Permit and Site Plan Approval in accordance with the provisions of this Zoning By-Law, Sections 6 & 11 of Chapter 40A (The Zoning Act) and Sections 81K through 81GG, inclusive, of Chapter 41 (The Subdivision Control Law) of the Massachusetts General Laws, the Planning Board Rules and Regulations Governing the Subdivision of Land, and the Rules and Regulations of the Planning Board relative to the Grant of Special Permits.

c. All applications shall be reviewed by the Planning Board's Consultant Review Engineer., The applicant, in accordance with the Planning Board Rules and Regulations, shall deposit with the Treasurer of the Town funds equal to five thousand dollars (\$5,000.00) for the purpose of covering the costs associated with said engineering review. Unexpended funds shall be returned to the applicant.

From definitions on ordinance.com:

PLANNED RESIDENTIAL DEVELOPMENT FOR SENIORS : A unified, self contained, residential retirement community, constructed expressly for and specifically limited to use and residency by persons who are fifty five (55) years of age or older, and including one or more types of residential dwellings, undertaken in accordance with an overall plan, incorporating a consistent architectural concept and incorporating the preservation of natural areas within the development.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board A. The establishment of a Planned Residential Development for Seniors (PRDS) subject to all of the requirements, regulations, provisions, and procedures of subsections 1. through 7., below. Failure on the part of the applicant to comply with any of said requirements, regulations, provisions, and procedures may be cause for the denial of the project by the Planning Board.

Has any housing been built under the cluster/flexible provisions?

Yes 7/22/04 Phone conversation with Ms. Hoffman, Planning Board Secretary. She said that Hanover has 3 PUDs for seniors which are mostly attached townhouses that are restricted to 55 and older. They do not include units designated as affordable.

Hanson

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No Hanson allows flexible zoning by right and special permit depending on the type of use. Single-family dwellings are allowed by right while mixed-use and assisted living requires a special permit.

Town of Hanson Zoning Bylaw

SECTION VI Use Regulations

H. Flexible Zoning Bylaw/Special District
[Amended 10/5/98]

The flexible zone district of this bylaw is intended to provide for a mixture of residential, agricultural, business, commercial and industrial, and mixed uses provided such use does not detract from the livability and aesthetic qualities of the environment:

Uses permitted:

- a. Conservation areas for water, water supply, plants and wildlife, and dams necessary for achieving this purpose.
- b. Farming and horticulture, including raising, harvesting and storing crops, truck gardening, cranberry bogs, grazing, poultry raising, fields, pastures, woodlots, and greenhouses, except that piggeries shall not be located in this district.
- c. Orchards, nurseries, forests and tree farms.
- d. Display and sale or offering for sale of farm produce and related products provided that the major portion of the produce is raised within the Town, and provided that no stand for such sale is located within twenty-five feet (25') of a Street line, and provision is made for off-street parking in accord with Section VII D.
- e. Single-family detached dwellings.
- f. Boarding houses or Rooming Houses for not more than four (4) persons, provided that the house is also occupied as a private residence.
- g. Accessory uses, including normal accessory uses as private garages, storage sheds, tennis courts, swimming pools, cabanas for swimming pools, summer houses, and a structure approved by Civil Defense authorities and designed for use by the inhabitants, employees or customers of the property to which it is accessory and used for shelter from natural disaster or war.

2. Uses permitted by special permit granted by the Board of Appeals as provided in Section VIII.D.

- a. Professional office, Funeral homes, and mortuaries.
- b. Retail store or service establishment, the principal activity of which shall be the offering of goods or services at retail within the building.
- c. Restaurants, membership clubs.
- d. Parking areas or garages for use of employees, customers, or visitors, subject to design standards in Section VII D.
- e. [Deleted]
- h. Theaters, museums, and bowling alleys.
- i. Gasoline service stations, provided that:
 - i. Repairs shall be limited to minor repairs and adjustments unless conducted in a building. ii. There shall be no storage of motor vehicles, appliances and equipment on the premises other than those in process of repair or awaiting delivery or in an enclosed structure.
- j. Motels, hotels and bed and breakfast establishments.
- k. Salesrooms and yards for automobiles.
- l. Picnic areas, day camps, overnight camps, recreation and any non-commercial open-air recreation use, including golf courses, parks (but not an amusement park), boating, fishing, hunting (where legally permitted).
- m. Marinas and landings, provided that there are adequate provisions for disposal of waste products and for parking. Storage buildings required in connection with these uses shall be located subject to the same provisions which apply to farm buildings, except that small buildings for the sale of fishing supplies or in connection with a marina may be located below the appliance contour line in accordance with Section V, paragraph c, swimming pools and related accessories.
- n. Restaurants, provided that their use is in connection with a permitted use and that adequate parking areas are provided.
- o. Country clubs or other membership clubs.
- p. [Deleted]
- q. Tourist camps and overnight camps where structures are used for shelter.
- r. Commercial amusements, provided all business is conducted within the structure.
- s. Licensed Kennels, by special permit of the Appeal Board.
- t. Structures containing more than one (1) but not more than eight (8) dwelling units, provided that:
 - i. Each dwelling unit shall have two (2) exposures.
 - ii. Each dwelling unit shall have two (2) separate exits.
 - iii. All off-street parking areas as required under Section VII D shall be in the rear of buildings.
 - iv. Each structure shall be connected to Town water.
 - v. A site plan prepared in accordance with the provisions of Section VII F has been submitted to and been approved by the Board of Appeals.
 - vi. If there is more than one (1) such structure on a lot of record, there shall be at least forty feet (40') between each structure.
 - vii. Demolition of existing historic structures, as designated in the "Bay Circuit/Open Space Plan, Hanson, Massachusetts," Table 1, Hanson Historic Sites, pages 5-6 and accompanying map, by IEP, Inc., dated January, 1988 shall not be permitted in order to construct a new multi-family structure.

Any use determined to be of similar character to the permitted uses of this district and to the intent of this district, said determination to be made by the Board of Appeals following petition of the land owner or owners.

Additional Uses Allowed By Special Permit

In the flexible zone district, the following uses may be allowed by special permit.

Uses permitted:

- a. mixed use in one (1) structure (ie. residence & business).
- b. assisted living residence at a limit of six (6) in one structure

Density Requirements:

- a. The minimum lot size for all structures shall be 35,000 square feet. (At least eighty percent (80%) of the minimum lot size shall be upland (i.e., not a bank, bog, dune, marsh, swamp or wet meadow under the Massachusetts General Law, Chapter 131, Section 40.)
- b. The minimum frontage in feet for all structures shall be 150 feet. Measured at the street line. Where a lot has frontage on two streets only one-half of the linear distance on the curve at the intersection shall be computed as frontage on any street. Both frontages shall meet the requirements of minimum lot frontage for a depth of one hundred (100) feet.
- c. The minimum front yard shall be thirty-five (35) feet from lot line or the average of the front set back of the buildings on lots on the same side of the street and within three hundred (300') feet of the subject lot, which front yard set back line shall be less.
- d. The minimum side yard shall be twenty (20) feet from the lot line.
- e. The minimum rear yard shall be fifteen (15) feet from the lot line.
- f. The maximum percent building coverage shall be 20%
- g. The maximum total gross coverage shall be 75%

Parking Requirements

Throughout this zone, where there is parking for eight (8) or more vehicles, sixty (60%) of the number of spaces shall be to the rear of the main structure on the lot, provided this requirement may be altered by the Board of Appeals in the manner set forth herein below at subparagraph "j." The requirements for off-street parking and loading areas shall be as specified below for specific uses. These requirements shall be met in the case of all new construction, including expansions, additions, or changes of use. Where applicable, such parking areas shall be noted on a required Site Plan under Section VII.F of this By-Law. Where stipulated, "net floor

area" shall mean usable floor space, exclusive of enclosed or inaccessible floor areas. In applying for a building or occupancy permit, the applicant must demonstrate that the following minimums will be met for the new demand without counting existing parking:

- a. Dwellings: Two spaces per dwelling unit, garage space inclusive.
- b. Motels, hotels, lodging houses: One space per guest unit plus one additional space per eight guest units or fraction thereof, plus one space for each employee on the largest shift.
- c. Retail stores, offices, municipal offices, banks: One space per 150 square feet of net floor area.
- d. Motor vehicle service station or repair of body shop: Three spaces for each service bay plus one space per employee on the largest shift.
- e. Industrial or wholesale: A minimum of five spaces, plus one space for each 2,000 sq. ft. net floor area for the first 20,000 sq. ft., plus one space for each additional 10,000 sq. ft. of net floor area, plus one space per employee on the largest shift.
- f. Places of assembly, restaurants: One space per three seats, or one space per 12 square feet of seating area, whichever is greater.
- g. Hospitals: One space per bed.
- h. Nursing homes: One space per each two beds, plus one space per employee on the largest shift.
- i. Bowling alleys: Four spaces per lane.
- j. All others, including shared parking: As determined by the Board of Appeals only upon its written determination that the proposed use will not have adverse effects on either the town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. The determination shall include consideration of each of the following:
 - i.) Social, economic, or community needs which are served by the proposal
 - ii.) Traffic flow and safety;
 - iii.) Adequacy of utilities and other public services;
 - iv.) Neighborhood character and social structures;
 - v.) Impacts of the natural environment;
 - vi.) Potential fiscal impact.

2. Design of Off-Street Parking and Loading Spaces shall meet the requirements specified below:

- a. Location:

Required parking shall be either on the same premises as the activity it serves, or on a separate parcel if said parcel is located within 300 feet of the building's major entrance, and if not separated by a state-numbered highway, and if in a zoning district allowing the activity it serves.
- b. Backing:

All parking areas shall be designed and located so that their use does not involve vehicles backing onto a public way. This shall not apply to residential uses.
- c. For all required off-street parking spaces, open or enclosed, each 300 square feet of net standing and maneuvering area shall be considered one (1) space. All such parking spaces shall be designed so as to provide a twelve foot (12') clear space adjacent to each building. All required parking spaces shall be provided with unobstructed access to and from a street and shall be properly maintained in such a manner as to permit them to be used at all times. All required parking spaces shall be located on the same lot as the use with which such spaces are connected or, in the case of unenclosed spaces, within 200' of the lot, except that two (2) or more businesses may jointly provide the required spaces on one (1) or more of their lots. The number of spaces in any such joint facilities shall be at least equal the total number required under the provisions of this Section for their individual uses.
- d. Required off-street parking and loading spaces shall not hereafter be reduced, nor shall one be counted as or substituted for the other.
- e. Whenever off-street parking in Business or Commercial-Industrial Districts is required in accordance with Section VII D, there shall be an area at least twenty feet (20') deep between the street line and the balance of the lot which shall be separated from the street and the balance of the lot by a curb which shall encompass an area that shall be seeded and landscaped except at an access. Such access shall be at least twenty feet (20') wide and at least 120' center to center apart, and further provided that there shall be only one (1) access if the street frontage is 200' or less. If the street frontage is greater, additional accesses may be allowed in the ratio of one (1) such access for each additional 200' or portion thereof of frontage.
- f. Except in the case of parking spaces provided for dwellings, requirements for paving off-street parking and loading areas shall be determined by the Planning Board.
- g. Except in the case of parking spaces provided for single-family dwellings, off-street parking and loading areas used after sundown shall be illuminated with illumination so arranged so as not to shine directly on abutting properties or on streets.
- h. Entrance cuts to be made onto a traveled way shall be designed by the Planning Board after consultation with the State DPW Engineers as required, Police Chief, and Highway Surveyor.
- i. For Parking areas of fifteen (15) cars or more, the following requirements shall apply:
 1. Parking lots for 15 or more cars shall be screened from any residential use or district which is abutting or separated from it only by a street. Screening shall be by a four foot planting strip maintained with densely planted shrubs, or by a fence of not less than four feet in height, and shall be landscaped as required below.
 2. Parking lots for 15 or more cars shall contain or be bordered within 5 feet by at least one tree per 10 cars, trees to be of 2" caliper or larger, and if within the parking area, to be planted in curbed soil plots allowing not less than 40 square feet of unpaved soil area per tree.
 3. Parking lots for 50 or more cars shall be separated into areas not to contain more than 25 spaces. Parking areas of 25 spaces shall be separated by grass or shrub buffer areas, not less than 10 feet in width.

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

No [This research survey is not including mixed use PUDs or zones in the category of cluster zoning.]

Town of Hanson Zoning Bylaw

SECTION VI Use Regulations

H. Flexible Zoning Bylaw/Special District
[Amended 10/5/98]

The flexible zone district of this bylaw is intended to provide for a mixture of residential, agricultural, business, commercial and industrial, and mixed uses provided such use does not detract from the livability and aesthetic qualities of the environment:

Uses permitted:

- a. Conservation areas for water, water supply, plants and wildlife, and dams necessary for achieving this purpose.
- b. Farming and horticulture, including raising, harvesting and storing crops, truck gardening, cranberry bogs, grazing, poultry raising, fields, pastures, woodlots, and greenhouses, except that piggeries shall not be located in this district.
- c. Orchards, nurseries, forests and tree farms.
- d. Display and sale or offering for sale of farm produce and related products provided that the major portion of the produce is raised within the Town, and provided that no stand for such sale is located within twenty-five feet (25') of a Street line, and provision is made for off-street parking in accord with Section VII D.
- e. Single-family detached dwellings.
- f. Boarding houses or Rooming Houses for not more than four (4) persons, provided that the house is also occupied as a private residence.
- g. Accessory uses, including normal accessory uses as private garages, storage sheds, tennis courts, swimming pools, cabanas for swimming pools, summer houses, and a structure approved by Civil Defense authorities and designed for use by the inhabitants, employees or customers of the property to which it is accessory and used for shelter from natural disaster or war.

2. Uses permitted by special permit granted by the Board of Appeals as provided in Section VIII.D.

- a. Professional office, Funeral homes, and mortuaries.
- b. Retail store or service establishment, the principal activity of which shall be the offering of goods or services at retail within the building.
- c. Restaurants, membership clubs.
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- e. [Deleted]
- h. Theaters, museums, and bowling alleys.
- i. Gasoline service stations, provided that:
- ii. Repairs shall be limited to minor repairs and adjustments unless conducted in a building. ii. There shall be no storage of motor vehicles, appliances and equipment on the premises other than those in process of repair or awaiting delivery or in an enclosed structure.
- j. Motels, hotels and bed and breakfast establishments.
- k. Salesrooms and yards for automobiles.
- l. Picnic areas, day camps, overnight camps, recreation and any non-commercial open-air recreation use, including golf courses, parks (but not an amusement park), boating, fishing, hunting (where legally permitted).
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- n. Restaurants, provided that their use is in connection with a permitted use and that adequate parking areas are provided.
- o. Country clubs or other membership clubs.
- p. [Deleted]
- q. Tourist camps and overnight camps where structures are used for shelter.
- r. Commercial amusements, provided all business is conducted within the structure.
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- t. Structures containing more than one (1) but not more than eight (8) dwelling units, provided that:
 - i. Each dwelling unit shall have two (2) exposures.
 - ii. Each dwelling unit shall have two (2) separate exits.
 - iii. All off-street parking areas as required under Section VII D shall be in the rear of buildings.
 - iv. Each structure shall be connected to Town water.
 - v. A site plan prepared in accordance with the provisions of Section VII F has been submitted to and been approved by the Board of Appeals.
 - vi. If there is more than one (1) such structure on a lot of record, there shall be at least forty feet (40') between each structure.
 - vii. Demolition of existing historic structures, as designated in the "Bay Circuit/Open Space Plan, Hanson, Massachusetts," Table 1, Hanson Historic Sites, pages 5-6 and accompanying map, by IEP, Inc., dated January, 1988 shall not be permitted in order to construct a new multi-family structure.

Any use determined to be of similar character to the permitted uses of this district and to the intent of this district, said determination to be made by the Board of Appeals following petition of the land owner or owners.

Additional Uses Allowed By Special Permit

In the flexible zone district, the following uses may be allowed by special permit.

Uses permitted:

- a. mixed use in one (1) structure (ie. residence & business).
- b. assisted living residence at a limit of six (6) in one structure

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- a. The minimum lot size for all structures shall be 35,000 square feet. (At least eighty percent (80%) of the minimum lot size shall be upland (i.e., not a bank, bog, dune, marsh, swamp or wet meadow under the Massachusetts General Law, Chapter 131, Section 40.)
- b. The minimum frontage in feet for all structures shall be 150 feet. Measured at the street line. Where a lot has frontage on two streets only one-half of the linear distance on the curve at the intersection shall be computed as frontage on any street. Both frontages shall meet the requirements of minimum lot frontage for a depth of one hundred (100) feet.
- c. The minimum front yard shall be thirty-five (35) feet from lot line or the average of the front set back of the buildings on lots on the same side of the street and within three hundred (300') feet of the subject lot, which front yard set back line shall be less.
- d. The minimum side yard shall be twenty (20) feet from the lot line.
- e. The minimum rear yard shall be fifteen (15) feet from the lot line.
- f. The maximum percent building coverage shall be 20%
- g. The maximum total gross coverage shall be 75%

Parking Requirements

Throughout this zone, where there is parking for eight (8) or more vehicles, sixty (60%) of the number of spaces shall be to the rear of the main structure on the lot, provided this requirement may be altered by the Board of Appeals in the manner set forth herein below at subparagraph "j." The requirements for off-street parking and loading areas shall be as specified below for specific uses. These requirements shall be met in the case of all new construction, including expansions, additions, or changes of use. Where applicable, such parking areas shall be noted on a required Site Plan under Section VII.F of this By-Law. Where stipulated, "net floor area" shall mean usable floor space, exclusive of enclosed or inaccessible floor areas. In applying for a building or occupancy permit, the applicant must demonstrate that the following minimums will be met for the new demand without counting existing parking:

- a. Dwellings: Two spaces per dwelling unit, garage space inclusive.
- b. Motels, hotels, lodging houses: One space per guest unit plus one additional space per eight guest units or fraction thereof, plus one space for each employee on the largest shift.
- c. Retail stores, offices, municipal offices, banks: One space per 150 square feet of net floor area.
- d. Motor vehicle service station or repair of body shop: Three spaces for each service bay plus one space per employee on the largest shift.
- e. Industrial or wholesale: A minimum of five spaces, plus one space for each 2,000 sq. ft. net floor area for the first 20,000 sq. ft., plus one space for each additional 10,000 sq. ft. of net floor area, plus one space per employee on the largest shift.
- f. Places of assembly, restaurants: One space per three seats, or one space per 12 square feet of seating area, whichever is greater.
- g. Hospitals: One space per bed.
- h. Nursing homes: One space per each two beds, plus one space per employee on the largest shift.
- i. Bowling alleys: Four spaces per lane.
- j. All others, including shared parking: As determined by the Board of Appeals only upon its written determination that the proposed use will not have adverse effects on either the town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. The determination shall include consideration of each of the following:
 - i.) Social, economic, or community needs which are served by the proposal
 - ii.) Traffic flow and safety;
 - iii.) Adequacy of utilities and other public services;
 - iv.) Neighborhood character and social structures;
 - v.) Impacts of the natural environment;
 - vi.) Potential fiscal impact.

2. Design of Off-Street Parking and Loading Spaces shall meet the requirements specified below:

a. Location:

Required parking shall be either on the same premises as the activity it serves, or on a separate parcel if said parcel is located within 300 feet of the building's major entrance, and if not separated by a state-numbered highway, and if in a zoning district allowing the activity it serves.

b. Backing:

All parking areas shall be designed and located so that their use does not involve vehicles backing onto a public way. This shall not apply to residential uses.

c. For all required off-street parking spaces, open or enclosed, each 300 square feet of net standing and maneuvering area shall be considered one (1) space. All such parking spaces shall be designed so as to provide a twelve foot (12') clear space adjacent to each building. All required parking spaces shall be provided with unobstructed access to and from a street and shall be properly maintained in such a manner as to permit them to be used at all times. All required parking spaces shall be located on the same lot as the use with which such spaces are connected or, in the case of unenclosed spaces, within 200' of the lot, except that two (2) or more businesses may jointly provide the required spaces on one (1) or more of their lots. The number of spaces in any such joint facilities shall be at least equal the total number required under the provisions of this Section for their individual uses.

- d. Required off-street parking and loading spaces shall not hereafter be reduced, nor shall one be counted as or substituted for the other.
- e. Whenever off-street parking in Business or Commercial-Industrial Districts is required in accordance with Section VII D, there shall be an area at least twenty feet (20') deep between the street line and the balance of the lot which shall be separated from the street and the balance of the lot by a curb which shall encompass an area that shall be seeded and landscaped except at an access. Such access shall be at least twenty feet (20') wide and at least 120' center to center apart, and further provided that there shall be only one (1) access if the street frontage is 200' or less. If the street frontage is greater, additional accesses may be allowed in the ratio of one (1) such access for each additional 200' or portion thereof of frontage.
- f. Except in the case of parking spaces provided for dwellings, requirements for paving off-street parking and loading areas shall be determined by the Planning Board.
- g. Except in the case of parking spaces provided for single-family dwellings, off-street parking and loading areas used after sundown shall be illuminated with illumination so arranged so as not to shine directly on abutting properties or on streets.
- h. Entrance cuts to be made onto a traveled way shall be designed by the Planning Board after consultation with the State DPW Engineers as required, Police Chief, and Highway Surveyor.
- i. For Parking areas of fifteen (15) cars or more, the following requirements shall apply:
1. Parking lots for 15 or more cars shall be screened from any residential use or district which is abutting or separated from it only by a street. Screening shall be by a four foot planting strip maintained with densely planted shrubs, or by a fence of not less than four feet in height, and shall be landscaped as required below.
 2. Parking lots for 15 or more cars shall contain or be bordered within 5 feet by at least one tree per 10 cars, trees to be of 2" caliper or larger, and if within the parking area, to be planted in curbed soil plots allowing not less than 40 square feet of unpaved soil area per tree.
 3. Parking lots for 50 or more cars shall be separated into areas not to contain more than 25 spaces. Parking areas of 25 spaces shall be separated by grass or shrub buffer areas, not less than 10 feet in width.

According to survey received from Hanson Planning Board on 4/28/05, flexible zoning was established in 1998. The Board of Appeals is the SPGA. No more units could be built under the flexible provisions than under conventional zoning. Mixed use residence/business and multifamily housing is allowed. The provisions have been used.

Survey received from Hanson Planning Board on 4/28/05:

Has any housing been built under the cluster/flexible provisions? (none, 1-8 projects, more than 8)

1-8

Which entity is the special permit granting authority for cluster/flexible zoning?

Has any housing been built under the cluster/flexible provisions?

Harvard

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes OSC-PRD is allowed by special permit (Planning Board) in the AR District.

CODE OF THE TOWN OF HARVARD v2 (Updated 2004)

§ 125-35. Open Space and Conservation - Planned Residential Development (OSC-PRD). [Added 3-29-2003 ATM by Art. 32EN]
This section establishes and regulates Open Space and Conservation Planned Residential Development (OSC-PRD).
Development under this section is pursuant to a special permit granted by the Planning Board.

A. Purpose and intent. The purpose and intent of the OSC-PRD provision is to permit high-quality residential development that preserves open space, water resources, wetlands, habitat, prime agricultural land, scenic landscapes and natural features, reduces infrastructure and site development cost, and promotes a diversity of housing opportunities within the Town, while respecting and enhancing neighborhoods, and promoting attractive standards of appearance and aesthetics consistent with Town character.

(1) A further purpose of the OSC-PRD provision is to reduce the anticipated negative fiscal impact on the Town associated with conventional residential development.

(2) The OSC-PRD provision is designed to encourage the siting of homes in a manner that clusters units together in well-designed village settings, on buildable portions of the site, as a distinct alternative to the more arbitrary siting associated with lot by lot development typically reflected in plans submitted pursuant to Massachusetts General Laws Chapter 41, Sections 81K through 81GG, the Subdivision Control Law.

B. Applicability. The Planning Board may grant a special permit for an OSC-PRD on an Agricultural-Residential (AR) zoned tract of land that is at least 4.5 acres of land area, with definite boundaries ascertainable from a recorded or registered deed(s) or recorded or registered plan(s). Existing public and private ways need not constitute boundaries of the tract, but the area within such ways shall not be counted in determining tract size.

(1) Permitted uses in Open Space and Conservation Planned Residential Development. Permitted uses include the following:

(a) Single-family detached dwellings.

(b) Attached units, not to exceed 6 or more units in any single building.

(c) Agriculture and horticultural uses including but not limited to orchards, vineyards, forestry, farming for fruits and vegetables.

(d) Open space.

(e) Trails.

(f) Passive recreation.

(g) Educational and religious uses and other uses not mentioned above which are exempt from regulation by zoning under Massachusetts General Laws Chapter 40A, Section 3.

(h) Accessory residential/recreational uses (e.g., tennis court, pool, playground).

C. Requirements and process for approval. An applicant who is the owner (or with the permission of the owner) of a 4.5 acre or larger tract of land in the AR District as described above, may submit to the Planning Board a plan and application for a special permit for an OSC-PRD in accordance with the provisions of this section, excepting the building lots or lot shown on such plans from the lot area and other dimensional requirements specified in other sections of this Bylaw. While a subdivision plan is not required to be submitted in conjunction with the provisions of this section, in the event that a subdivision plan is being proposed by the applicant, such plan shall be submitted to the Planning Board in accordance with the Subdivision Rules and Regulations of the Planning Board. EN

(1) Submittal requirements. Prior to the granting of a special permit pursuant to this section, a duly submitted application for said special permit shall be submitted together with a site plan to the Planning Board, in accordance with § 125-38, Site plans, of the Bylaw, and any Site Plan Rules and Regulations adopted by the Planning Board. For purposes of this Bylaw, a landscape architect, architect, land surveyor, and professional engineer must participate in the preparation of such site plan, which shall include the following:

(a) The location of the proposed development.

(b) The size of the site in acres.

(c) The total number of the proposed buildings and/or lots, and the size of each in square feet.

(d) The acreage and proposed use of permanent open space.

(e) A statement on the disposition or manner of ownership of the proposed open space.

(f) The lots or areas which are to be used as building areas or lots, and the lots or areas which are to remain as permanent open space.

(g) Lines showing yard and setbacks as required by this Bylaw, within which dwellings or structures must lie.

(h) Sufficient detail of proposed built and natural features as described in § 125-35D and § 125-35E to enable the Planning Board to make the required determinations of § 125-35C(3).

(i) A landscape preservation plan sheet(s) to be included with the site plan, reflecting the existing, natural features to be preserved and proposed landscape features and details.

(2) Submittal of preliminary plan. In order to assist the Planning Board in making a determination, pursuant to § 125-35C(3)(d), that an OSC-PRD is superior to a conventional subdivision development, an applicant must submit a plan of the required form and content standards as a "Preliminary Plan" in accordance with the Massachusetts General Laws Chapter 41, Section 81S and the "Rules and Regulations of the Harvard Planning Board Relative to Subdivision Control." Such plan, although not a formal subdivision plan filing, and submitted for conceptual purposes only, shall include a perimeter survey prepared by a registered land surveyor, location of wetlands delineated by a wetlands specialist, and topography based upon the most recent United States Geological Survey map. The applicant shall demonstrate to the satisfaction of the Board that a subdivision plan, if formally filed, would be buildable without reliance on significant waivers of the subdivision regulations, and without extraordinary engineering techniques. Further, the applicant must demonstrate and provide sufficient evidence, to the satisfaction of the Planning Board, that each of the lots reflected on the "Preliminary Plan" submitted are capable of being served by an individual sewage system that would comply with the regulations of the Board of Health.

(3) Approval criteria. After notice and a public hearing in accordance with Massachusetts General Laws Chapter 40A, Section 9, 11, and 15 and after following the procedure outlined in this Bylaw, the Planning Board may grant such a special permit with any conditions, safeguards, and limitations, if it determines:

(a) That the application form and content referred to in § 125-35C(1), herein is properly completed.

(b) That the site plan referred to in § 125-35C(1) is properly completed.

(c) That all the other requirements of this Section and Bylaw are fully met.

(d) That the design and layout of the proposed OSC-PRD is superior to a conventional subdivision plan in preserving open space for conservation and recreation; that it preserves natural features of the land, and allows more efficient provision of streets, utilities and other public services; and, that it provides a high degree of design quality, based on the criteria and considerations enumerated

herein in § 125-35E.

(e) That if development of single family homes is being proposed on separate lots, as opposed to a clustered village concept that is a major objective of this Bylaw, exemplary site planning is demonstrated, and other determinations in § 125-35D, are met.

H. Base development density. The maximum number of dwelling units per acre permitted in an OSC-PRD shall not exceed one unit per 1.50 acres of land area, and in no event exceed the maximum number of lots or dwelling units obtainable under a conventional subdivision plan for the land area under consideration, except as provided in § 125-35I.

I. Development incentive.

(1) The Planning Board may authorize an increase in lots or dwelling units up to a maximum of 25% above that allowed under § 125-35H of this Bylaw, provided the following conditions are met:

(a) The applicant proposes a significant increase in open space above 50%, and preserves significant natural resources, in the opinion of Planning Board.

(b) There is permanent preservation of land devoted or set aside for agricultural use or other unique preservation strategy, including preservation of historic structures or barns, or other special features of the built environment.

(If (a) and (b) above are found to be satisfied, in the opinion of Planning Board, it may authorize a 5% increase in applicable base density.)

(c) The applicant proposes public improvements or amenities that result in substantial benefit to the Town and the general public, provided:

[1] There are significant improvements to the environmental quality or condition of the site and its surrounding areas, including a decrease in stormwater runoff from what would otherwise result from a conventional subdivision plan.

[2] There are provisions contributing to off-site public facilities or environmental improvements beyond those necessary to mitigate the impacts of the proposed development.

(If (c) above is found to be satisfied, in the opinion of Planning Board, it may authorize a 5% increase in applicable base density.)

(d) The applicant proposes attached dwellings that include a maximum of two bedrooms per unit, and are developed in the character of a New England Village style of architecture.

(If (d) above is found to be satisfied, in the opinion of Planning Board, it may authorize a 5% increase in applicable base density.)

(e) Housing units for senior citizens and persons aged 55 years and over housing is provided.

(If (e) above is found to be satisfied, in the opinion of Planning Board, it may authorize a 5% increase in applicable base density.)

(f) The applicant sets aside 10% or more of lots or dwelling units on the site for "affordable housing" for purchase or rental by those with households of low or moderate incomes. Such units must count toward the Town's Subsidized Housing Inventory, and be in accordance with the provisions of 760 CMR 45.00, as may be amended. The Planning Board shall review and approve the actual percentage distribution of qualifying low versus moderate income units.

(If (f) above is found to be satisfied, in the opinion of Planning Board, it may authorize a 20% increase in applicable base density.)

(2) Standards for on-site affordable units. Housing units set aside as affordable housing, as described in § 125-35I(1)(f), shall have a gross floor area comparable to market-rate units and shall be integrated into the development and not grouped together. When viewed from the exterior, the affordable units shall be indistinguishable from the market-rate units in the same development. The developer shall provide adequate guarantee, acceptable to the Planning Board, to ensure the continued availability and affordability of the units in perpetuity; such guarantee must include recorded deed restrictions, recorded restrictive covenants relative to equity limitation, or other acceptable forms of guarantees. No more than 80% of the building permits for the market-rate units shall be issued within an OSC-PRD until construction has commenced on all the affordable units; no more than 80% of the certificates of occupancy for the market-rate units shall be issued until all of the certificates of occupancy for the affordable units have been issued.

J. Dimensional requirements. The following provisions shall apply:

(1) The Planning Board may waive the minimum requirements for frontage and/or yard requirements that would normally be applicable to land within the AR District in order to achieve maximum open space area, and may permit more than one single or two-family dwelling be located on a lot in an OSC-PRD, except as provided below.

(2) The parcel proposed for development must have a minimum of 50 feet of frontage on a public way or private way which is open to the public.

(3) Attached units shall contain no more than six units in a single building.

(4) The minimum distance between clusters of multiple unit dwellings, shall be 50 feet.

(5) The minimum width of existing and proposed open space between dwelling units in the OSC-PRD and adjacent property, shall be 150 feet in the case of parcels of five acres or more.

(6) The minimum setback from internal roads shall be 25 feet.

(7) The maximum height of proposed buildings shall be 35 feet, and shall not exceed 2 1/2 stories.

(8) Except as provided in this Bylaw, any lot in an OSC-PRD shall comply with any other dimensional requirements of the zoning district in which it is located.

K. Common open space. A minimum of 50% of the OSC-PRD parcel shall be devoted to contiguous open space, completely devoid of any structure, parking, loading and unloading space, accessways thereto, or as private yards, patios, or gardens for the exclusive or principal use by residents of individual dwelling units. To the greatest extent possible, such open space shall be left in its undisturbed natural condition or shall be appropriate in size, shape, dimension, location, and character to assure its use as a conservation area, and where appropriate, a recreational area, and be a visual and natural amenity for the development and the Town. The common open space described herein is in substitution of and supercedes any other reference to common open space that may be described elsewhere in the Bylaw.

(1) Open space criteria. The following criteria define open space, and open space that is considered usable within an OSC-PRD parcel:

(a) No more than 25% of common open space in an OSC-PRD shall be wetlands.

(b) Unless approved by the Planning Board, common open space shall not be considered usable if the slope of the finished grade

exceeds 33%.

(c)Unless approved by the Planning Board, the nearest part of the common open space shall not be more than 300 feet in distance from the nearest point of any building that it is proposed to serve.

(d)No common open space shall be considered usable unless it is compact and contiguous and has no dimension of less than 50 feet.

(e)All usable open space shall be open to the sky and pervious.

L. Open space conveyance.

(1)The common open space shall be conveyed in the following ways as approved by the Planning Board:

(a)To a corporation or trust comprising a homeowners association whose membership includes the owners of all lots or units contained in the development. The developer shall include in the deed to owners beneficial rights in said open land, and shall grant a perpetual open space restriction to the Town of Harvard or a non-profit corporation or organization over such land to insure that it be kept in an open state and not be built upon for residential use, or developed for accessory uses such as parking or roadways. Such restriction shall be in such form and substance as the Planning Board shall prescribe, and may contain such additional restrictions on development and use of the open space as the Planning Board may deem appropriate.

(b)To a non-profit organization, the principal purpose of which is the conservation of open space. The developer or non-profit organization shall grant an open space restriction as set forth above.

(c)To the Town for a park or open space use, subject to the approval of the Board of Selectmen, for management by the Park and Recreation Commission if a park, otherwise by the Conservation Commission, with a clause insuring that it be maintained as open space.

(2)Multiple conveyance. To provide flexibility, and when deemed in the public interest, the Planning Board may approve more than one organization to accept the open space conveyance, particularly when it is appropriate that a major portion of such land be conveyed to the Town or a non-profit conservation organization, and another portion of such land is more appropriately conveyed to an owners association.

From ordinance.com under definitions:

CDOS -- Residential cluster development for open space conservation as provided under § 125-35, Cluster development for open space conservation. [Added 3-31-1990 ATM by Art. 18]

D. Use by special permit authorized by the Planning Board:

(2) As provided in § 125-34, Mini-subdivision. [Added 3-31-1990 ATM by Art. 18]

(3) As provided in § 125-35, Cluster development for open space conservation. [Added 3-31-1990 ATM by Art. 18]

Survey received from Harvard 5/24/04:

Can more units be built under cluster/flexible provisions than would be allowed through conventional zoning?

"yes"

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board This section establishes and regulates Open Space and Conservation Planned Residential Development (OSC-PRD). Development under this section is pursuant to a special permit granted by the Planning Board.

Has any housing been built under the cluster/flexible provisions?

Yes According to Marie Nader, Planning Board Administrator, (11/2/04) the town just permitted its first planned residential development. The development ("Deer Run") will consist of 5 units and will not include affordable housing. Although the town has had the bylaw for years, no developer has used it until now (land is expensive and the topography is difficult to build on). The bylaw was recently changed to make the process easier for developers.

Haverhill

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Section 255-87. Planned unit development.

[Amended 8-8-1972 by Doc. 197]

Planned unit development, which may include residential, recreational, commercial and institutional uses, may be allowed by special permit in the districts specified in Table 1: Table of Use and Parking Regulations and which are not subject to Table 2: Table of Dimensional and Density Regulations, provided that the following conditions are met. (Researcher's note: Table 1 states that Cluster residential design is allowed by SP in RR, RL, RM, RH, RU districts and that PUD is allowed by SP in RM, RH, RU districts) (See also Section 255-90.)

A. The tract shall be at least 10 contiguous acres, except in an RM Zone where 25 contiguous acres are required, in single or consolidated ownership and have at least three hundred (300) feet of contiguous frontage on a public right-of-way at least seventy (70) feet in width. (If the width of the public-right-of-way is less than herein required, additional right-of-way may be deeded to the city for the entire length of frontage on said way so as to comply with this requirement.) [Amended 6-10-1992 by Doc. 52-C]

B. Uses. [Amended 4-23-1985 by Doc. 83]

(1) The following uses shall be permitted:

(a) Residential (one-, two-, and multifamily dwelling).

(b) Community facilities, religious or educational.

(c) Membership club for exclusive use of the residents of the planned unit development.

(d) Public recreation or open space.

(e) Fire station.

(f) Commercial (retail or service establishment that is otherwise permitted in any CN District).

(g) Provided that the planned unit development is at least one hundred (100) contiguous acres, the following may apply:

[1] Sports facility to provide (nutritional) counseling, exercise programs, physical therapy, conditioning and care for sports-related injuries and necessary hospital referrals and such other services as are related to sports activities, not to exceed eight thousand (8,000) square feet.

[2] Bank and/or other financial institution (drive-in and/or non-drive-in), not to exceed one thousand one hundred (1,100) square feet.

C. At least thirty percent (30%) of the land area shall be set aside as permanent open space and offered to the city for acceptance as public open space or covenanted by the owner as public open space. [Amended 8-14-1973 by Doc. 188; 6-10-1992 by Doc. 52-C]

D. The remaining seventy percent (70%) of the land area may be developed for residential community facilities and commercial uses. Ten percent (10%) of the total residential gross floor area or ten thousand (10,000) square feet in gross floor area, whichever is less, may be devoted to commercial gross floor area at any one (1) time. [Amended 8-14-1973 by Doc. 188; 6-10-1992 by Doc. 52-C]

E. The residential gross density within the developed area (seventy-percent portion) shall not exceed the density of dwelling units per acre in the underlying district, except as provided for in Section 255-89.1, Inclusionary housing. [1] [Amended 8-14-1973 by Doc. 188; 6-10-1992 by Doc. 52-C] (Researcher's note: Section 255-89.1 states: Section 255-89.1 Affordable Housing [Added 6-27-2000 by Doc. 79-J]

A. Statement of Purpose and Definition of "Affordable"

In order to meet the needs of the community for housing serving all income and until such time as 10% of the housing stock of the City of Haverhill determined to be available to households with incomes of 80% or less median income of the Lawrence-Haverhill Primary Metropolitan Statistical Area (PMSA), any new residential development requiring a special permit from either the City Council or the Board of Appeals is required to make available 10% or more of the units for such persons of low and moderate income, or make cash contribution to be designated housing entity (as described in Section D.3).

Definition: For purposes of this section of the Haverhill Zoning Ordinance the term affordable shall be defined as follows:

Affordable rents are defined as those rents as published from time to time by the U.S. Dept of Housing and Urban Development under that agencies HOME program and shall not exceed the Low HOME rent limits for the Lawrence/Haverhill PMSA.

Affordable Sale Price is defined as 50% of the HOME Maximum value limits for Essex County as published from time to time by the Dept. of Housing and Urban Development under that agencies HOME program.

B. Applicability to Multi-family Dwelling Units

Prior to favorable action on an application for a special permit to construct multi-family dwelling units, the following requirements must be met:

1. All new multi-family housing developments are required to provide 10% of their units for occupancy by low and moderate income households.

2. If 15%-25% of the units are set aside for low and moderate income housing units, the City Council may grant a numerical equivalent (i.e. 15% max. density bonus for 15% units for low/mod) density bonus of up to 15-25% more units than normally allowed in applicable zoning district. In no case can the unit density bonus exceed 25%.

In order to accomplish increases in density in multi-family rental developments, the City Council shall determine that public utilities, lot sizes and dimensional requirements are sufficient to accomplish the increases in dwelling unit density in addition to other special permit requirements.

3. All new Cluster Residential Developments or PUD shall provide 10% of the units for handicapped accessibility using adaptable design for construction. [Added 6-27-2000 by Doc. 79-J]

C. Applicability to Cluster Residential or Planned unit development

In the event that the developer of a cluster residential or planned unit development wishes to provide more low and moderate

income housing units than required as part of the development he/she may apply to the City Council acting as the Special Permit Granting Authority (SPGA) for a special permit to allow an increase in density ("density bonus"). A density bonus may be granted using the following formula:

1. If 15%-25% of the units are set aside as low and moderate income housing rental units, the City Council may grant a numerical equivalent density bonus of up to 15-25% more units than normally allowed in applicable zoning district. In no case can the unit density bonus exceed 25%.

In order to accomplish increases in density for cluster residential or planned unit development, the City Council shall determine that public utilities, lot sizes and dimensional requirements are sufficient to accomplish the increases in dwelling unit density in addition to other special permit requirements.

Location of Low and Moderate Income Housing Units

The requirement of low and moderate income housing units may be met in one of the following ways. The developer as part of his/her special permit application shall include a proposal to address this requirement. The City Council shall make the final determination of which method is appropriate:

1. The low and moderate income housing units will be constructed on the same site as other units and indistinguishably interspersed throughout the project (except as provided for below). In all cases, the low and moderate income housing units to be provided shall be equal in quality, materials, and character to the market - rate units in development.

2. In lieu of constructing new units or rehabilitating existing units, the developer may make a cash contribution to a designated housing entity or with the approval of the City Council they make a cash donation to the City for the purchase of recreational land. The amount of cash payment shall be determined by the following formula: the proposed average fair market value of all of the proposed dwelling units, as certified by a qualified appraiser (or, if rental dwelling units, an average fair market value established by the Office of the City Assessor), and multiplied by .15. Said payment shall be made prior to the issuance of any building permit(s). In addition to the above method, if a project which is to have 25% or more low and moderate income units, wishes not to construct the units on site, then the developer may build the 25% rental units off site at an acceptable location in the City. [Amended 6-27-2000 by Doc. 79-J]

Rental or Sale of Low and Moderate Income Housing Units that are Constructed

1. In the event that all units in a development are to be rental units, the low and moderate income housing units shall be made available to persons eligible for state or federal rental subsidies and who are on the waiting list of the Haverhill Housing Authority. The units shall remain available for a term of 40 years based on eligibility standards adopted by the Housing Authority.

2. In the event that the units in the development are to be offered for sale, the low and moderate income housing units shall be first offered for sale to the Haverhill Housing Authority at a sales price in conformance with the guidelines of the Haverhill Housing Partnership posted with the City Clerk. If the Haverhill Housing Authority chooses not to purchase such units, the low and moderate income housing units shall then be offered for sale to any other non profit housing entity or directly to low and moderate income persons.

3. In the event that units are to be offered for sale directly to persons with low or moderate incomes, the guidelines established by the Haverhill Housing Partnership Committee shall apply, and these guidelines shall be posted with the City Clerk.

F. Fractional Share

In determining the number of low and moderate income units to be provided a fractional share of 0.5 or more shall be regarded as a whole unit and a fractional share of 0.4 or less shall require no contribution to satisfy the fractional share.

G. Projects with 6 units or less

Projects with 6 units or less shall provide one unit. If 15%-25% of the units are set aside as low and moderate income housing rental units, the Haverhill Board of Appeals (as SPGA for projects of 6 units or less) may grant a numerical equivalent density bonus of up to 25% more units than normally allowed in applicable zoning district. In no case can the unit density bonus exceed 25%.

H. Timing

If the project is built in phases, a proportionate share of low and moderate income units shall be built in each phase.

I. Designated Housing Entity

Cash payments received under the provisions of this ordinance shall be paid into a Designated Housing Entity, to be established by the City. This entity shall be used, at the discretion of the Mayor, with the approval of the City Council to increase the supply of affordable housing in Haverhill.)

F. Buildings shall be a minimum of fifty (50) feet from any perimeter lot line and a minimum of twenty (20) feet from any internal street line, and there shall be a minimum of thirty (30) feet between buildings. If a building height exceeds three (3) stories or thirty-five (35) feet, whichever is less, a distance of one-half () the total building height shall be added to the minimum distances herein required.

G. Buildings shall be limited to the maximum height of the underlying district. [Amended 6-10-1992 by Doc. 52-C]

H. The development shall be served by both a public water and public sewerage system. □

I. The plan and the roadway and respective utility improvements in the tract shall be subject to the definitive plan and performance guaranty requirements of the Rules and Regulations Governing the Subdivision of Land in the City of Haverhill, Massachusetts.

J. The services of a consultant to act as a Clerk of the Works, directly responsible to the City Engineer, shall be required for all planned unit developments to assure that proper construction practices are implemented according to any standards or procedures set forth by the City Council as a condition of the issuance of the required special permit and according to the subdivision plans and specifications approved by the Planning Board. Said Clerk shall be selected and reimbursed as outlined in Section 255-92-1.

[Added 10-14-1980 by Doc. 170-C]

K. The developer shall install street identification signs on all rights-of-way and drives within the development. Said signs shall be in place upon completion of final paving of each respective way or drive. [Added 9-25-84 by Doc. 147-C]

L. The developer shall install streetlighting on all rights-of-way and drives within the development. The lighting shall be in place prior to paving of each respective way or drive. [Added 9-25-84 by Doc. 147-C]

Section 255-88. Cluster residential development.

[Amended 8-8-72 by Doc. 197; 8-14-73 by Doc. 188; 6-6-78 by Doc. 103-C; 6. 19-79 by Doc. 94-C]

A. A cluster residential development is a division of land into lots for use as single-family building sites where said lots are arranged into one (1) or more groups having area and yard measurements less than the minimum required in the Table of Dimensional and Density Regulations. These clusters or groups shall be separated from adjacent property and other groups of lots within the development by intervening open space land.

B. Cluster residential developments may be allowed in those districts specified in Table 1: Table of Use and Parking Regulations by special permit subject to dimensional requirements less than the minimum required for the development of an individual lot in the same district, provided that the following conditions are met. (See also Section 255-89.)

(1) The tract of single or consolidated ownership at the time of application shall be at least fifteen (15) acres.

(2) Each individual lot shall be subject to all requirements for a one-family detached dwelling in any RH District.

(3) The number of lots over the tract of land in any one zoning district shall not exceed the number of lots permitted under normal application of the area regulations of the district in which the tract of land is located, except that a ten percent (10%) unit density bonus may be granted; however, in the event that a density bonus is granted, open space land shall be at least thirty percent (30%) of the total land tract. [Amended 6-10-1992 by Doc. 52-C]

(4) The proposed plan shall be in accordance with the Haverhill Master Plan as last revised.

(5) The development shall be served by both public water and sewerage systems.

(6) The area of open space land when added to the area of building lots shall at least equal the area that would have been required to develop the same number of dwelling units within a conventional, nonclustered subdivision in the zoning district. Open space land shall be at least fifty percent (50%) nonwetlands or land with a slope of five percent (5%) or greater.

(7) Open space land separating groups of lots within the development shall be left in a natural state or developed for open space recreational purposes only, such as a tot lot, park, playground, playfield, golf course, conservation area, etc. Open space land which separates the development from adjacent property not of the development shall be left in a natural state and shall not be developed for any purpose.

(8) Such open space land shall simultaneously, with the Planning Board's approval of the definitive subdivision plan, either be conveyed to the city and accepted by it for park or open space use; or be conveyed to a nonprofit organization, the principal purpose of which is the conservation of open space; or to be conveyed to a corporation or trust owned or to be owned by the owners of lots or residential units within the plot. If such a corporation or trust is utilized, ownership thereof shall pass with conveyances of the lots or residential units. In any case where such land is not conveyed to the city, a restriction enforceable by the city shall be recorded, provided that such land shall be kept in an open or natural state and not be built for residential use or developed for accessory uses such as parking or roadway. Such open space land shall have suitable access to a street.

(9) The plan and the roadway and respective utility improvements in the tract shall be subject to the definitive plan and performance guaranty requirements of the Rules and Regulations Governing the Subdivision of Land in the City of Haverhill, Massachusetts.

(10) The services of a consultant to act as a Clerk of the Works, directly responsible to the City Engineer, shall be required for all cluster residential developments to assure that proper construction practices are implemented according to any standards or procedures set forth by the City Council as a condition of the issuance of the required special permit and according to the subdivision plans and specifications approved by the Planning Board. Said Clerk shall be selected and reimbursed as outlined in Section 255-92.1. [Added 10-14-1980 by Doc. 170-C]

(11) The developer shall install street identification signs.... [Added 9-25-84 by Doc. 147-C]

(12) The developer shall install streetlighting.... (Added 9-25-84 by Doc. 147-C)

PLANNED UNIT DEVELOPMENT - A development involving the construction of two (2) or more principal buildings on the same lot for any permitted use. [Amended 6-10-1992 by Doc. 52-C]

Which entity is the special permit granting authority for cluster/flexible zoning?

Selectmen/Council The City Council is hereby authorized to hear, decide and grant, upon application, special permits for cluster residential developments, planned unit developments, multifamily developments...

Has any housing been built under the cluster/flexible provisions?

Yes Economic Development and Planning Director Bill Pillsbury said that their flexible zoning has been "very effective" and that the town has "done a lot with it." (11/23/04)

Hingham

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by

special permit?

Yes Town of Hingham Zoning Bylaw, Sections III-A and Section IV (Revised 2003) - Flexible Residential Development is allowed by special permit in Residence District A,B,C.

IV-D Flexible Residential Development (FRD) - Special Permit

1 Purposes

(a) To encourage the permanent preservation of open space, water bodies and supplies, wetlands and other natural resources, and historical and archeological resources,

(b) To preserve and enhance community character by allowing for greater flexibility, creativity and open space within residential developments,

(c) To provide for a diversified housing stock, including Moderately-Sized Homes and Low or Moderate income Housing,

(d) To facilitate the construction and maintenance of housing, streets, utilities and public service facilities in an economical and efficient manner, and

(e) To minimize the total amount of disturbance on the site

2 Definitions

Capitalized terms used herein and not otherwise defined herein shall have the same meanings ascribed to such terms in Section VI of this By-Law

ADDITIONAL DWELLING UNITS - As defined in Section IV-D, 7

CONVENTIONAL YIELD - The number of Single-Family Detached Houses that would be permitted under Massachusetts General Laws Chapter 41, Sections 61K-81GG (The Subdivision Control Law) and which could reasonably be expected to be developed in full conformance with applicable zoning, subdivision rules and regulations, wetland by-laws, Board of Health rules and regulations and all applicable rules and regulations of the Town of Hingham

EXISTING PROTECTED OPEN SPACE - Open space not located within the site which is protected in perpetuity by legal restriction or form of ownership (e.g., land which is under the control of the Conservation Commission, owned by a non-profit organization the principal purpose of which is the conservation of open space, or subject to a conservation restriction)

FLEXIBLE RESIDENTIAL DEVELOPMENT (OR "FRD") - an alternative development plan to a conventional subdivision which permits flexibility in the layout and design of a subdivision and Additional Dwelling Units in exchange for the preservation of a significant portion of the site as open space and the construction of diversified housing

LOW OR MODERATE INCOME HOUSING - Dwelling Units restricted for a period of not less than thirty (30) years to occupancy by persons or families who qualify as low or moderate income, as those terms are defined for this area by the Massachusetts Department of Housing and Community Development (DHCD) and which are affordable to such persons in accordance with applicable regulations of DHCD or the Department of Housing and Urban Development. For the purpose of this Section IV-D, any Dwelling Unit intended to be considered as Low or Moderate Income Housing shall have the following minimum specifications

MODERATELY-SIZED HOME - For the purpose of this Section IV-D, any Dwelling Unit intended to be considered as a Moderately-Sized Home shall have the following maximum specifications

OPEN SPACE - Land within the site that is prohibited from development (except as specifically provided herein), and managed under the requirements set forth in Section IV-D, 8 hereof

UNRESTRICTED DWELLING UNITS - As defined in Section IV-D, 7

3 Eligibility

Sites that meet the following criteria are eligible for a Special Permit A3

(a) Sites containing a minimum of five (5) acres and a Conventional Yield of not less than three (3), subject to subsection 3(d) below

(b) Sites located in Residential Districts A, B and C

(c) Sites with the proposed use permitted in the District in which the site is located, except that if the proposed FRD includes Low or Moderate Income Housing, Town Houses shall also be permitted instead of, or in combination with, Single Family Detached Houses

(d) Sites consisting of a single parcel or two or more contiguous parcels For the purposes of this Section IV-D, parcels physically separated by a street or way (other than a Major Street as defined in Section 4 of the Planning Board Rules and Regulations) may be considered contiguous parcels, provided that (i) the parcels on each side of such street or way are each at least three (3) acres and (ii) the frontage of the parcels on such street or way shall be parallel for a distance of not less than fifty (50) feet

(e) The site may be a subdivision or a division of land pursuant to Massachusetts General Laws Chapter 41, Section 81P, provided, however, that a FRD may also be permitted on a site intended as a condominium and not so divided or subdivided

4. Application and Review Procedure

The review procedure for a Flexible Residential Development (FRD) consists of two steps: 1) Preliminary Flexible Residential Development Plan ("Preliminary FRD Plan") review; and 2) Definitive Flexible Residential Development Plan ("Definitive Plan") review. In the first step, the applicant shall file a Preliminary FRD Plan, as described below, which describes the overall development proposal for the site. The Planning Board shall grant or deny a Special Permit A3 based on the information contained in the Preliminary FRD Plan application.

If the Special Permit A3 is granted, the applicant shall submit a Definitive Plan, as described below, based on the Preliminary FRD Plan. The Planning Board shall then review the Definitive Plan as a definitive subdivision plan. Two separate public hearings shall be held, one for the Special Permit and one for the Definitive Plan.

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The applicant is encouraged to request a pre-application review at a regular business meeting of the Planning Board. If one is requested, the Planning Board shall invite all relevant boards and committees to attend, including but not limited to the Conservation Commission, Board of Health and, if applicable, Sewer Commission, Historic Districts Commission and Housing Partnership Committee. The purpose of the pre-application hearing is to minimize the applicant's cost of engineering and other technical experts, and to obtain the input and direction of the Planning Board prior to filing the application. At the pre-application review the applicant shall outline the proposed FRD and seek preliminary feedback from the Planning Board and/or its technical experts. The applicant is also encouraged to request a site visit by the Planning Board and/or its agents in order to facilitate pre-application review. If such a site visit is requested, all applicable boards and committees will also be notified and invited to attend.

5. Preliminary Flexible Residential Development Plan Review

a. An application for Preliminary FRD Plan review shall include the following:

(i) Site Context Map. A map illustrating the larger context in which the site is located, including associated or adjacent neighborhoods, natural features, roads and zoning districts.

(ii) Existing Conditions/Site Analysis Map. Based on existing data sources and field inspection, this map should contain all zoning classifications applicable to the site, all physical and natural features including water bodies, streams, wetlands, areas of greater than 40% slope, vistas, geological and topographical features, topography at 2' intervals, unique vegetation, historic features, large boulders or ledge outcroppings, wooded and open areas, trees with a caliper of 6 inches or greater and stone walls.

(iii) Preliminary Plan. The preliminary development plan, prepared by a professional landscape architect registered in the Commonwealth of Massachusetts, which complies with the requirements of Section 3, B (1) and (2) of the Planning Board Rules and Regulations. The Planning Board may waive specific requirements relative to the content of the Preliminary Plan as the Planning Board deems appropriate. The Preliminary Plan shall also identify the proposed location and size of structures to be built on the site.

(iv) Conventional Yield Sketch Plan. A sketch plan showing the Conventional Yield.

b. The applicant shall file the Preliminary FRD Plan with the Town Clerk and Planning Board, and submit copies of the Preliminary FRD Plan to the Board of Health, Conservation Commission, Fire Department, and Department of Public Works. The applicant shall also submit copies of the Preliminary FRD Plan to such other Town boards and agencies as the

Planning Board shall request. The applicant shall file with the Town Clerk and submit to the Planning Board one or more transmittal letter(s), as required, certifying that it has forwarded such copies to the Town boards and agencies as provided in this subparagraph and as may be requested by the Planning Board.

c. The Town boards and agencies receiving copies of the Preliminary FRD Plan shall submit written recommendations to the Planning Board within 35 days after filing of the Preliminary FRD Plan. Failure to report to the Planning Board within 35 days shall be deemed a lack of objection to the

45 application. The applicant is encouraged to meet with the Town boards and agencies receiving copies of the Preliminary FRD Plan during the review period.

d. The Planning Board, within 60 days or such further time as may be agreed upon in writing by the applicant, may grant a Special Permit A3 if it determines that the proposed FRD achieves greater flexibility and creativity in the design of residential development than a conventional subdivision plan, promotes the preservation of Open Space and natural resources, reduces the total amount of disturbance on the site, facilitates the efficient delivery of services and complies with the requirements of this Section IV-D.

e. All Open Space shall be dedicated at the time the Special Permit holder commences construction under a Building Permit.

6. Definitive Flexible Residential Development Review

a. If the Special Permit A3 is granted by the Planning Board, the applicant shall file with the Planning Board an application for a Definitive Plan in accordance with the Rules and Regulations of the Planning Board relative to the submission of a Definitive Plan (Section 3, C). In addition, the applicant shall submit a list of all waivers requested from the Planning Board Rules and Regulations.

b. The Planning Board shall review the Definitive Plan to determine its compliance with the Subdivision Control Law, and hold a public hearing as required by Massachusetts General Laws Chapter 41, Section 81T. The Special Permit A3 shall be reconsidered if there is a substantial variation between the Definitive Plan and the Preliminary FRD Plan. A substantial variation shall be defined as an increase in the number of Lots or Dwelling Units, a decrease in the amount of Open Space and/or a change in the development pattern which adversely affects natural landscape features and Open Space, or surrounding residential properties. If the Planning Board finds that a substantial variation exists, it may reopen the Special Permit A3 public hearing to review the modifications to the Preliminary FRD Plan and, based on its findings, may approve, modify or revoke the Special Permit A3.

7 Density

The total number of Dwelling Units permitted on the site shall not exceed the Conventional Yield, provided that, if the Planning Board makes a finding that the proposed development complies with all of the provisions of this Section IV-D, the total number of Dwelling Units permitted on this site shall be the greater of (i) one hundred thirty five percent (135%) of the Conventional Yield (rounded to the nearest whole number) or (ii) the Conventional Yield plus two (2). The number of Dwelling Units permitted in excess of the Conventional Yield are referred to herein as the "Additional Dwelling Units"

(a) Subject to (d) through (f) below, at least one third (1/3) of the Additional Dwelling Units shall be Low or Moderate Income Housing,

(b) Subject to (d) through (f) below, at least one-third (1/3) of the Additional Dwelling Units shall be Moderately-Sized Homes,

(c) The remaining Additional Dwelling Units shall be referred to herein as "Unrestricted Dwelling Units",

(d) If the total number of Additional Dwelling Units is less than three (3), the first Additional Dwelling Unit shall be designated as Low or Moderate Income Housing and the second Additional Dwelling Unit shall be designated as an Unrestricted Dwelling Unit,

(e) If the total number of Additional Dwelling Units is a number which is not evenly divisible by the number three (3), the number of Additional Dwelling Units represented by the remainder shall be designated as follows (i) if the remainder is one (1), such Additional Dwelling Unit shall be designated a Moderately-Sized Home, and (ii) if the remainder is two (2), the first Additional Dwelling Unit shall be designated as Low or Moderate Income Housing and the second Additional Dwelling Unit shall be designated as either a Moderately-Sized Home or an Unrestricted Dwelling Unit,

(f) The Additional Dwelling Units shall be allocated such that the number of Additional Dwelling Units designated as Unrestricted Dwelling Units shall not exceed the number designated as Low or Moderate Income Housing,

(g) Low or Moderate Income Housing and Moderately-Sized Homes shall not be segregated on the site, and shall be designed in the same architectural style and constructed with building materials comparable to any Unrestricted Dwelling Units constructed on the site,

(h) If the proposed development consists of a mix of Single Family Detached Houses and Town Houses, the Low or Moderate Income Housing and the Moderately-Sized Homes (i) shall be developed with a consistent mix of such Single Family Detached Houses and Town Houses and (ii) must be evenly distributed among the Single Family Detached Houses and the Town Houses constructed on the site. In addition, the number of bedrooms in any Town Houses which are designated as Low or Moderate Income Housing shall mirror the number of bedrooms in the remaining Town Houses (for example, if there are two market rate Town Houses, one with two bedrooms and one with three bedrooms, then the corresponding Town Houses designated as Low and Moderate Income Housing shall also contain two bedrooms and three bedrooms, respectively), and

(i) It shall be a condition of the approval of a Definitive Plan that the procedure for the sale or rental of the Low or Moderate Income Housing shall be in writing and approved by the Hingham Housing Authority (or such other board or authority granted jurisdiction over affordable housing units by the Town) prior to the issuance of a building permit for the site. To the extent permitted by applicable law, preference shall be given in the sale or rental of Low and Moderate Income Housing units to (i) persons currently residing in the Town for at least 24 consecutive months or (ii) persons who have previously resided in the Town for at least ten (10) years or (in) persons who are currently employed by the Town for at least 24 consecutive months for a minimum of twenty (20) hours per week.

8 Open Space Requirements

The following Open Space requirements shall apply

(a) A minimum of forty percent (40%) of the site shall be Open Space

(b) The Open Space, or any portions thereof, shall be conveyed to (i) the Town, (n) a nonprofit organization, the principal purpose of which is the conservation of open space or (m) a corporation, trust or homeowners' association (hereinafter, a "Trust") owned or to be owned by the owners of Dwelling Units within the site. In any case where Open Space is not conveyed to the Town, a restriction enforceable by the Town shall be recorded providing that such land shall perpetually be kept in an open or natural state consistent with this Section of the By-Law.

If a Trust is utilized to hold title to the Open Space, maintenance of such Open Space and any accessory facilities shall be permanently guaranteed by such Trust, which shall provide for mandatory assessments of maintenance expenses to each Dwelling Unit owner. The deed of trust or articles of incorporation shall include provisions designed to effect these obligations and to grant to the Town an easement to perform such maintenance obligations if the Trust fails to do so, along with the right to record a lien against the Dwelling Units for the collection of all costs associated with performing such maintenance obligations as well as the imposition of any applicable fees. Each individual deed shall incorporate such provisions specifically or by reference. The documents creating such Trust shall be submitted to the Planning Board for its approval and, upon Definitive Plan approval, shall be recorded.

(c) The percentage of Open Space that is wetlands (as defined under the Hingham Wetlands By-Law) shall not exceed the percentage of the entire site that is wetlands. For the purposes of this subsection 8(c), surface drainage systems, such as retention and detention ponds, shall be considered wetlands and may be located in the Open Space subject to the limitation of this subsection.

(d) The Open Space shall be contiguous and, when possible, should abut and give access to adjacent Existing Protected Open Space so as to help to create a system of protected Open Space. Open Space will be considered contiguous if connected by a street (other than a Major Street), way, walking or bicycle path or non-exclusive easement. Upon a finding by the Planning Board that the quality of the Open Space preserved within the FRD shall be significantly increased by permitting noncontiguous areas of Open Space, such non-contiguous areas may be included within the total required Open Space.

(e) The Open Space shall be used for conservation, passive recreation, playground areas, outdoor education, agriculture, forestry, or a combination of these uses, and shall be served by suitable access for such purposes. The Planning Board may permit up to 5% of the Open Space to be paved or built upon for facilities accessory to the dedicated use or uses of such Open Space (such as pedestrian walks, bike paths and playground equipment). The Open Space shall not include land set aside for roads and/or parking uses.

(f) Subsurface wastewater and storm water management systems serving the FRD may be located within the Open Space, provided that a sufficient Open Space buffer exists to adequately screen the development from abutting properties in accordance with Section IV-D.9 (c) hereof.

9 Minimum Dimensional Requirements

(a) Minimum lot size will be determined through the Special Permit process. In addition, the following minimum requirements shall apply:

(b) There shall be an Open Space buffer along the perimeter of the site consisting of trees, shrubs, vegetation, and topographic features sufficient to screen the development from abutting properties and adjacent roadways. This buffer shall be not less than 700

feet in width along abutting properties and not less than 50 feet in width along adjacent roadways, and shall count towards the Open Space requirement. No buffer shall be required along roadways created as part of the FRD. No portion of the Open Space buffer shall be within the boundaries of any Lot. Upon a finding by the Planning Board that a buffer of lesser width would be sufficient to screen and/or separate the FRD from the abutting properties or adjacent roadways, the buffer may be reduced. Upon a finding of the Planning Board that the natural state of the buffer is insufficient to adequately separate and/or screen the site from abutting properties, additional trees, shrubs and/or plantings shall be required.

(c) To the extent a specific provision of this Section IV-D is in conflict with any other provisions of this By-law, the provisions of this Section IV-D shall control.

10. Additional Requirements

a. Roadways and Lots shall be designed and located in such a manner as to maintain and preserve existing tree cover, natural topography and significant natural and cultural resources, to minimize cut and fill, and to preserve and enhance views to and from the site and the Dwelling Units.

b. The removal or disruption of historic, traditional, or significant uses, structures, or architectural elements shall be minimized insofar as practicable, whether these exist on the site or on adjacent properties.

c. When site conditions permit, the use of "soft" (non-structural) storm water management techniques (such as swales) and other drainage techniques that reduce impervious surface and enable infiltration where appropriate shall be required.

d. Walkways and bicycle paths shall be provided to link Dwelling Units with the Open Space and with any parking areas, recreation facilities and Existing Protected Open Space and paths and/or sidewalks on adjacent land where appropriate.

e. No lot shown on a plan for which a Special Permit is granted under this Section IV-D may be further subdivided and a notation to this effect shall be shown on the plan.

f. No building permit shall be issued for the construction or modification of any Moderately-Sized Home that would result in a violation of any of the maximum specifications set forth in the definition of Moderately-Sized Home.

According to survey received from Hingham on 4/25/05, the flexible provisions were first adopted in 1990 and last amended in 2003. Both the planning board and the board of appeals serve as SPGA. Three - five developments have been built under the provisions.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board & Board of III-A Schedule of Uses

No building, structure, or land shall be used for any purpose or in any manner other than as set forth in the Schedule of Uses, Section III-A of this By-Law. The symbols "P", "A", and "O" as therein used having the following application:

P - Use permitted

A1 - Use allowed under a Special Permit by the Board of Appeals as provided in Section I-F

A2 - Use allowed under a Special Permit by the Board of Appeals as provided in Section I-G and subject to a site plan review as provided in Section I-I

4. Application and Review Procedure

The review procedure for a Flexible Residential Development (FRD) consists of two steps: 1) Preliminary Flexible Residential Development Plan ("Preliminary FRD Plan") review; and 2) Definitive Flexible Residential Development Plan ("Definitive Plan") review. In the first step, the applicant shall file a Preliminary FRD Plan, as described below, which describes the overall development proposal for the site. The Planning Board shall grant or deny a Special Permit A3 based on the information contained in the Preliminary FRD Plan application.

If the Special Permit A3 is granted, the applicant shall submit a Definitive Plan, as described below, based on the Preliminary FRD Plan. The

Planning Board shall then review the Definitive Plan as a definitive subdivision plan. Two separate public hearings shall be held, one for the Special Permit and one for the Definitive Plan.

44

The applicant is encouraged to request a pre-application review at a regular business meeting of the Planning Board. If one is requested, the Planning Board shall invite all relevant boards and committees to attend, including but not limited to the Conservation Commission, Board of Health and, if applicable, Sewer Commission, Historic Districts Commission and Housing Partnership Committee. The purpose of the pre-application hearing is to minimize the applicant's cost of engineering and other technical experts, and to obtain the input and direction of the Planning Board prior to filing the application. At the pre-application review the applicant shall outline the proposed FRD and seek preliminary feedback from the Planning Board and/or its technical experts. The applicant is also encouraged to request a site visit by the Planning Board and/or its agents in order to facilitate pre-application review. If such a site visit is requested, all applicable boards and committees will also be notified and invited to attend.

d. The Planning Board, within 60 days or such further time as may be agreed upon in writing by the applicant, may grant a Special Permit A3 if it determines that the proposed FRD achieves greater flexibility and creativity in the design of residential development than a conventional subdivision plan, promotes the preservation of Open Space and natural resources, reduces the total amount of disturbance on the site, facilitates the efficient delivery of services and complies with the requirements of this Section IV-D.

Has any housing been built under the cluster/flexible provisions?

Yes According to Mary Shultz, three developments have been built under Hingham's flexible zoning program. (6/23/04)

According to survey received from Hingham on 4/25/05, three - five developments have been built under the provisions.

Another copy of the same survey, received from Hingham on 4/21/05, notes that 138 units have been developed through the flexible provisions.

Holbrook

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes SECTION 10: SPECIAL PROVISIONS

10.1 The following uses may be permitted as designated in Section 7.3 Table of Use Regulation provided they meet the following requirements in addition to any other requirements.

10.2 APARTMENTS, MULTIPLE OR ATTACHED DWELLINGS

10.21 No building or buildings intended for three or more families shall be constructed on a lot having less than two hundred (200) feet frontage.

10.22 A space not less than twenty (20) feet shall be maintained- open with grass, bushes, flowers or trees along each side lot, rear lot line and front lot line except for entrance and exit driveways and such open space shall not be built on, nor paved, nor used for parking.

10.23 No more than four (4) dwelling units shall be constructed per one (1) acre of land area whether such land area is designated as wetlands or not or the land is otherwise undevelopable.

10.24 The manner of sewerage disposal shall be approved in writing by the Board of Health.

10.25 All off-street parking shall be provided at the rear or side of the building for which it is intended to be used. Parking in the front areas of such buildings may be authorized by a Special Permit issued by the Town of Holbrook Planning Board.

10.26 No apartment, multiple, or attached dwelling containing more than four (4) dwelling units shall be constructed unless a Special Permit pursuant to Subsection is issued. For the purposes of this Section, the Town of Holbrook Planning Board shall be considered the Special Permit granting authority.

10.26.1 Special Permit

Purpose and Intent

The purpose of this special provision section is to provide high quality multi-unit housing uses while minimizing the need for municipal infrastructure and services and while preserving open space. Developments created under this Section shall be designed to maximize the use of available public transportation, to minimize vehicular traffic, and to provide opportunity for pedestrian and recreational uses.

Definitions

AGE RESTRICTED UNITS - Units restricted to occupancy by persons fifty-five years of age or older and that are consistent with and in compliance with Senior Housing Laws.

BEDROOM - Any habitable room in a Dwelling Unit other than a living room, dining room, kitchen, utility room, or bathroom.

COUNTABLE UNITS - Units qualifying and countable towards the Commonwealth of Massachusetts mandated minimum affordable housing requirement under Massachusetts General Laws in particular Section 40B ss. 20-23 and the Massachusetts DHCD guidelines. Such units shall be available to groups such as veterans, senior citizens, municipal employees, and others who meet the state income regulations for moderate to low income housing.

DWELLING UNIT - Any room or suite of rooms comprising one complete housekeeping unit with its own cooking and food storage equipment and facilities and its own bathing and toilet facilities wholly within 'such room or suite of rooms.

MULTIPLE UNIT BUILDING - A free standing building with more than four (4) Dwelling Units.

MULTIPLE UNIT DEVELOPMENT - A development consisting of one (1) or more Multiple Unit Buildings located on a single or adjacent parcels of land.

OPEN SPACE - An area left in its natural vegetated state, designated and maintained exclusively for recreational use, or landscaped to the satisfaction of the Holbrook Planning Board and not used for building, parking, or other related purposes.

PRINCIPAL SITE ROADWAY - A Roadway serving the site shall be designed to conform with the roadway and sidewalk standards of the Regulations for Subdivision of Land of the Town of Holbrook and or any other standards of the Town of Holbrook.

SENIOR HOUSING LAWS - Collectively and separately, the Fair Housing Act, 42 USC Section 3607(b), 24 CFR Subtitle B, Ch. 1, Section 100.300 et seq. and G.L. c. 151B, Section 4.

Application Procedures and Fees

Application - An application for a Special Permit for construction under this section shall be submitted to the Planning Board on forms furnished by the Planning Board, accompanied by (a) fees set forth in the rules and regulations of the Holbrook Planning Board (b) the following information and data, and (c) a Development Plan as described below.

- a. All of the information required for site plan approval pursuant to Section 10.6.
- b. The name(s) and, address(es) of the Applicant and all legal and beneficial owners of the site; copies of all instruments, options, contracts or encumbrances affecting ownership of the development site; and an instrument executed by all persons owning property within the site consenting to the development of the subject property; as applied for.
- c. A proposed development schedule showing the beginning of construction, the rate of construction and development, including stages, if applicable, and the estimated date of completion.
- d. A narrative report prepared by qualified professionals, detailing the impact of the development on the Town's capacity to furnish services including, but not limited to, roads, water, and sanitation.
- e. Information regarding the number and kind of dwelling units and other structures (including signs) proposed, their location, the number of bedrooms planned, the sale prices anticipated and population projections pertaining thereto.
- f. Areas to be set aside for building structures, parking areas and conservation and recreation easements.

g. Information pertaining to any organization which the Applicant proposes where the development is to be a condominium development.

h. Any and all other information that the Planning Board may reasonably require in a form acceptable to it to assist in determining whether the Applicant's proposed development plan meets the objectives of this Section.

i. A traffic study prepared by a registered engineer showing projected traffic totals at peak and off peak hours at all entrances and exits to the site and covering nearby roadways and intersections that may be affected by the use of the site as identified by the Planning Board.

j. A Development Plan consisting of a plan showing the proposed uses of all land areas within the relevant Multiple Unit Development. The plan shall show in a general manner:

- a. The location of proposed buildings;
- b. The location and dimensions of drives and parking areas;
- c. The location and characteristics of any common open space;
- d. Proposed infrastructure;
- e. Proposed building renderings.

Application and Technical Review Fees

A filing fee and technical review fee shall be paid by the applicant as a part of any application under this Section. Said fees shall be set from time to time and published by the Town of Holbrook Planning Board in accordance with State Law. The technical review fee shall be used to engage professional, technical and/or legal consultants to review an application for a Special Permit. The technical review fee shall be replenished by the applicant when depleted to an amount less than fifty percent (50%) of the original amount determined. Failure to provide or restore any said fees in this section shall result in denial of applications or revocation of any Special Permit(s) granted to the applicant. Unexpended amounts of the technical review fee will be refunded on request to the applicant upon completion of the project and when in compliance with any requirements placed on it. The applicant will be provided with a detailed accounting of all disbursements from the technical review fee account.

Standard and Requirements

The following standards shall be required in order to be eligible for a Special Permit under this Section.

Open Space Requirements - At least forty (40%) percent of the site shall be open space.

Senior Units - A number of units shall be reserved for Age Restricted Units. Said units shall be restricted for occupancy to persons fifty-five (55) years of age or older and shall comply with any and all Senior Housing Laws. Age Restricted Units shall be enforced by deed restriction on the property. If fewer than thirty-five percent (35%) of the total units allowed by the density set forth in Section 10.23 are constructed as Age Restricted Units, then the overall density allowed under Section 10.23 and as defined under Density in this section shall be reduced by the number of Age Restricted Units allowed but not constructed. The purpose of this requirement is to encourage but not mandate the construction of Age Restricted Units by allowing a greater density when units of this type are built.

Public Transportation - For developments consisting of more than fifty (50) units and the majority of said units are located more than one-half (1/2) statute mile from the nearest public transportation connection, the owners of the property may be required to prepare and to implement a Traffic Demand Management Plan. Such Traffic Demand Management Plan may be required to include or to pay reimbursement for shuttle transportation service to the nearest public rail transportation facility during the hours of 6:30 AM to 9:00 PM.

Recreational Opportunity - On site recreational facilities such as, but not limited to, parks, exercise facilities, gymnasiums, walking or bicycle trails shall be constructed and maintained for the use of the residents.

Density - No more than four (4) Dwelling Units shall be constructed per one (1) acre of land space.

Bedrooms - No Dwelling Unit constructed under this Section shall contain greater than two bedrooms.

Countable Units - A minimum of fifteen percent (15%) units constructed shall be qualified as Countable Units. Countable Units shall remain eligible for a minimum of thirty (30) years by deed restriction running with the property. Said Units shall only be counted towards meeting this requirement if they are not counted to meet any other such requirement. The applicant is responsible for all application and certification processes needed to certify these units.

Site Plan Review - The application for approval under this section shall be filed in conjunction with the Site Plan review requirement under Section 10.6 of the Town of Holbrook Zoning By-Law.

Interior Driveways and Roadways - The principal roadway(s) and drives serving the site shall be designed to conform with the

standards of the Regulations for Subdivision of Land of the Town of Holbrook and any other standards of the Town of Holbrook. Private ways within the site shall be adequate for intended vehicular and pedestrian traffic and shall be maintained by an association of unit owners or by the applicant.

Refuse Pickup and Roadway Maintenance - The owner or unit owners of a development shall be responsible for the maintenance of (including snow and ice removal) of all roadways within the development, for trash and refuse removal, and maintenance of all recreational and landscape amenities required.

Parking - The Applicant shall provide adequate parking to serve all anticipated uses on the property, with information detailing the method of computation of parking spaces. The number of parking spaces per dwelling unit provided shall be no less than that allowed by the Town of Holbrook Zoning By-Laws Section 11, "Off-Street Parking and Loading Requirements".

Stormwater Management - The stormwater management system shall be designed in accordance with the Subdivision Regulations of the Town of Holbrook Planning Board and the DEP's Stormwater Management Guidelines.

Criteria for Approval

The Planning Board may grant a Special Permit or may grant a Special Permit with Conditions for this use (Multiple Unit Development) under this Section where it makes the following findings and the Planning Board shall also make such further findings as may otherwise be required by this section and may attach such conditions or safeguards or limitations on the grant of the Special Permit as it finds to be appropriate and reasonable to protect the surrounding neighborhood and town.

Findings

a. The proposed development complies fully with all provisions of this section and all other requirements of the Town of Holbrook Zoning By-Law.

b. The proposed development complies with the Purposes and Intent of this section.

c. That the site is suitable for the proposed use.

d. Adequate access for police, fire, and public safety exists

e. That the internal roadways and driveways are adequate for the proposed use

f. That external entrances and exits are sufficient and do not pose a traffic hazard

g. That the proposed development has incorporated trip reduction measures in order to minimize vehicular trips to and from the site. These measures may include but are not limited to sponsored transportation to regional and local public transit facilities, pedestrian amenities, bicycle and walking paths.

h. That adequate parking and loading facilities are provided.

i. The site will be suitably landscaped to protect the character of the neighborhood and adjacent property and the neighborhood.

j. The proposed use has an adequate method of sewage disposal, source of water and drainage.

k. That the distances between structures are adequate for public safety and traffic circulation purposes.

l. That the proposed development makes adequate provisions to insure Age Restricted Units, where applicable, and Countable Units are constructed in accordance with this section and all applicable laws.

m. The proposed development does not cause detriment to the neighborhood after considering the following potential consequences:

1. noise, during the construction and operational phases;

2. pedestrian and vehicular traffic;

3. environmental harm;

4. visual impact caused by the character and scale of the proposed structure(s).

5. makes no detrimental impact on municipal services

6. historical character of the neighborhood

Permit Lapse

Special permits issued under this section shall lapse within twenty-four (24) months of Special Permit approval if a substantial use

thereof or construction has not begun, except for good cause as determined by the Special Permit Granting Authority.

****Webmasters Note:** The previous sections, 10.2 through 10.26.1, have been amended as per an update approved at a town meeting held on 5/17/04.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board 10.26 No apartment, multiple, or attached dwelling containing more than four (4) dwelling units shall be constructed unless a Special Permit pursuant to Subsection is issued. For the purposes of this Section, the Town of Holbrook Planning Board shall be considered the Special Permit granting authority.

Has any housing been built under the cluster/flexible provisions?

Yes Ms. Ruthwicz, Director of Community Development, said that the new Rail Transit District is cluster because of the wetlands and superfund contamination. There will be three developments built there with 125 units per cluster.

Holden

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Cluster Residential Development
Mixed Use Development
Village Zoning
Retirement Community

Cluster Residential Development: 1994
Mixed Use Development: 2001
Village Zoning: 1991
Retirement Community: 1994

· ☐ Does the regulation specify whether developments built using PUD/OSRD, etc. will be allowed an increase in total units from the maximum allowed under conventional zoning?

Cluster Residential Development: No density increase
Mixed Use Development: Some density increases over underlying zones.
Village Zoning: allows apartments up to 12 units per structure.
Retirement Community: Up to 20% density increase for additional affordable units.

· ☐ What structure types are allowed in the development?

Cluster Residential Development: Single-Fam, duplex, townhouse up to 6 units, in general, though no single-family residences allowed in R-10 and R-M.
Mixed Use Development: 2, 3, and 4 family residences, duplexes, townhouses. Confirmed by Town Planner Pam Harding, 1/03/05
Village Zoning: Multifamily up to 12 units & townhouse
Retirement Community: detached and attached dwellings of any combination, restorative care center/skilled nursing facility/clinic, congregate housing, assisted living facility(s) and accommodations for in-house resident services, independent living retirement housing.

· ☐ How much open space must be set aside (percent of total parcel)?

Cluster Residential Development: 30%
Mixed Use Development: Not specified.
Village Zoning: Complex formula
Retirement Community: 75%

Text of provisions for Cluster Residential Development, Mixed Use Development, Village Zoning and Retirement Community follow:

"a. Cluster Residential Development Bylaw

Intent and Purpose

Whereas, the Town of Holden wishes to allow for greater flexibility and creativity in the design of residential subdivisions, provided that the overall density of the development is no greater than what is normally allowed in the zone, and;

Whereas, the Town desires to encourage the permanent preservation of open space, agricultural lands, and other natural resources, and;

Whereas, the Town desires to maintain the traditional New England character and land use pattern in which small villages contrast with open space and farmlands, and;

Whereas, the Town desires to facilitate the construction and maintenance of streets, utilities and public services in a more economical and efficient manner, and;

Whereas, the Town desires to encourage a less sprawling form of residential development that consumes less open land;

Now, therefore, the Town of Holden hereby adopts the following bylaw which shall be known as the "cluster residential development bylaw."

For the cluster residential development of land for single family, duplex or townhouse residential purposes in any R-40, R-1, R-2, R-10, or R-M districts subject to area regulations less than the minimum required in the Table of Area Regulations, provided:

(1) Minimum Tract Size - the tract in single or consolidated ownership at the time of application shall be at least ten acres in size and subject to approval by the Planning Board under the Subdivision Control Law.

(2) Development Plan - A development plan which includes the entire tract shall be submitted for review in accordance with section XI.J.3.a(9) herein.

(3) Requirements - Any individual lot to be developed for a single-family detached residential purpose in any R-40 district shall be subject to all requirements for single family detached dwellings in any R-1 district, each individual lot to be developed for single-family detached residential purpose in any R-1 district shall be subject to all requirements for single-family detached residential purposes in any R-2 district, and any individual lot to be developed for a single-family detached dwelling in any R-2 district shall be subject to the requirements for a single-family detached dwelling in any R-10 district. Detached single-family dwelling units shall not be allowed in the cluster development of land zoned R-10 or R-M.

(4) Townhouse Minimum Lot Areas - The front, side and rear yard depths for townhouse construction shall be identical for all residential districts and shall be as shown in the diagram above. No more than six dwelling units shall be attached in any single townhouse structure.

(5) Determination of Maximum Dwelling Units

(a) Basic Requirements. The maximum number of dwelling units that may be constructed under this procedure on a given tract shall be determined as indicated below. This method shall apply regardless of the amount of land actually required for street right-of-ways. Land utilized by utilities for easement for major facilities such as electric transmission lines and water mains, where such land is not available to the owner for development because of the easements shall not be considered as part of the gross acreage in computing the maximum number of dwelling units under this procedure nor shall the land located within the flood line of a water course, water body or wetland area.

(b) Method of Determination.

The total number of lots allowable on a site tract proposed for a cluster residential development shall not exceed the number of lots that would be allowed in the zoning district in which the site tract is located. The maximum number of lots allowed shall be determined by the layout of a preliminary sketch plan showing the total number of lots which could be obtained by utilizing a conventional grid subdivision. The burden of proof shall be upon the applicant.

(6) Conformance to Development Plan - To the extent that is possible and practical, the Planning Board shall require that any proposed cluster subdivision be in conformance to the basic intent of the Development Plan or Plans as last revised, unless it can be shown that said subdivision, in instances of nonconformity, serves better the general area and the town. The proposed cluster subdivision shall be served by the Town water and sewer systems.

(7) Dwelling Unit Mix - A minimum of 60 percent of the dwelling units must be detached single-family dwellings, except for the case in which the tract is zoned R-10 or R-M, in which case only duplex or townhouse units may be constructed.

(8) Common Land

(a) Character and Distribution Common land shall be distributed to provide immediate access from all sections of the development to the extent reasonably practicable and invisibility shall be maximized from the residential areas. The design of the Cluster Residential development shall be such that, to the extent reasonably practicable the common land serves to separate groups or clusters of lots and dwellings from adjacent property and other groups. At least 50 percent of the common land shall not be land having slopes exceeding 15 percent, or land subject to protection under Mass. General Law Chapter 131, Section 40 (The Wetlands Protection Act) and the Regulations promulgated thereunder (310 Code of Massachusetts Regulations 10.00), as amended or changed from time to time. All common land shall have suitable access to a street and shall provide a separate pedestrian and/or bikeway access apart from the roadway to interconnect all significant portions of the development. Common land as determined in (c) below may be assigned to specific areas when in the judgment of the Planning Board the preservation of such areas is needed to protect Town interest, abutting properties and community amenities. Common land shall be located so as to provide open space buffering between existing development and the proposed residential cluster subdivision, suitable to Planning Board site design concerns.

(b) USE Common land shall be restricted to such recreational uses as a park, playground, playfield and similar facilities for the use and enjoyment of the residents or undisturbed conservation areas.

(c) QUANTITY Within a cluster residential development, no less than thirty percent (30%) of the total land area, exclusive of land set aside for road area, shall be devoted to common open space. The common open space shall not include land set aside for roads, rights-of-way, parking uses and/or man-made retention or detention ponds.

(d) OWNERSHIP The common land so determined in (c) above shall be either conveyed to the town and accepted by it for park or open space use or be conveyed to a non-profit organization the principal purpose of which is the conservation of open space or to

be conveyed to a corporation or trust owned or to be owned by the owners of lots or residential units within the plot. If such a corporation or trust is utilized, ownership thereof shall pass with conveyances of the lots or residential units. In any case where such land is not conveyed to the town, a restriction enforceable by the town shall be recorded providing that such land shall be kept in an open or natural state and not be built for residential use or developed for accessory uses such as parking or roadway.

(9) Each application to the Planning Board for a cluster residential development special permit shall include information required by the Planning Board in its sub-division regulations for the submission of Preliminary Plans (whether or not all of the development constitutes a subdivision), and shall also include the size of the proposed dwellings. All applications for a cluster residential development special permit under this bylaw shall be referred by the Planning Board to the Board of Appeals for its review and comments within fourteen (14) days after its submission to the Planning Board. The Board of Appeals shall make its recommendations and send a copy thereof to the Planning Board within thirty (30) days of receipt of the referral request by the Planning Board, or there shall be deemed no opposition or desire to comment. The Planning Board shall study the cluster design with reference to the health, safety and welfare of the prospective occupants, the occupants of neighboring properties, and users of the adjoining streets or highways, and the welfare of the Town generally including its amenities. In addition to compliance with all of the land-space and building space requirements set forth herein, the Board shall be satisfied that the following cluster design objectives are met:

9.1 The distribution of common land in a manner that best meets the open space design intent and purpose of the cluster bylaw concept as set forth above, and protects the Town interest.

9.2 The Board may impose conditions as it finds appropriate to serve the purposes of this cluster bylaw governing the size of structures to be located within the residential cluster subdivision.

9.3 Traffic safety and ease of access at street and highway entrances and exits of driveways, taking account of grades, sight distances and distances between such driveway entrances, exits and the nearest existing street or highway intersection.

9.4 Safety and adequacy of driveway layout and sufficiency of access for service vehicles such as electricity, gas, fuel, telephone, laundry, rubbish removal, water, sewer, fire, police, ambulance or other routine or emergency vehicles.

9.5 Safe and adequate means of disposal of sewage, of garbage and rubbish, safety and adequacy of water supply and distribution, and of fire fighting facilities on the site.

9.6 Assurance of positive storm-water drainage and snow-melt run-off from all driveways and from all parking and loading areas on the site.

9.7 Compliance with off-street parking and loading requirements as specified in Section VIII of this bylaw."

" i. Mixed Use Development

(1) Intent The intent of Mixed Use Development is to provide for the coordinated and mixed development of residential, commercial and business office-professional uses in certain sections of the community, to foster a classic village appearance and development, to make such mixed uses accessible to pedestrian traffic while improving the appearance of the community, and to encourage expanded use of the Main Street corridor

(2) A Mixed Use Development shall require a Special Permit from the Planning Board pursuant to Section XI J All uses permitted in the C and BO-P zoning districts are permitted in a Muted Use Development except as set forth in Section XI ,1 31 (3) Notwithstanding the provisions of Section V F Table 1 USE REGULATIONS the following uses are permitted in a Mixed Use Development

- (a) two, three and four family dwelling
- (b) duplex
- (e) townhouse

(3) The following uses are prohibited in a Mixed Use Development notwithstanding the provisions of Section V F Table 1 USE REGULATIONS

- (a) an automobile repair service and garages
- (b) construction industry including supplies
- (c) open storage of construction equipment
- (d) adult book store, adult dance club or adult theaters
- (4) Dimensional Requirements

(a) The Dimensional requirements of the zoning district in which the Mixed Use Development is located, as set forth in Section VI, Table 2, shall apply, except as hereinafter provided

(b) Residential use in a Mixed Use Development shall not exceed three (3) dwelling units, notwithstanding Section V F TABLE OF USE REGULATIONS regarding residential development, and shall not exceed fifty percent (50%) of the total gross floor area of the Mixed Use Development

(c) The minimum lot area for a Muted Use Development shall be computed as follows

(i) If the residential use is located in the same building as the commercial/ business office-professional use, the minimum lot area for the Mixed Use Development shall be that required for the commercial/business office-professional use, and no increase in the minimum lot area shall be required due to the residential use

(ii) If the residential use is not located within the same building as the commercial/business office-professional use, the minimum lot area for the Muted Use Development shall be the minimum lot area for the commercial/ business office-professional use, plus 3,500 square feet for each dwelling unit

(iii) Parking shall be provided for each use in the Muted Use Development in accordance with the requirements of Section VIII, Table 4, but may be reduced by the Planning Board in accordance with the provision of Section VIII B 5 in connection with the issuance of a special permit pursuant to Section XIJ3i(2)

**Webmasters Note: The previous subsection has been added as per Case No. 1629 Annual Town Meeting Dated 5/21/01."

Village Zoning:

"SECTION XIV VILLAGE REGULATIONS

A. DEFINITION

A Village shall be an area developed as an entity and occupied by a balanced mix of landuses, as allowed by Village Special Permit granted by the Zoning Board of Appeals after receipt of the recommendations of the Planning Board.

B. INTENT

The intent of Village zoning is to allow a variety of landuses, within a planned development of localized density, which integrates the different elements such that each complements the function of each other use, thus improving the quality of the Village as a whole. Such a symbiotic effect depends on careful integration of the mixed landuses into a coherent Village. To ensure a beneficial mix of uses, the following requirements must be met, the Village Site Plan must be approved, and a Village Special Permit must be issued.

C. REQUIREMENTS

1. Land use A Village development shall include a minimum of three of the following permitted landuses, one of which shall be residential, subject to other Village regulations:

- a) Residential
- b) Restaurant
- c) Theater or Auditorium
- d) Recreational Facility
- e) Parking (open lots, and attached or detached single or multi-space garages)
- f) Business and Professional office
- g) Retail Establishment (not including production facilities, but allowing on-site assembly)
- h) Personal Service Business
- i) Hotel or Motel
- j) Community Facility

C. 2. Proportional Balance of Land use

To ensure a balanced mix of integrated landuses, the following proportional linkage requirements shall be applied: a) Residential uses shall be balanced by other permitted uses by application of the following formulae:

- i The minimum total area (sq. ft.) of non-residential uses shall be no less than 150 sq. ft. multiplied by the total number of residential bedrooms.
- ii The minimum total area (sq. ft.) occupied by retail establishments, personal service businesses, and business and professional offices shall be no less than 100 sq. ft. multiplied by the total number of residential bedrooms.
- iii The minimum total area (sq. ft.) of residential uses shall be no less than 40% of the total floor area (sq. ft.) of Village building uses.

b) Open Space

Village Open Space shall be provided for recreational and social opportunities, to enhance Village appearance, and for access to areas of natural beauty. open Space shall be considered to be that portion of the Village not covered by new or existing buildings, accessory structures, parking spaces, or roadways; and may include courts, yards, exterior paths, plantings, greenery, and covered or interior atria which are freely accessible and not serving an essential building function, characterized by natural lighting. At least 75% of the required Village open Space shall not be natural wetlands, or land having slopes exceeding 15%.

C. 2. b. The minimum allowable area (sq. ft.) of Village Open Space shall be determined by application of the following formulae: [...]

- (c) Public Access [...]
- d) Restaurants [...]
- e) Hotels or Motels [...]

C. 3. Area Regulations

All Area Regulations pertain to the exterior dimensions of the total Village area.

a) Minimum Required Village Area

The minimum required Village area shall be the greater of i or ii:

- i Five acres
- ii 10,000 sq. ft., plus 3,500 sq. ft. for each residential unit more than two

b) Minimum Village Width

The minimum village width shall be 200 feet.

c) Minimum Village Frontage

The minimum village frontage shall be 150 feet.

d) Minimum Village Yards

- i Front: 30 feet
- ii Side : 13 feet
- iii Rear : 15 feet

iv The minimum yard requirements shall not apply to existing buildings and existing lot lines of a Village

v New lot lines for a Village shall not increase the non-conformity of lot-line setbacks to existing buildings.

4. Height, Bulk and Appearance Regulations

a) Maximum Building Coverage

The total area covered by all the buildings within a Village shall not exceed 40% of the total Village area.

b) Maximum Permitted Height

i New Construction: The maximum permitted height of buildings shall be 35 feet, measured from average finished grade adjacent to the building. ii Existing buildings: Existing building heights shall be accepted within a Village; and renovations of existing buildings within the Village shall be allowed to increase building height by no more than ten feet.

c) Minimum Residential Floor Area

The minimum residential floor area for each unit within a Village shall be 768 sq. ft.

d) Townhouse Residential Buildings

- i Shall have separate entrances for each dwelling unit
- ii Shall have no continuous facades exceeding 100 feet
- iii Shall have a minimum off set of five feet, to interrupt continuous facades within an individual building

iv Shall have a minimum of twenty feet between exterior walls of adjacent buildings
v Shall have a minimum average unit width of twenty feet, and a minimum unit width of sixteen feet, measured from center to center of common side walls.

e) Multi-Family Residential Buildings

The maximum number of individual dwelling units contained within a single multi-family Village residential building shall be twelve.

5. Signs and Billboards [...]

6. Off-Street Parking and Loading Regulations [...]

7. Utilities [...]

8. Streets [...]

VILLAGE SPECIAL PERMIT"> D. VILLAGE SPECIAL PERMIT

1. Administration [...]

2i Village Site Plan [...]

3. Village Site Plan Approval [...]

4. General Review Standards [...]

E. CERTIFICATE OF VILLAGE COMPLIANCE/OCCUPANCY [...]

Retirement Community:

"SECTION XVIII RETIREMENT COMMUNITY

(Added ATM 5/17/99, approved 8/16/99)

Section 1 - Intent and Applicability

The intent of this section is to allow flexibility in development of parcels for housing and related services for retired and aging persons, with particular interest in meeting the needs of residents of Holden. A Retirement Community, as defined herein, may be allowed upon grant of a special permit by the Planning Board.

Section 2 - Definition

As used, in this by-law, Retirement Community shall mean a development on a parcel of twenty (20) acres or more comprised of a mixture of dwelling unit(s) as defined herein to include Independent Housing and may include a combination of Congregate Housing, Assisted Living Facility(s), and Restorative Care/Skilled Nursing Facility(s) with said dwelling units designed to accommodate the needs of an aged population. A Retirement Community shall operate under common management serving the principal purpose of assisting the elderly in maintaining an independent lifestyle. For those projects comprised of greater than twenty (20) acres, a Retirement Community shall be limited to persons at least one of whom in each household shall have attained the age of fifty-five (55) years. The program of in house resident services offered by a Retirement Community development that includes any combination of Congregate Housing, and/or Assisted Living Facility(s), and/or Restorative Care/Skilled Nursing Facility(s) shall be primarily for the benefit of residents and their guests of the Retirement Community and shall include a majority of the following:

1. Restorative care/skilled nursing*
2. Transportation services
3. Financial assistance
4. Barber/beautician
5. Medical evaluation/health care maintenance
6. Home health
7. Assisted Care*
8. Adult day care and respite care services
9. Food services
10. Cleaning services
11. Exercise, recreational, educational and social services
12. Other services, activities and accessory uses incidental to the operation of a Retirement Community

In house services may only be provided to residents and their guests and may not display exterior advertising. The program of in house services offered by the Retirement Community shall be specified in the Special Permit application and the scale of each service shall be in proportion to the number of dwelling units in the Retirement Community and subject to approval by the Planning Board.

*Assisted Care includes the provision of services geared to an aging adult population which may have difficulty functioning independently and may require oversight including, but not limited to the provision of a full meal plan, transportation services, personal care and assistance with medications.

*Restorative care/skilled nursing includes the provision of services for long-term nursing, convalescent or rehabilitative care; supervision and care incident to old age, retirement home care for elderly persons.

Section 3 - Types of Dwellings and Facilities Permitted

The Planning Board may grant a Special Permit to allow a Retirement Community in any zoning district. A Retirement Community shall adhere to the dimensional requirements of the underlying zoning district except as set forth in Section 4 of this Section XVIII: Specific Restrictions. A Special Permit granted by the Planning Board may allow the construction of detached or attached dwellings of any combination, and may also allow the construction of a restorative care center/skilled nursing facility/clinic, congregate housing, assisted living facility(s) and accommodations for in house resident services. There shall be provided in appropriate cases suitable means of access to and egress from and access within all buildings designed for occupation for dwelling purposes or in house services for handicapped persons as required to comply with the standards of the Architectural Access Board. Enclosed walkways and/or non enclosed walkways connecting buildings shall be permitted.

INDEPENDENT LIVING RETIREMENT HOUSING : As used in this Bylaw, Independent Living Retirement Housing means private

residential dwelling units, individually equipped with a minimum of a kitchen, bedroom, bathroom and living area. Geared toward independently functioning adults, this housing typically does not offer on-site supportive services but is designed to be barrier free and may include emergency call features complemented by housing management and maintenance services.

CONGREGATE HOUSING : As used in this Bylaw, Congregate Housing means private dwelling units/apartments which may have kitchen facilities within a complex containing central dining and other common areas and is designed for an adult population requiring some supportive services including but not limited to meals, housekeeping, home health and other supportive services.

Congregate Housing under this section of the bylaw must obtain all required permits and/or licenses that are required to operate such facility by any department of the United States of America, the Commonwealth of Massachusetts and the Town of Holden.

ASSISTED LIVING FACILITY : As used in this Bylaw, an Assisted Living facility means a twenty-four hour staff along with private dwelling units which may contain independent efficiency kitchens, but which contain common kitchen, dining and other activity areas. Assisted Living facilities are geared to an adult population which may have difficulty functioning independently and may require oversight including, but not limited to the provision of a full meal plan, transportation services, personal care and assistance with medications. Special care programs specifically designed for adults with memory loss are included in this category. Assisted Living Facility(s) under this section of the bylaw must obtain all required permits and/or licenses required to operate such a facility by any department of the United States of America, the Commonwealth of Massachusetts including Certification by the Executive Office of Elder Affairs pursuant to M.G.L. Chapter 19D and the Town of Holden.

RESTORATIVE CARE/SKILLED NURSING FACILITY : includes any institutions which provide services primarily to three or more individuals admitted thereto with long-term nursing, convalescent or rehabilitative care; supervision and care incident to old age; or retirement home care for elderly persons and includes services provided by nursing homes, convalescent homes, long term care facilities, rest homes, infirmaries for older adults, charitable homes for the aged. Restorative Care/Skilled Nursing Facility(s) under this section of the bylaw must obtain all applicable permits and licenses required by any agency of the United States of America, the Commonwealth of Massachusetts and the Town of Holden.

DWELLING UNIT : One or more living or sleeping rooms arranged for the use of one or more individuals living as a single housekeeping unit with individual or congregate cooking, living, sanitary and sleeping facilities, excluding Mobile Homes and Trailers. The intent of this definition is to define a "home" with private sleeping rooms rather than a dormitory arrangement of sleeping quarters.

Section 4 - Specific Restrictions

A Retirement Community as provided herein shall also be subject to the following specific restrictions.

A. Density and Parcel Size

A Retirement Community shall occupy a parcel of land of twenty (20) acres or greater. The maximum number of dwelling units permitted in a Retirement Community shall be determined as follows:

Single family detached dwelling units require a land area of 10,000 square feet exclusive of required open space.

Duplexes require a land area of 15,000 square feet exclusive of required open space.

Triplexes require a land area of 22,500 square feet exclusive of required open space.,

Townhouses or other multifamily residential dwelling units require a land area of 15,000 square feet for the first two dwelling units and 6000 square feet per dwelling unit for each dwelling unit thereafter exclusive of required open space. No more than 50% of the dwelling units in a Retirement Community shall be in any one of the above referenced categories [single family detached dwelling units, duplexes, triplexes, townhouses or other multifamily dwelling units] if the Retirement Community consists of more than ten dwelling units. The Planning Board may waive this requirement if it can be demonstrated that the request is consistent with the objectives of the bylaw and is in the best interests of the Town and its residents. Congregate Housing and/or Assisted Living Facilities occupying a single structure may be constructed at a density of 12 dwelling units per acre exclusive of required open space and acreage devoted to other use with no more than two such facilities occupying a Retirement Community site. These facilities must adhere to the open space requirements of this article. Congregate Housing and/or Assisted Living Facilities may not function independently of a Retirement Community under Section XVIII of the Holden Zoning Bylaws. Any Congregate Housing or Assisted Living Facility under this section of the bylaw must obtain all required permits and/or licenses required by any department of the United States of America, the Commonwealth of Massachusetts and the Town of Holden. Development plans submitted under this section shall include a construction schedule indicating that other forms of housing allowed under this section will be constructed prior to or concurrent with commencement of construction of Congregate Housing or Assisted Living Facilities. An increase in the number of dwelling units of up to twenty (20) percent of the maximum dwelling units allowed may be permitted based upon each additional dwelling unit so granted being Affordable Housing. In granting such increases the Planning Board shall require that the developer provide legally enforceable assurances which are acceptable to the Planning Board that the dwelling units so granted will continue to be Affordable Housing. For the purposes of this section "Affordable Housing" means housing affordable to people or families with incomes as set by the Department of Housing and Community Development for this purpose.

B. Set back

Single family detached dwelling units, duplexes, and triplexes, townhouses, multifamily residential dwelling units, Restorative Care/Skilled Nursing Facilities, Congregate Housing, and Assisted Living Facilities are to be set back a minimum of 50 feet from the outside perimeter property line of the retirement community. This 50 foot setback is intended to act as a buffer and shall not be disturbed from its natural state for the entire distance excepting for additional plantings or as required by the Planning Board and excepting the entranceway(s). The Planning Board may approve the removal of dead, dying or scrub vegetation in conjunction with additional plantings. The minimum setback for Congregate Housing, Assisted Living Facilities, and Restorative Care/Skilled Nursing Facilities shall be increased by 15 feet for structures over one story in height.

C. Lot coverage and Open Space Requirements

Lot coverage, including both building footprints and all other impervious surfaces, for any Retirement Community shall not exceed

twenty-five percent (25%) of the total parcel. If the Retirement Community contains more than 4 buildings, these buildings shall be sited using cluster principles. At least twenty-five (25) percent of the Retirement Community site, of which fifty (50) percent shall not be wetlands, shall be preserved as open space exclusive of parcel size restrictions and set back requirements in Sections 4A and 4B. A minimum of seventy-five (75) percent of the open space shall be maintained as a natural vegetation area except that plantings, passive recreational uses (as may be permitted and/or required by the Planning Board), the installation, repair and maintenance of footpaths, underground utilities, access ways (if required by the Town of Holden or other governmental agency), drainage structures and facilities and such other construction as may be permitted and/or required by the Planning Board under the provisions of Site Plan Approval are permitted. However, such portions of the open space as shall have been disturbed for purposes so permitted shall be restored to former conditions as approved by the Planning Board. The open space shall be protected by a recorded restriction enforceable by the Town of Holden.

D. Parking [...]

E. Roads, Driveways, and Utilities [...]

Section 5 - Other Objectives

The following objectives are important in the development of a Retirement Community and are to be considered by the Planning Board in determining whether to grant a Special Permit for a Retirement Community: [...]

Section 6 - Procedures [...]

Section 7 - Application and Submission Requirements [...]

Section 8 - Application Review Procedures [...]"

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board Zoning Bylaws of the Town of Holden (Adopted 1954, Amended 2004)

For the cluster residential development of land for single family, duplex or townhouse residential purposes in any R-40, R-1, R-2, R-10, or R-M districts subject to area regulations less than the minimum required in the Table of Area Regulations, provided:

(1) Minimum Tract Size - the tract in single or consolidated ownership at the time of application shall be at least ten acres in size and subject to approval by the Planning Board under the Subdivision Control Law.

Has any housing been built under the cluster/flexible provisions?

Yes According to Town Planner Pam Harding, the only development that has taken advantage of any of these provisions has been in a commercial zone, a bakery with an apartment above. (1/3/05)

Cluster Residential Development
Mixed Use Development
Village Zoning
Retirement Community

Survey received from Holden on 5/25/05 (completed by Pamela Harding) marks the answer: "2 developments"

Holliston

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes From ordinance.com:

V-H SPECIAL PERMIT FOR CLUSTER DEVELOPMENT

(Amended March 1978-STM, Art. 1. Previously amended May 1975-STM, Art. 10)

1. Intent - For the purpose of encouraging the preservation of open space and promoting the more efficient use of land in harmony with its natural features and to promote the health, safety, convenience and general welfare of the inhabitants of the town, an owner or owners of a tract of land, or a duly authorized agent therefore may, in connection with the submission of a subdivision plan for approval under the subdivision control law, make application to the Planning Board for a Special Permit excepting his plan from the lot area and frontage requirements of Section IV of this by-law.

2. Requirements - After notice and Public Hearing, the Planning Board may grant such permit provided that:

a. It finds that the proposed plan:

- (1) is in harmony with the purpose and intent of this by-law;
- (2) does not have a detrimental impact on the neighborhood or the natural environment and is in harmony with the long-range plan of the town;
- (3) is appropriate to the natural terrain of the tract to be developed;
- (4) provides open space which is of a size, shape and location and has adequate access so as to benefit the town and the residents of the development.

b. The area of the tract to be developed is not less than ten (10) acres.

c. No dwelling other than single-family detached dwellings shall be permitted within the perimeter of the Cluster Development.

d. Every individual lot shall contain not less than the following:

In Agricultural-Residential District A 40,000 sf.

In Agricultural-Residential District B 25,000 sf

In the Residential District 20,000 sf

e. The average frontage of all lots on a public or private way is as follows:

f. The location of each dwelling shall satisfy the applicable front, rear and side-yard requirements contained in Section IV-B of this by-law, except that in Agricultural Residential district B the side-yard requirement may be reduced to 20 feet, and in addition that:

(1) in Agricultural-Residential district A each dwelling shall be set back at least to a point on its lot where the lot width is a minimum of 125 feet, and

(2) in Agricultural-Residential District B and in the Residential District each dwelling shall be set back at least to a point on its lot where the lot width is a minimum of 100 feet.

g. The number of lots in the tract shall not exceed the number of lots which would be permitted if the tract were developed pursuant to Rules and Regulations of the Planning Board and according to the requirements contained in Section IV of this by-law. Responsibility for determining the number of permitted lots shall rest with the Planning Board and that Board may require the applicant to submit whatever information said Board deems necessary to make this determination including, but not limited to a general layout plan prepared to comply with Section IV of this by-law and the modifications permitted by this Section V-H, soil analyses and percolation tests.

h. All common or open space land hereunder shall either be owned:

(1) by a Homes Association whose membership includes the owners of all lots contained in the tract. The developer shall include in the deed to owners of individual lots beneficial rights in said common land, and shall grant a separate conservation restriction to the Town of Holliston, satisfactory to the Holliston Conservation Commission, over such land pursuant to Chapter 184, Sections 31-33, General Laws, to insure its perpetual use for those purposes approved by the Homes Association under Section VII-2(i) of this by-law and those purposes specified in Section 31 of chapter 184, General Laws. This restriction shall be enforceable by the Town through its Conservation Commission in any proceeding authorized by Section 32 of Chapter 184, General Laws. In addition, the developer shall be responsible for the maintenance of the common land until such time as the Homes Association is capable of assuming said responsibility. In order to ensure that the association will properly maintain the land deeded to it under this section, the developer shall cause to be recorded at the Middlesex South District Registry of Deeds a Declaration of Covenants and Restrictions which shall, at a minimum, provide for the following:

(a) mandatory membership in an established Homes Association, as a requirement of ownership of any lot in the tract.

(b) provisions for maintenance assessments on all lots in order to ensure that the common land is maintained in a condition suitable for the uses approved by the Homes Association under Section V-H-2(i) of this by-law. Failure to pay such assessments shall create a lien on the property assessed enforceable by either the Homes Association or the owner of any lot.

(c) provisions which, so far as possible under the existing law, will ensure that the restrictions placed on the use of the common land pursuant to Section V-H-2(i) of this by-law will not terminate by operation of law.

(2) or, by the Town of Holliston, for park or open space use, subject to approval by vote of the Town Meeting.

(3) or, by a non-profit organization, satisfactory to the Planning Board, the principal purpose of which is the conservation of open

space in perpetuity.

i. The common land or open space shall remain undeveloped and in its natural state, but, subject to the approval of the Homes Association and Conservation Commission under h(1), to approval by vote of the Town Meeting under h.(2) or approval of such non-profit organization under h.(3) such land may be used for any of the following purposes:

(1) grazing, agriculture and forestry

(2) playing fields

(3) other outdoor recreational facilities permissible under Chapter 184, Sections 31-33, General Laws.

Use of the common land, when held by a Homes Association, shall be restricted to lot owners and their guests and other persons approved by the Homes Association. Either the Homes Association, the Town or such non-profit organization shall have the right to place reasonable restrictions on the use of the common land or open space which has been deeded to it in order to ensure its continuing suitability for the purposes authorized by this section, and no structure shall be erected upon said land except as incident to the above uses and no such structure shall be more than 15 feet in height.

j. The total area of common land or open space within the development shall equal or exceed the sum of the areas by which individual lots are reduced below the minimum lot area which would be required under Section IV of this by-law. In no case shall less than 15% of the total land area of the tract be set aside as common land or open space.

3. Planning Board Procedure - Each application form when submitted for a Special Permit hereunder shall be prepared in accordance with the Rules and Regulations of the Planning Board. Submission of this Preliminary Plan to the Planning Board shall not exempt the developer from any of the requirements of the Subdivision Control Law and shall not serve as a substitute for subsequent compliance with the requirements of the Subdivision Control Law. A favorable decision by the Planning Board that the Special Permit be issued shall not, therefore, be deemed to either constitute subdivision approval or imply that such approval will be given. Nor shall it reduce the period allowed for consideration of the plan by the Planning Board under the Subdivision Control Law once the Planning Board has approved the Special Permit. The Planning Board may, in appropriate cases, impose further reasonable restrictions upon the tract, or parts thereof, as a condition to issuance of the Special Permit.

4. Further restrictions - Any Special Permit granted by the Planning Board shall be subject to the following additional conditions:

a. No lot shown on a plan for which a permit is granted under this section may be further subdivided and a notation to this effect shall be shown upon the recorded plan.

b. No certificate of occupancy shall be signed by the Inspector of Buildings until the Inspector of Buildings has certified to the Planning Board that the premises to be occupied have been built in accordance with the recorded plan approved by the Planning Board as a basis for the Special Permit.

Survey received from Holliston Town Planner Karen Sherman on 3/21/05 notes that the first provision for flexible zoning was adopted in 1975, and it was last amended in 1978.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board Town of Holliston Zoning Bylaws, Section V-H (as amended 2004):

"V-H SPECIAL PERMIT FOR CLUSTER DEVELOPMENT

(Amended March 1978 – STM, Art. 1. Previously amended May 1975 – STM, Art. 10)

1. Intent - For the purpose of encouraging the preservation of open space and promoting the more efficient use of land in harmony with its natural features and to promote the health, safety, convenience and general welfare of the inhabitants of the town, an owner or owners of a tract of land, or a duly authorized agent therefore may, in connection with the submission of a subdivision plan for approval under the subdivision control law, make application to the Planning Board for a Special Permit excepting his plan from the lot area and frontage requirements of Section IV of this by-law."

Has any housing been built under the cluster/flexible provisions?

Yes According to Peter Tarakoff, Holliston Building Inspector, (7/22/04), a number of cluster developments have been built in Holliston.

Survey received from Holliston Town Planner Karen Sherman on 3/21/05:

Has any housing been built under the cluster/flexible provisions? (none, 1-8 projects, more than 8)

"More than 8"

Hopedale

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Note:

This bylaw is complicated. Researchers may want to refer back to the original text. It continues for many pages beyond what is copied below.

PERFORMANCE RESIDENTIAL DEVELOPMENT BY-LAW

ARTICLE I. TITLE AND PURPOSE.

Division 1000.0 Title.

This section of the Zoning By-Laws of the Town of Hopedale, shall be known as and may be referred to as the "Hopedale Performance Residential Development By-Law."

Division 1001.0 Purpose.

The purpose of Section 16 is the implementation of performance criteria to a mixed use residential district to promote the health, safety, and general welfare of the present and future inhabitants of Hopedale; in accordance with the provisions of Chapter 808, Acts 1975, of the Commonwealth of Massachusetts and any amendments thereof.

ARTICLE II. JURISDICTION.

Application for approval of a Performance Residential Development site plan shall be made to the Hopedale Planning Board in accordance with its then current rules and regulations governing the same, including the payment of fees and notice requirements.

PERFORMANCE BASED RESIDENTIAL BY-LAW.

Conceptual Aspects of Performance Zoning.

Performance zoning specifies density in absolute terms - maximum living area per net site acre. It is a density value that may be a replication existing densities of neighborhoods that surround areas of new development or values that the town and/or Planning Board feel are appropriate.

The performance by-law controls and regulates how the development interacts with site variables such as topography, drainage, vegetation, vistas, existing infrastructure and access and may further reduce the density allowed on the site.

Technical Aspects of Performance Zoning.

Housing.

Performance zoning permits each of the housing types described in Division 5103.0 as of right in a performance residential district provided specific standards or each of the three dwelling types are met. These housing types occur in areas called residential rings or portions thereof. The areas shall be arranged in order of consecutively decreasing density.

The Standards.

The performance approach to zoning regulates development mainly on the basis of four variables.

Maximum density standards.

Maximum density standards are values measured in square feet of living area per site acre. District density standards control overall site density and residential ring density standards regulate local densities within the site. Maximum density standards are reflective of existing neighborhood densities or represent a value determined by the Town's planning studies.

Percentage distribution of living area in residential rings.

These percentages are determined by conducting demographic and market studies. They shall fall within the by-law defined range; however, deviations may be allowed through Planning Board approval. These values contribute to the establishment of the mix of residential unit types. (See Division 5301.0).

Impervious surface.

Maximum impervious surface percentage, an important measure of land use intensity, is the maximum amount of a site that is occupied by surfaces that do not absorb rain.

Pervious surface area.

That portion of the site that does not impede the absorption of rainwater. It consists of two categories: restricted open space and outdoor living space. The proportion of these two spaces to one another determines the degree of protection afforded natural resources or features and sets the character of the area.

Site Capacity and Land Use Intensity. Performance zoning protects the environment by specifying developmental limits on a resource-by-resource basis. Performance zoning based on the use of maximum density standards which apply only to buildable land. The intensity of use on an), piece of buildable land is controlled by the maximum density standards and the distribution of residential unit types on the site.

Carrying capacity is an ecological term which defines the Composition community of living things that can achieve a balance in a given environment.

The site capacity calculation of performance zoning uses the concept of restricted open space to insure protection of the natural environment in a dependable and consistent fashion. The performance approach takes a larger than lot-by-lot perspective in regulation environmental degradation. It protects resources by requiring a site capacity rather than a lot capacity analysis of developmental constraints.

Bufferyards.

The purpose of bufferyards in performance zoning is to provide barrier impacts.

The bufferyard shall be flexible. Within each class of bufferyard, a developer may choose from several options including height, width, and density of vegetation.

Transportation.

The transportation division of this performance by-law imposes street width standards which vary depending on the type of street involved and the intensity of use located on the street. Residential street width is affected by three variables:

Traffic volume - The fewer the number of vehicles, the narrower the road may be. Fewer cars meet or pass each other.

Design speed - At low Speeds, drivers have more time to react to traffic situations. Thus, roads may be narrower as design speeds decline.

Parking - When a residential street is to serve the overflow of off-street parking areas, at least one extra lane of roadway width is required.

Division 5100.0 Use Regulations.

Divisions 5101.0 through 5105.0 specify which uses are permitted in the "RP-1" and "RP-2" zoning districts and define the use categories available to these residential districts.

Division 5101.0 Uses Permitted by Right, Special Use Permits, and Uses not Permitted.

Except as otherwise provided by law or in Section 16, no building, structure or land shall be used or occupied except in the zoning district indicated and for the Purposes permitted in this division. The general use categories specified by division 5102.0 are defined in Divisions 5103.0 through 5105.0

Division 5102.0 Table of Permitted Uses

Districts: RP-1 and RP-2

Uses (Residential Rings: Center/Middle/Outer)

Village Units Y/N/N

Cottage Dwellings N/Y/N

Estate Dwellings N/N/Y

Res Office Y/Y/Y

Pro Office SP/SP/SP

Community Center SP/N/N

Non-Pft library, museum, art gallery SP/SP/N

Division 5103.0 Residential Uses.

Residential Performance Dwellings. Uses consisting of three (3) dwelling categories: village units, cottage dwellings, and estate dwellings. Ownership forms may be fee simple, cooperative, or condominium.

COTTAGE DWELLING. Units only allowed within the middle residential ring. They represent moderately affordable units whose characteristics are delineated in Divisions 5201.0 and 5301.0.

ESTATE DWELLINGS. Units only allowed within the outer residential ring. They represent luxury units whose characteristics are delineated in Divisions 5201.0 and 5301.0.

VILLAGE UNIT. Units only allowed within the center residential ring. They represent the most affordable units whose characteristics are delineated in Divisions 5201.0 and 5301.0.

Residential offices. The use of a dwelling maintained by a person residing on the premises used for an activity conducted elsewhere.

Professional Offices or Studios. The use of a dwelling by a professional person, resident therein. The granting of a special permit for this use shall not allow the use to occupy more than thirty-five (35) percent of the total floor area of the dwelling. All signs shall comply with Section 7.1 of the Zoning By-Laws of Hopedale.

Community Center. An activity or recreation center for the Performance Residential Development that may also provide vendor services to the local residents.

Division 5104.0 Institutional and Public Uses. nonprofit libraries, museums, and art galleries.

Division 5105.0 Accessory Uses.

A. Authorization. Accessory structures and uses are permitted in any "RP" zoning district in connection with any lawful principal use within such district. Any question of whether a particular use is permitted as an accessory use by the provisions of this division shall be determined by the zoning officer pursuant to his or her authority.

B. Use Limitations. In addition to complying with all other regulations, no accessory use shall be permitted, unless together with the principal or structure, the land use intensity class criteria are not exceeded.

Division 5200.0 Performance Standards.

The standards of Division 5201.0 are minimum standards unless otherwise noted, and shall apply to each district and use therein. All standards must be met. Whenever a standard contained in Division 5201.0 is different from another performance standard articulated in this article, the strictest standard shall always govern.

Division 5201.0 Table of District Performance Standards

Zoning District/Total site area minimum

RP-1/7 acres

RP-2/10 acres

Division 5300.0 Land Use Intensity Categories and Bufferyards.

The "RP-1" and "RP-2" districts each contain three (3) intensity of use categories: center residential ring containing small dwellings, middle residential ring containing medium sized dwellings, and outer residential ring containing large dwellings. Intensity of use is the amount of square feet of living area per acre for the use. In order to minimize impacts that neighboring uses might have on one another, Section 16 requires that bufferyards be provided between uses according to their categories.

Intensity of use may further be reduced depending upon additional natural resource site constraints (Division 5400.0-5506.0), pervious space requirements (Division 5200.0, 5201.0 and 5600.0 through 5602.0), and the implementation of the Detailed Design Regulations (Article VI).

Division 5301.0 Land Use Intensity Determination.

Demographic and market studies are conducted to determine the appropriate percentages of the Net Living Area that these percentages fall within the limits set forth in the District Performance Standards (Division 5201.0)

Net Living Area for the Site. net site area = [(total site area) - (Wetland Protection Area)]

Common Recreation Land [1] = [Common Recreation Land %] x [Net Site Area]

(Div. 5201.0) adjusted net = [net site area]/[wetland protection allowance] - [Common site area (ac) (see following note) Rec. Land]

Net Living

Area (Site) = [Adj. Net Site Area] x [Density Standard (District)]

NOTE: Net site area maybe increased by a maximum of twenty five percent of the Wetland Protection Area, provided the applicant shows that the proposed additional use area will not harm or cause the pollution of the Wetland Protection Area, used in the calculation of net living areas exceed the acreage of the site outside this protection area.

Net Living Area for Each Residential Ring.

The living Area or each residential ring shall be determined as follows: net living area = [Net Living Area for the site (sq.ft.)] x for center ring [% of living area for center ring(expressed as decimal)] net living area = [Net Living Area for the site (sq.ft.)] x for middle ring [% of living area for middle ring(expressed as decimal)] net living area = [Net Living Area for the site (sq.ft.)] x for outer ring [% of living area for outer ring(expressed as decimal)]

Land Area of Each Residential Ring.

The area of ring in acres is obtained by dividing the Net Living Area for each residential ring by its respective ring Density Standard (Div. 5201.0) area of center residential = [Net Living Area for center ring (sq.ft.)]/ ring (acres) [Density Standard for the center ring] area of middle residential = [Net Living Area for middle ring (sq.ft.)] ring (acres) [Density Standard for the middle ring] area of outer residential = [Net Living Area for outer ring (sq.ft.)] ring (acres) [Density Standard for the middle ring]

Determination of Land Area for Common Recreation Area.

Total Common Recreation Area Land to be provided for a Performance Residential Development is the sum of the following two

parts:

Common Recreation Land [1] (acres)= [CRL%] x [Net Site Area (acres)]

Common Recreation = [Adjusted Net Site Area (acres)] minus Land [2] (acres) [total land area of all 3 residential rings (acres)]

Number of Units.

A. Determine the Net Living Area (sq.ft.) of each residential ring.

B. Determine the market-driven living area (sq.ft.) required of each dwelling type.

C. The square footage of each dwelling type form step (3) shall be constrained by the following room number limits:

1. Village Units (center residential ring) - one to three rooms.
2. Cottage Dwellings (middle residential ring) - two to five rooms.
3. Estate Dwellings (outer residential ring) - four or more rooms.

Bathrooms, kitchen work areas and utility closets or service rooms are not counted as rooms; however, breakfast nooks and eating areas ancillary to the kitchen shall be counted as rooms.

D. Having established the total living area (sq.ft.) available for each residential ring and the range of sizes (sq.ft.) for each dwelling type, the total number of each type of dwelling unit can be determined.

E. The Planning Board may, after analyzing the fiscal impact study (Div. 5400), require the development team to revise the percentage of living area assigned to each of the residential rings or modify the number of units for each ring to provide a more appropriate fiscal impact to Hopedale.

Community Center.

Having established the living area of the center residential ring along with its area, one can develop through the application of the formulas below, the maximum allowable size for the community center and enclosed storage area. community center area(sq.ft.) =

10% x Net Living Area center ring(sq.ft.)(community center shall not be less than 300 sq.ft.)

15% x community center area = enclosed storage area
(enclosed storage area shall not be greater than 425 sq.ft.)

Elderly Housing Provision.

When in its judgement, the public welfare and convenience will be served, performance the Planning Board on approving a definitive site plan for a Performance Residential Development, may require as a condition the following:

Up to twenty-five (25) percent of the living area for the center residential ring be assigned to elderly living units.

Of the stimulated elderly units, at least fifteen (15) percent shall. be designed barrier-free. Fractional units shall be rounded up to the nearest whole unit.

ARTICLE VI. DETAILED DESIGN REGULATIONS.

Division 6000.0 Purpose.

The purpose of Division 6001.0 is to propose a method for the implementation of a system of design "patterns" to insure the success of the residential development as a living entity. Detailed regulations contained in Division 6002.0 and 6003.0 include bulk, height, and layout limitations, that apply to specific land uses within a Performance Residential Development.

It is recommended that "The Timeless Way of Building" and "A Pattern Language" written by Christopher Alexander (Oxford University Press) be consulted in guaranteeing that the detailed design concerns (Div. 6001.0) be properly implemented. Unlike the restrictive nature of so many architectural guidelines which tend to make good design impossible, these two books will provide limitless opportunities for good design.

Division 6001.0 Design Patterns.

A. In order to establish a sense of community it is important to develop a positive space which is usable, and binds the site together as a community. To link up the various areas within the site to make built and natural centers real centers, in short to make the population within the site more of a real community, it will be necessary to satisfy the following needs:

1. Central Walk. This a special walk, a kind of rural promenade, where everyone gathers and can sit in the sun. Such a walk must be beautiful in itself, generous in scale, and cross the center of the development allowing footpaths from other parts of the site to intercept it.
2. Reflective and Special Locations. In every site, there is some spot or some feature that represents its essence and should be preserved. It could be a meadow, or a high point, or a ridge, or a special grove of trees or many other things. It does not necessarily coincide with any other presently preserved natural resource area. Such a special place should not be built on, but it should distinctly be understood as a special place to use, in line with its character. See pattern 'Holy Ground' in "The Pattern Language".

3. Community Activities. Common recreation land (Div.5301.0) which can provide outdoor recreation opportunities for all three residential rings within a performance residential development, should be located adjacent to the "central walk."

B. The Coherence Of The Houses As They Sit On The Land And The Formation Of Good Positive Space.

In order to guarantee a pleasant distribution of houses it is necessary to Provide for good positive space. This is not dependent on numeric values like density, but rather, on the qualitative character of the space between the houses and the way they are oriented with regard to slopes and space. Outdoor living space should be oriented toward the sun and face down slope.

C. Architecture and Positiveness of Space.

Architecture shall have suitable form to generate positive space. Due "The Pattern Language" should be consulted to insure that the shapes of houses, the variety of footprints, volumes, roofs, and exterior masses should enhance the positiveness of space.

D. Village Center Location.

The cluster of village units that make up the center residential ring area the "village", should be integral with the natural center of the site. It should be a location that is the topographic, emotional, and "felt" center of nature's landscape.

The village center, which is to be the most densely built up area on the site, should generally not be located on the most striking topographic feature or landscape formation, but rather, at some area that has a distinct and complementary relation to these formations.

E. Estate And Cottage Dwelling Locations.

During the design process houses and buildings should be located first, and then roads are nestled into the landscape in such a way as to maintain the beauty of the relation which the houses have with the land. All roads should snuggle into the landscape, follow contours, avoid trees, and be as narrow as allowed.

Division 6002.0 Building Height

New dwelling units within the "RP-1" and "RP-2" district shall not exceed thirty-eight (38) feet in height.

Division 6002.1 Exceptions to Height Limitations.

Height limitations shall not apply to chimneys, towers, ventilators, skylights, tanks, and silos provided such structures are not used for living purposes.

Division 6003.0 Building Configuration Location and Cluster Limits.

A. Configuration. Units within all residential rings shall conform to the following design elements:

1. All units shall have at least two (2) points of ingress and egress.
2. All units having entry points on the ground level shall have those points contiguous to uninterrupted outdoor living space (OLS).
3. All rooms within units, as defined in Section 16, shall have at least two (2) different sides that natural light can enter.

B. Location Limitations. The minimum separation of buildings from perimeter boundaries of the site shall be thirty-five (35) feet.)

C. Cluster Limitations.

1. Village Units (center res ring) - no limit.
2. Cottage Dwellings (middle res ring) - 1 to 3.
3. Estate Dwellings (outer res ring) - 1 to 2.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board Hopedale Zoning Bylaw

According to the Use Regulations Schedule:

Performance Residential Development is allowed by special permit from the planning board in RP-1.

Has any housing been built under the cluster/flexible provisions?

Hopkinton

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Hopkinton has 2 options by special permit for cluster/open space style development. There is the Open Space and Landscape Preservation Development and the Village Housing Bylaw.

Village Housing text below is from Hopkinton's Housing Plan, but the Village Bylaw was adopted on June 21, 2004. Researcher assumes that the text is similar.

Village Housing¹

Add a new section Article XVI-C, Village Housing in Residential Districts

Village Housing in Residential Districts

210-105.10. Planning, design, conservation and development objectives.

A) General intent and purposes. It is the intent and purpose of this Article XIII to maintain a working balance in the Town of Hopkinton between the demand for new development and the provision of affordable housing and its rewards on the one hand, and the

human need for our natural resources and their maintenance on the other. The Town of Hopkinton cannot and should not prevent its citizens from owning, selling and developing their land. The Town also understands the importance of providing for a variety of housing that meets the needs of all of its citizens, regardless of income. But it is also a fundamental and important truth that with each new house and each cut tree, the environment and ecology of the Town changes. Therefore, the control and maintenance of a reasonable balance between new development and the preservation of the Town's natural resources is a legitimate area for public concern and legislation. It is, therefore, the intent of the Town that this article shall provide for the provision of

affordable housing under the state guidelines for the creation of such units while providing for the reasonable protection of its natural resources by properly conserving its land as development takes place. This shall be accomplished by establishing a procedure whereby each proposal for village housing will be reviewed separately and judged by standards designed to protect both the special quality of the site and its environs and the Town and its environment against misuse or overdevelopment of the land. In this article, the guiding principle in judging village housing proposals will be the variety and diversity in of the proposed development of affordable housing units and the care shown by the developer in conservation, site planning and building design as applied to the specific parcel of land proposed for development.

B) General objectives. The following planning, design, conservation and development objectives will apply to all proposals for village housing construction in Hopkinton:

1) To provide new affordable housing for all citizens regardless of income, race, color, and creed or other like characteristics.

2) To promote the beneficial use and conservation of land by relating proposed buildings to the unique features, conditions and natural quality of the site. Beneficial

use shall be measured in terms of topography, surface and subsurface soil and drainage conditions, location with respect to adjacent or existing streets, buildings

or other natural features, the type and size of trees to be retained or removed, the use and retention of natural ground cover, open space, water, swamp, other natural water source or feature, stone walls, ledge or any other feature of recognized conservation or historical significance.

3) To facilitate sound and orderly public and private development in Hopkinton by relating a village housing proposal to any public Master Plan for land use, conservation, streets or public facilities.

4) To recognize the importance of diversity and variety in the exterior quality, appearance and design of housing structures by rejecting monotonous, look-alike designs and to encourage those designs that are specifically designed for and related to the special conditions and features of the proposed site.

5) To conserve and preserve the significant and unique natural features of the proposed site in their natural state and ensure or provide for their permanent protection from future encroachment or development. Permanent protection of the undeveloped, conservation or open-space portion of the development site shall be assured by a legally binding agreement running with the land, which shall permanently protect a minimum of 15% of the development site as open space.

6) To give encouragement to owners and developers to produce the highest quality design in the housing structures to be built by using visual space planning applied to other site development elements, such as parking areas, wooded or conservation areas, adjacent streets, accessory buildings, lighting and open areas.

7) To give fair and full consideration to the opinions and statements of abutting property owners at the public hearings required for each application.

8) To provide for design review of all proposals prior to construction, to ensure compliance with the above intent and objectives and to assure that the proposal will not result in or contribute to incompatible use of the land, pollution of the soil or groundwater, traffic congestion or inappropriate site development.

C) Criteria. Before the Planning Board may issue the special permit, it shall determine each of the following:

1) That the proposed development constitutes a desirable development in the neighborhood and in the Town.

2) That the proposed development will not be detrimental to the neighborhood or the Town.

3) That the plans generally provide adequately for convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent streets, property or improvements, with the understanding that review of such items will be more detailed at the site plan stage.

4) That the plans appear to provide adequate methods of disposal of sewerage, refuse and other wastes, adequate methods for drainage for surface water and seasonal flooding, if any, and adequate provision of water for domestic purposes, with the understanding that review of such items will be more detailed at the site plan stage.

5) That the plan complies with the Master Plan.

6) That the provisions of Section 210-105.10A and B of this article have been met.

210-105.11 Definitions.

As used in this article, the following terms shall have the meanings indicated:

AFFORDABLE HOUSING UNIT — A dwelling unit that is deed restricted for occupancy by a LOW- AND MODERATE INCOME household and meets the

requirements of the Department of Housing and Community Development's "Local Initiative Program" (LIP) for inclusion in the Subsidized Housing Inventory, as provided for in M.G.L.c.40B, Sections 20-23, 760 CMR 31.04, and 760 CMR 45.00.

BASEMENT -- Any portion of a structure below the first story.

CONDOMINIUM -- A method of ownership whereby an individual may own separately one or more single dwelling units in a building or project. Said individual and other owners of such dwelling units may have an undivided interest in the common areas and facilities that serve the unit or project, such as land, roofs, floors, main walls, stairways, lobbies, halls, parking areas, driveways, recreation areas, open space areas and natural landscaped and/or conservation areas. Said individual may take title to his individual dwelling unit or units, vote on a proportional basis in all respects of his undivided interest in common areas, be taxed separately by the Town for the individual dwelling unit or units and may have a mortgage on the individual dwelling unit.

FLOOR AREA -- The sum of the horizontal area of the several floors of a dwelling unit measured from the outside, excluding cellar floor areas, basement rooms, garages, porches and open attics or unfinished rooms, and for which a certificate of occupancy has been issued as habitable living quarters. In split level houses, the first two levels may be counted as one floor, provided that the difference in floor levels is less than five feet.

VILLAGE HOUSING — A residential land use consisting of Affordable Housing Units on one single contiguous parcel.

HALF-STORY -- Any place under the gable, hip or gambrel roof, the floor of which is not more than two feet below the plate.

LOW- AND MODERATE INCOME. A household with income at or below 80% of the area median income that applies to Hopkinton, as determined from time to time by the Department of Housing and Urban Development (HUD).

SCREENING -- A suitable area that will serve as a buffer to adjacent properties, will reduce noise levels and partially obscure any structures.

STORY -- That portion of a building above the finished grade included between the floor and the ceiling or roof above it.

USABLE LAND -- Usable land excludes wetland and floodplains as defined in MGL c. 131, § 40, and areas with slopes of more than 15%. For the purpose of calculating density, 20% of unusable land may be considered usable.

210-105.12. Use regulations and dimensional requirements.

A) Use districts. Village Housing, under single ownership or as condominiums, shall be allowed by special permit in all districts where residential uses are permitted by right in accordance with the requirements and regulations set forth in this article.

B) Dimensional requirements. The following lot sizes, setbacks and regulations must be adhered to by each applicant:

1) Anyone wishing to build garden apartments village housing may do so only on a site containing an area of not less than 10 5 acres of usable land, but not more than 30 20 acres of usable land per village housing project and/or application. The minimum lot frontage shall be 200 50 feet on a public road.

2) Density shall be a maximum of ten units per acre of usable land.

3) The total ground floor area of housing units, garages and accessory buildings shall not exceed 25% of the site area.

4) One-bedroom units shall contain a minimum of 700 square feet of floor area. Twobedroom units shall contain a minimum of 900 square feet of floor area. Threebedroom units shall contain a minimum of 1200 square feet of floor area.

5) Buildings shall not exceed 2 1/2 stories in height and shall contain a maximum of 12 units. The number of detached single-family dwelling units may vary and may comprise all of the dwelling units in the project.

6) Parking spaces. There shall be provided two parking spaces per unit, at least one of which shall be located so as to provide convenient access to its assigned dwelling unit. Parking garages will be permitted as a parking space if located and designed so as to complement the building design and site layout.

7) Setbacks. All buildings must comply with the setback requirements of the underlying zoning district. The street setback area shall be undeveloped and/or

landscaped. Upon a finding by the Planning Board that a setback of lesser width would be sufficient to screen and/or separate the development from adjacent property, the setback may be reduced. The Board may require no-cut easements, conservation restrictions or the like where the setback has been reduced. Buildings shall be located a minimum of 20 feet from interior roadways and driveways which are not considered streets or public roads.

8) Maintenance of roads. Maintenance of roads and driveways, including snowplowing within the project limits, is the responsibility of the project owner.

9) Lighting. All lighting must be shielded and/or directed away from adjoining property.

10) Signs. Signs are subject to such limitations of size and usage as may be imposed by the Planning Board.

11) Rubbish disposal. Rubbish disposal shall be provided for by the owner and not by the Town. There shall be no outside burning of rubbish. Inside incinerators which are approved by the Planning Board may be allowed.

12) Underground utilities. Underground utilities are mandatory and shall be installed in accordance with the standards contained in the subdivision rules and regulations of the Town of Hopkinton.

13) Recreation area. In developments of ten or more units, suitable recreation space of at least 600 square feet per dwelling unit shall be provided for both adults and children. Such areas shall be suitable for the siting of active recreational facilities and shall be in addition to included as part of in addition to the open space required for the project. Such recreation areas may be contiguous to the open space or may be separately located. This section shall not apply if the development is within one half mile of an existing active recreational facility which is open to the public free of charge.

14) Landscaping. Suitable landscaping materials no less than 15 feet in width must be placed along property lines to provide screening if there is no suitable natural growth in these areas. Fencing may be allowed at the discretion of the Planning Board. The screened area may be included in the required setback distances.

15) Suitability of land area. Natural watercourses and ponds may not be altered, filled, drained or relocated. Any pond that has been in existence for over 25 years shall be deemed to be a natural pond. Floodplain or marshes may be included as part of a lot, but may not be altered, filled, drained or relocated and may not be used for building sites, sewage disposal areas or ways.

16) Distance between structures. The distance between structures shall be no less than the average height of the two structures or 35 feet, whichever is greater. This requirement may be waived by the Planning Board upon the recommendation of the Fire Chief.

17) Road Construction. Roads are to be constructed in accordance with the Design Standards and Construction Requirements of the Subdivision Rules and Regulations of the Town of Hopkinton with the exception of width and length, which shall be determined by the Planning Board based on the specific characteristics of each plan submittal. The Planning Board may grant waivers from the Design Standards and Construction Requirements if the Board determines that such waiver will not result in any substantial detriment to the public good or substantially derogate from the intent or purpose of such Standards or Requirements or of this Chapter. All requests

for waivers must be in writing and must be submitted to the Board at the time of plan submittal. Inspection of the roads during construction shall be in accordance with the procedures contained in the Subdivision Rules and Regulations and the inspection process shall be administered by the Planning Board. Such procedure shall include the payment of any fees or deposits for the inspections as required by the then applicable Subdivision Rules and Regulations.

18) Open space, as described in Section 210-105.10B(5), shall consist of a minimum of 15% of the development site and shall be clearly delineated and defined on the site plan of each application. It is the intention of this article that the open space shall generally occur as a single contiguous area of open space that retains those natural features of the site most worthy of preservation in their natural state.

19) Affordable Units. All of the Village Housing affordable housing units shall be restricted by deed that requires that they remain affordable, as defined by this chapter, in perpetuity. 100% of the housing units in any Village Housing development shall be affordable housing units, as defined in this chapter.

210-105.13. Administration.

A) Application procedure. The application procedure consists of two steps: application for village housing concept plan special permit approval to the Planning Board and application for village housing site plan approval to the Planning Board. A village housing site plan shall be considered neither a definitive subdivision plan under the provisions of the Subdivision Control Law, nor a site plan under the provisions of Article XX of this Chapter. A village housing site plan shall be considered a technical administrative review of an approved concept plan. The village housing concept plan

special permit is the special permit referred to in Section 210-105.11A of this article.

1) Concept plan special permit.

a) A record owner desiring to use land for village housing shall file with the Planning Board an application for a village housing concept plan special permit to use the land for garden apartments, together with such plans, drawings, specifications and additional information as set forth in the Village Housing Submission Requirements and Procedures Manual adopted by the Planning Board and filed with the Town Clerk. After adoption of this article, the Planning Board shall vote to adopt the Village Housing Submission Requirements and Procedures Manual after holding a public hearing.

b) Within seven days of receipt of the application for the village housing concept plan special permit, the Planning Board shall transmit copies of the application and plan to the Director of Public Works, Conservation Commission and Board of Health for comment and recommendations. The Planning Board shall not approve any such application until the final reports of such departments shall have been submitted to it or until 35 days shall have elapsed after the transmittal of the plans and additional materials without such report being submitted. Design review fees shall be governed and set by the Planning Board and shall be assessed to the record owner and applicant.

c) The Planning Board will hold a public hearing and will file its decision with the Town Clerk as required by MGL c. 40A, § 9.

d) Approval of the village housing concept plan special permit application shall not be considered approval of any construction. This approval is a preliminary approval intended to give guidance to the applicant for the development of the site plan and to determine whether the proposed concept meets the objectives of the bylaw and the Town.

e) After a village housing concept plan special permit application has been submitted, no tree removal, no utility installation, no ditching, grading or construction of roads, no grading of land or lots, no excavation except for purposes of soil testing, no dredging or filling and no construction of buildings or structures shall be done on any part of the site until the application has been reviewed and approved as provided by these regulations.

f) A village housing concept plan special permit shall become void within two years from the date of issue, which two years shall not include time required to pursue or await determination of an appeal referred to in MGL c. 40A, § 17. If any construction work contemplated by such special permit shall have commenced and proceeded in good faith continuously, except for good cause, but notwithstanding, the project shall not have been completed within such two-year period, the applicant must request extension of the special permit from the Board, in which case the Board shall extend the special permit for such period of time as it deems appropriate.

2) Village housing site plan. After approval of the concept plan special permit, the applicant may submit an application for approval of a village housing site plan to the Planning Board. No village housing site plan application may be submitted unless a concept plan has been approved and is currently in effect. The village housing site plan shall be designed to be in conformance with the approved concept plan special permit. If the Planning Board determines that there is a substantial variation between the concept plan special permit and the site plan, it shall hold a public hearing on the modifications of the concept plan special permit.

a) Within five days after receipt of the complete application, the Planning Board shall distribute copies of the application and plans to the Director of Public Works, Conservation Commission and Board of Health. These departments shall transmit recommendations, if any, to the Board within 35 days of receipt of the plans.

b) The Board shall hold a public hearing within 45 days of the receipt of the complete application. Notice of the time, place and subject matter of the public hearing shall be given by the Planning Board at the expense of the applicant by advertisement in a newspaper of general circulation in the Town, once in each of two successive weeks, the first publication being not less than 14 days before the day of such hearing, and by mailing a copy of such advertisement to the applicant and to all owners of land abutting the land included in such plan as appearing on the most recent tax list.

c) The Board shall file its decision with the Town Clerk within 90 days from the date of submission. This time may be extended by mutual agreement between the applicant and the Planning Board.

d) Approval criteria.

(1) Before the Planning Board may approve the site plan, it shall determine each of the following:

(a) That the plans provide adequately for convenience and safety of vehicular and pedestrian movement within the site and in relation to

adjacent streets, property or improvements.

(b) That the plans assure the adequacy of the methods of disposal of sewerage, refuse and other wastes and the methods of drainage for surface water and seasonal flooding, if any.

(c) All of the provisions of this Chapter, including Section 210-105A and B, have been complied with and all necessary special permits and variances have been granted from the Board of Appeals.

(2) If the Planning Board does not make all of the above determinations, it shall deny the application stating its reasons for such denial.

e) The Board may approve the site plan with conditions. Those conditions may include, but shall not be limited to, the following:

(1) Phasing of the village housing site plan construction so that no more than thirty five (35) units per year of affordable housing will be constructed utilizing a three-year average as a standard until that point at which the state mandate for percent affordable housing units has been achieved.

(2) Performance guaranty. As a condition of plan approval, the Planning Board may require that a performance bond, secured by deposit of money or negotiable securities in the form selected by the Board, be posted with the Town to guarantee completion of improvements to be made in compliance with the plans submitted and approved hereunder. The Board may also require that an amount be included for land restoration not having to do with the construction of improvements. The amount of security shall be determined by an estimate from the applicant's engineer which may be confirmed or increased by the Board. The Town may use the secured funds for their stated purpose in the event that the applicant does not complete all improvements in a manner satisfactory to the Board within two years from the date of approval, or the final date of the last extension of such approval, if any. The term "improvements" shall not include the construction of buildings.

(3) Off-site improvements to correct conditions directly caused by the village housing development.

(4) The duration of the Board's approval and a specified date of completion.

B) Modifications to approved plan. The approved village housing site plan may be modified or amended by the Planning Board on its own motion or upon application by the developer. If the Board determines that such modifications are significant, it shall hold a public hearing in accordance with the provisions of Subsection A(2) above.

C) Completion.

1) Upon completion of construction of all site work and building construction, the applicant shall file a completion certificate with the Director of Municipal Inspections, such certificate to state that the site development, conservation and building construction has been completed in conformity with the approved plans.

2) The applicant shall submit two as-built plans showing the entire site and including, but not limited to, the following: utilities, structures, roadways, open space and recreation areas.

3) After submission of the completion certificate and as-built plans, the Board shall review such information and if such as-built plans conform to the site plan as approved and modified or amended, release the remaining performance guaranty, if any.

D) Appeal. Appeals of decisions made under this article shall be pursuant to MGL c. 40A, § 17.

ARTICLE XVII

Open Space and Landscape Preservation Development

[Added 4-15-1988 ATM, Art. 48; amended 4-11-1989 ATM, Art. 19; 6-11-1990 ATM, Art. 23; 5-4-1993 ATM, Art. 21; 5-3-1994 ATM, Art. 25; 5-1-1995 ATM, Arts. 32 and 33; 5-2-2000 ATM, Art. 34; 5-5-2003 ATM, Art. 24]
~ 210-106. Purpose.

As an alternative to a conventional subdivision and in order to provide for the public interest by the preservation of open space and natural landscape features in perpetuity and to promote variety in single-family residential housing patterns by encouraging development which is designed to accommodate a site's physical characteristics, such as topography, vegetation, water bodies, wetlands, open spaces, such as farmlands and meadows, major scenic views and wildlife habitats, the following regulations are established. It is not the intent of this article to make undevelopable land developable or to permit an increase in the number of building lots that would otherwise be possible on a conventional plan but rather to encourage the preservation of important site features.

~ 210-107. Applicability. [Amended 5-3-1994 ATM, Art. 25]

Open space and landscape preservation development shall be allowed within Residence B, Residence Lake Front and Agricultural A zoning districts, subject to the requirements of this Chapter for those districts, and in accordance with the additional requirements specified herein.
~ 210-108. General requirements.

A. Any parcel of land located within a zone permitting open space and landscape preservation development containing 10 or more acres, or five or more acres if located adjacent to permanent open space which will be expanded by the proposed plan, and which may be developed as a conventional subdivision, may be considered for an open space and landscape preservation development subject to a special permit issued by the Planning Board. [Amended 5-2-2000 ATM, Art. 34]

B. After an open space and landscape preservation development application has been submitted, no tree removal, no utility installation, no ditching, grading or construction of roads, no grading of land or lots, no excavation except for purposes of soil testing, no dredging or filling and no construction of buildings or structures shall be done on any part of the development site until the application has been reviewed and approved as provided by these regulations.

~ 210-109. Permitted uses.

Permitted uses shall be as follows:

A. Detached single-family dwellings, as defined, including all accessory uses as permitted in this Chapter for the district in which the land lies.

B. Uses permitted within the common open space as described in these regulations.

C. Recreational facilities consistent with open space and landscape preservation development purposes.

~ 210-110. Minimum requirements.

A. Size: The total area of the tract proposed for open space and landscape preservation development shall be at least 10 acres.

B. Density: The total number of building lots on the tract proposed for open space and landscape preservation development shall be calculated using the following equations.

The resulting number of lots shall be a guide, and the total number of lots shall be determined by the Board using the following as guidelines:

(1) Conventional subdivision plan submitted by the applicant.

(2) Information provided by the applicant indicating the development potential of the land.

(3) The following equation. The variables for total parcel area and wetlands shall be entered in square feet. When the total number of lots calculated by the equation results in a fraction, the total number of lots shall be rounded down. [Amended 5-3-1994 ATM, Art. 25; 5-2-2000 ATM, Art. 34]

(a) In Residence B and Residence-Lake Front Districts:

Total Number of Lots = Total Parcel Area - (.5X Wetlands) - (.1X Total Parcel Area)
45,000

(b) In the Agricultural District:

Total Number of Lots = Total Parcel Area - (.5X Wetlands) - (.1X Total Parcel Area)
60,000

~ 210-111. Intensity regulations.

The Planning Board may grant a reduction of all intensity regulations of the underlying zoning regulations for all portions of an open space and landscape preservation development if the Planning Board finds that such reduction will result in better design, improved protection of natural and scenic resources and will otherwise comply with these regulations, provided that in no instance shall any lot deviate from the following Table of Minimum Requirements.

TABLE OF MINIMUM REQUIREMENTS

[Amended 5-3-1994 ATM, Art. 25; 5-5-2003 ATM, Art. 24]

Zoning Districts

Agricultural and

District Residential B Residence-Lake Front

Minimum area (square feet) 25,000 30,000

Minimum frontage (feet) 75 100

Minimum front yard setback (feet) 40 50

Minimum side yard setback (feet) 20 20

Minimum rear yard setback (feet) 20 20

A. The lot frontage depth requirement contained in this Chapter, Article I, ~ 210-4, Definitions, definition of "lot frontage," may be waived by the Planning Board in order to achieve the purposes of this article.

B. Dead-end streets may be permitted in an open space and landscape preservation development but shall not exceed 1,000 feet in length. No dead-end street shall provide access to more than 10 building lots.

C. Common driveways may be permitted in an open space and landscape preservation development, provided that each common drive serves no more than two lots. The requirement in this Zoning Bylaw that a driveway providing the principal access to a lot be across the designated frontage of the lot shall not apply when a common driveway is to be utilized in an open space and landscape preservation development; provided,

however, that the common driveway must cross the designated frontage of one of the lots it serves. [Amended 5-2-2000 ATM, Art. 34]

~ 210-112. Development standards.

A. Concept plan standards. Prior to the issuance of a special permit for an open space and landscape preservation development, the applicant shall submit the information necessary to demonstrate that the following standards have been met:

- (1) The development will not cause unreasonable traffic congestion or unsafe conditions both within and outside of the development.
- (2) The development will provide for and maintain convenient and safe emergency vehicle access to all buildings and structures at all times.
- (3) The site design shall preserve and, where possible, enhance the natural features of the property, including scenic views, by adapting the location and placement of structures and ways to the existing topography in order to minimize the amount of soil removal, tree cutting and general disturbance to the landscape and surrounding properties.
- (4) The site design shall identify and ensure preservation of significant and special natural features.

B. Definitive plan standards. Prior to the approval of a definitive plan based upon the open space and landscape preservation concept plan, the applicant shall submit the information necessary to demonstrate that the following standards have been met. These standards are in addition to the requirements of the Hopkinton Subdivision Rules and Regulations and are in no way intended to replace any portion of those regulations.

- (1) The nature of the soils and subsoils shall be suited for the intended purposes based upon the Soil Conservation Guidelines. This determination shall focus upon but shall not be limited to the locations, design and construction of roadways, buildings and surface water drainage systems. Soil borings or test pits may be made to provide information on soil texture, color, percolation rates and depth to the groundwater table at its maximum elevation.
- (2) Anticipated storm water runoff from the site shall not exceed peak runoff from the site prior to development. The applicant shall submit formal drainage calculations by a registered professional engineer for this purpose.
- (3) Proper soil erosion and sedimentation control measures shall be employed to prevent sedimentation and siltation of existing surface water bodies and wetlands. In areas where the land slopes downward toward any surface water body or fresh water wetland, proposed filling, cutting, clearing or grading shall be minimized and all such development activities shall be carried out in such a way as to retain the natural vegetation and topography wherever possible. The Planning Board may require that an erosion and sedimentation control plan be submitted if significant erosion is anticipated in slope areas.

~ 210-113. Open space use and design standards.

A. Within an open space and landscape preservation development, no less than 50% of the land area shall be devoted to common open space. The common open space shall not include land set aside for roads and/or parking uses. The Planning Board may reduce the common open space requirement to 30%, if it is demonstrated that a minimum lot area of 45,000 square feet is required because of soils and topographical conditions. No more than 50% of the common open space shall contain wetlands as defined by MGL c. 131, ~ 40.

B. The common open space shall be designed and maintained in accordance with the following standards:

- (1) Areas to remain as naturally existing woods, fields, meadows and wetlands shall be maintained and may be improved in accordance with good conservation practices.
- (2) Common open space shall be planned as large, contiguous units wherever possible. Strips of narrow parcels of common open space shall be permitted only when necessary for access or as vegetated buffers along the site's perimeter.
- (3) Common open space may be in more than one parcel, provided that the size, shape and location of such parcels are suitable for the designated uses.
- (4) No more than 20% of the common open space shall be covered by man-made impervious surfaces.
- (5) Common open space may be used for active and passive recreation, conservation, forestry, agriculture, natural buffers, structures necessary for approved uses, utilities and other facilities necessary for the convenience and enjoyment of the residents, subject to approval by the Planning Board.
- (6) If detention and/or retention ponds are necessary for the construction of the improvements shown on the subdivision plan, such detention and/or retention ponds shall not be located within the common open space shown on such plan. The Planning Board may waive this requirement if the Board finds that the integrity and significance of the open space and the benefit of the open space to the Town are not compromised, and that the open space created conforms with the intent and purpose of this article. In no case, however, shall permanent clearing

for drainage improvements or utilities, including detention and/or retention ponds, exceed 5% of any common open space parcel. [Added 5-1-1995 ATM, Art. 32]

C. Buffer areas.

(1) There shall be a buffer at the perimeter of the site consisting of trees, shrubs, vegetation and topographic features sufficient to separate and/or screen the development from abutting properties. This buffer shall be no less than 100 feet in width. The buffer shall be considered common open space.

Upon a finding by the Planning Board that a buffer of lesser width would be sufficient to screen and/or separate the development from adjacent property, the buffer may be reduced. If, however, the perimeter of the site abuts a Business (B), Rural Business (BR) or Industrial (I) zoning district, the Planning Board may require the buffer area abutting a B, BR or I District to be greater than 100 feet in order to ensure adequate separation and/or screening from the abutting commercial zoning districts.

(2) The Board may require no-cut easements, conservation restrictions or the like where the buffer requirement has been reduced. These easements and restrictions shall be on private property, shall not be considered a buffer and shall not be included in common open space calculations.

(3) Retention and/or detention ponds may be permitted in the buffer area upon approval of the Planning Board. Structures shall not be permitted in the buffer area. [Amended 5-1-1995 ATM, Art. 32]

(4) Buffer areas shall remain in their current natural state. If in the opinion of the Planning Board the current natural state is insufficient to adequately separate and/or screen the site from abutting properties, additional trees, shrubs and/or plantings shall be required.

~ 210-114. Common open space ownership and management.

A. Common open space in any open space and landscape preservation development shall be conveyed a) to the Town and may be accepted by it for park or open space use; b) a nonprofit corporation, the principal purpose of which is the conservation of open space; or c) a corporation or trust owned or to be owned by the owners of lots within the development. If a corporation or trust owned by the owners of lots is utilized, ownership thereof shall pass with the conveyances of the lots. In any case where such land is not conveyed to the town, a conservation restriction enforceable by the Town shall be recorded, which shall provide that such land shall be kept in an open or natural state and shall not be built upon for residential use or developed for accessory uses, such as parking or roadway. [Amended 5-2-2000 ATM, Art. 34]

B. If the common open space is not to be conveyed to the town, then the applicant shall include, as part of the covenant, a provision that the common open space will be deeded as approved by the Planning Board. In addition, the covenant shall not be released until proof of ownership has been provided to the Planning Board.

C. If the common open space is not to be conveyed to the town, the applicant for an open space and landscape preservation development special permit must include a program describing how the common open space will be maintained in perpetuity to standards satisfactory to the Planning Board. The applicant shall also provide as part of the common open space proposal an agreement empowering the Town to perform maintenance of the common open space in the event of failure to comply with the program included in the application pursuant to the preceding sentence, provided that, if the Town is required to perform any maintenance work, the owners of lots within the open space and landscape preservation development shall pay the cost thereof and that the cost shall constitute a lien upon their properties until said cost has been paid.

D. The Planning Board may require that all or such part of the common open space as the Planning Board deems appropriate shall be clearly identified and marked on the ground prior to the commencement of any construction activity. [Added 5-1-1995 ATM, Art. 33]

~ 210-115. Application and review process.

The application process for an open space and landscape preservation development is comprised of two steps. In the first step, the applicant submits a concept plan, as outlined below, which describes the overall development plan. The Planning Board shall grant or deny a special permit based upon the information contained in the concept plan. If the special permit is granted, the applicant then submits a definitive plan, as described below, based upon the concept plan. The Planning Board then reviews the plan as a definitive subdivision plan. Two separate public hearings, one for the special permit and one for the definitive plan, must be held.

A. Concept plan.

(1) The applicant for an open space and landscape preservation development special permit shall first submit 10 copies of a concept plan as outlined below. The applicant shall also submit a sketch plan at the same scale showing how development of the parcel would be achieved by a conventional subdivision plan, in accordance with all applicable land use regulations. All applications for a special permit under this section shall be referred by the Planning Board to the Board of Health, Conservation Commission and other board/agency/department for its review and comments within 14 days of its submission to the Planning

Board. Any such board or agency to which applications are referred for comment shall make its recommendations and send copies thereof to the Planning Board and the applicant within 35 days of receipt of the referral request from the Planning Board or there shall be deemed to be no opposition or desire to comment. The Planning Board shall not act upon said special permit until either comments from referred boards or agencies have been received or said 35 days from the date of the referral request have elapsed, whichever is sooner. A public hearing shall be held in conformance with MGL, c. 40A, ~ 9.

(2) Concept plan. All applicants for open space and landscape preservation development special permits shall submit a concept plan prepared by a professional landscape architect registered in Massachusetts. The concept plan shall contain the following information, in addition to the requirements of a preliminary plan as specified in the Hopkinton Subdivision Rules and Regulations, Article IV, Section A-2, and information sufficient to illustrate and establish that the concept plan standards and special permit criteria of this section have been met: [Amended 5-5-2003 ATM, Art. 24]

(a) Existing landscape features, such as steep topography, including a delineation of areas with slopes over 25%, wetlands, springs, lakes and ponds, streams, rock outcrops, boulder fields, stone walls, cliffs, forest glades, drumlins, high points, hilltops and ridges.

(b) Existing open areas, such as forests, farm fields, meadows and major long views.

(c) In the event the parcel includes previously disturbed land, the applicant shall include a reclamation plan.

(3) Special permit criteria. The special permit shall be granted only if the Planning Board finds each of the following:

(a) The development meets the purpose of an open space and landscape preservation development as described in ~ 210-106.

(b) The development standards contained in ~ 210-112A(1) through (4) have been met.

(c) The common open space is designed in accordance with the standards set forth in ~ 210-113B.

(d) The common open space is designed in accordance with the standards set forth in ~ 210-113C.

(e) The parcel could be developed as a conventional subdivision under existing local, state and federal land use regulations.

(f) The open space and landscape preservation development provides for efficient use and delivery of municipal and other services and infrastructure.

B. Definitive plan.

(1) If the open space and landscape preservation development special permit is granted, the applicant shall submit a plan in conformity with the requirements and procedures for definitive plan submission and review under the Subdivision Rules and Regulations of the Planning Board. In accordance with MGL c. 41, ~ 81R, the applicant may request a waiver from the Subdivision Rules and Regulations if such action is in the public interest and consistent with the intent and purposes of this article, the Subdivision Control Law,⁹ and the special permit. The Planning Board then shall review the aspects of the open space and landscape preservation development with regard to its compliance to the Subdivision Control Law, and hold a public hearing as required by MGL c. 41, ~ 81T. The overall concept shall only be reconsidered if there is substantial variation between the definitive plan and the concept plan. A substantial variation shall be defined as an increase in the number of lots, a decrease in the open space acreage, a change in the layout which causes dwelling units or roadways to be placed closer to a dwelling unit within 500 feet of the project and/or a change in the development pattern which adversely affects natural landscape features and open space. If the Planning Board finds that a substantial variation exists, it must hold a public hearing on the modifications of the concept plan.

(2) The concept design review fee will be calculated as the preliminary plan design review fee in the Hopkinton Subdivision Rules and Regulations. The definitive plan design review fee will be calculated as the definitive design review fee in the Hopkinton Subdivision Rules and Regulations.

~ 210-116. Duration of approval.

Notwithstanding anything to the contrary within/without this article, any special permit granted by the Planning Board for an open space and landscape preservation development shall become void within two years from the date of issue, which two years shall not include time required to pursue or await determination of an appeal referred to in MGL c. 40A, ~ 17, unless any construction work contemplated thereby shall have commenced and proceeded in good faith continuously to completion, except for good cause. All open space shall be dedicated at the time the permit holder proceeds with construction under a building permit.

"In addition, Hopkinton has been unusually successful at encouraging open space-cluster developments over conventional subdivisions. During the 1990s, 70% of all subdivisions approved by the Planning Board were permitted under the Open Space and Landscape Preservation Development (OSLPD) bylaw, resulting in 840 acres of protected open space." (p. 26)

Note: The "Garden Apartments in Residential Districts" and the "Senior Housing Development" provisions also appear to be types of "flexible" or "cluster" zoning.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board From Ordinance.com

Section 210-108. General requirements.

A. Any parcel of land located within a zone permitting open space and landscape preservation development containing 10 or more acres, or five or more acres if located adjacent to permanent open space which will be expanded by the proposed plan, and which may be developed as a conventional subdivision, may be considered for an open space and landscape preservation development subject to a special permit issued by the Planning Board. [Amended 5-2-2000 ATM, Art. 34]

Has any housing been built under the cluster/flexible provisions?

Yes Master plan:

"In addition, Hopkinton has been unusually successful at encouraging open space-cluster developments over conventional subdivisions. During the 1990s, 70% of all subdivisions approved by the Planning Board were permitted under the Open Space and Landscape Preservation Development (OSLPD) bylaw, resulting in 840 acres of protected open space." (p. 26)

Survey received from Hopkinton 3/22/05:

Has any housing been built under the cluster/flexible provisions? (none, 1-8 projects, more than 8)

"Yes, more than 8"

Hudson

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

No Researcher found no mention of flexible zoning allowed by special permit in Hudson. The most comparable type of zoning is the Retirement Community Overlay District.

Which entity is the special permit granting authority for cluster/flexible zoning?

Has any housing been built under the cluster/flexible provisions?

Hull

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

No There was a PUD section in Hull's Zoning Bylaws, but it was deleted April 10, 1995.

Town of Hull Zoning Bylaws, Section 43 (2003)

Section 43 - Flexible Plan Development

43-1. Purpose

For the purpose of promoting the more efficient use of land in harmony with its natural features and in furtherance of the general intent of this bylaw to protect and promote the health, safety, convenience and general welfare of the inhabitants of the town, the Board of Appeals may grant a special permit for a Flexible Plan Development subject to the regulations and conditions contained in this section.

43-2. Permitted Use

In a Flexible Plan Development, the following uses is permitted:

- a. Multi-family residential use, including garden apartments and town houses.
- b. Hotels, motels, inns and marinas.
- c. Convenience commercial uses normally found servicing multi-family residential use such as foods, hardware, office, banks, news store, drug store, luncheonette, laundry, barber and beauty shops and variety store.
- d. Accessory uses normally associated with permitted uses in Paragraph 35-1A such as cocktail lounge, restaurant, beauty and barber shop, drug store, news stand, and similar uses designed to serve transient patrons provided such uses are located in the confines of the principal building.
- e. Public open space and recreation.

43-3. Application for special permit

Each application for a special permit for a Flexible Plan Development shall be accompanied by a site plan and building elevations at an appropriate scale. Such site plan shall show the entire project area at a scale of 1"= 100' and shall be prepared by a registered architect or registered professional engineer. The site plan and three (3) copies thereof shall be submitted to the Board of Appeals and shall show at least the following:

- a. All lot lines, wetlands and existing and proposed topography at two-foot contour intervals.
- b. Proposed development parcels and the location of proposed uses on each parcel.
- c. Existing and proposed street, parking, drainage and utility systems.
- d. Location of proposed parks, playgrounds and other open spaces.
- e. A tabulation of the total number of dwelling units and the number designated for each proposed dwelling type.
- f. Types of proposed commercial uses and square footage for each type of commercial use.
- g. Landscape plan showing all proposed landscape features and proposed improvements including walks, pedestrian ways, planting areas with size and type of stock for each shrub or trees, walls, fences and outdoor lighting.
- h. A written statement detailing the design characteristics for the development, including, but not limited to, exterior building materials, architectural treatment and street furniture.

43-4. Schedule for Special Application

Within ten days after the receipt of the special application and accompanying site plan the Board of Appeals shall transmit a copy of said site plan to the Planning Board, Board of Selectmen, Board of Health, and the Conservation Commission and said boards may, at their discretion, investigate the proposed layout and report in writing its recommendations to the Board of Appeals.

43-5. Special Application Considerations

In considering an application for a special permit under this section, the Board of Appeals shall consider whether the proposed Flexible Plan Development conforms to the following guidelines:

- a. The protection of adjoining premises against detrimental uses by provisions for surface water drainage, sight buffers and preservation of light and air.
- b. The convenience and safety of vehicular movement and the location of driveway openings and parking areas in relation to traffic or to adjacent streets.
- c. The convenience and safety of a pedestrian circulation system that provides direct routes between major buildings, parking areas and roads.
- d. The adequacy of the methods of disposal of sanitary sewage, storm water drainage, and solid waste refuse from the uses permitted on the site.
- e. The impacts of the proposed uses on one another within the development and the extent the proposed development relates harmoniously to the terrain, use, scale and proportions of existing and proposed buildings in the vicinity.

43-6. Special Permit Review

A application for a special permit to develop a Flexible Plan Development shall be submitted and reviewed in a manner consistent with the procedures set forth in Chapter 40A of the Massachusetts General Laws and this zoning bylaw.

43-7. Density Requirements

In a Flexible Plan Development the following requirements relating to the density and intensity of land use shall apply.

- a. The proposed project must include a minimum of 10 acres.
- b. Structures shall not exceed a maximum height of 70 feet.
- c. At least 25 percent of the total project area, excluding a 20 foot wide setback strip around the perimeter or such area shall be set aside as open space. The open space shall be left undeveloped or provided with recreational facilities such as pathways, picnic areas or play fields.
- d. Minimum parking requirements are as follows:
 - (i) 1.5 spaces per dwelling unit
 - (ii) Parking for other uses shall meet the minimum requirements as specified in Paragraph 35-4 of this bylaw.
- e. All structures within a Flexible Plan Development shall be setback at least 20 feet from the boundary of the project area or such lesser distance as may be permitted by the Board of Appeals in the case of structures other than multi-family residential structures.
- f. All signs shall conform to the provisions of Article VII of this bylaw.
- g. Density requirements: Residential density shall not exceed ten (10) units times the number of acres within the total project area plus the additional bonus units.
 - (i) Commercial density shall not exceed 150 percent of the total project area.
 - (ii) Compliance with the density, dimensional and open space requirements of this paragraph (43-7) shall be determined on the basis of the boundaries and total area of the Flexible Plan (including any public open space contained therein) without regard to the location or area of the separate lots within such Flexible Plan Development.

Except as expressly provided herein the density and dimensional requirements of Article III of this bylaw shall not apply to uses or structures within a Flexible Plan Development Plan. Nothing in this paragraph (43-7) shall prohibit the phased development or division of a proposed project area into separate lots provided that the requirements of this paragraph are maintained for the total project area.

43-8. Board-Modified Number of Dwellings

The Board of Appeals may approve an increase in the maximum number of dwelling units allowed in accordance with the following bonus schedule. The total bonus allowed shall not exceed 10 dwelling units per acre.

AMENITY BONUS

- a. 40% of proposed dwelling units devoted to elderly or handicapped housing up to 5 additional dwelling units per acre.
- b. Minimum 20 foot buffer strip around entire project area up to 5 additional dwelling units per acre.
- c. Active recreational facilities open to the public such as tennis court and public such as tennis court and up to 5 additional dwelling units per acre.
- d. Proposed dwelling units provide 50% of heating and hot water requirements by means of solar energy up to 5 additional dwelling units per acre.
- e. Underground parking, for proposed dwelling units up to 5 additional dwelling units per acre.
- f. Passive marine related recreational facilities open to the public such as waterfront park or boat landing facilities up to 5 additional dwelling units per acre.
- g. Other normally accepted incentive bonuses up to 5 additional dwelling units per acre.

Note: The survey received from Hull on 3/18/05 changed the answer to the question about cluster/flexible zoning to "no."

Researcher called Planning Director Jay Szklut to follow up. He said that "flexible development" in Hull is not like cluster development - it is not about clustering buildings and preserving open space. He said that it serves as a tool for allowing increased density or height, by special permit.

Which entity is the special permit granting authority for cluster/flexible zoning?

Has any housing been built under the cluster/flexible provisions?

Ipswich

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes OSP: RRA, RRB, RRC
 GEPD: RRA

Town of Ipswich Protective Zoning Bylaw (Adopted 1977, Amended 2004)

SECTION IX. SPECIAL REGULATIONS

A. Open Space Preservation (Cluster) Zoning (OSPZ).

The developer shall submit a "Yield Plan" which indicates the maximum number of lots achievable under a conventional layout without altering any land areas in which such activity would be precluded by normal application of state and town laws and regulations governing wetlands and riverfront areas, or by the existence of floodplain areas or steep (over 25%) slopes. In unsewered areas, the developer shall provide evidence acceptable to the Planning Board that individual on-site wastewater treatment and disposal systems may be permitted and constructed to serve all the lots proposed under the "Yield Plan" as submitted. This evidence shall include a demonstration of suitable soil and groundwater conditions through representative sampling and testing of the buildable areas of the site by means and methods approved by the Board of Health and shall at a minimum

consist of one determination of soil permeability and one observation of maximum ground water elevation per two acres of otherwise buildable land, such tests being distributed with reasonable uniformity over the site. For the yield plan to be approved, all such determinations and observations shall meet the above presumption, except that if more than five determinations and observations are made, only seventy-five percent of said determinations and observations need demonstrate the above presumption. [Added TM 10/16/00]

1. Purpose: The purpose of the Open Space Preservation (Cluster) Zoning Bylaw is to:

- a. conserve the Town's significant open space and to protect its natural features, including historic farms and landscapes, wetlands, forests, the Ipswich River, and the Area of Critical Environmental Concern (ACEC);
- b. foster housing patterns which are sensitive to and accommodate a site's physical characteristics;
- c. encourage the use of open space for agricultural use, conservation and/or passive recreation use;
- d. promote more efficient provision of streets, utilities and other public services by allowing a concentration of dwelling units without an increase in overall density. (Added 4/5/99 by Special Town Meeting; approved by Attorney General 8/2/99)

2. Applicability: Any proposed development in the Town of Ipswich which would create more than six (6) single-family attached or detached dwellings, on a property or set of commonly-owned contiguous properties containing a minimum of four (4) acres, shall be required to submit a special permit application to the Planning Board for Open Space Preservation (Cluster) Zoning in accordance with the provisions of this subsection. The applicant may also submit a conventional subdivision plan at the same time, in accordance with the Rules and Regulations Governing the Subdivision of Land in Ipswich. The Planning Board shall, in compliance with Massachusetts General Laws Chapter 40A, Section 9, hold a public hearing on the proposed Open Space Preservation (Cluster) application, and a concurrent public hearing on the proposed conventional subdivision, if applicable. In the event both an Open Space Preservation (Cluster) plan and a conventional subdivision plan are submitted, prior to the close of the public hearing, the Planning Board shall recommend which plan it considers most beneficial to the Town, and the applicant shall, also prior to the close of the public hearing, elect which plan he wishes to pursue, and shall inform the Planning Board of his choice in writing. For subdivisions which would create five or fewer lots, on a property or set of commonly-owned properties containing a minimum of five (5) acres, an applicant may submit a special permit application for Open Space Preservation (Cluster) Zoning, in preference to filing a conventional subdivision plan. Any special permit application submitted under the provisions of this subsection which involves the subdivision of land shall be subject to the approval of the Planning Board under the Rules and Regulations Governing the Subdivision of Land in Ipswich. (Added 4/5/99 by Special Town Meeting; approved by Attorney General 8/2/99) □

**Webmasters Note: The previous subsection has been amended as per an ordinance approved at a town meeting held on 10/15/01. □

3. Permitted Uses: The following principal developed uses of the lots shall be permitted:

- single-family attached
- single-family detached
- community uses
- religious uses
- educational uses
- membership club for the use of residents of the development
- country, fishing, tennis, boating, golf or similar club
- common driveways up to five lots

(Amended 4/5/99 by Special Town Meeting; approved by Attorney General 8/2/99)

4. Density Standards:

a. Base Density:

For the purposes of determining the total number of allowable dwelling units an entire tract, the total number of proposed dwelling units in the development shall not exceed the number of dwelling units which would be developed under normal application of zoning requirements for detached single-family dwelling units under the "Town of Ipswich Rules and Regulations Governing the Subdivision of Land" and in accordance with SECTION VI. DIMENSIONAL AND DENSITY REGULATIONS of the "Protective Zoning Bylaw of the Town of Ipswich". The developer shall provide a site plan with verifiable soil tests indicating the number of buildable lots possible under one-acre zoning and under the State Sanitary Code. Such soil tests shall be conducted as if they were actually percolation tests in accordance with the State Sanitary Code and shall be verified and attested to by a registered professional engineer.

b. Wetlands/Coastal Exclusion: □ □

For tracts which contain wetlands and/or flood plain, only one-half the area designated as wetlands and/or floodplain may be considered in the lot area calculations. For the purposes of determining lot area(s) the Federal Insurance Floodplain Maps (FIRM), 310 CMR 10.00 and the Town of Ipswich General Wetlands Bylaw shall be used to identify floodplain and wetland areas.

c. Maximum Density: □ □

In the RRC District in no circumstances shall the total number of units obtained through application of the above density formulae exceed one hundred twenty (120%) percent of the base density allowed under a. above. In the RRA District in no circumstances shall the total number of units obtained through application of the above density formulae exceed one hundred (100%) percent of the base density allowed under (1) above.

**Webmasters Note: The previous subsection has been amended as per an ordinance approved at a town meeting held on 10/15/01.

5. Development Requirements;

a. Town Water: The development shall be served by a water system deemed adequate for fire protection and domestic use by the Water Commissioners and by the Fire Chief

b. Sanitary Sewer/Septic: The property shall be served by the Town's sanitary sewer system, by a private central sanitary sewer system, or by individual septic systems. If, however, in the judgment of the Board, the topography and/or soil conditions are such that it would be more efficient to allow the underground common septic system or individual septic systems to be placed in the preserved open space, this configuration may be permitted. All systems are subject to approval by the Board of Health and any other permitting authority of competent jurisdiction.

c. Open Space Restriction: A minimum of fifty percent (50%) of the lot shall be:

****Webmasters Note:** The previous subsection has been amended as per an ordinance approved at a town meeting held on 10/15/01.

i) Conveyed to the Town of Ipswich and accepted by it for open space use;

ii) Conveyed to the Commonwealth of Massachusetts as part of a state forest, park, or wildlife management area;

iii) Conveyed to a non-profit corporation, the principal purpose of which is the conservation of open space, and made subject to a conservation restriction prepared in accordance with the provisions of Section 31 and 33, inclusive, of Chapter 184 of the General Laws of the Commonwealth of Massachusetts; or

iv) Conveyed to a corporation or trust owned or to be owned by the owners of lots or residential units within the plot; or

v) Made subject to a conservation restriction prepared in accordance with the provisions of Section 31 and 33, inclusive, of chapter 184 of the General Laws of the Commonwealth of Massachusetts running in favor of either the Town or, upon the approval of the Planning Board, a non-profit corporation, the principal purpose of which is the conservation of open space. The conservation restriction shall provide that such land shall be kept, in perpetuity, in an open or natural state, in accordance with the above-noted sections of Chapter 184 of the General Laws.

vi) The open space, in its entirety or a percentage thereof, may be held in non-common ownership, if approved by the Planning Board.

****Webmasters Note:** The previous subsection has been added as per an ordinance approved at a town meeting held on 10/15/01.

The method of protecting open space requires the approval of the Planning Board.

No more than fifty percent (50%) of the designated open space may be comprised of wetlands, or land having an average grade greater than twenty-five percent (25%). The open space shall be available for use by the general public, unless the applicant can provide compelling reasons to the Planning Board why such access would be infeasible in whole or in part. If it is deemed necessary to achieve the purposes of this subsection, the Planning Board may increase the open space minimum requirement, to a maximum of forty percent (40%).

****Webmasters Note:** The previous paragraph has been amended as per an ordinance approved at a town meeting held on 10/15/01.

The Town of Ipswich, through this Bylaw, encourages the use of the open space for agricultural, conservation or passive recreational use.

(Amended 4/5/99 by Special Town Meeting; approved by Attorney General 8/2/99)

d. Dimensional Regulations:

There shall be no lot area, frontage or setback requirements within a tract, except as follows:

(1) no building shall be erected within forty (40) feet of a public way or boundary line;

(2) the area developed for residential use, including buildings, parking and other areas paved for vehicular use, shall not exceed twenty-five (25%) percent of the total area of the OSPZ tract. Foot and bicycle paths and recreational facilities, including buildings wholly devoted to recreation, shall not be counted in the calculation of the twenty-five (25%) percent limitation.

****Webmasters Note:** The previous subsection has been amended as per an ordinance approved at a town meeting held on 10/15/01.

(3) For each lot located within any minimum tract, the minimum lot width shall be 75 feet, the minimum lot frontage shall be 50 feet, the minimum front, side and rear setbacks shall be 20 feet, 10 feet (per side) and 25 feet, respectively, and the maximum building coverage shall be 30%.

****Webmasters Note:** The previous subsection has been amended as per an ordinance approved at a town meeting held on 10/15/01.

****Webmasters Note:** The original subsection (4) has been deleted and the remaining subsections renumbered as per an ordinance approved at a town meeting held on 10/15/01.

(4) Notwithstanding the requirements of SECTION X.B. of this Bylaw, within the RRC district any minimum tract proposed for the Open Space Preservation (Cluster) Zoning shall be subject to site plan review in accordance with the provisions of SECTION X.

□□

(5) A vegetated buffer between the tract being built upon and abutting lots shall be required by the Board only if it determines that a buffer is necessary to protect significant natural features and to achieve the harmonious integration of the proposed development

with surrounding properties.

****Webmasters Note:** The previous subsection has been amended as per an ordinance approved at a town meeting held on 10/15/01.

(6) The Planning Board by special permit may waive any of the above dimensional requirements if it determines that such action would not be inconsistent with the purpose of this Open Space Preservation Zoning section.

****Webmasters Note:** The previous subsection has been added as per an ordinance approved at a town meeting held on 10/15/01.

e. Application and Review Process

All special permit applications for Open Space Preservation (Cluster) Zoning shall be made and filed on the appropriate application form. For an application to be considered complete, it shall provide all information required by the Rules and Regulations Governing Granting of Special Permits, available from the Department of Planning and Development.

If a proposed development filed under this subsection also requires subdivision approval, the applicant shall submit, along with the special permit application, a subdivision concept plan. The concept plan should address the general features of the land, and give approximate configurations of the lots and roadways. Imaginative and creative land use planning should be applied, with the aim of preventing damage to the landscape, topography and valuable and nonrenewable natural resources of the Town. The concept plan shall be prepared by a registered professional land surveyor and a registered professional landscape architect, and the plan shall include all information required in the Planning Board's rules and regulations, as described in paragraph 7. of this subsection A.□□

In designating the open space, the applicant shall apply the guidelines adopted by the Planning Board in May of 1997, entitled CRITERIA FOR EVALUATING PROPOSED OPEN SPACE. To facilitate the identification of appropriate open space within a proposed development, the Planning Board shall, within forty-five days of the special permit application, advise the applicant of significant natural features on the property. Prior to identifying these features, the Board shall seek the recommendation of the Open Space Committee. The approved special permit shall incorporate protection of the natural features to the greatest extent possible.

If the Planning Board approves a Special Permit for an open space preservation development requiring subdivision approval, the applicant shall then submit a definitive subdivision plan to the Planning Board under the Rules and Regulations governing the subdivision of land in the Town of Ipswich. Although the applicant has the option of submitting a preliminary plan instead of a definitive plan, the approved special permit will be considered to have served the purpose of a preliminary subdivision plan.

The Planning Board shall reconsider the aforementioned subdivision concept plan if there is substantial variation between the preliminary or definitive plan and the concept plan. A substantial variation shall be defined as an increase in the number of building lots, a decrease in the open space acreage, a change in the layout which causes dwelling units or road ways to be placed significantly closer to a dwelling unit within five hundred (500) feet of the project, and/or a change in the general development pattern. If the Planning Board finds that a substantial variation exists, it shall hold a public hearing on the modifications to the concept plan.

(Added 4/5/99 by Special Town Meeting; approved by Attorney General 8/2/99)

f. Construction of Meets shall be in accordance with the Rules and Regulations Governing the Subdivision of Land in the Town of Ipswich. Streets may be offered for acceptance as public ways.

g. Limitation of Subdivision:

No lot shown on a plan for which a permit is granted under this section may be further subdivided, and a notation to this effect shall be shown on the plans.

H. Great Estate Preservation Development (GEPD)

Adopted at Special Town Meeting 10/20/97; approved by Attorney General 2/10/98; and revised at Annual Town Meeting 4/6/98; approved by Attorney General 6/2/98; Special Town Meeting 4/5/99, and Annual Town Meeting 4/5/99; approved by Attorney General 8/2/99, and 7/28/99 respectively)

The following density standards and development requirements shall apply to a GEPD approved by a special permit from the Planning Board in lieu of the zoning provisions otherwise applicable in the RRA zoning district.

1. Purpose

The purposes of a Great Estate Preservation Development (GEPD) are to:

- a. encourage the preservation and appropriate development of the building and lands of the large estate properties in the RRA District (For the purposes of this subsection, a Great Estate is defined as an architecturally significant residence and its formal landscape features and supporting structures, constructed prior to 1948 and situated on a minimum of sixty [60] acres.);
- b. recognize and preserve the design integrity of landscape features, both natural and built, which contribute to the character of a Great Estate;
- c. encourage the efficient use of such land in harmony with the natural features of the RRA District;
- d. provide an alternative to the subdivision of an estate property for residences;
- e. preserve open space for conservation or recreation use, and provide appropriate public access to said open space; and
- f. protect natural features which are important to the character of the town.

2. Permitted Uses

The following uses may be permitted in a GEPD by special permit with site plan approval from the Planning Board, as set forth in

this subsection:

a. any use listed in the use schedule as an allowable use in the RRA District, whether by special permit or otherwise, except that residential dwelling use shall not exceed forty-five (45%) percent of the maximum floor area which may be developed pursuant to this GEPD zoning, unless said residential dwelling use meets the following conditions, in which instance the residential dwelling use shall not exceed forty-five percent (45%) of the maximum floor area of the GEPD: (a) the residential dwelling use is located in a GEPD which has an area of at least two hundred (200) acres which has remained substantially unchanged in lot configuration and size since December 31, 1996; (b) a minimum of twenty-five (25) affordable housing units shall be built; if the total number of residences constructed exceeds 180 units, the developer shall also provide 15% of the total on-site market units built in excess of this number as affordable housing, or in lieu of constructing the additional affordable units, subject to the approval of the Planning Board, the developer may contribute a payment of \$50,000 for each additional affordable unit to a fund to be used for the purpose of creating or sustaining affordable housing in the Town of Ipswich. Affordable units shall be as defined in f.(ii) below, except that up to one-third of the affordable units may be rented or sold to, and occupied by, households earning up to 120% of the median area household income. At least ten of the affordable units shall be located within the GEPD. Affordable units constructed off-site shall be done so in compliance with SECTION IX.1.5. of this zoning bylaw; (c) no more than two hundred thirty-five (235) dwelling units, inclusive of the on-site affordable units, shall be built on-site; (d) no more than 50% of the units may contain more than two bedrooms, and non of the units shall contain more than three bedrooms; and (e) each 1000 square feet of residential dwelling built in excess of 25% of the maximum floor area which may be developed pursuant to this GEPD zoning. [Amended 10/16/00]

b. hotel, conference center...

c. medical and dental clinics;

d. health or fitness spa. ...

e. school for instruction in golf, tennis, or other sport; golf driving range, provided it is affiliated with a golf course which is a component of the GEPD;

f. multi-family dwelling, provided that:

(i) at least 50% of the units are limited to those over the age of 55 as described in M.G.L. Chapter 151B, Section 4(6). Any special permit approval shall include a condition which describes an appropriate method of ensuring that this provision is satisfied;

(ii) at least 10% of the total units are affordable housing. (For the purposes of this subsection, affordable housing shall be defined as dwelling units which are rented or sold to, and occupied by, households earning up to 80% of the median area household income, as such median is defined by the United States Department of Housing and Urban Development (HUD). Affordable rental units shall be "rent restricted", as such term is defined in the Federal Low-Income Housing Tax Credit Program, Internal Revenue Code Section 42(g)(2), such that rents, including utilities, are set at no more than thirty (30) percent of the income limit, adjusted for bedroom size.);

g. nursing homes;

h. business and professional offices;

i. retail shops, dining facilities, and similar accessory uses primarily to serve occupants, employees or guests;

j. research offices or establishments devoted to research and development activities; and

k. the processing of biotechnological products arising out of, or substantially similar to, the research and development activities of a research office or establishment on the same lot; provided, however, that (a) said use shall require a separate special permit from the Planning Board; (b) recognizing the unique manner in which each user may conduct its biotechnological processing, any special permit issued for such a use shall be limited to a specific user and any change in control of a corporate user shall require a new special permit for a subsequent user (For the purposes of this subsection, change of control shall be defined as (i) the sale by the user of its operating assets located on the lot to an unaffiliated entity; (ii) a merger or consolidation resulting in the stockholders of the user owning less than one-half of the stock of the surviving corporation; or (iii) the sale of more than one-half of the issued stock of the user to parties who were not stock-holders of the user at the time of the approval of the special permit); (c) at no time shall more than thirty-five (35%) of the constructed floor area be primarily devoted to such processing; and (d) the Board determines, upon consultation with the Board of Health and the Water Commissioners, that said processing use is not detrimental to the health, safety, and welfare of the community.

3. Density Standards

a. Minimum Lot Size: A GEPD may be permitted on a lot which:

(i) has an area of at least sixty (60) acres which has remained substantially unchanged in lot configuration and size since December 31, 1996. Contiguous lots may be combined for inclusion in a GEPD, provided that at least one of the lots contains sixty (60) acres and has remained substantially unchanged in lot configuration and size since December 31, 1996. The calculation of minimum lot size shall be done in accordance with paragraph b.(iii) below; and

(ii) is a great estate as defined in 1.a. above; and

(iii) contains buildings constructed prior to December 31, 1996 which contain in aggregate a minimum of 40,000 square feet of existing floor area. For the purposes of this subsection, floor area is defined as the aggregate gross floor area of all floors within all principal and accessory buildings.

b. Floor Area of Development:

(i) New Floor Area: For the purposes of determining the total new floor area which may be developed on the lot, the applicant may construct new floor area in the development such that the total resulting floor area does not exceed the product of 3,000 square feet times the number of dwelling units which could be developed under normal application of one-acre zoning requirements under the "Town of Ipswich Rules and Regulations Governing the Subdivision of Land" and in accordance with SECTION VI. of this zoning bylaw. The applicant shall provide with the application for special permit a site plan with verifiable soil tests indicating the number of buildable lots possible under detached single-family zoning, the State Environmental Code, Title V, the requirements of the Board of Health, the Wetlands Protection Act, and the Ipswich Wetlands Protection Bylaw and Rules and Regulations. Such soil tests shall be conducted as if they were actually percolation tests in accordance with the above-referenced requirements and shall be verified and attested to by a registered professional engineer.

(ii) Additional Floor Space for Rehabilitation of Existing Buildings: If, as part of the development, the applicant rehabilitates or renovates existing buildings on the lot, the new floor area to be developed on the lot may be increased by five (5) square feet for every square foot of floor space in buildings to be rehabilitated or renovated. This density bonus shall apply only if all buildings and structures on the site certified by the Historical Commission as having historic or architectural significance, are to be rehabilitated or renovated. The Planning Board shall refer to the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings for guidance when reviewing the buildings which have been, or are proposed to be, rehabilitated or renovated.

(iii) Wetlands/Coastal Exclusion: For a lot which contains wetlands and/or floodplain, or which is subject to the Rivers Protection Act, only one-half the area which is designated as wetlands and/or floodplain, or is subject to the Riven Protection Act, may be considered in the lot area calculations. For the purposes of determining lot area, the Federal Insurance Floodplain Maps (FIRM) and the Town of Ipswich General Wetlands Bylaws shall be used to determine floodplain, wetlands, and areas subject to the Rivers Protection Act.

(iv) Maximum Density: The total allowable floor area obtained through the application of the formulae described in sub-paragraphs (i) and (ii) above, shall not exceed eight percent (8%) of the area of the lot.

4. Development Requirements

a. Town Water: The development shall be served by a water system deemed adequate for fire protection and domestic use by the Water Commissioners and by the Fire Chief

b. Sanitary Sewer/Septic: The development shall be served by the Town's sanitary sewer system or by one or more on-site disposal systems conforming to the State Environmental Code, Title V and the regulations of the Board of Health. If, however, in the judgment of the Board, the topography and/or soil conditions are such that it would be more efficient to allow (i) a private central sanitary sewer system, notwithstanding the lot's location in a Water Supply District, and/or (ii) allow an underground common septic system or individual septic systems to be placed in the preserved open space, this configuration may be permitted. Prior to making such judgment, the Planning Board shall seek the review and recommendations of the Board of Health, Department of Utilities, Board of Water Commissioners, and the Conservation Commission. If a GEPD is located within a Water Supply District and a private central sanitary sewer system is proposed, the Planning Board shall not approve a special permit under this subsection unless and until said system shall have received a favorable recommendation from the Board of Water Commissioners, which recommendation shall not be unreasonably withheld. All systems are further subject to approval by the Board of Health and any other governmental authority having jurisdiction.

c. Open Space Restriction: A minimum of thirty (30%) percent of the lot shall either be:

(i) conveyed to the Town of Ipswich and accepted by it for open space use;

(ii) conveyed to the Commonwealth of Massachusetts as part of a state forest, park, or wildlife management area;

(iii) conveyed to a non-profit corporation, the principal purpose of which is the conservation of open space, and made subject to a conservation restriction prepared in accordance with the provisions of Section 31 and 33, inclusive, of Chapter 184 of the General Laws of the Commonwealth of Massachusetts;

(iv) made subject to a conservation restriction prepared in accordance with the provisions of Section 31 and 33, inclusive, of Chapter 184 of the General Laws of the Commonwealth of Massachusetts running in favor of either the Town or, upon the approval of the Planning Board, a non-profit corporation, the principal purpose of which is the conservation of open space. The conservation restriction shall provide that such land shall be kept, in perpetuity, in an open or natural state, in accordance with the above-noted sections of Chapter 184 of the General Laws.

In designating the open space, the applicant shall apply the guidelines adopted by the Planning Board in May of 1997, entitled CRITERIA FOR EVALUATING PROPOSED OPEN SPACE. At least a portion of the open space shall be available for use by the general public, unless the applicant can provide compelling reasons to the Planning Board why such access would be infeasible. If it is deemed necessary to achieve the purposes of this subsection, the Planning Board may increase the open space minimum requirement by not more than ten (10) percent.

d. Dimensional Regulations

(i) A minimum setback of one hundred (100) feet shall be provided between a GEPD and abutting lots, and a buffer strip consisting of vegetated area with a minimum depth of one hundred (100) feet shall be provided between the GEPD and any street line. An entry drive, along with a gate house and appropriate signage, may be permitted within the buffer strip. If a boundary line of the GEPD is adjacent to permanent open space, such as Town, State, Federal or privately-restricted open space, the Planning Board may require that the first thirty (30) feet of the setback from such open space be a landscaped buffer. The Planning Board may decrease or increase by not more than twenty (20%) percent any buffer area requirement if, after site plan review by the Board, the Board deems such action to be reasonable and appropriate.

(ii) The area developed for commercial use, including buildings, parking, outdoor recreational structures, and areas paved for vehicular use, shall not exceed twenty (20%) percent of the total area of the lot. Walking or bicycle trails shall not be counted in the calculation of the twenty (20%) percent limitation.

(ii) The development shall be subject to site plan review in accordance with the provisions of SECTION X.□□□

(iv) Newly constructed or renovated buildings in a GEPD may be four stories in height, provided that the building height does not exceed the maximum height allowed under SECTION VI.G.2. of this bylaw.□□□

(v) Notwithstanding anything to the contrary contained in this zoning bylaw, in granting a special permit and site plan approval for a GEPD, the Planning Board may reduce any of the foregoing dimensional requirements, or increase the height requirement, to a maximum of twenty-five (25) percent, provided that in no instance shall a building contain more than four stories.

(vi) Newly constructed buildings in a GEPD, other than gate houses, shall be setback at least two hundred fifty (250) feet from a public way.

e. Streets and Further Subdivision: Any subdivision of the GEPD which is subject to MGL C.41 shall be in accordance with the Rules and Regulations Governing the Subdivision of Land in the Town of Ipswich. After issuance of a GEPD special permit and site plan approval, and establishment of the required open space for the GEPD, as a whole, the GEPD may be subdivided into lots which may be less than sixty (60) acres and may be held in separate ownership, provided that each portion of the subdivided site remains subject to all of the applicable terms and conditions of (i) the GEPD special permit, and (ii) the site plan approval for the improvements on such portion of the site.

f. Phasing: Phasing of the GEPD, as approved by the Planning Board, shall be permitted either pursuant to phasing described in the initial special permit application or in subsequent special permit or site plan review applications. The special permit and site plan approval shall not be deemed to have lapsed so long as the applicant shall have commenced use of the Great Estate Preservation special permit or site plan approval in substantial accordance with the phasing time frames set forth in the special permit and site plan approval application. The Planning Board shall have the authority to require a performance bond or other similar mechanism if it determines that such a mechanism is necessary to ensure that the key components of the project are satisfactorily completed.

5. Special Permit Application Process...

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board Open Space Preservation Zoning requires a special permit from the planning board.

Has any housing been built under the cluster/flexible provisions?

Yes According to Town Planner Glenn Gibbs, (6/1/05) Open Space Preservation Zoning has been used "quite a bit." He said there have been approximately 10 developments using OSPZ. Under the Great Estate provisions, 2 properties have been developed.

Kingston

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes The bylaw allows four types of flexible development: Residential Development Encouraging Open Space (RDEOS), Planned Residential Development (PRD), Development with Significant Public Benefit (DSPB), and Planned Residential Development for Seniors (PRDS).

Town of Kingston Zoning Bylaw (Adopted 1955, Amended 2004)

5.3 Residential Development Encouraging Open Space (RDEOS), Planned Residential Development (PRD), Development with Significant Public Benefit (DSPB), and Planned Residential Development for Seniors (PRDS)

(Added ATM 5/6/00, approved 9/11/00)

5.3.1 In the Residential-40 Districts and R-80 Districts, the following regulations shall apply to any grant of a special permit for Residential Development Encouraging Open Space (RDEOS), Planned Residential Development (PRD) as well as Planned Residential Development for Seniors (PRDS) as may be authorized by the Planning Board pursuant to Section 7.0., Administration., pursuant to approval of a Definitive Plan in accordance with the Planning Board Subdivision Regulations, adopted by the Kingston Planning Board, said application shall be reviewed in accordance with the standard set forth in Massachusetts General Laws, Chapter 40A, Section 9; these bylaws; and Rules and Regulations promulgated by the Kingston Planning Board for granting of a Definitive Plan. Development with Significant Public Benefit (DSPB) are, subject to the above, only permitted in Residential-40 Districts. Due to the importance to the Town of Kingston of Water Resource Districts, aquifer recharge areas and Zone II areas and the significant public benefit afforded by these areas no density bonuses for Development with Significant Public Benefit (DSPB) will be permitted in the Residential (R-80) 80 Districts.

5.3.2. PURPOSES, OBJECTIVES AND APPLICABILITY

The purposes of this section of the Town of Kingston Zoning Bylaw reflect the goals, policies and proposals of the Kingston Master Plan including the Land Use, Housing, Natural and Cultural Resources, and Community Facilities and Services elements. Those purposes include but are not limited to:

- a. To allow for greater flexibility and creativity in the design of residential subdivisions, provided that the overall density of the development is not greater than what is allowed in the district;
- b. To encourage the permanent preservation of open space areas for the conservation of natural resources, outdoor recreation, park purposes, or public access to open space, in conjunction with residential development;
- c. To facilitate the provision of streets, necessary utilities and community services in a more efficient and economical manner;
- d. To encourage the preservation, and minimum disruption, of the existing natural and man made features of land and to minimize impacts on environmentally sensitive areas and to protect the integrity of ecosystems and natural resources; ensuring the protection of water bodies and supplies, wetlands, floodplains, agricultural lands, wildlife, wildlife habitats, species diversity, forests and other natural resources;
- e. To encourage a less sprawling form of development that consumes less open land;
- f. To ensure that the development of additional housing does not detract from the livability, scale, character or economic value of existing residential neighborhoods;
- g. To encourage greater diversity and to provide greater choices of housing opportunities to meet the needs of a population which is diversified with respect to the varying needs of town residents in different stages of life, the number of persons in a household, and income;
- h. To encourage the development of affordable housing;
- i. To provide greater flexibility and design freedom in the development of those tracts of land which lend themselves to planned development;
- j. To promote a high standard in the design of development sites and of individual buildings;
- k. To ensure that such development will not create adverse impacts in the community;
- l. To preserve historically or architecturally significant buildings or places;
- m. To permit ostensibly different types of structures and residential uses to be combined in a planned interrelationship;
- n. To facilitate a detailed review by town officials and by the public;
- o. To assure that the number of dwelling units allowed will be consistent with surrounding land uses, and that traffic and public services will not be adversely impacted;
- p. To allow flexibility in the standards and procedures for residential development that are a Residential Development Encouraging Open Space (RDEOS) or Planned Residential Development (PRD) that promote an improved design relationship between new buildings and public facilities and common open space.

5.3.3. The procedure for a Residential Development Encouraging Open Space (RDEOS), Planned Residential Development (PRD) or a Development with Significant Public Benefit (DSPB) is not intended be used as an alternative to allow the construction of a conventional subdivision that could not otherwise comply with the standards and requirements set forth in this Bylaw or in the "Rules and Regulations Governing the Subdivision of Land". Permitted density of Residential Development Encouraging Open Space (RDEOS), Planned Residential Development (PRD) are the same as the underlying zoning. One (1) dwelling unit per acre of developable site in the R-40 zone and one half (0.5) dwelling unit per acre of developable site in the R-80 zone. Developments with Significant Public Benefit (DSPB) and the associated density bonuses are permitted only in the R-40 zoning district. Density bonus associated with DSPB which are permitted only in the R-40 zone can achieve a maximum density bonus of one and a half (1.5) dwelling units per acre of developable site only with the provision of affordable housing units and other defined significant public benefits as described in Section 5.3.8. below.

5.3.4. MEANING OF TERMS

- a. A "Residential Development Encouraging Open Space" (RDEOS): shall mean a development in which single-family dwelling units are clustered together into one or more groups on the lot and the clusters are separated from each other and adjacent properties by permanently protected open space. Each individual property shall have access from the rear or side portion of the lot to this open space.
- b. A "Residential Development Encouraging Open Space (RDEOS) Subdivision" is a residential development in which a tract of land is divided into: 1) lots for constructing dwellings in one or more groups and 2) common open space. The common open space may be in one or more locations and may separate groups of dwellings from each other.

c. A "Planned Residential Development (PRD)" is a unified residential development in which a tract of land is divided into:

- 1) one or more lots for constructing dwellings in one or more groups and
- 2) common open space. A "Planned Residential Development (PRD)" may have one or more lots used for developments in:
 - 1) condominium ownership,
 - 2) cooperative ownership, or
 - 3) single ownership with individual rented dwelling units

d. A "Planned Residential Development Subdivision" dwelling units may include:

- 1) Dwelling single family detached - A detached structure containing one (1) dwelling unit intended and designed to be occupied by a single-family.
- 2) Dwelling, single family attached (duplex) - A building containing two dwelling units which are attached to each other by a common vertical wall, each dwelling unit having open space on or yards on three sides and each dwelling unit having direct access to the ground.
- 3) Dwelling, accessory apartments - A second dwelling unit either in or added to an existing single family detached dwelling, or in a separate accessory structure on the same lot as the main dwelling, for use as a complete, independent living facility with provision within the accessory apartment for cooking, eating, sanitation, and sleeping. Such a unit is an accessory use to the main dwelling. A separate special permit as called for in Section 4.3.3.4. and Section 4.14.3.3. are not required if permitted by special permit for RDEOS, PRD, or DSPB. Size requirements as stated in referenced bylaws are required.
- 4) Dwelling, townhouse - A building containing three or four dwelling units in a row in which each dwelling unit has its own front and rear access to the ground, no dwelling unit is located over another dwelling unit, and each dwelling unit is separated by from any other dwelling unit by one or more party walls.

e. A "Development with Significant Public Benefit" (DSPB) is a RDEOS or a PRD in which the Planning Board has determined that there are sufficient benefits to the adjacent neighborhood and/or the Town generally to warrant a density bonus. The Planning Board may grant a density bonus of up to ten percent (10%) for each qualifying public benefit with a maximum density bonus of fifty percent (50%) with inclusion of affordable housing units. The maximum density bonus of fifty percent (50%) cannot be reached without the provision of affordable housing.

f. A "Planned Residential for Seniors (PRDS)": A unified, self contained residential retirement community, constructed expressly for and specifically limited to use and residency by persons who are fifty five (55) years of age or older, and including one or more types of residential dwellings, undertaken in accordance with an overall plan, incorporating a consistent architectural concept and incorporating the preservation of natural areas within the development.

g. A PRDS Community Center: A structure erected solely for the use of residents of the PRDS and their guests. The Community Center shall contain at a minimum, kitchen and separate toilet facilities for men and women and may contain dining areas, game rooms, entertainment rooms, library, laundry facilities, meeting rooms, exercise rooms, locker rooms and/or pool, all of which shall be designed and maintained in conformance with the latest Massachusetts' standards for accessibility for the handicapped.

h. The developable site area for developments subject to this bylaw shall be calculated by subtracting from the lot area, all land which is located in:

- 1) Wetlands areas as defined in Town of Kingston Wetlands Protection Bylaw or G.L. c. 131, Section 40 and pertinent regulations including but not limited to any bank, riverfront area, freshwater wetlands, coastal wetland, beach, dune, flat, marsh, meadow or swamp bordering on ocean or on any estuary, brook, creek, river, stream pond or lake or any land under said waters or any land subject to tidal action, coastal storm flowage or flooding or area under Coastal Zone Management, or
- 2) another zoning district in which the principal use of the lot is not also permitted.

i. Developments with Significant Public Development (DSPB) is Residential Development Encouraging Open Space (RDEOS) or a Planned Residential Development (PRD) in which the Planning Board has determined that there are sufficient benefits to the adjacent neighborhood and/or the Town generally to warrant a density bonus. Due to the public benefit of protecting aquifer recharge area, Water Resource Districts and Zone II areas a development with significant public benefit (DSPB) shall not be permitted in Residential-80 (R-80) Districts.

5.3.6. OPEN SPACE: COMMON AND USABLE

5.3.6.1. PURPOSE

a. Common open space is intended to provide open, natural area on a site for the general use of most, or all, the occupants of a residential development. It is intended to provide for the active and passive recreational use and visual enjoyment of the occupants of a residential development and, in some cases, for residents of the adjacent neighborhood and the public generally. (See

Development of Significant Public Benefit)

b. Usable open space is intended to provide outdoor space for the recreational and leisure time use of, and in close proximity to, the occupants of dwelling units in a residential development with three or more dwelling units.

5.3.6.2. RELATIONSHIP BETWEEN USABLE AND COMMON OPEN SPACE

Common open space will qualify as usable open space provided it meets the criteria set forth in section 5.3.7.2. Usable open space will qualify as common open space provided it is not on a privately owned lot, or on a space designated for the exclusive use of one dwelling unit.

5.3.6.3. CONDITION

Where required or provided, common open space shall be land that:

- a. may be in one or more parcels of a size and shape appropriate for the intended use;
- b. meets the requirements for developable site area as that term is defined in section 5.3.4.h.; and
- c. all occupants of a development have the right to use.

5.3.6.4. COMMON OPEN SPACE OWNERSHIP AND MANAGEMENT

a. Common open space in any Residential Development Encouraging Open Space shall be conveyed to:

(1) The Town, and may be accepted by it for use as open space, conservation, recreation, or park lands:

(2) A nonprofit corporation, the principal purpose of which is the conservation of open space; or

(3) A corporation or trust owned or to be owned by the owners of lots within the development. If a corporation or trust owned by the owners of lots is utilized, ownership of open space shall pass with the conveyances of the lots. In any case where such land is not conveyed to the Town, a restriction enforceable by the Town shall be provided, including a recordable easement and recordable covenant, that such land shall be kept in an open or natural state and shall not be built upon for residential use or developed for accessory uses such as parking or roadway.

b. If the common open space is not to be conveyed to the Town, then the applicant shall include as part of the covenant, a provision that the common open space will be deeded to one of the above entities as approved by the Planning Board. In addition, the covenant shall not be released until proof of approved open space ownership has been provided to the Planning Board.

c. If the common open space is not to be conveyed to the Town, the applicant for an Residential Development Encouraging Open Space special permit must include a program describing how the common open space will be maintained in perpetuity to standards satisfactory to the Planning Board. The applicant shall also provide as part of the common open space proposal an easement empowering the Town to maintain the common open space in the event of failure to comply with the program included in the application pursuant to the preceding sentence providing that, if the Town is required to perform any maintenance work, the owners of lots within the Residential Development Encouraging Open Space shall be liable to pay the cost thereof and that cost shall constitute a lien upon their properties until said cost has been paid.

5.3.6.5. ACCESSORY PARKING OR STRUCTURES

A maximum of 20 percent of common open space may be devoted to parking for use of the open space or structures used for, or accessory to, active outdoor recreation, provided such parking or structures are consistent with the open-space uses of such land.

5.3.6.6. AMOUNT OF USABLE OPEN SPACE REQUIRED

The minimum amount of usable open space provided shall be as set forth in the schedule in subsection 5.3.5.

5.3.6.7. QUALIFYING USABLE OPEN SPACE

To qualify as usable open space, an area shall conform to the following standards:

a. USABILITY

The area must have a surface that is adequately drained, and permits recreational or leisure time use. Such surface may include any combination of grass, plant materials, wood, or paving materials of a type designed for pedestrian or recreational use. No open space shall be considered usable if:

1. the slope of the finished grade is more than 10 percent, unless the slope is left in its natural undisturbed state that minimizes the potential for erosion and possible sedimentation into watercourses and waterbodies.
2. the land does not meet the requirements for developable site area as that term is defined in section 5.3.4.h.

b. LOCATION

The nearest part of the area shall be not more than 300 feet walking distance from the dwelling unit it serves. Usable open space may be located in an area which:

1. is on a privately owned lot, or a space designated for the exclusive use of one dwelling unit, or
2. qualifies as common open space as provided in section 5.3.6.

c. SIZE AND SHAPE

It has a minimum horizontal area of 600 square feet and no dimension is less than 20 feet.

d. STRUCTURES AND FACILITIES

It shall be open to the sky, and may include unroofed facilities such as a tennis court, swimming pool or similar open air recreational facilities. Accessory structures related to such unroofed facilities may be located within the area.

e. ACCESS

The access to usable open space shall conform to the same standards set forth in a.1 and a.2. above, but may have dimensions smaller than those set forth in c. above. If the dimensions of the access are smaller than those required in c. above, the access shall not be counted toward the minimum usable open space required 5.3.5.

5.3.7. CRITERIA FOR APPROVAL OF A RESIDENTIAL DEVELOPMENT ENCOURAGING OPEN SPACE (RDEOS) OR PLANNED RESIDENTIAL DEVELOPMENT (PRD)

Prior to the approval of a Residential Development Encouraging Open Space (RDEOS) subdivision or a Planned Residential Development (PRD), in addition to the findings and determinations required by under Special Permits with Site Plan Review, the Planning Board shall determine that the proposed development meets the following criteria:

a. the common open space includes:

1. some, or all, of the outstanding natural features of the site and of the man made features that enhance the land form;
2. land that also meets the standards for usable open space;
3. land that increases visual amenities for residents of the development and/or of the adjacent neighborhood;

b. the common open space is readily accessible by one or more paths or entry points specifically designed for access purposes;

c. the dwellings are sited and oriented in a complimentary relationship to:

1. each other,
2. the common open space, and

3. the adjacent properties. If the development includes different types of dwellings, such as semi-attached dwellings or townhouses, those types of dwellings shall relate to the predominant characteristics of the adjacent single family detached dwellings with respect to scale, mass, setback, proportions and materials;

d. negative visual impacts of the development, if any, are screened from adjacent properties and nearby streets by landscaping or other site planning techniques;

e. where opportunities exist, improved access is provided to, or additional links and connections are developed to, a town system of public facilities, such as open space, recreation facilities, footpaths, bicycle paths or multi-use trails;

f. that any building which contains more than one dwelling unit is designed so that either:

1. the building has the exterior appearance of a single family dwelling or,
2. alternatively, if single-family attached dwellings and/or townhouses are constructed, each individual dwelling unit has direct access to ground level and an opportunity for a private yard, patio, or other private outdoor space;

g. there are provisions for common facilities, such as recreation or parking, or for services such as the maintenance of streets, walkways, paths, or multi-use trails utilities, landscaping or recreation facilities;

5.3.7.1. SPECIAL PERMITS, DIMENSIONAL STANDARDS, WAIVERS, TYPES OF HOUSING

The Planning Board, acting as Special Permit Granting Authority (SPGA), may, as part of the grant of a special permit with site plan review, also grant a special permit to:

a. modify the standards:

1. in Intensity Schedule Section 5.0. Intensity of Use Regulations, for minimum lot area, minimum lot frontage, minimum front yard, minimum side yard, minimum rear yard, maximum percentage of site coverage, and maximum height in stories;
2. the provisions of 5.1.2. relative to the number of principal buildings on a lot;
3. the minimum lot width in section 5.2. and Intensity Schedule;
4. the provisions in subsection 5.3.4.h. relative to contiguous developable site area;
5. in section 6.4. relative to the location of off-street parking spaces;
6. in section 6.4. and Regulation of the Planning Board Governing the Design Construction and Maintenance of Off-Street Parking and Loading Areas relative to setbacks required for parking spaces and driveways; and
7. in section 5.2.7.1. relative to the subdivision of land in relation to lots or buildings that are nonconforming or would not comply with this By-Law as a result of the proposed development; all as they may apply to individual dwellings or lots within Residential Development Encouraging Open Space (RDEOS) subdivision or a Planned Residential Development (PRD):

b. permit the types of buildings identified in 5.3.4.c as allowed by special permit;

c. allow an existing structure, that was constructed at least 10 years prior to the date of application for approval of the special permit to be converted to a three-, or four-family dwelling, a multi-family dwelling, an independent living residence, an assisted living residence, or a congregate living facility, provided the Planning Board determines that:

1. the structure can be modified for a residential use that does not have adverse impacts on the adjacent single family neighborhood;
2. the exterior character of the structure is maintained and is consistent with the adjacent neighborhood of single-family dwellings;
3. modification of the existing structure maintains more of the site open than the alternative of removal of the structure and further subdivision of the lot into house lots;

d. allow a driveway on one lot to lead to a parking space on another lot, or to allow a driveway to straddle a lot line, as provided in Rules and Regulations Governing the Subdivision of Land.

5.3.7.2. COMMON OPEN SPACE

In granting a special permit with site plan review for a planned residential development, the Planning Board may require a greater amount of common space than the minimum required. In making that determination, the Planning Board shall consider the need to protect the natural resources and features of the site, the type of housing to be constructed and its relationship to common open space, and potential public access to and use of the open space.

5.3.7.3. ACCESSORY APARTMENT in Residential Development Encouraging Open Space (RDEOS) subdivision or a Planned Residential Development (PRD) If an accessory apartment is included in a dwelling, in a Residential Development Encouraging Open Space (RDEOS) subdivision or a Planned Residential Development (PRD), it may be considered in the calculation of the density for the development.

5.3.8. DEVELOPMENTS WITH SIGNIFICANT PUBLIC BENEFIT (DSPB)

5.3.8.1. OBJECTIVES

The objectives of this section are to allow additional flexibility in the standards and procedures for approval and to provide incentives for applicants to propose a development with significant public benefit and to:

- a. encourage the provision of more public facilities and services that benefit the adjacent neighborhood and the town generally;
- b. encourage types of housing that meet the needs of age groups, income groups, or persons with special needs, that are not adequately served by large single family dwellings;
- c. encourage a greater degree of review of the design features of a residential development;
- d. require a higher qualitative standard:
 1. of building design, and
 2. in the provision of public facilities and the provision of open space;

e. further the objectives set forth in section 5.3.2. than would otherwise apply in the administration of zoning and subdivision regulations.

The Planning Board may grant a density bonus of up to ten percent (10%) for each qualifying public benefit with a maximum density bonus of fifty percent (50%) with inclusion of affordable housing units. The maximum density bonus of fifty percent (50%) cannot be reached without the provision of affordable housing. An applicant is not entitled to the maximum development nor is the applicant entitled to approval of a Residential Development Encouraging Open Space (RDEOS), a Planned Residential Development (PRD), a Development with Significant Public Benefit (DSPB) or a Planned Residential Development for Seniors (PRDS). The amount of development permitted will be based on the Planning Board's evaluation of the proposed development and the extent to which it reflects the goals, objectives and recommendations of the Kingston Master Plan. Due to the public benefit of protecting aquifer recharge area, Water Resource Districts and Zone II areas a development with significant public benefit (DSPB) shall not be permitted in Residential-80 (R-80) Districts.

5.3.8.2. SIGNIFICANT PUBLIC BENEFIT DEFINED

5.3.8.2.1. QUALIFYING SIGNIFICANT PUBLIC BENEFIT

A significant public benefit shall be a benefit to the adjacent neighborhood and/or the Town generally as determined by the Planning Board. In general a qualifying public benefit shall be:

1. improvements in the adjacent neighborhood similar to the required improvements on the site -- such required improvements being those identified elsewhere in this By-Law or in subsection 5.0 of the Subdivision Regulations, such as, but not limited to, any facility, infrastructure, or restriction on the development of land in relationship to the development of land and buildings;

2. improvements on the site that are, in the opinion of the Planning Board, well in excess of those otherwise required;

3. restrictions on, or special design or development features of, uses and buildings permitted in the zoning district. A significant public benefit may be one or more of the following as determined by the Planning Board after consultation with the board, committee, commission, department or official indicated and such others as the Planning Board may determine:

a. preservation of a historic structure or place -- with the Historical Commission;

b. protection of integrity of eco-systems and natural resources and open land that is dry and otherwise developable, and potentially an important addition to the inventory of open space in the town -- with the Conservation Commission and the Open Space Committee. All of such open land shall be accessible to the public. The type of private homeowners association reserve, allowed in 5.3.6.4, from which the public could be excluded, shall not qualify;

c. provision of public recreation facilities -- with the Recreation Committee;

d. installation of paths or multi-use trails to provide pedestrian and bicycle access to open space or other public facilities in the adjacent neighborhood -- with the Recreation Committee, Open Space Committee and the Conservation Commission;

e. placement underground of electric power lines and communication lines, such as, but not limited to telephone, fiber optic, security alarm and cable TV lines;

f. provision of affordable units for moderate-income households -- with Kingston Housing Authority, and as applicable, or the Council on Aging;

g. provision of housing units that, are set aside for affordable housing:

(a.) Ten (10) percent of the total dwelling units are set aside for affordable housing, defined as units affordable to households with incomes at or below eighty (80) percent of the median household income in the Boston Metropolitan Statistical Area as determined by the latest U.S. Census or as adjusted based on the formulas in use by the Massachusetts Executive Office of Communities and Development, which is on file with the Planning Board.

(b.) The increase shall not exceed twenty percent of the number of units otherwise allowed

(c.) The exterior appearance of the affordable units is consistent with the style of the market rate units in the development.

(d.) There is provision satisfactory to the Planning Board and enforceable by the Town that the units will be sold or leased at costs and be subject to occupant income limitations to assure that the units remain affordable. The Planning Board may impose reasonable conditions on the length of occupancy, resale, phasing and site development on the affordable units

h. provision of housing units that are of a size or type that meet the needs of segments of the town's population that, due to age or special needs, are not adequately served by large single family dwellings and the then current housing stock within the Town - such as Planned Residential for seniors (see 5.3.9.)

i. provision of facilities for alternate transportation services that do not rely on the use of single occupant automobiles. The alternate transportation services may include a financial contribution to a service provided by the Town of Kingston, or a service provided by

others and coordinated by the Town;

j. provision of transportation facilities, such as a walk, path, multi-use trails or traffic engineering improvements -- with the Highway Department, the Recreation Committee or the Open Space Committee;

k. provision of a utility or underground facility, including but not limited to water service, sanitary sewer service, storm water management systems, or the expansion in the capacity of an existing facility or system -- with the Water Commission or Sewer Commissioners.

5.3.8.2.2. IMPROVEMENTS BENEFITTING ADJACENT NEIGHBORHOOD

Qualifying improvements shall generally include those that benefit the adjacent neighborhood and or the Town generally or are provided on the site. If the Planning Board first determines that the type of improvements listed in 5.3.8.3.1. are not needed or cannot be provided in the adjacent neighborhood, or on the site, the Planning Board may consider instead a financial contribution to one or more Town funds established for the purposes listed in 5.3.8.3.1.

5.3.8.2.3. IMPROVEMENTS NOT QUALIFYING AS SIGNIFICANT PUBLIC BENEFIT

A significant public benefit shall not include any required improvement identified elsewhere in this By-Law or in section 5.0 of the Rules and Regulations Governing the Subdivision of Land, such as, but not limited to, any facility, infrastructure, or restriction on the development of land in relationship to the development of land and buildings. A waiver from the requirements of the Rules and Regulations Governing the Subdivision of Land or of the usual requirements of this By-Law for a conventional subdivision shall not be considered to be a significant public benefit.

5.3.8.3. CRITERIA FOR APPROVAL

Prior to the approval of a Development with a Significant Public Benefit, the Planning Board shall determine, in addition to the findings and determinations required by section 5.3.10.8.2. and section 5.3.7. of this By-Law, Criteria For Approval of a Residential Development Encouraging open Space (RDEOS), a Planned Residential Development (PRD), a Development with Significant Public Benefit (DSPB) or a Planned Residential Development for Seniors (PRDS), that the proposed development meets the following criteria:

- a. that there are sufficient benefits to the adjacent neighborhood and/or the town generally to warrant an increase in the maximum development permitted; and
- b. that legally binding documents have been submitted to ensure the completion and continued availability of any proposed improvement or special condition that qualifies as a significant public benefit.

5.3.8.4. SPECIAL PERMITS, TYPES OF HOUSING, DIMENSIONAL STANDARDS, WAIVERS

The Planning Board, acting as Special Permit Granting Authority (SPGA,) and as part of the grant of a special permit with site plan review to approve a development with significant public benefit, may also grant any of the special permits described in Section 5.3.7.1.

5.3.8.5. COMMON OPEN SPACE

The public shall have access to all common open space in a Development with Significant Public Benefit. The provisions of section 5.A.6.4.c. that allow exclusion of the public shall not apply in a Development with Significant Public Benefit.

5.3.9. PLANNED RESIDENTIAL DEVELOPMENT FOR SENIORS (PRDS)

5.3.9.1. Purpose and Meanings of Term

- a. Purpose: The purpose of PRDS is to provide alternative housing for residents who are 55 years in age or older.
- b. A unified, self contained residential retirement community, constructed expressly for and specifically limited to use and residency by persons who are fifty five (55) years of age or older, and including one or more types of residential dwellings, undertaken in accordance with an overall plan, incorporating a consistent architectural concept and incorporating the preservation of natural areas within the development.

5.3.9.2. GENERAL REQUIREMENTS

- a. Any PRDS shall contain a minimum area of not less than twenty (20) acres, of which at least ten (10) acres constitute a developable site as defined in Section 5.3.4.h. exclusive of any and all easements or covenants restricting in any way the use of said minimum area.
- b. Any person who resides in a PRDS shall be fifty-five years in age or older.
- c. Covenants or Deed Restrictions, reviewed by Town Counsel and accepted by the Planning Board shall provide that the dwelling units of the PRDS shall be occupied by persons fifty five (55) years of age and older except for guest visiting for short durations not

to exceed thirty (30) days in a calendar year.

d. The maximum number of dwelling units in any specific PRDS shall not exceed four percent (4%) of the total number of dwelling units in the Town as shown on the records of the Board of Assessors for the year in which the application is filed.

e. Any PRDS shall be served by a minimum of two (2) access roads or drives unless a divided access road or drive is approved by the Planning Board.

f. Any PRDS containing town houses shall have a continuous vegetated buffer of not less than fifty (50) feet around the entire development.

g. Any PRDS shall contain a Community Center for the use, recreation, and enjoyment of the residents of the PRDS that is at a minimum, a gross floor area equivalent to one hundred (100) square feet for each dwelling unit in the PRDS. However in lieu of such Community Center, the Planning Board may authorize the substitution of some other public facility or service benefiting PRDS and the adjacent neighborhood and the Town generally, costing the applicant an amount equal to the documented cost of such Community Center.

****Webmasters Note:** The previous subsection has been amended as per an update approved at a town meeting held on 4/5/03.

h. Building permits may be issued for twenty percent (20%) of the dwelling units in a PRDS prior to the construction of the Community Center or providing for the substitute public facility or service, if applicable. However, no additional building permits shall be issued until construction of said Community Center has been completed, or the substitute public facility or service provided for, to the satisfaction of the Planning Board.

****Webmasters Note:** The previous subsection has been amended as per an update approved at a town meeting held on 4/5/03.

i. Dwelling units may be all single family, all duplex or all town house units providing that no town house unit contains more than ten dwelling units per structure. A mix of units is also permitted provided that no one dwelling type shall constitute more than sixty percent (60%) nor less than thirty percent (30%) of the total number of dwelling units.

j. All dwelling units shall be constructed on site. No dwellings or dwelling units shall be of pre-fabricated, factory made, or modular construction, including but not limited to mobile homes, modular homes or manufactured homes.

k. Each dwelling unit shall have a minimum of two (2) sides of full exterior exposure.

l. Each dwelling unit shall have a view of the common open space.

m. Each dwelling unit containing four (4) or more dwelling units shall be equipped with a fire protection residential sprinkler system approved by the Kingston Fire Department.

n. Individual dwelling units shall not contain more than two (2) bedrooms per unit.

o. Home occupations, taking in of boarders, or the renting of rooms shall not be allowed nor permitted

5.3.10. SPECIAL PERMITS: PROCEDURES CRITERIA

5.3.10.1. SPECIAL PERMIT WITH SITE PLAN REVIEW (SPS) REQUIRED

No residential development subject to this bylaw shall be initiated without first obtaining a special permit with site plan review in accordance with the provisions of this section and Section 7.7. The purpose of the special permit with site plan review is to provide detailed review of residential developments which have a substantial impact upon the character of the town, adjacent residential areas and the provision of public facilities and services. A special permit with site plan review (SPS) is a type of special permit in which a use, or one or more buildings that comprise a development, may be permitted if the proposed development of the site meets certain criteria, standards or conditions as set forth in the section of this By-Law that refers to the granting of a special permit with site plan review and to other standards and objectives as set forth in this section. The SPGA may, in its discretion, grant a special permit with site plan review but only in those cases where this By-law specifically refers to the granting of a special permit with site plan review and only in those cases where the SPGA makes a finding and determination, as set forth in Section 7.7. An applicant is not entitled to a special permit with site plan review and the SPGA, in its discretion, may decline to grant a special permit with site plan review if it is unable to make a positive finding and determination as required in Section 7.7.

5.3.10.2. SPECIAL PERMIT GRANTING AUTHORITY (SPGA)

The Planning Board shall be the Special Permit Granting Authority for all residential development governed by this bylaw. In acting upon applications for special permits with site plan review, the SPGA shall be governed by the provisions of Section 5.3.10.4. and Section 7.7.

5.3.10.3. SPECIAL PERMIT APPLICATION REQUIREMENTS

The application to the SPGA for a special permit with site plan review (SPS) under this section shall be accompanied by a site plan, an existing conditions plan, and A conceptual subdivision plan where the Planning Board is the SPGA, as the Planning Board may

describe in its Development Regulations. A definitive subdivision plan may be submitted rather than a conceptual plan. Where the applicant submits a definitive subdivision plan complying with the Subdivision Control Law and the Planning Board's "Development Regulations", insofar as practical, the public hearing on the application for the special permit with site plan review and the definitive subdivision plan shall be held concurrently.

5.3.10.4. PROCEDURES FOR SPECIAL PERMITS AND SPECIAL PERMITS WITH SITE PLAN REVIEW

5.3.10.4.1. INFORMATION REQUIRED FOR APPLICATION

The application to the SPGA for a special permit for Residential Development Encouraging Open Space (RDEOS), Planned Residential Development (PRD), Development with Significant Public Benefit (DSPB) or Planned Residential Development for Seniors (PRDS) shall be accompanied by the following materials:

- a. a plot plan, showing the location of all buildings and structures on the lot including existing conditions and proposed changes, if applicable. In the case of a building or structure which is, or is proposed to be, close to a minimum yard setback line, the SPGA may require submittal of a certified plot plan.
- b. if applicable, an off-street parking and loading plan,
- c. if applicable, a landscaping plan,
- d. if applicable, a copy of the determination of applicability issued by, or of a Notice of Intent filed with, the Conservation commission pursuant to Kingston General By-Laws and Chapter 131, Section 40 MGL.
- e. if applicable, a traffic study, and a proposal for mitigating measures to improve capacity or for trip reduction programs, if any,
- f. if applicable, proposals for mitigating measures or the construction of improvements to deal with the impacts, other than traffic impacts, of the proposed development or to provide sufficient capacity in Town facilities or services; any other material necessary for the SPGA to make the finding and determination required by Town of Kingston Zoning Bylaw or as may be required by the written rules of the SPGA; and the application to the SPGA for a special permit with site plan review under Section 5.3.10.8. shall, in addition, be accompanied by the following material:
- g. a site plan
- h. the term "application" as used in this section shall include the accompanying materials described in a. through g. above.

Upon written request from the applicant prior to the filing of an application, the SPGA may waive the submission of such information, plans, studies or analyses, or parts thereof, as may not be needed for, or germane to, consideration of the application. In the event a person seeks a special permit under more than one provision of this By-law as part of one building or site development proposal, he/she shall file an application that clearly identifies each provision of the By-law for which such special permit is sought. The SPGA may issue notice, conduct a hearing and issue a decision in a concurrent manner that does not require a separate application, notice, hearing and decision on each such special permit, provided that it clearly identifies the separate provisions of the By-law for which each special permit is sought or granted. In the event a person seeks a special permit and a variance as part of one building or site development proposal, he/she shall file a separate application for each and a separate decision shall be rendered for each.

5.3.10.5. SPECIAL PERMIT PROVISIONS

In addition to the conditions cited in section 5.3.10.8.3., the SPGA may grant a special permit with site plan review for the development of a tract of land in a residential district provided it makes a determination that the proposed development is consistent with the standards and criteria set forth in subsection 5.3.7. and 5.3.8.4., subject to the following provisions:

- a. the special permit shall incorporate by reference the building design and definitive site development plans filed with the application for a special permit
- b. that, where applicable, the special permit shall incorporate by reference, any legally binding document that has been submitted to ensure the completion and continued availability of any proposed improvement or special condition;
- c. The SPGA may require that the amount of development be less than that shown on the definitive site development plan if it determines that the criteria contained in subsections 5.3.7. or 5.3.8.4. so require.

5.3.10.6. DENIAL OF SPECIAL PERMIT

The SPGA may deny an application for a special permit with site plan review hereunder and base its denial upon:

- a. a failure to comply with the provisions set forth in Section 5.3., or
- b. a finding that the proposed development would not be consistent with the general objectives for planned residential development set forth in subsection 5.3.2., or the criteria set forth in subsections 5.3.7. or 5.3.8.4. or

c. a failure to conform with the goals, objectives, and recommendations of the Kingston Master Plan.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board Town of Kingston Zoning Bylaw (Adopted 1955, Amended 2004)

5.3.1 In the Residential-40 Districts and R-80 Districts, the following regulations shall apply to any grant of a special permit for Residential Development Encouraging Open Space (RDEOS), Planned Residential Development (PRD) as well as Planned Residential Development for Seniors (PRDS) as may be authorized by the Planning Board pursuant to Section 7.0., Administration., pursuant to approval of a Definitive Plan in accordance with the Planning Board Subdivision Regulations, adopted by the Kingston Planning Board, said application shall be reviewed in accordance with the standard set forth in Massachusetts General Laws, Chapter 40A, Section 9; these bylaws; and Rules and Regulations promulgated by the Kingston Planning Board for granting of a Definitive Plan. Development with Significant Public Benefit (DSPB) are, subject to the above, only permitted in Residential-40 Districts.

Has any housing been built under the cluster/flexible provisions?

Lakeville

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

No

Which entity is the special permit granting authority for cluster/flexible zoning?

Has any housing been built under the cluster/flexible provisions?

Lancaster

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Town of Lancaster Zoning Bylaw (Adopted 1950, Amended 2004)

4.60 Flexible Development

Intent: to facilitate sensitive use of Town resources through allowing flexibility in meeting the basic objectives of the Dimensional Requirements of Article 4. These provisions shall apply to parcels of all sizes.

4.61 Dimensional Requirements. The Planning Board may by Special Permit authorize division into and building upon lots complying with the following alternative frontage and lot area regulations rather than those otherwise applicable.

(a) Number of Buildable Lots. The number of buildable lots allowed to be created -from any parcel shall be the number of buildable lots into which the parcel could reasonably be expected to be divided under normally applicable dimensional and on-site disposal regulations. That number may, at the owner's option, be determined by Planning Board estimate or by an alternative "conventional" plan certified to comply by a Registered Land Surveyor and professional Engineer. Such determination may be appealed to the Board of Appeals by any party having standing, as provided at Section 8 of Chapter 40A, G.L.

In addition to buildable lots, there may be one or more parcels of deed-restricted open space not to be built upon.

(b) Bonus lots. The Planning Board may allow lots in addition to the number allowable under paragraph (a) above, as a bonus for reserving from development land determined by the Planning Board to be of critical importance because it forms a natural buffer two hundred feet or more in depth from an existing street, with prohibitions against buildings, parking, or driveways; or because of its visual prominence or potential vista blockage, because of its ecological significance or fragility, special importance as farmland, or value for recreation or future Town water supply; or because it is important to the Town's open space plan. If such land is placed under a Conservation Restriction or deeded to the Town, the allowable number of lots in the development may be increased by a number equal to one-half the number of lots otherwise allowable on that reserved critical land under the requirements of (a) above.

(c) Transfers. By agreement of its owner, land may be used in calculating permitted lots under item 4.61 (a) or 4.61 (b) even though not contiguous with or in the same ownership as the premises being developed, but only as follows:

(1) such land must be determined by the Planning Board to be of special importance to remain in a natural state because of its visual prominence or potential vista blockage, because of its ecological significance and fragility, because it has special importance as farmland, because of its value for recreation or for future Town water supply, or because it is important to the Town's open space plan.

(2) the land being-developed-must not itself have the qualities specified immediately above.

(3) the credited land. must not be wetlands (as defined in Section 40, Chapter 131, G.L.), or be used to satisfy lot area requirements for any other development.

(4) prior to issuance of any building permit dependent upon the transfer, such transfer land shall be made subject to a permanent Conservation Restriction held by the Town pursuant to Section 31-33, Chapter 194, G.L., prohibiting nonagricultural development.

(d) Lot Frontage. The minimum frontage for any lot shall be 80 feet. The average frontage for all lots having frontage only on an existing street shall be not less than the normally applicable requirement of Section 4.12.

(e) Lot Area. The minimum area of any lot shall be not less than one half that required by Section 4.11.

4.62 Special Permit Considerations. A special permit for flexible development shall be granted only upon Planning Board determination that such alternative development better serves Bylaw intent than would development under otherwise applicable rules, considering possible deterioration of water quality, visual intrusion, displacement of natural features, or traffic conflicts.

4.63 Documentation. All lots created under the provisions of Section 4.60 Flexible Development shall be shown on a recorded plan indicating that Section 4.60 applies, and that no additional building lots are to be created through future division of such lots, and establishing the maximum number of dwelling units to be allowed on each lot.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board Town of Lancaster Zoning Bylaw (Adopted 1950, Amended 2004)

4.61 Dimensional Requirements. The Planning Board may by Special Permit authorize division into and building upon lots complying with the following alternative frontage and lot area regulations rather than those otherwise applicable.

Has any housing been built under the cluster/flexible provisions?

Yes Planning director Bruce Hamblin confirmed (11/12/04) that the town has flexible zoning, but said that it has only been used once when a golf course went in and the developer also built 5 units on reduced lots. Mr. Hamblin said that the town will most likely consider revising/improving flexible zoning by-laws as they begin work on a new master plan within the next year.

Lawrence

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes According to the City of Lawrence Zoning Ordinance, Section 29-9. (Adopted 1943, Last Amended 2002), Table of Use Regulations, Planned Unit Development is allowed by special permit by the Planning Board.

According to the City of Lawrence Zoning Ordinance, Section 29-9(z). (Adopted 1943, Last Amended 2002), Table of Use Regulations:

"(z) Planned unit development.

(1) The use may include a combination of retail businesses, offices, light industrial uses or multiple-family dwellings or residential dwellings in one or more buildings or structures together with parking facilities and open space within the defined development area.

(2) There is 35% of the premises dedicated to open space, and passive and active recreational uses are provided in the open space.

(3) The traffic circulation pattern for the use is safe and convenient, and links all uses in a logical manner.

(4) Other uses provided are accessory to the principal uses.

(5) The minimum size of the premises is the lesser of 60,000 square feet or five times the minimum lot size of the zoning district.

(6) The minimum frontage of the premises is not less than two times the minimum frontage provided in the zoning district.

(7) The boundaries of the use are surrounded by a vegetated buffer the size of which shall be determined by the planning board.

(8) The lot coverage by the buildings is no more than 50%.

(9) The height of any building or structure does not exceed the height requirement in the zoning district where the building or structure is to be constructed.

(10) Parking and loading spaces are provided for each use as required by Tables 4 and 5.

(11) The open space is to be maintained by a private association.

(12) The density for residential use is no greater than 1 1/4 times the density for residential uses permitted in the R-3 district, for residential uses and lot area, frontage and setbacks shall not be less than 75% of the requirements for residential uses permitted in the R-3 district."

PLANNED UNIT DEVELOPMENT . A mixed use development and two or more buildings or structures on a plot of land containing a minimum of the lesser of sixty thousand square feet or five times the minimum lot size of the zoning district in which a mixture of residential, open space, commercial, industrial or other uses and a variety of building types are determined to be sufficiently advantageous to render it appropriate to grant special permission to depart from the normal requirements of the district.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board According to the City of Lawrence Zoning Ordinance, Section 29-9. (Adopted 1943, Last Amended 2002), Table of Use Regulations, Planned Unit Development is allowed by special permit by the Planning Board.

Has any housing been built under the cluster/flexible provisions?

Leicester

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Leicester Zoning Bylaw

5.7 Senior Village Developments

5.7.01 Intent and Applicability

The purpose of this section is to encourage development of master-planned residential communities for persons fifty-five (55) years of age and older, by allowing a greater variety of uses and building types at a higher density than would normally be allowed to promote affordable housing and the preservation of open space within the development. It is intended that this section provide a mechanism for development of a range of housing types and facilities that are responsive to the socio-cultural, health care, and recreational needs of senior residents; to achieve land development that is responsive to an analysis of the environmental assets and constraints of a site; and to encourage well-integrated development in terms of land use and major design elements such as buildings, roads, utilities, drainage systems and open space.

[...]

Leicester Zoning Bylaw

2.4 RECREATIONAL DEVELOPMENT

(A) INTENT

The intent of this Section is to provide recreational opportunities for the residents of Leicester, to allow more effective and efficient use of large tracts of land in the rural areas of Leicester, and to minimize Town service responsibilities.

(B) DEFINITIONS

RECREATIONAL AREA is a parcel(s) of land or an area(s) of water, or a combination of land and water within the site designated for a Recreational Development, maintained and preserved for active or passive recreational uses (such as a park, tennis courts, ball fields, swimming pools, golf courses, etc.), or for buffer areas, and designed and intended for the use or enjoyment of occupants of the Recreational Development and, in certain circumstances, the general public. Recreational Areas may contain such structures and improvements as are appropriate under the provisions of this Section.

RECREATIONAL DEVELOPMENT (RD) is an area of land, designed and developed as a unit, with Recreational Areas as integral characteristics and which departs from the zoning regulations conventionally required in the Residential A, Residential B or Suburban-Agricultural Districts concerning use of land or buildings, lot size, bulk or type of structures, or other requirements. Unless specifically prescribed, any combination of residential and compatible uses may be allowed.

(C) OBJECTIVES

- (1) To preserve natural topography and provide useable space for recreational facilities.
- (2) To insure appropriate, high quality design and site planning and a high level of environmental amenity.
- (3) To eliminate Town service responsibilities for streets and utilities.
- (4) To allow flexibility and creativity in the design of developments through a carefully controlled Special Permit process of negotiation of particular plans.

(D) USES

Under the Special Permit described in this Section, only the following uses may be allowed:

- (1) Recreational Areas
- (2) All Allowed Uses, Special Permit Uses, and Special Permit Uses Subject to Environmental Design Criteria under the B District (section 3.2.02. 2, 2A, 4, 5, and 6.)
- (3) All allowed Uses, Special Permit Uses, and Special Permit Uses Subject to Environmental Design Conditions under the B District (section 3.2.03. 2, 3, 6.)
- (4) Non-residential uses (hereinafter referred to as "NR Uses", which would consist of a pro shop, clubhouse or other recreational-type facilities or establishments in keeping with the nature and intent of this Section and the residential character of the RD.

(E) LOCATION AND DENSITY

An RD may be established only in the SA, RA, or RB Districts by Special Permit issued by the Planning Board (which for purposes of this Section is designated as the Special Permit Granting Authority), provided that all proposed RD's shall comply with the standards of environmental design review. The density shall be 85% of that allowed for in the RA District, EXCEPT as provided below. The minimum area of a tract eligible for an RD is two hundred (200) acres in a single or consolidated ownership or control at the time of application, and the tract must have five hundred (500) feet of direct frontage on a major street, as designated by the Zoning By-Law. Other dimensional requirements for a single-family dwelling or an NR Use within an RD are as follows:

Minimum Lot Size - 20,000 Square Feet

Minimum Lot Front/feet - 100'

Minimum Front Yard Setback - 25'

Minimum Side Yard - 15'

Minimum Rear Yard - 25'

Other dimensional requirements for multi-family structures shall be governed by the provisions of Section 4.2, RIB, except that no more than 45% of the units within an RD may be multi-family, and all such units must be of a townhouse type with separate entrances and with a maximum of eight (8) attached units per building. In calculating intensity of use and allocation of Recreational Areas, the following standards shall be used:

****Webmasters Note:** The previous paragraph has been amended as per an update approved at a town meeting held on 11/13/02.

- (1) NR uses shall be subtracted from the total land area before calculating residential densities.
- (2) 50% of land and water areas contained in Flood Hazard Areas shall be subtracted from the total land area before calculating densities.

(3) Areas which are considered by the Planning Board as marginal or unsuitable for building, such as flood plains, inaccessible wetlands and water areas, aquifer buffer zones and restrictive easement areas, steep slopes (25% or greater), highly erodible or poorly drained areas, areas of very shallow bedrock or of very high water table shall, as a general rule, be included in the Recreational Areas.

(4) Roads shall be subtracted from total area in determining net densities. For preliminary and general planning purposes, roads may be estimated as fifteen percent (15%) of total area. For definitive plans, all lot sizes and densities as specified herein shall be net figures with rights of way for streets figured exactly.

(5) The total number of dwelling units in an RD shall be no greater than 85% of the total number of units that would otherwise be allowed by the Zoning By-Law in the B District. The Planning Board, however, may authorize additional units upon a finding that the proposed development includes proportional on-site and/or off-site improvements, including but not limited to Recreational Areas, roadways, sidewalks, and other such amenities, and based upon the ownership and maintenance of such facilities.

(6) In making the determination as to the number of allowable units, the Planning Board may require that the applicant provide satisfactory evidence that the number of units shown on the RD plan is no greater than the number that could otherwise be developed, including soil and other such tests.

(7) The Planning Board shall not grant a Special Permit for an RD unless it is adequately demonstrated that the RD is superior in design and land use to a conventional development, and that the proposed RD is consistent with the objectives of this Section. The Planning Board shall have the power to waive or exceed design standards and conditions in any circumstance deemed appropriate.

(F) PLANNING PRINCIPLES AND REQUIREMENTS

(1) Land Uses and Recreational Areas The Recreational Areas shall serve to unify the entire development visually and functionally, to buffer different types of uses within the development, to appropriately buffer the development from surrounding land uses, and to visually separate buildings or groups of buildings, whether on or off-site. It is intended that the different types of uses within an RD shall be related to each other in a logical manner such that all uses function compatibly.

(2) Relationship of Land Uses Uses shall be located and designed to serve the intended population efficiently.

(3) Vehicular Circulation Streets in the RD shall serve the functions and be designed to the standards prescribed in the Subdivision Rules and Regulations of the Town of Leicester. Collector and major streets shall normally be fronted on both sides by open space and shall have no direct frontage by single-family lots. Streets shall be designed to the standards of the current Leicester Subdivision Rules and Regulations, provided that the Planning Board may waive any part thereof which it deems inappropriate in specific instances. □

(4) Pedestrian Circulation The presence of Recreation Areas throughout the development creates the opportunity for a pedestrian circulation system separate from the street system. Pedestrian paths through the Recreational Areas can be safer, more pleasant and often more direct than conventional sidewalks which must follow vehicular rights of way. Wherever possible and appropriate, pedestrian circulation shall be provided within the Recreational systems, minimizing street crossings and reducing the need for streetside walkways. Where paths in the Recreational Areas can appropriately take the place of sidewalks, the Planning Board may waive the conventional sidewalk requirement specified in the subdivision regulations.

(G) NATURAL FEATURES PROTECTION

Because Recreational Areas are critical features of the RD, all Rd's shall have primary importance attached to natural feature, conservation requirements. Additional standards concerning the character and quality of the Recreational Areas are prescribed herein. Failure to comply with the intent of these standards and guidelines may constitute grounds for disapproval of the RD.

(H) RECREATIONAL AREAS

(1) Location The Recreational systems shall be designed to accomplish the following objectives:

(a) To maintain as much land as possible in its natural state, or in an attractive, landscaped manner with emphasis on hardy flowers and shrubs, or for specific active or passive recreational purposes, and in large parcels that would not be possible in lot by lot ownership, with access guaranteed to all users of the development.

(b) To create buffers between residential and non-residential uses.

(c) To distribute the Recreational Areas such that the entire development is unified functionally and visually by such space.

(d) To provide Recreational Areas within easy access of all users. All parts of the system shall be appropriate to their functions as buffers, large natural areas, ponds and streams capable of harboring or sustaining compatible natural species, open fields, developed recreation areas or yards for buildings. Such characteristics as area, breadth, and nature of foliage shall be considered by the Planning Board in determining whether the Recreational Areas satisfy the standards and intent of the RD.

(2) Ownership and Maintenance The plans and documentation submitted to the Planning Board shall include a description of all Recreational Areas as Follows:

(a) Plans The plans and/or any supporting documents shall show the exact location, size, specific character and general use of all Recreational Areas.

(b) Dedication to Town The Town may at any time accept the dedication of any of said land, facilities, or any interest therein for public use, benefit or maintenance, but the dedication of public use shall not be required as a condition for approval of the RD. If the Town Meeting fails to accept the offered land within two (2) years of the receipt of the offer, then the offer or shall use another method identified herein for guaranteeing the Recreation Areas as approved by the Planning Board.

(c) Covenant Any land or facilities designed as part of the Recreational system which are not dedicated to the Town shall be made subject to a covenant acceptable to the Planning Board, which covenant shall be recorded in the Worcester District Registry of Deeds, or the Worcester County Registry District of the Land Court, whichever is applicable, and shall run with said land in perpetuity. Said instrument shall prohibit further subdivision of such space or change of its use to any use not in keeping with the RD as approved without the approval of the Planning Board. Said instrument shall also prohibit denial of access to any part of said space by any occupant of the RD (although use may be conditioned on payment of a fee).

(d) Organization Owning Recreational Areas Ownership of all or any portion of the Recreational Areas not dedicated to the Town shall be retained by a corporation or trust owned or to be owned by the owners of lots or units in the RD, subject to the following standards:

(i) The Town may enter upon said property at reasonable times for the purpose of inspection in order to insure compliance with the Special Permit.

(ii) Membership in said corporation or trust shall be automatic and shall pass with conveyances of the lots or units and be inseparable therefrom. The RD presentation shall include a complete description of said organization and the methods by which it shall be established and maintained, and the method by which fees and property taxes shall be collected and enforced. The presentation may provide that the property owners' association may lease back such land to the developer, his assigns, or to any other person or corporation, for operation and maintenance of the same. □

(iii) Prior to the release of lots or units for sale or construction, the following documents are to be submitted to the Planning Board for approval:

(1) A sample Purchase and Sale Agreement which shall be used for the purchase of the individual lots and/or units. Said Agreement shall include in conspicuous type the following: that the property is part of a Recreational Development subject to Section 2.3.05 of the Zoning By-Laws of the Town of Leicester; that the purchaser and subsequent owners of the units are subject to the requirements therein contained; that the purchaser shall be required to be a member of a homeowner's association, shall be subject to rules and regulations of said association and shall be liable for any applicable assessment made by or against said association. The Purchase and Sale Agreement shall further contain a statement by the seller that the purchaser has been provided with a copy of the rules and regulations of the homeowner's association, copies of any proposed management policies, copies of restrictions or covenants running with the land in the development, and a prospectus which shall be a summarization in layman's language of the information contained in other documents.

(2) Copies of any documents or proposed documents creating the homeowner's association, the by-laws and the rules and regulations of the homeowner's association, any management policies or proposed management policies, copies of any restrictions or covenants running with the land in the development, and the prospectus which shall be a summarization in layman's language of the information contained in the filed documents. Said homeowner's association documents shall include a provision stating that, in the event of failure of a lot or unit owner to render to the association an established fee amount proportionate for its share of the reasonable and appropriate maintenance and property tax for the Recreational Areas, the association or the Town of Leicester may place a lien upon the lot or unit in order to assure payment, with said lien to include related legal expenses.

(I) NON-RESIDENTIAL USES

(1) General Conditions NR uses may be specifically authorized under the Special Permit as auxiliary supporting uses in the RD. Inadequate relation of such uses to the overall plan of the development, incompatibility with adjacent uses, insufficient buffer areas or undue traffic generation shall be sufficient grounds to deny any such use. Plans and other documents for NR uses should be submitted as an integral part of those submitted for the RD.

(2) Public and Quasi-Public Day care centers, public parks and community recreation center, Town buildings and uses and utilities as allowed may be permitted uses in RD's, subject to the prescribed standards and any conditions required by the Planning Board under the procedures for the RD.

(J) ADMINISTRATION

In reviewing an RD proposal, the Planning Board shall be governed by the Special Permit procedures as specified in Section 6.4.02 of the Zoning By-Laws. For purposes of this RD section, the Planning Board is designated as the Special Permit Granting Authority. In addition, the Planning Board, as the Special Permit Authority for the RD section, shall be governed by Massachusetts General laws Chapter 40A, Section

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board (7) The Planning Board shall not grant a Special Permit for an RD unless it is adequately demonstrated that the RD is superior in design and land use to a conventional development, and that the proposed RD is consistent with the objectives of this Section.

Has any housing been built under the cluster/flexible provisions?

Yes Town Planner Michelle Buck clarified that the Recreational Development District was created essentially as an overlay for a particular 300 acre golf course in the center of town. She said that the by-law (district) was created to protect the land and that the idea was to have 300 SF homes built nearby. It turned out that the by-law "had no teeth" and the end result was that the town bought the land to protect it and that no housing of any kind was ever built. (11/2004)

Senior Village Development has been built.

Survey received from Leicester on 5/23/05, completed by Michelle Buck, Town Planner (one age-restricted development):

"Under construction. 471 units permitted."

Leominster

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes City of Leominster Zoning Ordinance (Adopted 2001, Amended 2003)

ARTICLE IX OPEN SPACE COMMUNITY DEVELOPMENT REGULATIONS Section 22-56 Intent The purpose of an Open Space Community Development is to:

Allow for greater flexibility and creativity in the design of residential subdivisions. Encourage the permanent preservation of open space, agricultural lands and other natural resources. Maintain the traditional New England character and land use pattern in which clustered communities connect with open spaces and farmland. Facilitate the construction and maintenance of streets, utilities and public services in a more economical and efficient manner. Encourage a development that uses less land for housing development thereby conserving more open land. The Open Space Community shall be permitted by Special Permit from the Planning Board in the Rural Residence/Agricultural (RRA) and Residence A/Agricultural (RAA) Districts. Section 22-57 Design Requirements A design concept plan, prepared by a professional landscape architect, shall be submitted to the Planning Board for review. Provisions of RRA and RAA may be modified as indicated below when authorized as a Special Permit by the Planning Board subject to all other requirements in this and all pertinent requirements of the Zoning Ordinance and Subdivision Regulations: 57.1

Minimum Tract Sizes. A tract of land to be developed shall be not less than five (5) acres in size, and shall be in one ownership or shall be the subject of an application signed jointly by the owners of the entire tract. The maximum allowable built area per tract shall be 35 percent (35%).

Density and Lot Area. In no case shall the number of dwellings permitted on a tract of land exceed a number that would have been permitted were the district regulations complied with fully. This density maximum is contained in the appropriate district regulations. All wetlands and floodplains shall be excluded from the parcel in calculating the allowable density. The following dimensional requirements shall apply. These requirements reflect developments where individual lots are created as well as developments where all land is kept under common ownership.

Separate Lots Commonly Owned

Minimum Yard Requirements

District/ Lot Area/ Minimum Lot Width/ Front/ Side/ Rear/ Frontage/ Minimum Distance Between Buildings RRA 20,000 85 10 15 15 60 30

RAA 12,500 75 8 10 10 30 20

The yard requirements shall not be reduced from those specified in the District. Minimum lot width shall be measured at building line.

Permitted Uses. Single family detached dwelling. Utilities. Each lot shall be serviced by a municipal water service and a municipal sewer. On-site disposal systems may only be permitted if a municipal sewer is not available and if, prior to granting the Special Permit, the Board of Health reports that each lot has passed a satisfactory percolation test and soils examination or that the Board of Health reports that the tract has been sufficiently tested to assure that the lots can comply with its regulations for disposal systems.

Common Land

The area of Common Land shall equal at least 25% of the total area of the Open Space Community Development tract. Such land shall have a shape, dimension, character and location suitable to assure its use for park, recreation, conservation or agricultural purposes by all the residents of the development. No more than 50% of the minimum required Common Land shall be situated within the floodplain or wetland. Each parcel of Common Land shall have at least 50 feet of frontage and no structure shall be constructed thereon in excess of 15 feet in height nor shall the maximum lot coverage, including paved areas, exceed 10% without Planning Board approval. Provision shall be made so that the Common Land shall be readily accessible to the owners and occupants of the lots in the Open Space Community Development. Subdivision of the common land is prohibited, and a notation to this effect shall be shown on the Definitive Subdivision Plan. Structures or buildings accessory to recreation, conservation, or agricultural uses may be erected but shall not exceed five percent (5%) coverage of such common land. The Open Land may be preserved and owned as follows: Common land may be conveyed to a homeowners association owned by the owners of lots within the development. If such a Community Association is utilized, ownership thereof shall pass with conveyances of lots in perpetuity. The common land may be conveyed to a non-profit organization, the principal purpose of which is the conservation or preservation of open space. The common land may be conveyed to the City of Leominster, at no cost, and be accepted by the City Council for open space, agricultural or natural resource protection use. Such conveyance shall require City Council approval. ...

ARTICLE X PLANNED UNIT DEVELOPMENT Section 22-61 General Description A "Planned Unit Development" shall mean development containing a mixture of residential uses and building types, including single family and multifamily dwellings, business uses and industrial uses. A Planned Unit Development may be allowed by Special Permit to exceed the normal density requirements for the district to the extent authorized by this Ordinance provided that standards for the provision of affordable housing and other standards specified herein are met. Section 22-62 Purposes The purposes of this Planned Unit Development Ordinance are to: • allow for greater variety and flexibility in development forms; • encourage the redevelopment of underutilized buildings for mixed uses; • reduce traffic congestion and air pollution by providing opportunities for housing and employment in close

proximity; and • encourage more compact and efficient developments. Section 22-63 Uses Allowed by Special Permit The Planning Board may grant a Special Permit with Site Plan Approval for construction of a Planned Unit Development (PUD). Planned Unit Developments shall be permitted in the Residential B, Residential C, Business A, Business B and Commercial Districts. The Special Permit shall conform to this Ordinance and to G.L. Chapter 40A, Section 9, and to Regulations which the Planning Board shall adopt for carrying out its requirements hereunder. In a Planned Unit Development, the following uses may be allowed by Special Permit: Single family dwellings; Two-family dwellings; Townhouses-single family dwellings connected by one or more walls; Multifamily dwellings; Business uses which are permitted in the underlying district; and Industrial uses which are permitted in the underlying district. Section 22-64 Density and Dimensional Regulations 64.1 Site Area Requirements. For both new construction and expansion, there shall be no minimum square foot requirements. 64.2 Usable Open Space. Usable open space shall be considered the part or parts of land or structure within a PUD that are reserved for permanent active or passive recreation use. This space shall exclude parking areas, required setbacks, waterways, walkways, and be open and unobstructed to the sky. Trees, plantings, arbors, flagpoles, sculpture, fountains, swimming pools, open air recreational facilities and similar objects shall not be considered obstructions. In all Planned Unit Developments that are new construction, at least ten percent (10%) of the land shall be set aside as permanent usable open space, for the use of the PUD residents, or for all PUD users, or for the community. The required open space may, at the option of the City Council, be conveyed to the Conservation Commission or to a non-profit conservation organization, or to a corporation or trust representing persons responsible for the PUD and shall be protected by a conservation restriction as required by G.L. Chapter 40A, Section 9, for common open space in Open Space Community Developments. A covenant shall be placed on the land such that no part of the PUD can be built, sold or occupied until such time as a satisfactory written agreement has been executed for the protection of open space. 64.3 Height Requirements. In all PUD projects, the height of buildings shall not exceed a seventy (70) foot height limit above the mean finished grade of abutting properties. Parking facilities within the building shall not be calculated as part of the allowable height. The maximum additional height allowed for parking facilities shall be nine (9) feet. There shall be no frontage requirements for uses within the Planned Unit Development. Minimum frontage setback, rear and side yard requirements specified in the Table of Dimensional Requirements shall pertain only to the periphery of the Planned Unit Development. Section 22-65 Utility, Parking, Landscaping and Open Space Requirements Planned Unit Developments must meet the utility, parking, landscaping and open space requirements of this Ordinance. Section 22-66 Affordable Housing Requirements In reviewing an application for Planned Unit Development in which the proposed density exceeds that normally allowed in the district, the Planning Board shall give special consideration to such a proposal which includes affordable housing units amounting to at least ten (10) percent of the total PUD units.

The document would not allow proper copying and pasting. Researchers might want to refer back to the original document to review it.

Part of open space bylaw - density bonus by special permit from city council:

Section 22-60 Special Permits by City Council Notwithstanding any provisions to the contrary, the City Council may grant a Special Permit in accordance with the provisions of this Article where the lot area in the Rural Residence and Agriculture District is less than 20,000 square feet but 15,000 square feet or more, or where the lot area in the Residence A and Agriculture District is less than 12,500 square feet but 7,500 square feet or more.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board City of Leominster Zoning Ordinance (Adopted 2001, Amended 2003)

The Open Space Community shall be permitted by Special Permit from the Planning Board in the Rural Residence/Agricultural (RRA) and Residence A/Agricultural (RAA) Districts.

Has any housing been built under the cluster/flexible provisions?

Yes Economic Development Coordinator Chris Paquette (11/30/04) said that there have been two projects so far (a third didn't work out) and that they have gone well. He said that so far, flexible zoning has had "a pretty good reception" and he credited the Mayor with being a big advocate of open space. He said that the Mayor has been in office for 12 years and that in that time, the city has purchased 3,000 acres (almost 1/2 of the whole city (?)). He said that a 400 acre golf course was recently deeded to the Audobon Society and will become a bird sanctuary. He also added that citizens can donate to an open space fund and that the city recently bought Johnny Appleseed's remaining orchard (apparently Leominster was Johnny's home town)- "162 pristine acres that are on one of our water supplies"- and that trails have been added. Homes have been added too but are away from the road and clustered in order to preserve the orchard.

Lexington

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Answer confirmed in 6/24/04 email from Ms. McCall-Taylor:

"Yes in all residential zones."

9.5 CLUSTER SUBDIVISION, SPECIAL RESIDENTIAL DEVELOPMENT

9.5.1 MEANING OF TERMS

A "cluster subdivision" is a residential development with three or more dwelling units in which a tract of land is divided into:

- 1) lots for constructing dwellings in one or more groups and
- 2) common open space. The common open space may be in one or more locations and may separate groups of dwellings from each other. (See also the Definition, Cluster Subdivision.)

A "special residential development" is a residential development with three or more dwelling units in which a tract of land is divided into:

- 1) one or more lots for constructing dwellings in one or more groups and
- 2) common open space. A "special residential development" may have one or more lots used for developments in:
 - a. condominium ownership,
 - b. cooperative ownership, or
 - c. one ownership where individual dwelling units are rented.

A "special residential development" is intended to provide greater flexibility than a cluster subdivision to respond to special site or development considerations.

9.5.2 OBJECTIVES

The objectives of this section are to allow flexibility in the standards and procedures for residential development with three or more dwelling units that are a cluster subdivision or a special residential development to:

- a. promote development proposals based on an evaluation of the characteristics of individual sites that is difficult to achieve by applying pre-determined, largely geometric standards;
- b. promote the retention and enhancement of the outstanding natural features of open land and of existing man made enhancements to it;
- c. promote an improved design relationship between new buildings and public facilities and common open space;
- d. permit approval of a development based on an evaluation of the projected impacts of the development.

9.5.3 MAXIMUM DEVELOPMENT BASED ON IMPACT

9.5.3.1 OBJECTIVE

The objective of this section, and of section 9.6. Developments with Significant Public Benefit, is to base the amount of development allowed on the projected impacts of the development on the adjacent neighborhood and municipal facilities and services.

9.5.3.2 MAXIMUM DEVELOPMENT BASED ON IMPACT

The projected impacts of a cluster subdivision or a special residential development shall not be greater than the total projected impacts of one-family detached dwellings that could be constructed on individual lots in a conventional subdivision on the tract according to the procedure described in this section. The maximum development permitted in a cluster or special residential development may not exceed ANY of the total impacts that are projected to occur from such one-family detached dwellings based

on the following impact measures each considered separately:

- a. Gross Floor Area of Dwelling Units
- b. Living Area of Dwelling Units
- c. Site Coverage of Dwelling Units
- d. Total Number of Occupants of Dwelling Units
- e. Vehicular Trip Generation from Dwelling Units

The maximum development permitted is not to be based on the number of dwelling units. The number of dwelling units permitted is not predetermined; it is the number that occurs in a development when none of the impact measures, each considered separately, exceeds the total impact that is projected to occur in a conventional subdivision on the tract according to the procedure described in this section.

9.5.3.3 NO ENTITLEMENT TO MAXIMUM DEVELOPMENT

An applicant is not entitled to the maximum development described in paragraph 9.5.3.2 nor is the applicant entitled to approval of a cluster subdivision or special residential development. The amount of development permitted, as calculated by any of the impact measures, will be based on the Planning Board's evaluation of the proposed development and the extent to which it complies with the criteria set forth in paragraph 9.5.5.

9.5.4 CALCULATION OF IMPACT OF DEVELOPMENT

9.5.4.1 MEASURES OF THE IMPACT OF DWELLING UNITS

For the purpose of the calculations required elsewhere in this section, the impact of a one-family detached dwelling constructed on a lot in a conventional subdivision is determined to be:

- a. Gross Floor Area of One-family Dwelling Unit: 7,200 square feet;
- b. Living Area of One-family Dwelling Unit: 4,700 square feet;
- c. Site Coverage of One-family Dwelling Unit: 2,900 square feet;
- d. Total Number of Occupants of One-family Dwelling Unit: 5 persons
- e. Number of Vehicle Trips Generated by a One-family Dwelling Unit: 15 trips

9.5.4.2 IMPACTS OF OTHER TYPES OF DWELLING UNITS

The Planning Board shall periodically publish the projected total number of occupants in, and the number of motor vehicle trips generated by, other types of dwelling units. Those other types of dwelling units shall include:

- a. One-family Detached*,
- b. One-family Attached*,
- c. Two-family*, and
- d. Townhouse*.

* (See definition in Section 2.)

The Planning Board shall periodically tabulate and publish data on such other types of dwelling units:

- a. that have been constructed in the preceding 10 years, or
- b. on the 25 most recently constructed dwelling units of that type, whichever results in the greater number of dwelling units in the sample. In estimating the projected total number of occupants in, and the number of vehicular trips generated by, other types of dwelling units, the Planning Board shall consider the size of the dwelling units, the number of bedrooms and other physical and economic characteristics of the dwelling units. In projecting:
 - a. the total number of occupants in other types of dwellings, the Planning Board shall consider data reported in the Town Census conducted by the Town Clerk in the most recent calendar year;
 - b. the total number of vehicle trips, the Planning Board shall use the estimates of trip generation outlined in paragraph 12.2.4.a, trip generation, of this By-Law.

9.5.4.3 CALCULATION OF MAXIMUM DEVELOPMENT

The maximum development permitted in a cluster or special residential development shall be determined by using the following procedure:

STEP ONE:

1) calculate the maximum number of dwellings in a conventional subdivision by the following formula: divide the area of the lot by the minimum lot area for the district in which the lot is located (RO=30,000 s.f., RS and RT=15,500 s.f.) provided any fraction thereof may be included in the calculation;

STEP TWO

2) calculate the total gross floor area of all dwellings in a cluster or special residential development by multiplying 7,200 square feet by the maximum number of dwellings in a conventional subdivision in 1) above;

3) calculate the total living area of all dwellings in a cluster or special residential development by multiplying 4,700 square feet by the maximum number of dwellings in a conventional subdivision in 1) above;

4) calculate the total site coverage of all dwellings in a cluster or special residential development by multiplying 2,900 square feet by the maximum number of dwellings in a conventional subdivision in 1) above;

STEP THREE

5) calculate the projected total number of occupants of all dwellings in a cluster or special residential development by multiplying five persons by the maximum number of dwellings in a conventional subdivision in 1) above. To determine the projected number of total occupants of "other types of dwelling units" (9.5.4.2), the applicant shall furnish a schedule showing the number of proposed dwelling units, according to:

- a. the type of structure,
- b. the number of bedrooms,
- c. the living area, and
- d. the projected rent or sales price of each proposed dwelling unit.

Based on the data available to it, as described in paragraph 9.5.4.2, the Planning Board shall determine the projected total number of occupants in "other types of dwelling units" referred to in paragraph 9.5.4.2 that corresponds most closely to the schedule furnished by the applicant. The projected total number of occupants shall be the median in the data range.

STEP FOUR

6) Calculate the projected total number of vehicle trips generated from all dwellings in a cluster or special residential development by multiplying 15 vehicles times the maximum number of dwellings in a conventional subdivision. (See 1) above.) Based on the schedule furnished by the applicant, described in 5) a. and b. above, and on the data available to it, as described in paragraph 9.5.4.2, the Planning Board shall estimate the total number of vehicle trips generated from the "other types of dwellings" referred to in paragraph 9.5.4.2 that corresponds most closely to the schedule furnished by the applicant. This worksheet is for illustrative purposes only. It is not legally adopted by the Town Meeting as apart of the Zoning Bylaw.

This is for illustrative purposes only. It is not legally adopted by the Town Meeting as a part of the Zoning ByLaw.

WORKSHEET FOR CALCULATION OF PARAGRAPH 9.5.4.3 CALCULATION OF MAXIMUM DEVELOPMENT

For assistance in determining the estimated occupancy of other types of housing, contact the Planning Department.

9.5.4.4 EFFECT OF IMPACT MEASURES ON AN APPROVED DEVELOPMENT

a. OCCUPANCY AND NUMBER OF MOTOR VEHICLE TRIPS: The calculation of impact measures for occupancy and number of motor vehicle trips is only for the purposes of estimating impacts for approval of a development application. The median of the population and motor vehicle trip generation data series, as described in paragraphs 9.5.4.2 and 9.5.4.3, is determined to be an adequate measure of the impact of a typical dwelling unit. This method of estimating impacts assumes that the actual occupancy, either initially or later, of any one dwelling unit may be higher or lower than the typical dwelling unit used in these calculations. Neither the initial occupancy nor any change in the later occupancy of, or the number of motor vehicle trips generated from, any dwelling unit, shall affect the occupancy or limit the ownership or use of motor vehicles in that dwelling unit.

b. GROSS FLOOR AREA, LIVING AREA, SITE COVERAGE: The total gross floor area, living area, site coverage of all dwellings, as determined by the calculation of impact measures in paragraph 9.5.4.3, is the maximum for approved development. After the granting of a special permit approving the development, no building permit shall be issued for any dwelling that would result in the

maximum specified in the approval being exceeded.

9.5.5 CRITERIA FOR APPROVAL

Prior to the approval of a cluster subdivision or a special residential development, in addition to the findings and determinations required by paragraph 3.4.2 of this By-Law, the Planning Board shall determine that the proposed development meets the following criteria:

a. the common open space includes:

1) some, or all, of the outstanding natural features of the site and of the man made features, such as but not limited to stone walls, that enhance the land form;

2) land that also meets the standards for usable open space;

3) land that increases visual amenities for residents of the development and of the adjacent neighborhood;

b. the common open space is readily accessible by one or more paths or entry points specifically designed for access purposes;

c. the dwellings are sited and oriented in a complementary relationship to:

1) each other,

2) the common open space, and

3) the adjacent properties. If the development includes other types of dwellings, such as semi-attached dwellings or townhouses, those types of dwellings shall relate to the predominant characteristics of the adjacent one-family detached dwellings with respect to scale, mass, setback, proportions and materials;

d. negative visual impacts of the development, if any, are screened from adjacent properties and nearby streets by landscaping or other site planning techniques;

e. where opportunities exist, improved access is provided to, or additional links and connections are developed to, a town system of public facilities, such as open space, recreation facilities, footpaths or bicycle paths;

f. that any building which contains more than one dwelling unit is designed so that either:

1) the building has the exterior appearance of a one-family dwelling or,

2) alternatively, if one-family attached dwellings and/or townhouses (See 9.2.2b. or e. and the definitions of those terms under "Dwelling, Structural Characteristics" in Section 2, Definitions.) are constructed, each individual dwelling unit has direct access to ground level and an opportunity for a private yard, patio, or other private outdoor space;

g. there are provisions for common facilities, such as recreation or parking, or for services such as the. maintenance of streets, walkways or paths, utilities, landscaping or recreation facilities;

h. where there are sufficient dwellings units, the layout of the street(s) and interior drive(s) will accommodate vehicles, other than automobiles, that are used in local transportation services.

9.5.6 SPECIAL PERMITS, DIMENSIONAL STANDARDS, WAIVERS, TYPES OF HOUSING

The Planning Board, acting as SPGA, may, as part of the grant of a special permit with site plan review, also grant a special permit to:

a. modify the standards:

1) in Table 2, Schedule of Dimensional Controls, for minimum lot area, minimum lot frontage, minimum front yard, minimum side yard, minimum rear yard, maximum percentage of site coverage, and maximum height in stories;

2) the provisions of 7.1.4 relative to the number of dwellings on a lot;

3) the minimum lot width in subsection 7.2.2;

4) the provisions in subsection 7.2.3 relative to contiguous developable site area;

5) in subparagraph 11.4.1 relative to the location of off-street parking spaces;

6) in subsection 11.6 relative to setbacks required for parking spaces and driveways; and

7) in subparagraph 6.2.5 relative to the subdivision of land in relation to lots or buildings that are nonconforming or would not

comply with this By-Law as a result of the proposed development; all as they may apply to individual dwellings or lots within a cluster subdivision or a special residential development:

b. permit the types of buildings identified in 9.2.2 as allowed by special permit;

c. allow an existing structure, that was constructed at least 10 years prior to the date of application for approval of the special permit, to be converted to a three-, or four-family dwelling, a multi-family dwelling, a rooming house, a group quarters, an independent living residence, an assisted living residence, or a congregate living facility, provided the Planning Board determines that:

1) the structure can be modified for a residential use that does not have adverse impacts on the adjacent single family neighborhood;

2) the exterior character of the structure is maintained and is compatible with the adjacent neighborhood of single-family dwellings;

3) modification of the existing structure maintains more of the site open than the alternative of removal of the structure and further subdivision of the lot into house lots;

d. allow a driveway on one lot to lead to a parking space on another lot, or to allow a driveway to straddle a lot line, as provided in paragraph 11.8.c.

9.5.7 COMMON OPEN SPACE

In granting a special permit with site plan review for a special residential development, the Planning Board may require a greater amount of common space than the minimum 10 per cent required by line 9.2.6. In making that determination, the Planning Board shall consider the need to protect the natural features of the site, the type of housing to be constructed and its relationship to common open space, and potential public access to and use of the open space.

9.5.8 ACCESSORY APARTMENT IN CLUSTER SUBDIVISION, SPECIAL RESIDENTIAL DEVELOPMENT

If an accessory apartment is included in a dwelling, as provided in paragraph 9.3.7, in a cluster subdivision or special residential development, it shall be considered to be one of the other types of dwelling units and included in the calculation of the maximum development permitted based on the various impact measures. (See subsection 9.5.4.3.)

Definition of cluster from Lexington's bylaw on ordinance.com:

CLUSTER SUBDIVISION : A residential development in which buildings are constructed on lots in one or more groups separated from adjacent property and other groups of buildings by intervening open land. The density, dimensional standards or types of buildings permitted may vary from those otherwise permitted or required.

SECTION 8. SPECIAL ZONING DISTRICTS

A. PLANNED DEVELOPMENT DISTRICTS (TOWN MEETING REZONING REQUIRED)

8.1 OBJECTIVES

A planned development district is intended:

- 1) to permit considerable flexibility in the development of tracts of land by requiring few pre-determined standards,
- 2) to permit a developer to propose, and for the Town to vote on a site development and use plan unique to a particular location,
- 3) to permit the use of development standards more detailed than the more general standards elsewhere in this By-Law,
- 4) to provide information for the Town to evaluate the potential impacts of a proposed development and to enable the SPGA to require adherence to such site development plans in the granting of a special permit.

8.2 PLANNED COMMERCIAL DISTRICT CD

8.2.1 STANDARDS FOR DEVELOPMENT

The Planned Commercial District - CD, does not have pre-determined standards for development. Such standards are to be proposed by the developer, included in the preliminary site development and use plan and approved by the Town Meeting.

8.2.2 TOWN MEETING PRESENTATION

Each petition presented to the Town Meeting for rezoning land to a CD district shall include a preliminary site development and use

plan as described in subsection 3.6, and shall be filed in accordance with the provisions of that section.

8.2.3 USES PERMITTED

No use is permitted and no development may occur in a CD district except in conformity with a preliminary site development and use plan approved by the Town Meeting, the provisions of this section and a special permit with site plan review granted by the SPGA. Uses other than commercial may be in a CD district if clearly identified in the preliminary site development and use plan approved by the Town Meeting.

8.2.4 SPGA

The Board of Appeals shall be the special permit granting authority. In action upon applications for special permits with site plan review, the SPGA shall be governed by the provisions of Section 3.4.

8.3 PLANNED RESIDENTIAL DEVELOPMENT DISTRICTS RD

8.3.1 STANDARDS FOR DEVELOPMENT

A number of standards for development in the planned residential development district, RD, are included in Section 9. Additional standards may be proposed by the developer and included in the preliminary site development and use plan and approved by the Town Meeting.

8.3.2 TOWN MEETING PRESENTATION

Each petition presented to the Town Meeting for rezoning land to an RD district shall include a preliminary site development and use plan as described in subsection 3.6, and shall be filed in accordance with the provisions of that section.

8.3.3 DEVELOPMENT PERMITTED

No types of residential buildings may be constructed and no development may occur in an RD district except in conformity with a preliminary site development and use plan approved by the Town Meeting, the provisions of this section and of Section 9, and a special permit with site plan review (SPS) approved by the SPGA.

8.3.4 SPGA

The Board of Appeals shall be the special permit granting authority. In acting upon applications for special permits with site plan review, the SPGA shall be governed by the provisions of Section 3.4 and Section 9.7.

8.4 REZONING PROVISIONS APPLICABLE TO BOTH CD AND RD DISTRICTS

8.4.1 FILING OF PRELIMINARY SITE DEVELOPMENT AND USE PLAN

Two copies of the preliminary site development and use plan which accompanies a petition for a rezoning shall be filed with the Town Clerk and one copy with the Planning Board at least three weeks prior to the Planning Board public hearing required to be held under Chapter 40A. Subsequent to that public hearing, revisions to the preliminary site development and use plan may be filed with the Town Clerk and the Planning Board and must be filed at least seven days prior to the first session of the Town Meeting. The vote of the Town Meeting shall refer to the preliminary site development and use plan and shall be considered part of the rezoning action.

8.4.2 AMENDMENTS TO THE PRELIMINARY SITE DEVELOPMENT AND USE PLAN

After the filing of the preliminary site development and use plan which accompanies a petition for a rezoning, the Town Meeting shall not take favorable action on a proposed amendment to the preliminary site development and use plan unless:

- a. at least seven days prior to the vote of the Town Meeting on the petition the Town Meeting Member proposing such amendment:
 1. has filed a copy of the proposed amendment with the Town Clerk and the Planning Board, and
 2. has sent a copy of the proposed amendment by registered mail to the petitioner,
- b. the Moderator shall determine that the proposed amendment is within the scope of the petition and the preliminary site development and use plan most recently filed as provided in paragraph 8.4.1, and
- c. at least two thirds of the Town Meeting vote favorably on the proposed amendment.

8.4.3 AMENDMENTS TO THE PSDUP APPROVED BY AN EARLIER TOWN MEETING

The preliminary site development and use plan for an existing planned development district that was approved by an earlier Town Meeting may be amended. The proposed amendments shall be presented and acted upon in the same manner set forth in this section for an original petition.

8.4.4 AMENDMENTS TO THE PSDUP APPROVED BY AN EARLIER TOWN MEETING

The preliminary site development and use plan for an existing planned development district that was approved by an earlier Town Meeting may be amended. The proposed amendments shall be presented and acted upon in the same manner set forth in this section for an original petition.

According to the survey received from Lexington on 4/14/05, the first provision for cluster/flexible zoning was adopted in 1985. The last time the cluster/flexible provisions were amended was 1996. The planning board is the SPGA. More units can be built under cluster/flexible zoning than would be allowed through conventional zoning. 1, 2-family, townhouses, 1-family attached are allowed. More than 8 cluster developments have been built.

Which entity is the special permit granting authority for cluster/flexible zoning?

More than one entity 8.3.4 SPGA
The Board of Appeals shall be the special permit granting authority

The Land Use Ordinance of Lexington (Town of)
MIDDLESEX COUNTY, MASSACHUSETTS
ZONING BY-LAW

SECTION 2. DEFINITIONS

SPECIAL PERMIT GRANTING AUTHORITY : The authority empowered to grant special permits, which shall be the Board of Appeals unless some other board is so designated in these By-Laws.

9.7 SPECIAL PERMITS: PROCEDURES, CRITERIA
9.7.2 SPGA

The Planning Board shall be the Special Permit Granting Authority for all residential development with three or more dwelling units except for a development in an RD district and for the conversion of a municipal building. (See subsection 8.3.4 for a development in an RD district, where the Board of Appeals is the SPGA; see subsection 9.8 for conversion of a municipal building, where the Board of Selectmen is the SPGA.) In acting upon applications for special permits with site plan review, the SPGA shall be governed by the provisions of Sections 3.4 and 3.5.

Has any housing been built under the cluster/flexible provisions?

Yes Survey received from Lexington on 4/14/05:
Has any housing been built under the cluster/flexible provisions? (none, 1-8 projects, more than 8)
"more than 8"

Lincoln

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes District R-4 is a Planned Community Development District and there is also a Cluster Development area in District R-1 - by special permit.
Town of Lincoln Zoning Bylaws, Section 6.6. R-1 Cluster Development: "Development Regulations - R-1 Cluster Development
6.6.1 For the purpose of promoting the more efficient use of land in harmony with its

natural features, an owner or owners of a tract of land situated within the R-1 Single Residence District, or a duly authorized agent of such owner or owners, may make application to the Planning Board for a special permit exempting such land from the lot area and frontage, yard, widths of lot requirements of Section 6.5 and Section 13.2.6 and from the requirements of 6.1(a) that there shall be no more than one dwelling unit per lot."

Town of Lincoln Zoning Bylaws, Section 8.2 Planned Community Development District, (2003): "8.2 R-4 Planned Community Development District.

The R-4 Planned Community Development (PCD) District is intended either to achieve the purposes of the R-3 District or to permit the construction of a limited number of subsidized housing units for persons of low and moderate income while ensuring compliance with local planning standards and policies concerned with land use, building design, and requirements of health, safety and welfare of the inhabitants of the Town. Development in an R-4 should result in the construction of subsidized housing within the same general type of development pattern as an R-3, and except as otherwise provided, it is intended that an R-4 will conform to all of the objectives and restrictions of an R-3. Development in an R-4 should, insofar as practical, result in a mixture of residents of different income levels as well as a mixture of housing of different types. No more than half of the subsidized units in such a development shall be designed specifically for occupancy by persons of low income. Development in an R-4 PCD should not produce an excessive concentration of residents of one income level or housing of a single type."

"8.2.2 Uses Permitted in an R-4 District Subject to Permission of the Board of Appeals: Detached, semi-detached and multi-family dwelling units, provided that no building permit for a development which does not conform to the use and development restrictions of an R-1 District shall be issued hereunder, unless the Board of Appeals has issued a special permit under Section 8.4 below, as modified by Section 14.2 below, and a site plan has been submitted to and approved by the Planning Board in accordance with Section 8.3 hereof."

SECTION 8. THE R-3 AND THE R-4 DISTRICTS.

8.1 R-3 Open Space Residential Development District.

The R-3 Open Space Residential Development (OSRD) District is intended to provide an alternative pattern of land development to the pattern permitted in the R-1 District. Specifically, it is intended to encourage the conservation of more significant common open space than is normally the case in an R-1 District, while at the same time providing for a greater mixture of housing types in certain districts in the Town, at somewhat greater dwelling unit densities than would be allowed in an R-1 district, without a significant increase in population density. This is intended to be done by allowing the construction of appropriate clusters of dwelling units which will not detract from the ecological and visual qualities of the environment. An Open Space Residential Development should result in:

- (a) conservation of significant tracts of open space;
- (b) efficient allocation, distribution and maintenance of common open spaces;
- (c) economic and efficient street, utility and public facility installation, construction and maintenance;
- (d) a variety of housing types and characteristics;
- (e) housing and land development harmonious with natural features;
- (f) the development and maintenance of real property values consistent with the needs of the people of the Town.

8.1.2 Uses Permitted in an R-3 District:

Any use permitted in an R-1 Single Family Residence District subject to the same use and development restrictions as are prescribed therein.

8.1.3 Uses Permitted in an R-3 District Subject to Permission of the Board of Appeals:

Detached, semi-detached, and multi-family dwelling units provided that no building permit for a development which does not conform to the use and development restrictions of an R-1 District shall be issued hereunder unless a site plan has been submitted and approved under Section 8.3 and Section 17 hereof, and the Board of Appeals has issued a special permit under Section 8.4 below.

8.2 R-4 Planned Community Development District.

The R-4 Planned Community Development (PCD) District is intended either to achieve the purposes of the R-3 District or to permit the construction of a limited number of subsidized housing units for persons of low and moderate income while ensuring compliance with local planning standards and policies concerned with land use, building design, and requirements of health, safety and welfare of the inhabitants of the Town. Development in an R-4 should result in the construction of subsidized housing within the same general type of development pattern as an R-3, and except as otherwise provided, it is intended that an R-4 will conform to all of the objectives and restrictions of an R-3. Development in an R-4 should, insofar as practical, result in a mixture of residents of different income levels as well as a mixture of housing of different types. No more than half of the subsidized units in such a development shall be designed specifically for occupancy by persons of low income. Development in an R-4 PCD should not produce an excessive concentration of residents of one income level or housing of a single type.

8.2.1 Uses Permitted in an R-4 District:

Any use permitted in an R-1 Single Family Residence District subject to the same use and development restrictions as are prescribed therein.

8.2.2 Uses Permitted in an R-4 District Subject to Permission of the Board of Appeals:

Detached, semi-detached and multi-family dwelling units, provided that no building permit for a development which does not conform to the use and development restrictions of an R-1 District shall be issued hereunder, unless the Board of Appeals has issued a special permit under Section 8.4 below, as modified by Section 14.2 below, and a site plan has been submitted to and approved by the Planning Board in accordance with Section 8.3 hereof.

8.3 Development Regulations for a Tract of Land Situated Within an R-3 OSRD District or an R-4 PCD District, not Subject to the Restrictions of the R-1 District.

8.3.1 The development regulations for the R-1 Single Residence District shall apply to any development in the R-3 or R-4 Districts unless an owner or owners of land (or their agent) in an R-3 or an R-4 district submits a site plan meeting the requirements of Section 17 below to the Planning Board for its approval. After notice and public hearing, the Planning Board may approve such site plan, in accordance with Section 8.3.2, in which case the area of lots, the street frontage, and yard sizes and the widths of lot at building shall be as shown on the site plan as approved; provided, however, that the height of buildings shall not exceed 36 feet.

8.3.2 The Planning Board may approve a site plan for an R-3 or R-4 development provided such site plan meets the requirements of Section 17, and provided further that:

- (a) the area of the tract to be developed is not less than twenty-five (25) acres;
- (b) the number of dwelling units to be constructed in the development does not exceed twice the number of lots upon which dwellings could be constructed in the total land area of the tract which is usable for residential construction if the tract were subject to the restrictions of the R-1 Single Family Residence District;
- (c) not more than 20% of the dwelling units are detached single-family dwelling units;
- (d) provision shall be made so that at least 70% of the Qualifying Land Area of the tract, and all land not usable for residential construction, shall be Open Land;
- (e) provision shall be made so that the Open Land in the development shall be owned:
 - i. by the Town;
 - ii. by the Lincoln Land Conservation Trust; or
 - iii. an association of the owners of the land that may be approved by the Planning Board, with provisions for limited easements for recreational use by residents of the town, provided that such ownership shall vest in the town sufficient rights to enable it to enforce compliance with the restrictions imposed by the Board of Appeals as conditions of its special permit,
- (f) provision shall be made so that the Open Land shall be restricted to any one or more of the uses allowed in a C-Open Space Conservation District, except that, subject to approval of the Board of Health, the Planning Board may permit the Open Land to be used for sub-surface waste disposal where it finds that such use would not be detrimental to the character or quality of the Open Land;
- (g) each dwelling unit shall have reasonable access to the Open Land, but need not front directly on such Open Land;
- (h) the size, shape and location of any buildings to be constructed are not detrimental to the neighborhood, are appropriate to the terrain in which they are located, and do not adversely affect the visual character of the neighborhood or the Town;
- (i) the plan provides for the convenience and safety of vehicular and pedestrian movement on the site and for adequate location of driveways in relation to street traffic;
- (j) the plan provides for an adequate arrangement and number of parking spaces in relation to the dwelling units to be constructed;

(k) the plan provides adequate methods on the site for waste disposal, surface and subsurface drainage;

(l) the plan provides for the construction of all roads and the installation of all utilities in accordance with this Bylaw and the rules and regulations as may be from time to time adopted by the Planning Board;

(m) the application sets forth a specific plan for maintenance of all Open Land, waste disposal and drainage facilities, roadways, and other improvements to be constructed in the development;

(n) the location and layout of the Open Land shall take into account, preserve, and where appropriate, promote such features of the tract as rivers, streams, ponds, marshes, wetlands, historic sites, wildlife refuges, unique geological or botanical areas or features, and existing or potential trails, paths and open space links;

(o) the plan provides Open Land which is of a size, shape and location, and has adequate access so as to benefit the Town and the residents of the development;

(p) the proposed plan is appropriate to the natural terrain of the tract to be developed;

(q) in the case of an R-3 development, the applicant demonstrates to the satisfaction of the Planning Board that the population density and traffic generated by the development will not be significantly greater than the population density and traffic generated by an R-1 development.

8.3.3 In connection with its approval or disapproval of a site plan submitted in accordance with this Section 8.3, the Planning Board shall issue to the applicant and file with the Town Clerk and the Board of Appeals a written decision explaining the reasons for its action.

8.4 Application to the Board of Appeals for Special Permit for Development in an R-3 or R-4 District.

8.4.1 An owner or owners of land situated within an R-3 OSRD District or an R-4 PCD District (including their authorized agent) in connection with the submission of R-3 or R-4 site plan for Planning Board approval and after consultation with the Board of Health, may make an application to the Board of Appeals for a special permit permitting development of the tract of land for conservation of open space and multi-family uses in keeping with the purposes of the R-3 OSRD District or the R-4 PCD District, as the case may be.

8.4.2 Each application for a special permit hereunder shall be accompanied by a written statement setting forth the reasons why, in the opinion of the Applicant, the proposed plan is in the public interest and consistent with the objectives of the R-3 OSRD District or the R-4 PCD District, as the case may be. Such application shall also be accompanied by an environmental impact statement in the form prescribed by the rules and regulations of the Planning Board governing the subdivision of Land (whether or not the development constitutes a subdivision).

8.4.3 Such application shall be accompanied by the site plan submitted to the Planning Board under Section 8.3, and shall include floor plans and elevations of all proposed buildings.

8.4.4 After notice and public hearing, and after due consideration of the recommendations of the Planning Board (see Section 8.4.6 below), the Board of Health (see Section 8.4.7 below), and the Conservation Commission, the Board of Appeals may grant such a permit provided that It finds that the proposed plan:

(a) is in harmony with the purpose and intent of this Bylaw and will promote the purposes of the R-3 OSRD District or the R-4 PCD District, as the case may be;

(b) does not have a detrimental impact on the neighborhood and is in harmony with the long-range plan of the Town;

(c) will not, during construction or thereafter, have an adverse environmental impact on the neighborhood or on any river, stream, lake, pond, marsh or other wetlands;

(d) will not adversely affect any potable water supply.

8.4.5 The Board of Appeals may impose further restrictions upon the tract as a condition to granting the special permit as the Board of Appeals shall deem appropriate to the purposes of this Bylaw.

8.4.6 In connection with an application for a special permit from the Board of Appeals under this section, the Planning Board shall, in addition to filing its decision with respect to the site plan, submit in writing, prior to the hearing, its recommendations to the Board of Appeals. The Board of Appeals shall give due consideration to the recommendations of the Planning Board and, where its decision differs from the recommendations of the Planning Board, shall state the reasons therefor in writing.

8.4.7 In connection with an application for a special permit from the Board of Appeals under this section, the Board of Health and the Conservation Commission shall submit in writing, prior to the hearing, their recommendations and reports to the Board of Appeals. The Board of Health and the Conservation Commission may supplement their reports within five days after the hearing. The reports shall include as a minimum:

(a) an evaluation of the proposed methods for waste disposal, surface and subsurface drainage with particular reference to the

protection which such methods afford to any river, stream, lake, pond, marsh, or other wetlands which may be affected by the proposed structures and use;

(b) a recommendation as to the advisability of granting the special permit, and as to any restrictions which should be imposed upon the development as a condition of such permit. The Board of Appeals shall give due consideration to the reports of the Board of Health and the Conservation Commission, and where its decision differs from the recommendations of the Board of Health or the Conservation Commission, shall state the reasons therefor in writing.

8.4.8 The application for any permit hereunder shall set forth the manner in which the applicant proposes to ensure that the development will be constructed in accordance with the plan, and any permit issued hereunder shall specify that no certificate of occupancy shall be signed by the Building Inspector until the Building Inspector has certified to the Board of Appeals that the premises to be occupied have been built in accordance with the approved site plan.

The North Lincoln Planning District requires re-zoning to activate the PDD zoning:

12.5 NL-NORTH LINCOLN PLANNING DISTRICT

12.5.1 Purpose The NL-North Lincoln Planning District is intended:

- (a) to permit greater flexibility in the development of tracts of land by requiring few predetermined standards,
- (b) to permit a developer to propose, and for the Town to vote on, a site development and use plan unique to a particular location,
- (c) to permit the use of development standards more detailed than the general standards elsewhere in this By-Law,
- (d) to provide information for the Town to evaluate the potential impacts of a proposed development, and
- (e) to enable the Planning Board to require adherence to a site development and use plan in the granting of a special permit.

12.5.2 North Lincoln Planned Development Districts. Unless and until any portion of the NL-North Lincoln Planning District is placed in a North Lincoln Planned Development District the permitted uses and dimensional controls shall be those in effect from time to time in the other district or districts in which such land is located, without regard to its inclusion in the NL-North Lincoln Planning District. Upon submission of a preliminary development and use plan pursuant to Section 12.5.3 and compliance with the other requirements of this Section 12.5, any portion of the NL-North Lincoln Planning District may be placed, by a two-thirds (2/3) vote of Lincoln Town Meeting, in a North Lincoln Planned Development District. North Lincoln Planned Development Districts shall be numbered sequentially. The permitted uses and dimensional controls in a North Lincoln Planned Development District shall be governed exclusively by the provisions of this Section 12.5, and not by the provisions of the underlying district in which such land is located, unless and until the time for issuance of a special permit under this Section expires without a special permit having been issued, or the time when such a special permit lapses by reason of the applicant's failure to use it within the required period. After expiration of the time for issuance of a special permit under this Section without a special permit having been issued, or after the lapse of such a special permit, the permitted uses and dimensional controls in such district shall again be governed by the provisions of the other district or districts in which such land is located without regard to the inclusion of the land in such North Lincoln Planned Development District or in the NL-North Lincoln Planning District. The general rules set forth in Sections 13.1 and 13.2, the definitions set forth in Section 23, and the provisions applicable to any other overlay district in which such land may be located shall apply within any North Lincoln Planned Development District, and the requirements of other provisions of the Zoning By-Law not limited in application to a particular underlying zoning district shall apply except to the extent expressly and conspicuously otherwise stated in the written portion of the preliminary development and use plan. A preliminary development and use plan may contain alternative provisions, provided that the plan expressly and conspicuously identifies any such provisions and states the conditions in which each alternative provision will apply.

12.5.3 Preliminary Development and Use Plan. A preliminary development and use plan shall be composed of a written portion and drawings, as follows:

12.7 SL - SOUTH LINCOLN OVERLAY DISTRICT

12.7.1 Purpose: The South Lincoln Overlay District shall overlay the contiguous B-1, B-2, R-2 zoning districts as well as Assessor's Map 95 Parcels 11 and 12 of the R-1 District in South Lincoln for the purpose of providing for Planned Development Districts (PDD) that will offer enhanced mixed use, commercial, office, and residential opportunities in South Lincoln. The Planned Development Districts are intended to:

- (a) permit greater flexibility in the development or redevelopment of tracts of land by requiring few predetermined standards,
- (b) permit a developer to propose and for the Town to vote on, a preliminary development and use plan unique to a particular location; town meeting shall vote to approve the plan as a whole with a majority vote. The preliminary plan may also be amended on the floor of Town Meeting to add restrictions, limitations or requirements,

- (c) permit the use of development standards more detailed than the general standards elsewhere in this bylaw,
- (d) provide information for the Town to evaluate the potential impacts of a proposed development, and
- (e) enable the Planning Board to require adherence to a preliminary development and use plan in the granting of a special permit.

12.7.2 South Lincoln Planned Development Districts: Unless and until Town Meeting votes to approve a portion of the SL-South Lincoln Overlay District as a South Lincoln Planned Development District, the permitted uses and dimensional controls shall be those of the underlying zoning district, without regard to its inclusion in the SL-South Lincoln Overlay District. Projects in the South Lincoln Overlay District shall follow the same procedures and requirements outlined in Sections 12.5.3 through 12.5.12 North Lincoln Planning District except that all references to NL - North Lincoln shall be considered as SL -South Lincoln. References to "change of zoning district" in Sections 12.5.3 through 12.5.12 shall be read to mean "designation of planned development district." Upon Town Meeting approval of a Planned Development District designation (based on a preliminary development and use plan prepared pursuant to Section 12.5.3) that portion of the land shown on the plan that is in the South Lincoln Overlay District shall also be deemed to be a South Lincoln Planned Development District and to have the benefit of this Section 12.7.2. South Lincoln Planned Development Districts shall be numbered sequentially. The permitted uses and dimensional controls in a South Lincoln Planned Development District shall be governed exclusively by the provisions of this section 12.7, and not by the provisions of the underlying district in which such land is located, unless and until the time for issuance of a special permit under this section expires without a special permit having been issued, or the time when such a special permit lapses by reason of the applicants failure to use it within the required period described in Section 21.5. After expiration of the time for issuance of a special permit under this section without a special permit having been issued, or after the lapse of such a special permit, the Planned Development District designation shall have expired and the permitted uses and dimensional controls in such district shall again be governed by the provisions of the underlying zoning districts. The general rules set forth in Sections 13.1 and 13.2, the definitions set forth in Section 23, and the provisions applicable to any other overlay district in which such land may be located shall apply within any South Lincoln Planned Development District, and the requirements of other provisions of the Zoning Bylaw not limited in application to a particular underlying zoning district shall apply except to the extent expressly and conspicuously otherwise stated in the written portion of the preliminary development and use plan. A preliminary development and use plan may contain alternative development provisions provided that the plan expressly and conspicuously identifies any such provisions and states the conditions in which each alternative provision will apply.

****Webmasters Note:** The previous section, 12.7, has been added as per an update approved at a town meeting held on 3/27/04.

Notes on density:

Town of Lincoln Zoning Bylaws, Section 8.2 Planned Community Development District, (2003): "8.2.1 Uses permitted in an R-4 district: "any use permitted in an R-1 single familyl residence district subject to the same use and development restrictions as are prescribed therein."

Town of Lincoln Zoning Bylaw, Section 6.6.2, R-1 Cluster Development (2003): In the R-1 cluster development, the area of the tract of land can be not less than 160,000 sq. ft.

"(b) the area of the tract of land is not less than one hundred sixty thousand (160,000) square feet;

(c) the number of lots on which there is to be a single dwelling unit plus the number of dwelling units proposed to be located on lots containing more than one dwelling unit does not exceed the number of lots upon which dwellings could be constructed on the total land area of the tract which is usable for residential construction without reference to this Section 6.6, under applicable laws, as determined by the Planning Board with reference to:

(i) (6.5) R-1 development - standard regulations;"

For a Planned Community Development District, within Residence 4 district, it is subject to the use permitted in a R-1 single family residence district subject to the same use and development restrictions in R-1 districts, including a minimum lot area of 80,000 sq. ft.

In the R-1 cluster development, the area of the tract of land must be at least 160,000 sq. ft.

Which entity is the special permit granting authority for cluster/flexible zoning?

Board of Appeals 6.6.1 For the purpose of promoting the more efficient use of land in harmony with its natural features, an owner or owners of a tract of land situated within the R-1 Single Residence District, or a duly authorized agent of such owner or owners, may make application to the Planning Board for a special permit exempting such land from the lot area and frontage, yard, widths of lot requirements of Section 6.5 and Section 13.2.6 and from the requirements of 6.1(a) that there shall be no more than one dwelling unit per lo

8.1.3 Uses Permitted in an R-3 District Subject to Permission of the Board of Appeals:

8.2.2 Uses Permitted in an R-4 District Subject to Permission of the Board of Appeals:

8.4 Application to the Board of Appeals for Special Permit for Development in an R-3 or R-4 District.

Has any housing been built under the cluster/flexible provisions?

Yes Email from Mark Whitehead, Lincoln Town Planner, on 6/3/05:

"This is a tough question to get numbers on because we actually do more cluster subdivisions than we do conventional subdivisions. In the 15 years that I have been here, we have had 3 clusters and 1 conventional subdivision (and the conventional involved a large amount of land placed into a conservation restriction). This is because our cluster provisions are very flexible and we have a very active non-profit group that acts as the developer on behalf of our Land Trust. When properties come up for sale, the Rural Land Foundation will often purchase the land, do a cluster to sell some lots to pay for the purchase and give the rest to the land trust.

We have not had any development under the South Lincoln PDD as yet. This was passed just last year. The North Lincoln PDD has been around since the late 1980's and has developed Battle Road Farms 125 units with 40 percent of them affordable. Minuteman Commons mentioned before is a North Lincoln PDD with 32 units with six of those affordable. We also have the R3 and R4 zoning districts that allow greater density and clustering. Lincoln Ridge and Farrar Pond Village were developed under these provisions in the late 1970's."

Littleton

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Open Space Development. The purpose of such development is: "The purpose of this article is to encourage the preservation of significant parcels of agricultural land and open space, while at the same time accommodating the need for housing in Littleton; to adapt to changes in the nature of housing and the way in which housing is used; while preserving the current overall density and rural character of the Town." Code of the Town of Littleton, Part II, Chapter 173, Article XIX, Section 173-93 to 173-118 (as amended 2003).

"§ 173-95. Applicability. [Added 5-4-1998 ATM, Art. 32 EN]

A.All residential projects involving the subdivision of ten (10) acres or more of land shall submit application for Open Space Development and conform to the requirements of this section.

B.The Planning Board shall make a determination for all projects involving the subdivision of ten (10) acres or more of land pursuant to § 173-96. The Planning Board will either approve the Open Space development concept or waive the application to allow conventional subdivision concept. "

" § 173-102. Allowed Uses.

A.Units shall be single-family detached.

B.Community recreation facilities serving the development.

C.Offices and maintenance facilities for the open space community association and its management organization.

D.Construction offices and sales offices, for the open space only, until the last approved unit is initially sold.

E.Normally acceptable accessory uses and facilities incidental to the principal uses. "

"§ 173-104. Density Calculation.

A.Except as modified by Subsection B and C below, the number of dwelling units that may be constructed on an Open Space Development site shall be determined by the following formula: Total area, minus total wetlands as determined by the Littleton Conservation Commission in accordance with M.G.L., Chapter 131, Section 40, less 15%, divided by the minimum residential lot size for the zoning district in which it lies, and rounded to the nearest whole number. For example:

Gross Site Area50.0 acres

Less Wetlands Area:-10.0 acres

40.0 acres

Less 15%_6.0 acres

Net Developable Area: 34 .0 acres
Convert to square feet:x43,560

1,481,040 sq. ft.
Divided by Minimum Lot Size:(,)40,000 sq. ft. _____
37.03 units "

ARTICLE XIX Open Space Development
[Added 5-7-1990 ATM, Art. 22]
Section 173-93. Purpose.

The purpose of this Article is to encourage the preservation of significant parcels of agricultural land and open space, while at the same time accommodating the need for housing in Littleton; to adapt to changes in the nature of housing and the way in which housing is used; while preserving the current overall density and rural character of the town.

Section 173-94. Special permit.

A. The Littleton Planning Board is hereby designated the Special Permit Granting Authority (SPGA) to grant Special Permits for development under the provisions of this Article.

B. The SPGA may grant a Special permit for development of a qualified parcel of land in a unified manner as an Open Space Development.

C. A Special Permit may be granted only if the SPGA determines that the open space is no less beneficial to the town than a conventional subdivision of the same property. The SPGA may grant a special permit for an Open Space Development only upon finding that such use is in harmony with the general purpose and intent of the Zoning Bylaw and that the proposal meets the specific provisions set forth under Section 173-100 of the Zoning Bylaw. In granting the special permit, the SPGA may also adopt conditions, safeguards and limitations concerning the use of the property associated therewith, including limitations on open space use.

Section 173-95. Applicability.

[Added 5-4-1998 ATM, Art. 32] 1

A. All residential projects involving the subdivision of ten (10) acres or more of land shall submit application for Open Space Development and conform to the requirements of this section.

B. The Planning Board shall make a determination for all projects involving the subdivision of ten (10) acres or more of land pursuant to Section 173-96. The Planning Board will either approve the Open Space development concept or waive the application to allow conventional subdivision concept.

Section 173-96. Procedure.

Applications for an Open Space Development Special Permit shall be submitted in accordance with the submission requirements specified below.

A. Preapplication Review:

Before submitting a formal application for a Special Permit under this Article, the applicant is encouraged to meet with the Planning Board, Board of Health, and Conservation Commission to present the general concept of the development, and hear the concerns of the town officials that should be considered in the design of the development

B. Subdivision Plan:

Granting of a Special Permit under the provisions of this Article provides only that the open space conforms to the zoning bylaw. Subdivision approval is also required in accordance with the Subdivision Control Law and the Planning Board Subdivision Regulations 2 for the laying out of ways, installation of municipal services, and the creation of lots within the Open Space Development. If the development is undivided, or divided in such a way as not to require subdivision approval under the Subdivision Control Law, the development shall be subject to all of the design requirements of the Planning Board Subdivision Regulations as if each structure were on a separate lot, and determination of compliance with these requirements shall be part of the site plan review.

C. Site Plan Review:

Site Plan Review by the Planning Board is an integral part of the Open Space Development approval process and shall be conducted prior to any construction or grading on the property.

D. Request for Determination:

A Request for Determination shall be submitted to the Littleton Conservation Commission prior to or concurrent with submittal of the Special Permit Application to the SPGA.

E. Plan Review Submission:

The Applicant shall provide the SPGA with ten (10) sets of a completed application, meeting the submission requirements of Section 173-98. The SPGA shall submit such application to the Board of Health, Conservation Commission, Board of Selectmen, Fire Department, Police Department, Tree Warden, and Highway Department for review and comment. Each board shall have thirty-five (35) days after receipt of the applications to complete such review and comment. [Amended 5-6-1991 ATM, Art. 25]

Section 173-97. (Reserved)

Section 173-98. Submission Requirements.

A. A development statement describing the development program, including number of units, type of units, floor area, number of bedrooms, ground coverage, and areas of residential development and common open space as percentages of the total open space area.

B. A preliminary environmental analysis as defined by the Planning Board Subdivision Rules and Regulations for a Preliminary Subdivision. 3

C. Development plans including the following:

(1) Overall site plan showing locus, topography in 10 foot or three meter contours from USGS maps, all structures to be built or retained, all roads, driveways, parking areas, paths and trails, stone walls, sidewalks, community facilities serving the development, and common open spaces, as well as any other information that would be useful to illustrate the proposal.

(2) Drawings illustrating the design of buildings and clusters of buildings, and special features of the development.

(3) Perspective drawings illustrating views from existing public roads abutting the site after the completion of development.

(4) Typical elevation of proposed structures at a scale of 1/8 inch equals one foot.

(5) Typical floor plans at a scale of 1/4 inch equals one foot.

(6) Detailed plans, at a scale of one inch equals 40 feet, of all vehicular entrances to the site, all parking areas and access lanes, and community center sites.

(7) Conceptual plans for treatment and disposal of sanitary sewage, including locations and sizes of leaching fields, and reports of subsurface investigations of groundwater and soil conditions in proposed leaching areas.

(8) General analysis of the effect of the development on surface water flow to offsite or nearby wetlands.

(9) Plans for water supply and distribution sufficient to show the source of water, location and size of storage and distributions facilities, and provisions for fire protection.

D. Planned use of and access to open space.

E. Marketing Program including anticipated price schedule of units, target market sectors, and anticipating timing of development and sales. Market studies prepared by outside consultants are strongly recommended, but not required.

F. Construction schedule, including staging program if applicable, with estimated start and finish dates of each stage, anticipated completion date of community facilities serving the development, and planned completion date of entire development.

G. Management program outlining the community organization, if any, and the transition procedure from developer management to community association management.

H. Development team qualifications, including names, addresses and resumes of the development company, development managers, architects, engineers, landscape architects, land planners, other consultants and participants, and all general partners. Resumes must include lists of all developments in progress or completed within five years by each participant.

I. Financial program, including names and addresses of participating financial institutions, a description of the type of sources of equity funding, and bank references for the developers and general partners.

J. A list of all property owners within the Open Space Development tract, and proof of site control by the developer. Proof of site control may include deeds, option agreements, purchase and sale agreements, development partnership agreements, or other documents that establish the right of the developer to plan and develop the property if granted an Open Space Development Special

Permit.

Section 173-99. (Reserved)

Section 173-100. Decision Criteria.

A. In an Open Space Development, dwellings and accessory buildings should be arranged in groups that do not detract from the ecological and visual qualities of the environment, and are harmonious with the existing neighborhood. The review shall consider whether the size of the planned open space is such that preservation of desirable open space of the vicinity is maximized.

B. Prior to the granting of a Special Permit under this Article, the developer shall execute and deliver to the SPGA a binding agreement, which may state that it is contingent on the granting of the permit, to convey and restrict the open space in accordance with the terms of the Special Permit.

C. The Planning Board may approve or approve with conditions, a Special Permit for Open Space Development, provided that the Board determines that the plan complies with all relevant requirements of the Zoning Bylaw, and is on balance no less beneficial to the Town than the development likely without such approval, taking into consideration the following, among other concerns.

- (1) Preservation of natural resources, especially in relatively large-scale contiguous areas.
- (2) Protection of visual character by having open spaces which are visible from major roads.
- (3) Reduction in length of publicly maintained roads and utilities per dwelling unit served.
- (4) Location of development on sites best suited for such and avoiding environmentally fragile locations.
- (5) Protection of major street appearance and capacity by avoiding development close to or egressing directly onto such streets.
- (6) Contribution to meeting housing need.
- (7) Protection of water resources through careful location of potential sources of contamination.

Section 173-101. Activities Not Allowed.

A. Following the submittal of an application for a Special Permit under this Article, the developer shall not perform or permit to be performed any cutting of trees on the site or any excavation other than test pits prior to the SPGA's final action. Any test pits so dug or existing prior to the application, which are located in the proposed open space, shall be filled to the preexisting grade prior to the granting of the Special Permit. Failure to fulfill this requirement shall be deemed grounds for denial of the Special Permit.

B. Within Aquifer or Water Resource Districts, wastewater disposal facilities shall not serve more than one dwelling unit per 40,000 square feet land area of the portion of the development within such districts.

Section 173-102. Allowed Uses.

- A. Units shall be single-family detached.
- B. Community recreation facilities serving the development.
- C. Offices and maintenance facilities for the open space community association and its management organization.
- D. Construction offices and sales offices, for the open space only, until the last approved unit is initially sold.
- E. Normally acceptable accessory uses and facilities incidental to the principal uses.

Section 173-103. (Reserved)

Section 173-104. Density Calculation.

A. Except as modified by Subsection B and C below, the number of dwelling units that may be constructed on an Open Space Development site shall be determined by the following formula: Total area, minus total wetlands as determined by the Littleton Conservation Commission in accordance with M.G.L., Chapter 131, Section 40, less 15%, divided by the minimum residential lot size for the zoning district in which it lies, and rounded to the nearest whole number. For example:

Gross Site Area 50.0 acres

Less Wetlands Area: - 10.0 acres

40.0 acres

Less 15% - 6.0 acres

Net Developable Area: 34.0 acres

Convert to square feet: x 43,560

1,481,040 sq. ft.

Divided by Minimum Lot Size: divided by 40,000 sq. ft.

37.03 units

Rounded: 37 units

B. If the SPGA determines that any part of the site, other than wetlands, is evidently unbuildable, (such as excessive grades, etc.) the SPGA may require that 80% of that area be deducted from the gross site area in the above calculation.

C. If the developer believes that a conventional subdivision on the site would allow more units than determined by the above procedures, he may at his option and expense, submit to the SPGA such evidence as he feels necessary to support his claim. If the SPGA finds this evidence credible, it shall increase the allowed number of units accordingly. Failure of the developer to exercise this option shall be conclusive evidence that he agrees that the number of units determined by Subsections A and B above, equals the number of dwellings which could be constructed in a conventional subdivision on the same site.

D. Subject only to the rights of appeal conferred by the Massachusetts General Laws, the number of units determined by the above procedures shall be presumed to equal the number of dwellings which could be constructed in a conventional subdivision on the same site.

Section 173-105. (Reserved)

Section 173-106. Minimum Site Size.

[Amended 5-4-1998 ATM, Art. 32]

The site must be a minimum of ten (10) acres.

Section 173-107. (Reserved)

Section 173-108. Dimensional Requirements.

A. Height The maximum allowed height of any building or structure within an Open Space Development shall be 32 feet, as defined in the zoning bylaw definitions, but the height at any point shall not be more than one-half of the horizontal distance from any boundary of the open space or of any preexisting public way.

B. Yards. No minimum lot area, frontage, or yard requirements apply within an Open Space Development, except that no building shall be erected within 40 feet from any boundary lines of the open space or of any preexisting public way.

C. Coverage. Total impervious area, including buildings, parking and other paved areas, shall not exceed 30 percent of the area of the Open Space Development tract. More severe standards may apply in Aquifer or Water Resource Districts as defined in other articles of this chapter.

Section 173-109. (Reserved)

Section 173-110. Ownership.

An Open Space Development tract may include contiguous parcels of land separately owned by different persons or entities who have agreed that the entire tract shall be subject to all of the provisions and stipulations of the Special Permit as if it were a single development.

Section 173-111. (Reserved)

Section 173-112. Open Space.

A. Reserved open space shall be defined by deed, and placed under permanent conservation restriction. Open space shall either be conveyed to the Town and accepted by it for park or open space use; conveyed to a nonprofit organization the principal purpose of which is the conservation of open space, or conveyed to a corporation or land trust owned by the owners of the lots or residential units within the development, which corporation or land trust shall have lien authority to collect dues from its owners.

B. Provisions shall be made in the open space trust arrangements to allow and encourage the use of open space for active agriculture, forestry, or passive recreation.

Section 173-113. Roads.

A. All roads, except driveways, within an Open Space Development shall be designed and constructed to Planning Board standards for subdivision streets.

B. Buildings in the Open Space Development may be grouped around a common driveway and parking area, provided the SPGA determines that the design of the driveway and parking area provides safe and adequate access to the dwellings.

Section 173-114. Utilities.

All utility services shall be installed below ground throughout the development, and within the street rights-of-way where feasible.

Section 173-115. (Reserved)

Section 173-116. Limitations on Further Division.

Land shown on a plan for which a permit is granted under this Article may not be further divided and a notation to this effect shall be shown on the plan and shall be a condition of any approvals granted.

Section 173-117. Revision of Special Permit.

A. Subsequent to issuance of a Special Permit and approval of a Definitive Subdivision Plan, minor revisions may be made from time to time in accordance with applicable law, bylaws, and regulations, but the open space approved under such Special Permit shall otherwise be in accordance with the approved Special Permit.

B. The developer shall notify the SPGA in advance of any such revision, which shall not be effective until approved by vote of the SPGA. If the SPGA determines such revisions not to be minor, it shall order that an application for a revised Special Permit be filed, and a public hearing be held as required for an original application.

Section 173-118. Other Standards Applicable.

A. This Article does not waive any development regulations or procedures that would be applied to a conventional subdivision, except those that are specifically defined in this Article. All overlay zoning districts, such as Aquifer Protection, Floodplain, and Wetlands, shall apply to parcels developed under this Article.

B. The Planning Board may waive any of its subdivision regulations that may be waived under the Subdivision Control Law. Variances from this Article may be granted only by the Board of Appeals under the provisions of M.G.L., Chapter 40A.

Section 173-119 through 1473-124 (Reserved).

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board Section 173-94. Special permit.

A. The Littleton Planning Board is hereby designated the Special Permit Granting Authority (SPGA) to grant Special Permits for development under the provisions of this Article.

Has any housing been built under the cluster/flexible provisions?

Yes Email from Maren Toohil, Planning Board Coordinator, (6/2/05):

"Yes, there are several Open Space subdivisions."

Lowell

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes According to the Lowell Zoning Ordinance, Article VIII, Section 8.2 (adopted 2003), there is flexible development by special permit in Lowell.

"SECTION 8.2 PLANNED RESIDENTIAL DEVELOPMENT (PRD)

8.2.1 Purpose. In a Planned Residential Development (PRD) the dimensional requirements of individual lots are relaxed in exchange for a set-aside of passive open space and active recreational areas for common or public use within the overall development parcel. The PRD also clusters building sites thereby minimizing the amounts of roadway, utilities, and other infrastructure that must be developed and ultimately maintained by the City of Lowell for a given number of building sites. The overall density of the development remains consistent with or below the density of existing City zones. This approach requires a special permit to be granted by the approval of a comprehensive development plan by the Planning Board in conjunction with subdivision approval. The PRD requirements set forth in this Section govern the project with the approval of the comprehensive plan. Permits for projects that do not conform to the existing zoning cannot be issued without this approval. PRD is a land use permitted only by special permit in the zones designated in the Table of Uses, Section 4.2. Therefore, approval of a planned development comprehensive plan and authorization to utilize the dimensional and other requirements permitted for Planned Residential Developments does not constitute a zoning amendment as defined in Chapter 40A of the Massachusetts General Laws.

8.2.2 Eligibility Requirements. To be eligible for a special permit for a PRD, the following specifications must be met:

1. The development site must contain not less than five (5) contiguous acres of land. The applicant must provide proof of ownership or an option to purchase all of these lands at the time of application. The applicant must have ownership of all of these lands in order to execute any special permit rights should they be granted.
2. The development site must not be defined in such a manner as to completely encircle any parcel not owned by the applicant or leave any such parcel without access.
3. The applicant must have a comprehensive development plan for the entire development site, to include all facilities to comply with applicable sanitary, building, and public safety codes and ordinances of the City of Lowell and Commonwealth of Massachusetts, and must be designed, constructed, and maintained in accordance with the statutes, regulations, and ordinances of the City of Lowell and the Commonwealth of Massachusetts.
4. Such a comprehensive development plan must be submitted to the Planning Board for its approval and must be in accordance with the stated or implied development objectives as identified in approved planning reports and studies of the City of Lowell and Regional Planning Agency. Said submission must be made along with formal submission of all documents required for subdivision approval under the provisions of the Subdivision Control Law, G.L. c. 41, ss. 81K-81GG and the City of Lowell's Subdivision of Land Regulations. Such approval is required prior to the issuance of a building permit for any lot to be governed by the requirements established for a planned residential development.
5. The Planning Board must be satisfied that adequate financing exists for applicant to complete the proposed development. The Planning Board shall require that a performance bond be established in the manner outlined in the City of Lowell's Subdivision of Land Regulations to insure that the proposed work is completed.

Section 8.2.5 Permitted Land Use Activities in a PRD. The following land use activities may be proposed in a planned residential development comprehensive plan submitted to the Planning Board for special permit review. The Planning Board will not grant a special permit if other land-use activities are proposed within the plan.

1. Single-family residential;
2. Two family residential, provided such lot is not with an underlying S1 or S2 District;
3. Places of worship;
4. Public or private elementary or secondary schools;
5. Municipal park or recreational facility;
6. Licensed child care facility or kindergarten;
7. Library or museum;
8. Nonprofit recreational facility;
9. Nonprofit community center;
10. Public utility or service equipment facilities;
11. Telecommunications facilities, in conformance with all of the requirements of Section 7.6.

8.2.6 Dimensional Requirements. The following dimensional requirements govern the layout of individual lots within a PRD for which comprehensive plan approval has been obtained from the Planning Board. The applicable dimensional requirements shall be those set forth in Table 8.2.1 or, for lots in an S1 or S2 District, 70% of the requirement for the underlying district, whichever is larger.

Planned Residential

Development

Min. Lot Area (SF) 4250 (single family) 5500

(two family & all other
uses)

Max. F.A.R. 1.0

Max. Density of Planned
Development (Units/Acre)

15

Min. Frontage (ft) 45

Min. Front Setback (ft) 15

Min. Side Setback (ft) 5 (sum of 20)

Min. Rear Setback (ft) 20

Max. Height 35
 Max. No. of Stories 2.5
 Min. Parking Space (ft) 8.5 x18
 Min. Parking setback from
 prop. Line (ft)
 3
 Min parking setback from
 building* (ft)
 3
 Off-street parking spaces
 per dwelling unit
 2

8.2.7 Open Space Requirements. In any PRD, 25% of the land area of the overall development site must be set aside for active recreation and/or passive open space to be allocated as outlined in this section.

1. To satisfy this requirement, the required open space must include at least one recreational parcel equal to the lesser of one-fifth of the total required open space or one acre of contiguous land area available for active recreational use. This recreational open space area may take the form of a playing field or large open area, a linear exercise path or trail, or some combination of the two so long as the land is contiguous. Areas within utility easements may not be used to satisfy this requirement.
2. The required open space area must also include at least one conservation parcel equal to the lesser of two-fifths of the total required open space or two acres of contiguous land area for permanent conservation. This land shall not be significantly disturbed during construction. Designated wetlands areas may be used to satisfy no more than ten percent (10%) of this requirement. Areas within utility easements may not be used to satisfy this requirement. Flood plain areas that are outside designated wetlands areas may be used to satisfy this requirement.
3. If specifically approved by the City Council, planting areas in excess of ten feet wide (including sidewalks) along streets and boulevards or landscaped islands within rights-of-way may be used to satisfy no more than one-fifth of the total open space requirement for a planned development.
4. The remaining required open space may be any combination of recreational or conservation land, as described in subparagraphs 1 and 2 of this section, but shall be in contiguous parcels equal to the lesser of five percent (5%) of the total development area or one-half acre.

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5. All open space parcels must be preserved as open space through one of the following mechanisms, subject to the approval of the Lowell City Council:

- A. Acceptance by the City of Lowell or the Commonwealth of Massachusetts as protected open space for conservation, recreation, or park purposes, after obtaining all approvals that may be required. Common ownership by a homeowners association with restrictions in the master deed requiring that these lands remain as protected open space in perpetuity.
- B. Transfer of ownership or all development rights to a local or regional nonprofit entity dedicated to and having a proven track record with the ownership and maintenance of park and conservation lands. This transfer must include deed restrictions protecting the open space in perpetuity.
- C. In the case of open space located within a public right-of-way only, acceptance by the City of Lowell as part of a right-of-way for a public way.

6. The dedicated open space parcel(s) within the planned development may be expanded but cannot be reduced.

8.2.8 Signage and Parking Requirements.

1. Signage shall be regulated in the same manner as the SSF, TSF, USF, and TTF Residence Districts.
2. Off-street parking facilities shall be provided for all uses in the same quantities and manner as required in SSF, TSF, USF, and TTF Residence Districts.

8.2.9 Screening Requirements. Any trash storage area or dumpster used by more than two dwelling units must be adequately screened from abutting properties, open space areas, and public ways.

1. Off-street open-air parking for more than three vehicles must be screened from abutting properties as outlined in Section 6.1 of this ordinance.

8.2.10 Conservation Commission. No review and approval authority granted to the Lowell Conservation Commission by the City of Lowell or the Commonwealth of Massachusetts shall be limited or constrained by the approval of a planned development comprehensive plan.

8.2.11 Decision. A special permit shall not be granted if the PRD does not meet the open space requirements and eligibility requirements specified in this ordinance. A special permit shall not be granted for a PRD if more than 10% of the lots do not meet the dimensional requirements specified in Section 8.2.6 of this Section.

8.2.12 Variances. Post development, following acceptance by the City of Lowell of all public ways and public infrastructure in the development, individual property owners may request variances from dimensional requirements in the same manner as any other property owner in the City of Lowell.

8.2.13 Lapse. A special permit granted by the City Council for a PRD shall lapse within two (2) years of approval if substantial construction thereof has not commenced, except for good cause, by such date.

8.2.14 Additional Restrictions. The City Council may, in appropriate cases as it determines, impose further conditions, safeguards, or restrictions upon the development or parts thereof as condition to granting the special permit and approval of a comprehensive plan for a planned residential development.

8.2.15 Applicability of Other Sections of this Ordinance. The approval of a PRD does not waive or compromise the applicability of any other Section of this ordinance unless specifically noted above. In the event of a conflict or

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inconsistency between the provisions of the PRD sections set forth above and other sections of this ordinance, the PRD provisions shall govern.
"

PLANNED RESIDENTIAL DEVELOPMENT : A land use category allowed by special permit that may include the subdivision of land for multiple residential buildings and other compatible land use activities as outlined in Section 8.2 herein.

PLANNED UNIT DEVELOPMENT : A mixed use development on a plot of land containing a minimum of the lesser of sixty thousand (60,000) square feet or (5) five times the minimum lot size of the zoning district or as otherwise indicated in this Code, in which a mixture of residential, open space, commercial, industrial or other uses and a variety of building types to be allowed by special permit as provided for herein.

Survey received from Lowell 3/21/05:

What year was the first provision for flexible zoning adopted?

"PRD = 2001 PUD = 1976"

What was the last year that the municipality amended the cluster/flexible provisions?

"2004"

Which entity is the special permit granting authority for cluster/flexible zoning?

"City Council"

What types of structures are allowed under cluster/flexible zoning?

"SF + TF under PRD, Various under PUD INCL. MF + Mixed use"

Has any housing been built under the cluster/flexible provisions? (non, 1-8 projects, more than 8)

"1-8 projects"

Which entity is the special permit granting authority for cluster/flexible zoning?

More than one entity Section 8.2.5 Permitted Land Use Activities in a PRD. The following land use activities may be proposed in a planned residential development comprehensive plan submitted to the Planning Board for special permit review.

Survey received from Lowell 3/21/05:

Which entity is the special permit granting authority for cluster/flexible zoning?

"City Council"

Has any housing been built under the cluster/flexible provisions?

Yes Survey received from Lowell 3/21/05:

Has any housing been built under the cluster/flexible provisions? (non, 1-8 projects, more than 8)

"1-8 projects"

Lunenburg

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Town of Lunenburg Protective Zoning Bylaw (Amended 2004)

2.1.1.31. PLANNED RESIDENTIAL AREA : A unified one lot development, including one or more residential building types, undertaken in accordance with an overall plan, incorporating a consistent architectural concept and incorporating the preservation of natural areas within the development.

5.4. Purpose: Mixed Residential Development

The purpose of Section 5.4. is to provide an opportunity for varied housing stock as opposed to conventional single family subdivision or development and to encourage development alternatives.

****Webmasters Note:** The previous section has been added as per an update approved at a town meeting held on 5/1/04.

5.4.1. Intensity and Dwelling Unit Mix

5.4.1.1. Intensity and Dwelling Unit Mix

- a) The minimum area of any Mixed Residential Development shall be not less than five (5) acres and not more than ten (10) percent of this minimum area shall consist of wetlands or land under water or land with a slope in excess of fifteen (15) percent.
- b) Where a Mixed Residential Development abuts a residential use other than another Mixed Residential Development or Planned Residential Area, there shall be a buffer of a continuous width of at least fifty (50) feet. Said buffer shall be maintained in its natural state or planted or landscaped with vegetation indigenous to the area.
- c) If there is more than one (1) housing type in the Mixed Residential Development, e.g., one (1) family, two (2) family or more, no one (1) type shall constitute more than sixty (60) percent nor less than twenty (20) percent of the total number of dwelling units.
- d) There shall be no more than one (1) structure constructed or used as a dwelling on a lot in a Mixed Residential Development
- e) The maximum number of dwelling units in a Mixed Residential Development may not exceed two (2) percent of the total number of dwelling units in Town as shown on the record of the Board of Assessors for the year in which the application for the Special Permit is filed.
- f) In any one (1) year no more units may be constructed than are equal to one (1) percent of the total. number of dwelling units in Town as shown on the record of the Board of Assessors for the year in which the application for Special Permit is filed.
- g) Notwithstanding the foregoing subparagraphs a) through f), the number of building lots and/or the number of dwelling units to be constructed, may not exceed the number of building lots and/or the number of dwelling units of said tract of land which could be constructed under this Bylaw by means of a conventional development or subdivision plan, considering the whole tract, exclusive of water bodies and wetlands and land prohibited from development by legally enforceable restrictions, easements or covenants.

5.4.1.2. Dimensional Regulations a) In a Mixed Residential Development, lots shall be developed in accordance with the following table, provided that all units within the development are connected to public water or are served by a common or individual well approved by the Lunenburg Board of Health and are connected to a sewer or an on-site sewage treatment facility approved by the Lunenburg Board of Health.

[partial table is replicated in question 10 about MF by SP].

b) Irrespective of the table in section 5.4.1.2

- a). lots in a Mixed Residential Development which abut a street in existence at the time the applications for the Mixed Residential Development is filed, shall conform to the lot size currently required in the district in which it is located and shall only be used for a one (1) family dwelling structure.
- c) Except as indicated in Section 5.4.1.2.b), each unit in a Mixed Residential Development shall have the minimum frontage required on the table in Section 5.4.1.2.a). Frontage shall be on an accepted Town road or way approved by the Planning Board under the Subdivision Control Law.
- d) No building in a Mixed Residential Development shall exceed twenty-eight (28) feet in height... e) Each dwelling shall have at least two (2) sides with full exposures and shall have two (2) separate exits.

5.4.1.3. Design

- a) All buildings shall be of an architectural style which is compatible with the prevailing style in the Mixed Residential Development.
- b) Buildings, open spaces, driveways, parking areas and other development features shall be located and designed in a manner which conforms to the existing natural terrain of the site.
- c) All existing or proposed utilities...

d) Lighting facilities... 5.4.1.4. Affordability Guarantee

a) All units to be sold as affordable shall contain deed restrictions guaranteeing that the unit shall remain affordable for a period of not less than twenty (20) years from first occupancy or such period as defined by the Commonwealth of Massachusetts for affordable housing. Said deed restrictions shall guarantee that during the period in which the unit must remain affordable, it may be sold only at a price that allows the seller to realize a return on improvements and a reasonable rate of appreciation according to the Consumer Price Index between the time of purchase and the sale. The deed restrictions shall also guarantee that any purchaser of the unit within the twenty (20) year period shall meet the then qualifying income and any other eligibility guidelines for purchase of affordable housing as set forth by the Lunenburg Housing Partnership or such board or authority as is designated by the Board of Selectmen.

b) Eligibility for purchase or lease of affordable units shall be determined by the Town of Lunenburg acting through the Lunenburg Housing Partnership, if any, or such board or authority as is designated by the Board of Selectmen and according to the definitions established by the Commonwealth of Massachusetts.

c) Eligibility for purchase or lease of affordable units after the initial sale or lease shall be determined by the Town of Lunenburg acting through the Lunenburg Housing Partnership, if any, or such board or authority as is designated by the Board of Selectmen. Said Housing Partnership board or authority shall review eligibility and provide written response within thirty (30) days of receipt of the request for determination of eligibility.

5.4.1.5. Common Area and Facilities

a) All common areas and facilities shall be owned and maintained by a non-profit organization the principal purpose of which is the preservation and maintenance of common areas and facilities or a corporation or trust owned or to be owned in common by the owners of the dwelling units within the Mixed Residential Development in which the ownership of the common areas and facilities runs with the title to the dwelling units and is not separably alienable.

5.4.1.6. Off-Street Parking...

5.4.1.7. Open Space and Landscaping

a) All areas not covered by pavement, curbing, buildings and/or structures including such facilities as playing areas for court games, swimming pools and plazas, shall be landscaped with grass, shrubbery, trees, flowers or ground covers indigenous to the area. Along the length of each exterior wall of each principal building, there shall be a landscaped area with bushes, shrubs or flowers indigenous to the area.

b) An area equivalent to one-half (1/2) of the minimum area required by Section 5.4.1.1.b) shall be left substantially in its natural state.

5.5 Purpose: Planned Residential Area

The purpose of Section 5.5 is to provide opportunities for other than single-family development by establishing regulations that includes intensity, dimensions, design, ownership, maintenance and etc.

****Webmasters Note:** The previous section has been added as per an update approved at a town meeting held on 5/1/04.

5.5.1. In Residence A, Residence 8 or Outlying Districts, the following regulations shall apply to any grant of a Special Permit for a Planned Residential Area, a single lot, unified development, as may be authorized by the Planning Board pursuant to Section 8.0. Pursuant to approval of the Definitive Plan in accordance with the Rules and Regulations Governing the Subdivision of Land adopted by the Lunenburg Planning Board, said application shall be reviewed in accordance with the standard set forth in Section 9, General Laws, Chapter 40A, these Protective Bylaws and Rules and Regulations promulgated by the Lunenburg Planning Board for granting of a Definitive Plan.

5.5.1.1. Intensity

a) The minimum area of any Planned Residential Area shall be not less than five (5) acres and that not more than ten (10) percent of this minimum area shall consist of wetlands or land under water or land with a slope in excess of fifteen (15) percent.

b) In addition to the minimum five (5) acres required in paragraph a) above, there shall be provided for each dwelling unit within the Planned Residential Area an area equivalent to the lot area required within the District for a detached one-family dwelling.

c) If twenty (20) percent or more of the dwelling units qualify as low or moderate income housing, as defined by the Commonwealth of Massachusetts executive Office of Communities and Development for Lunenburg for the year in which they are to be first occupied and further provided that measures satisfactory to appropriate Town Boards, Selectmen are executed to assure that these units remain available as low or moderate income units and conform to the requirements of the Local Initiative Program then:

1. The minimum five (5) acres of area required by paragraphs a) and b) above shall not be required.

2. The lot area required in 5.5.1.1.b.) equivalent to a single family detached building may be reduced by thirty (30) percent and the frontage requirement in 5.5.1.2. may be reduced at the discretion of the Planning Board, provided that the Planned Residential Area has at least one hundred (100) feet of frontage on an accepted public way for the first ten (10) units and an additional two hundred (200) feet of frontage on an accepted public way for any additional units to assure two (2) means of entrance which are properly spaced or one hundred (100) feet if the second entrance is on a second public way.

d) The maximum number of dwelling units in a Planned Residential Area shall not exceed two (2) percent of the total number of dwelling units in Town, as shown on the record of the Board of Assessors for the year in which the application is filed.

e) In any one (1) year no more units will be constructed than are equal to one (1) percent of the total number of dwelling units in Town, as shown on the record of the Board of Assessors for the year in which the application is filed.

Notwithstanding the foregoing subparagraphs a) through d), the number of building lots and/or the number of dwelling units to be constructed within the Planned Residential Area, may not exceed the number of building lots and/or the number of dwelling units of said tract of land which could be constructed under this Bylaw by means of a conventional development or subdivision plan, considering the whole tract, exclusive of waterbodies and wetlands and land prohibited from development by legally enforceable restrictions, easements or covenants.

5.5.1.2. Dimensional Regulations

a) A Planned Residential Area shall have a minimum frontage on a public way and/or a way approved by the Planning Board under the Subdivision Control Law, equivalent to fifty (50) feet for each dwelling unit contained within the planned development. The requirements of this section may be modified if review and a determination by the Planning Board is made that adequate access is provided and changes will not derogate from the intent of Section 5.5., Planned Residential Area.

b) No building within a Planned Residential Area shall contain more than four (4) dwelling units.

c) No building in a Planned Residential Area shall exceed twenty-eight (28) feet in height, said height to be determined by the vertical distance between the average finished grade of the ground adjoining the building to the highest point of the Feet beams

d) No building or structure shall be located closer than one hundred (100) feet from the center line of any public way or other way utilized to meet the frontage requirements of this Section or within seventy-five (75) feet from the center line of any interior street, way, or driveway.

e) No building or structure shall be located within areas which are required to be maintained in a natural state.

f) No building or structure shall be located within fifty (50) feet of a property or lot line.

g) If there is more than one building containing dwelling units on a single lot, there shall be a minimum of fifty (50) feet between such buildings.

h) Each dwelling unit shall have at least two (2) sides with full exposures and shall have two (2) separate exits.

i) No floor, except an unfinished basement, of a dwelling unit shall be located beneath the average finished grade of the ground adjoining the building.

5.5.1.3. Design

a) Buildings shall be of an architectural style which is compatible with the prevailing style in the area in which the Planned

Residential Area is located and shall be compatible with other buildings in the Planned Residential Area.

b) Buildings, open spaces, driveways, parking areas and other development features shall be located and designed in a manner which conforms to the existing natural terrain of the site.

c) Building placement which makes maximum use of solar energy shall be encouraged.

d) All existing or proposed utilities...

e) Lighting facilities...

f) Provisions shall be made for the storage, collection and removal of garbage. All necessary facilities shall be appropriately screened.

g) There shall be one (1) entrance road and one (a) exit road to each Planned Residential Area, unless a divided entrance-exit road is approved by the Planning Board.

h) All interior roads and drives shall be constructed to the standards of the Planning Board as contained in the Rules and Regulations Governing the Subdivision of Land.

5.5.1.4. Off-Street Parking ...

5.5.1.6. Open Space and Landscaping a) All areas not covered by pavement, curbing, buildings and/or structures including such facilities as playing areas for court games, swimming pools and plazas, shall be landscaped with grass, shrubbery, trees, flowers or ground covers indigenous to the area. Along the length of each exterior wall of each principal building there shall be a landscaped area with bushes, shrubs or flowers indigenous to the area, b) An area equivalent to one-half (1/2) of the minimum area required by Section 5.5.1.1.b) shall be left substantially in its natural state.

5.5.1.6. Ownership and Maintenance a) The area left substantially in its natural state shall be placed in an ownership which shall provide for its permanent retention and maintenance. The manner of ownership, use and maintenance of such permanent natural area, and shall be determined by the agreement, duty executed in a form suitable for recording by the owner or, owners of such natural area, and shall provide that, in the event the Planning Board shall grant a Special Permit under this Section, such permanent area shall be owned or to be owned in common by the owners of the dwelling units within the development in which the ownership of the natural areas runs with the title to the dwelling units and is not separably alienable. b) Such natural area shall be kept in an open and natural state and shall not be built upon for residential use, for walkways, driveways and/or parking. c) Such natural areas shall be subject to permanent restrictions as agreed under Section 5.5.1.6.a). d) An organization, corporation or trust owned or to be owned in common by the owners of the dwelling units within the development in a form approved by the Planning Board shall be responsible for the maintenance of all common areas, not otherwise provided in accordance with Section 5.5.1.6.a), including, but not limited to lighting, plowing, roadways, sidewalks, recreation facilities and accessory structures.

5.6. Cluster Development

5.6.1. Purpose

5.6.1.1. The purpose of Cluster Development is to encourage the preservation of useable open space, agricultural lands, and forested lands in the Town of Lunenburg and assist in preserving the Rural Residential Character of the Town.

5.6.2. Applicability

5.6.2.1. In a Residence A, Residence B, or Outlying District, where Subdivisions, Planned Residential and Mixed Residential lots or exclusive use areas proposed to be developed with single family dwellings consist of twenty-five (25) acres or more, the following conditions must be met, pursuant to approval of a Definitive Plan in accordance with the Rules and Regulations Governing the Subdivision of Land adopted by the Lunenburg Planning Board.

5.6.3. Intensity

a) Dwelling units shall be developed on a maximum of fifty percent (50%) of the land within the development, with the remaining fifty percent (50%) of the land being designated as permanent open space. Not more than ten percent (10%) of the open space shall consist of wetlands or land underwater or land with a slope in excess of fifteen percent (15%)

b) In lieu of Cluster Development as shown above (5.6.3.a), a site can be developed in lots with a minimum of five (5) acres each, each lot may have no more than one (1) dwelling.

5.6.4. Dimensional Requirements

a) The minimum dimensional area for each dwelling shall be as follows:

1. Residence A and Outlying Districts: 30,000 square feet
2. Residence B: 60,000 square feet

b) All other Dimensional Regulations for the District in which the land is located shall apply.

5.6.5. Design

a) The selection of land to be designated as permanent open space shall be made by the Applicant and shall be subject to the approval of the Planning Board based on the following criteria:

1. The preservation of existing farms and/or the appropriateness of the land for agricultural uses.
2. The preservation of environmentally sensitive lands.
3. The appropriateness of the land for recreational uses.
4. The location of the land relative to other adjacent or nearby open space lands.
5. The location of the land relative to other development sites.
6. The area of roadway providing frontage to dwelling units shall not be calculated as permanent open space.

b) Land designated as open space shall be limited to the following uses:

1. Agriculture, farming, and/or the keeping of horses and grazing of animals as permitted by this Bylaw.
2. Passive or active recreation.

c) Open space may be conveyed to a non-profit organization, the principal purpose of which is the conservation of open space, or to be conveyed to a corporation or trust owned or to be owned by the owners of lots or residential units within the plot, or if proposed and accepted for public ownership, shall be dedicated to the Town of Lunenburg, as provided by MGL Chapter 40A, Section 9, provided that prior to acceptance, said land shall be tested by the Applicant for contaminants, who shall take proper remediation action, if necessary.

d) All interior roads and drives, and utilities and other improvements shall be constructed to the standards of the Planning Board as contained in the Rules and Regulations Governing the Subdivision of Land.

In the mixed residential development, Res A and outlying districts - number of units in structure/min lot size

1/24,000
2/32,000
3/40,000
4/41,000

Res B

1/56,000
2/72,000
3/80,000
4/94,000

Survey received from Marion Benson, Chair of the Lunenburg Planning Board, in 5/20/05:

What year was the first provision for flexible zoning adopted?

"1997"

What was the last year that the municipality amended the cluster/flexible provisions?

"1999"

Can more units be built under cluster/flexible zoning that would be allowed through conventional zoning?

"No"

Has any housing been built under the cluster/flexible provisions? (none, 1-8 projects, more than 8)

"1-8 projects"

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board Town of Lunenburg Protective Zoning Bylaw (Amended 2004)

5.6.2.1. In a Residence A, Residence B, or Outlying District, where Subdivisions, Planned Residential and Mixed Residential lots or exclusive use areas proposed to be developed with single family dwellings consist of twenty-five (25) acres or more, the following conditions must be met, pursuant to approval of a Definitive Plan in accordance with the Rules and Regulations Governing the Subdivision of Land adopted by the Lunenburg Planning Board.

Has any housing been built under the cluster/flexible provisions?

Yes Survey received from Marion Benson, Chair of the Lunenburg Planning Board, in 5/20/05:

Has any housing been built under the cluster/flexible provisions? (none, 1-8 projects, more than 8)

"1-8 projects"

Lynn

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes

City of Lynn Zoning Ordinance, SECTION 15. PLANNED UNIT DEVELOPMENT DISTRICT

SECTION 15. PLANNED UNIT DEVELOPMENT DISTRICT

15.1 DESCRIPTION OF DEFINITION OF ZONE

15.1.1. The City Council may grant a special permit for the construction and occupancy of a Planned Unit Development in a district zoned for such hereinafter defined and limited. The power granted herein is granted pursuant to the provisions of Chapter 40A, Section 9, of the General Laws of the Commonwealth of Massachusetts.

15.1.2. A Planned Unit Development District shall mean an area of land controlled by a single land owner to be developed as a single entity in which a mixture of residential, open spaces, commercial, and industrial uses, and a variety of building types and designs are determined to be sufficiently advantageous to render it appropriate to grant a special permit to depart from the normal requirements of the district to the extent authorized by the Lynn Zone Ordinance.

15.1.3. The tract of land controlled by a single owner at the time of application shall not be less than sixty thousand (60,000) square feet.

15.1.4. The purpose of the Planned Unit Development District is to provide for a mixture of land usage at a specified location in the City of Lynn at greater density and intensity than would be normally allowed provide that land usage does not detract from the livability and aesthetic qualities of the environment.

15.1.5. The City Council may, upon being petitioned, designate areas for Planned Unit Development Districts; provided, however, that no Planned Unit Development District shall be approved in areas of the City currently zoned, R1, R2, R3, or R4.

15.1.6. All applications for a special permit under this section shall be subject to the provisions of Section 16, Site Plan Review.

15.2. APPLICATION PROCEDURE

15.2.1. Submission of Preliminary Plan

15.2.1.1. The applicant shall file a preliminary plan accompanied by the form titled, "Submission of the Preliminary Plan, Planned Unit Development", to the Planning Board at a regularly scheduled meeting. A copy of the preliminary and the above-mentioned form shall also be filed in the City Clerk's Office. A fee of \$500.00 certified check made out to the City of Lynn, shall accompany the submission of the preliminary plan. The fee shall cover the cost of notification of abutters and advertisement.

15.2.1.2. The Planning Board, within 30 days upon receipt of the Plan and notification form by the City Clerk, shall review and determine whether the proposed project is consistent with the most suitable development of the City.

15.2.1.3. The Planning Board may suggest modifications and changes to the preliminary plan in anticipation of the filing of the definitive plan.

15.2.2. Contents of Preliminary Plan: Planned Unit Development

15.2.2.1. Planned Unit Development Boundaries, north point, date, scale, legend, and title, "Preliminary Plan, Planned Unit Development", the names of applicant, and engineer or designer.

15.2.2.2. Names of all abutters, land uses, and approximate location and width of all adjacent streets.

15.2.2.3. In a general manner, the existing and proposed lines of streets, ways, easements, and of any public areas within or next to the Planned Unit Development.

15.2.2.4. The approximate boundary lines of existing and proposed lots with approximate areas and dimensions.

15.2.2.5. The proposed system of drainage, including adjacent existing natural and artificial waterways, and the topography of the land in a general manner.

15.2.2.6. Existing buildings and significant structures in a general manner. The preliminary plan shall also reveal those buildings which presently exist which are to be removed.

15.2.3. Submission of Definitive Plan

15.2.3.1. The applicant shall submit an application for a special permit accompanied by the original of the definitive plan, plus ten (10) copies thereof.

15.2.3.2. The City Clerk shall transmit the original and copy of the definitive plan to the Planning Board. A copy shall also be forwarded to the Clerk of the Council and to the Mayor.

15.2.3.3. Within sixty (60) days of the filing of the definitive plan; the Planning Board shall submit to the City Council a report discussing the feasibility of the project and the consistency of the project with regard to the most suitable development of the City.

15.2.3.4. The City Council, upon receipt of the report of the Planning Board, and within 65 days of the filing of the definitive plan, shall hold a public hearing, notice of which shall be given in a local newspaper, once in each of two successive weeks, with the first publication to be not less than fourteen (14) days before the date of the hearing and notice shall be given to owners of all property abutting the proposed development of land in the same ownership in accordance with Chapter 40 A of the Massachusetts General Laws. Notice shall be given by certified mail by the City Clerk. The list of abutters shall be prepared by the petitioner, certified by the Office of Assessors.

15.2.3.5. The City Council shall, within ninety (90) days following the public hearing, provide by written certification either that the application is approved as submitted, approved subject to modification, or denial of the project. If the City Council fails to issue its findings within ninety (90) days, the plan shall be deemed approved and the special permit is granted.

15.2.3.6. Approval of a special permit for a planned unit development by the City Council shall require a two-thirds (2/3) vote of the City Council.

15.2.3.7. If the project is denied, the developer shall not be allowed to submit substantially the same proposal for a period of at least two years.

15.2.4. Contents of Definitive Plan

15.2.4.1. The application of a special permit and site plan review shall be accompanied by the original copy of the definitive plan and other data required to be submitted in triplicate and shall contain the following data:

- a. It shall be drawn at a scale of one inch equals forty feet unless another scale is requested and found suitable by the City Planner.
- b. The plan shall be prepared by a land surveyor, professional engineer, or architect.
- c. The scale, date, and north arrow shall be shown.
- d. The plan shall be certified by the land surveyor doing the boundary survey and the professional engineer or architect on the location of the buildings, setbacks, and all other required dimensions, elevations, and measurements and further that the plan be signed under the penalties of perjury.
- e. The corner points of the lot and change of direction of lines to be marked by stone monuments, cut in stone, stake, and nail, iron pin, or other marker, and shall be so marked.
- f. Lot number, dimensions of lot in feet, size of lot in square feet, and width of abutting streets and ways.
- g. Easements within the lot and abutting thereon.
- h. The location of existing or proposed building or lot.
- i. The dimensions of the existing and proposed buildings in feet.
- j. The distance between buildings on the same lot.
- k. Percent of the lot coverage.
- l. The distance of existing and proposed buildings from the lot lines in feet.
- m. Average finished grade of each building.
- n. The elevation above average finished grade of the floor and ceiling of the lowest floor of each building.
- o. Topographical lines at two foot intervals, existing and proposed.
- p. The use designation of each building or part thereof, and of each section of open ground, plaza, or usable roof space.
- q. Numbering of parking spaces.
- r. Height of all buildings, above average finished grade of abutting streets.
- s. The number of apartments, hotel rooms, meeting rooms, and restaurant and theater.
- t. Total square feet of floor space and of all landscape and recreation areas, and depiction of materials to be used (grass, five (5) foot shrubs, etc.).
- u. Deed or other recorded instrument that shows the applicant to be the owner or owner under option of the land to be designated as a Planned Unit Development.
- v. Any structure to be demolished.

15.3. DETERMINANT OF SITE PLAN REVISION

15.3.1. The site plan shall be subject to the following conditions, and the City Council, with the advice of the Planning Board, shall make a determination whether or not the project meets all the following conditions:

15.3.1.1. Site of structure and uses in an appropriate location.

15.3.1.2. Use or uses when developed will not adversely affect the health, safety, light, air, public access, and general welfare.

15.3.1.3. The ingress and egress for traffic flow is designed properly so that there will be no serious hazard to vehicles or pedestrians.

15.3.1.4. That adequate parking facilities are provided for each use and structure in the development.

15.3.1.5. That the project is consistent with the most suitable development of the City.

15.3.1.6. In these instances where it is in the public interest to protect certain scenic values and opportunities, there shall be a determination made which shall weigh the effect which the development has on the visual corridors of public concern. The plan shall insure that major facilities or functions which require siting within these scenic vistas are designed to be visually compatible with the natural characteristics.

15.4. PLANNED UNIT DEVELOPMENT

In a Planned Unit Development, the following uses may be proposed:

15.4.1. Residential--Multi-family residential which may include apartments or condominiums in low, mid, or high-rise structures.

15.4.2. Commercial Entertainment

15.4.2.1. Hotel, Motel

15.4.2.2. Restaurant

15.4.2.3. Theater

15.4.3. Commercial

15.4.3.1. Store, salesroom or showroom for the conduct of retail business, excluding facilities for the sale of motor vehicles, mobile homes, house trailers.

15.4.3.2. Personal Services

15.4.3.3. Bank or other financial services

15.4.3.4. Business or professional offices

15.4.4. Industrial Use

In general, uses which are believed not to be injurious to the safety or general welfare of the areas as enumerated in the Zone Ordinance.

15.5. AREA REGULATION

15.5.1. Open Space

In all Planned Unit Developments, at least 15% of the land shall be set aside as permanent open space. The required areas for common open space use shall either be reserved for private use or may be dedicated to the City. Land dedicated to the City shall be maintained by the person or persons responsible for the Planned Unit Development. Satisfactory written agreements or other arrangements acceptable to the City shall be made for perpetual preservation and maintenance of all common areas to be set aside and reserved for private use. A covenant shall be placed on the land such that no lot can be used, sold, or built upon until such time as the written agreement has been accepted by the City. Specifically, in the case of corporate ownership, the development shall include in the deed to the owners beneficial rights in said common land and an easement shall be conveyed to the City of Lynn against development of said land and the erection thereon of any structures other than for non-profit recreational use. The possibility of further subdivision of open space shall be eliminated by deed restriction or agreement in a form acceptable to the City.

15.5.2. Setback Requirements

Non-residential buildings may be built to the street line provided that the street is 50 feet in width and the zoning on the opposite side of the street is non-residential. In all other cases, the building shall be set back one quarter the height of the average of principal

buildings, but not less than 25 feet from all front and rear lot lines.

15.5.3. Floor Area

The floor area in all buildings in a Planned Unit Development shall not exceed a floor area ratio of 3, excluding parking structures, malls, and plazas.

15.6. PARKING REQUIREMENTS

15.6.1. In all Planned Unit Development Districts, adequate off-street parking shall be provided for all vehicles normally visiting property at any one time. The parking may be ground level, underground, or in a garage structure.

15.6.2. The design standards for off-street parking shall be in compliance with Section 9 of the Lynn Zone Ordinance.

15.6.3. The off-street loading requirements for all uses located within a Planned Unit Development shall comply with Section 9.

Which entity is the special permit granting authority for cluster/flexible zoning?

Selectmen/Council SECTION 15. PLANNED UNIT DEVELOPMENT DISTRICT
15.1 DESCRIPTION OF DEFINITION OF ZONE

15.1.1. The City Council may grant a special permit for the construction and occupancy of a Planned Unit Development in a district zoned for such hereinafter defined and limited. The power granted herein is granted pursuant to the provisions of Chapter 40A, Section 9, of the General Laws of the Commonwealth of Massachusetts.

Has any housing been built under the cluster/flexible provisions?

No Survey received from Lynn on 4/24/05:

"None"

Lynnfield

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes ZONING BYLAWS, TOWN OF LYNNFIELD, Section 8.4 (OCTOBER 20, 2003)

The Zoning Bylaw includes incentives for open space preservation in residential cluster developments on parcels over 25 acres.

The Master Plan 2002 states, "9.3.2 Greenbelt Zoning District The Zoning Bylaw provides landowners of 25 acres or more in residence districts with an incentive to create permanently protected greenbelts. They are allowed to subdivide the land under a Special Permit that allows smaller lot area, side yard, and frontage requirements for the lots in exchange for placing a conservation restriction or easement on at least 20% of the site's total area."

From ordinance.com:

8.4 Green Belt Zoning

8.4.1 Purpose

For the purpose of promoting the more efficient use of land in harmony with its natural features and with the general intent of the Zoning By-law, and to protect and promote the health, safety, convenience and general welfare of the inhabitants of the town, an owner or owners of a tract of land situated within Single Residence Districts, or a duly authorized agent thereof, may, in connection

with the submission of a subdivision plan for Planning Board approval under the Subdivision Control Law or, if no such approval is required, after consultation with the Planning Board, make application to the Board of Appeals for a Special Permit excepting his plan from the lot area, side yard and frontage requirements of the Town Zoning By-law pertaining to Single Residence Districts. A.T.M. 4/29/74

8.4.2 Hearing

After notice and public hearing, and after due consideration of the report and recommendations of the Planning Board (See "Planning Board Report", below), the Board of Appeals may grant such a Special Permit provided that:

1. It finds that the proposed plan is in harmony with the purpose and intent of this By-law and that it will promote the purposes of this section.
2. The area of the tract of land to be subdivided is not less than 25 acres.
3. Each lot shall contain not less than 26,700 square feet of land in Residence A, B and C Districts, and not less than 40,000 square feet of land in Residence D Districts. A.T.M. 4/29/74
4. Each lot shall have frontage on a way of not less than 30 feet and in no instance shall 4 contiguous lots have less than a total of 300 feet frontage and the total frontage of all lots in the tract shall in no instance be less than the product of 100 feet multiplied by the total number of lots. Each lot shall be so configured as to accommodate within it a circle having a diameter of not less than 120 feet.
5. The required front yard and rear yard depths of the district in which each lot is situated shall be met, and the side yard width shall not be less than 20 feet.
6. The number of lots permitted within the perimeter (total area) of the subdivision shall be determined on the following basis:
 - a. Residence A, B and C Districts, not more than 1 lot per 40,000 square feet, exclusive of the area set apart for ways and exclusive of area within a Flood Plain District or a Wetland as defined in G.L. Chapter 131, S40, as amended. A.T.M. 4/29/74, S.T.M. 10/17/88
 - b. Residence D District, not more than 1 lot per 60,000 square feet, exclusive of the area set apart for ways and exclusive of area within a Flood Plain District or a Wetland as defined in G.L. Chapter 141, S40, as amended. S.T.M. 10/17/88
 - c. In tracts located partly in more than one Residential District, not more than the total number of lots which would be permitted by the preceding Paragraphs a and b allowing fractional lots to be added together, exclusive of the area set apart for ways. Such area set apart for ways may be deducted from the total area of land in any District or partly from each. A.T.M. 4/29/74
7. There shall be an area or areas, but not more than two such areas, of "Green Belt Land" within the tract which shall equal or exceed the sum of the area by which any individual lots are reduced below the minimum lot area normally required by other sections of the Town's Bylaws in their districts and shall comprise at least 20% of the total area of the tract.
 - a. Provision shall be made that the "Green Belt Land" shall be owned by a trust, corporation or other entity or organization which is owned or controlled by the owners of the individual lots in the subdivision. Said land shall be subjected to a perpetual Conservation Restriction and Easement in favor of the Town of Lynnfield under the provisions of General Laws Chapter 40 Sec. 8c and Chapter 184 Section 31 as the same may be from time to time amended, and shall be available for use only by its owners for conservation purposes, as specified in said sections of the General Laws as the same may be from time to time amended, and shall contain no paved areas or structures except such as may be used for as accessory to such purposes. The Town shall be given an adequate permanent easement of access for its agents to inspect the use of the "Green Belt Land" to see that it is not used in violation of the Conservation Easement and Restriction. Construction and use of the tennis courts on an area not in excess of ten (10%) percent of the total "Green Belt Land" as defined herein shall be permitted in "Green Belt Land". Dredging of brooks and ponds shall be permitted in "Green Belt Land" so long as the same shall be done in accordance with applicable law.
 - b. The foregoing provisions shall not preclude such "Green Belt Land" being given by voluntary act of the owners to the Town, should the Board of Selectman, at some future time vote to accept the same, but in such case the Town shall not use any such land or make improvements thereon for any purposes other than those enumerated in this Paragraph. Nothing herein shall be construed to require any owner to donate land to the Town, nor to affect the right of the Town to take such land by eminent domain. S.T.M. 10/16/78
 - c. No land within a Flood Plain District shall be included in determining the required area of "Green Belt Land".
 - d. Reasonably unobstructed access and egress by a way at least 30 feet wide shall be provided to each area of "Green Belt Land" from one or more ways,
8. The utilities proposed for said subdivision will adequately provide for water, sewerage and drainage, and the proposed streets and street accesses and egresses will adequately provide for traffic convenience and safety.
9. The location and site design are compatible with the Master Plan of the Town adopted in 1954, as amended and as the same may be amended from time to time, the existing neighborhood and future development of the environs.

10. The plan provides for efficient allocation and distribution of the "Green Belt Land".

11. The land use is harmonious with the natural features of the tract.

8.4.3 Conditions

The Board of Appeals may, in appropriate cases, impose further restrictions upon the tract, or parts thereof, as a condition to granting the Special Permit.

8.4.3.1 Planning Board Report

In connection with an application for a Special Permit from the Board of Appeals under this Section, the Planning Board shall submit, in writing, prior to the hearing, its recommendation and report to the Board of Appeals. The Planning Board may supplement its report after the hearing. The report of the Planning Board shall include as a minimum:

1. A determination of the area of the tract usable for residential construction.
2. A determination of the number of lots upon which dwellings could be constructed without regard to this section.
3. A general description of the neighborhood in which the tract lies and the effect of the plan on the area.
4. The relation of the plan to the Master Plan of the town adopted in 1954, as amended, and as the same may be amended from time to time.
5. The extent to which the plan is designed to take advantage of the natural terrain of the tract.
6. The extent to which the proposed "Green Belt Land" has reasonable size and shape and has adequate access and egress.
7. The Planning Board's opinion as to the overall design of the plan.
8. The Planning Board's recommendations as to the advisability of granting the Special Permit, and as to any restrictions which should be imposed upon the tract as a condition of such Permit.

8.4.4 Response to Planning Board

The Board of Appeals shall give due consideration to the report of the Planning Board and, where its decision differs from the recommendations of the Planning Board, shall state the reasons therefor in writing.

8.4.5 Required Compliance

No provision hereof shall exempt a proposed subdivision from compliance with the Rules and Regulations of the Planning Board, nor shall it affect the right of the Board of Health to make reports and recommendations and of the Planning Board to approve, with or without conditions or modifications, or disapprove, a Subdivision Plan in accordance with the provisions of such Rules and Regulations and of the Subdivision Control Law.

8.4.6 Other Provisions

All dwellings and accessory buildings erected under the provisions of this section shall conform to all other provisions of the Zoning Bylaws, which shall not be varied except by the Board of Appeals as permitted by law.

8.4.7 Procedure

1. The procedure set forth herein for making application for a Special Permit for Green Belt Zoning is meant to be complementary and supplementary to the Rules of the Board of Appeals and the following should be interpreted to render the same harmonious with said Rules.

2. In single Residence Districts, Green Belt Zoning shall be allowed with a Special Permit issued by the Board of Appeals. A.T.M. 4/29/74

3. Thirty (30) days or more prior to application to the Board of Appeals for a Special Permit for Green Belt Zoning under this Section the applicant shall submit the subdivision plan referred to in the "Purpose" Section to the Lynnfield Planning Board by filing the same with the Clerk of the Planning Board, together with an application to obtain its approval with reference to the layout, construction and installation of streets, utilities and drainage facilities together with all other subjects within the proper jurisdiction of the Planning Board. Said approval shall not be given by the Planning Board unless and until the applicant has furnished the Town with such adequate security for performance of the applicant's obligations under the said plan and application as the Planning Board may require under its Regulations, as the same may from time to time exist. The Planning Board shall file a report concerning the Site Plan (hereinafter referred to) together with its recommendations as required by this Section with the Clerk of the Board of Appeals within forty-five (45) days from the date of application to said Planning Board, and shall send a copy of same to applicant. The Planning Board shall make such report and recommendation in or within forty-five (45) days from the date of application to the

Planning Board; the failure of the Planning Board to make such report on said Plan within said period of time shall permit the Board of Appeals to act upon an application thereunder for a Special Permit without such report of the Planning Board.

4. In addition to three (3) copies of the Subdivision Plan, each application for a Special Permit to the Board of Appeals for Green Belt Zoning shall be accompanied by a Site Plan on one (1) or more sheets, in triplicate, of the entire tract under consideration prepared in accordance with the Rules of the Board of Appeals and, without limiting the generality of the foregoing, shall show all existing and proposed buildings, structures, ways, driveway openings, driveways, and all major landscape features such as screening in the form of fences, walls, planting areas and other barriers, the existing topography at a suitable scale and contour interval, proposed grading, location of all Green Belt Areas, educational active or passive recreational and cultural uses, if any, and the location of any proposed easements. Said Plan shall be subject to such rules relating to scale, dimensions, legend, form and preparation as may from time to time be promulgated by the Board of Appeals.

5. Each application for a Special Permit shall be accompanied by four (4) copies of the following proposed documents:

a. Perpetual easements to the Town to enable it to maintain and repair the Green Belt Areas and the drainage system, although clearly placing the primary responsibility upon the owner for the same. Also, contracts indemnifying and holding the town harmless for any expense incurred by the town in performing any of these tasks; said contracts shall be in a form binding upon the successors and assigns of the owner of the Green Belt areas.

b. Performance bonds securing the Town against default by the owner, whether it be an association, corporation, corporation or trust, which owns the Green Belt Areas, in performing the required repair and maintenance services; said bonds shall be in a form binding upon the successors and assigns of the owner.

8.4.8 Non Severability of Green Belt Zoning Section Notwithstanding any other provisions of the Town's Bylaws, it is hereby declared that none of the provisions of this Section can be given effect in the event any of the provisions of this Section 15 or the application thereof to any persons or circumstances shall be held invalid and to this end the provisions of this Section are declared to be non-severable, S.T.M. 6/12/72

8.4.9 Changes

No changes in a Special Permit granted hereunder, or in any plan or other document executed or submitted in connection with the application for such Special Permit, shall be made except under the authority of a decision of the Board of Appeals upon application and hearing as provided under the "Hearing" Section of the "Green Belt Zoning". A.T.M. 4/29/74 Prior to such hearing, the Planning Board shall submit to the Board of Appeals in writing recommendations as to the advisability of granting the requested changes relating to a Special Permit granted hereunder, and as to any restrictions which should be imposed as a condition of approval by the Board of Appeals. A.T.M. 10/17/77

Which entity is the special permit granting authority for cluster/flexible zoning?

Board of Appeals 8.4.3.1 Planning Board Report

In connection with an application for a Special Permit from the Board of Appeals under this Section, the Planning Board shall submit, in writing, prior to the hearing, its recommendation and report to the Board of Appeals. The Planning Board may supplement its report after the hearing. The report of the Planning Board shall include as a minimum:

Has any housing been built under the cluster/flexible provisions?

Yes Kathy Randeale, Secretary, Lynnfield Planning Board, (6/2/05) said that approximately seven "Greenbelt" developments have been built. She said that Greenbelt Zoning was adopted in 1972 and amended in 1974. She said that it requires a minimum of 25 acres. Recently a group wanted to use it, but had only 23 acres and developed the land through conventional zoning.

Malden

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes According to the Malden Table of Use Regulations, .12, Planned Unit Development is allowed in zones BC and BH by special permit.

Michelle Romero, city planner, (6/14/04) said that, to her knowledge, Malden has never used PUD development. The PUD was created for one specific project that was 50 acres and was not used for that project, or been used since.

300.5 Planned Unit Development hereafter erected, placed, constructed, altered, converted, or otherwise changed may be allowed only by special permit in Residence C and Residential Office (RO) Districts by the Board of Appeal in conformance with the following controls:

. 1 In addition to those uses permitted in a Residential Office (RO) District, the following uses shall be permitted:

. 1 Day Nursery.

. 2 Recreation for Gainful Business.

. 3 Restaurants, excluding "Fast Food."

. 4 Convenience Retail Sales.

. 5 Convenience Retail Services.

. 2 The minimum and maximum dimensional control requirements of this ordinance shall be in full compliance unless specifically changed in this section.

. 3 Minimum of fifty (50) dwelling units.

. 4 Maximum building coverage of the principal building or buildings of any lot is to be thirty (30) percent of the total lot area, except this maximum coverage may be exceeded by twenty (20) percent for a total combined maximum building coverage of fifty (50) percent providing that the offstreet parking is to be in the basement and/or cellar of the building and the land that would normally be used for offstreet parking would be devoted to usable open space as required in the dimensional controls.

. 5 Maximum gross floor area of business services shall be twenty (20) percent of the gross floor area of all buildings containing dwelling units in the development.

. 6 The Board of Appeal must find that this special permit will not adversely affect the surrounding area.

300.22 Planned Development projects may be allowed by special permit by the Malden Planning Board in the Highway Business (BH) district if said projects are consistent with the special permit criteria of this subsection.

. 1 Minimum Lot Size

The minimum lot size for a Planned Development project at the time of application shall be 50 acres.

300.26 Residential Incentive Overlay (RIO).

A RIO, consistent with the recommendations of the Malden Square Zoning and Design Plan dated March 1998, may be applied over parcels within the Central Business (BC) District. The overlay shall not restrict property owner rights relative to the underlying zone. However, if the owner elects to use the RIO for development purposes, development shall conform to the following regulations, and other regulations that may apply consistent with the ordinances of the City of Malden:

. 1 The RIO shall permit multi-family residential use by right up to 12 stories and a height of 120 feet from the highest point of the established grade.

. 2 The RIO shall permit all allowed uses in the underlying Central Business Zone at street level. These uses shall not exceed 650 of the total floor area of any floor(s) at grade/street level.

. 3 All non-residential uses shall be subject to the same offstreet parking requirements as the underlying Central Business Zone. However, residential uses in the RIO shall require 1.5 parking spaces per unit. If such residential property is located within 2000 feet of the property line of a MBTA rapid transit or train station the RIO development shall require 1.25 off-street parking spaces per unit. Parking shall be provided on site or in an off-site facility within 400 feet of any property line of the residential property. In the instance where parking is provided off site, but within 400 feet of the residential property, the Malden Traffic Commission shall certify that said parking is available for use. In no instance shall more than 300 of the required off street parking be permitted in an off-site location.

. 4 Dimensional Requirements. All allowed uses in the RIO shall be subject to the dimensional requirements contained in Section 400.1 and Section 400.3 (but shall not be subject to the provisions contained in Section 300.21), with the exception of minimum

usable open space requirements, which shall be a minimum of 50 square feet per dwelling unit, and density requirement (sf/du) which shall be a minimum of 150 square feet in the RIO. However, the minimum area and frontage requirements, shall apply.

.5 Historic Structures. If the RIO is used at a site where a building or buildings have been designated as historic structures by local, state, or federal historic designation statutes, the historic facade or facades of the building or buildings shall be incorporated into-the design-for-the reuse of the building or buildings in question.

.6 Building Materials and Colors. RIO development shall have masonry veneer as the majority of the building facade material. The facade shall be defined as the exterior, above grade surface area of the vertical plane of all exterior building walls, not including openings, penetrations, doors, windows and door and window frames and trim. At least 85% of the masonry veneer shall be brick or stone and/or brick or stone facing or other similar products. No more than 15% of the building facade shall be exposed concrete. Roughhewn cedar shingles, textured exterior plywood, vinyl siding, and reflective glass shall not be used. Masonry shall not be painted..

.7 An area of passive recreation accessible to the public shall be required of all residential developments greater than 6 stories.

.8 Commercial space located at the street level of an RIO development shall have large display windows and transparent doors along the street level facade to maintain strong visual connections between the interior and exterior. Provide a minimum of 50% of the linear frontage of the commercial facade for doors and windows with non-reflective glass. Install doors with a minimum of 50% of their area in clear glass.

.9 Refuse Removal Facilities. All multi-family residential developments in the RIO shall provide a trash compactor room and facility on the premises and adequate access shall be provided for the servicing of said room and facility. Other provisions for the disposal of refuse may be permitted at the discretion of the Building Inspector, including dumpsters, if in the opinion of the Building Inspector a trash compactor room and facility cannot be adequately sited on the premises or is not deemed necessary for the safe and adequate removal of refuse given the provision of existing municipal trash collection services. However, if the Building Inspector permits dumpsters they shall be subject to the provisions contained in section 500.3.8 of this ordinance.

.10 Traffic. The project proponent shall demonstrate that traffic and circulation shall be adequate following project development. The applicant shall supply a traffic study of the existing traffic on surrounding streets as well as projected loads resulting from the construction of the proposed building. Such studies shall be performed by a qualified traffic engineer in conformance with the criteria established by the Transportation Research Board of the National Research Council, and shall include AM and PM hourly peaks. For any proposal within the RIO, "Adequate" shall mean a level of service of "D" or better.

.11 Shadow. The project proponent shall demonstrate that the proposed structure will create no significant new adverse shadow impact for any residential properties of two units or fewer in Residence A and B Zoning Districts. To insure the protection of solar access, the developer must provide shadow analysis, drawn by a registered architect, for 9:00 AM, 12:00 noon, and 3:00 PM based on Standard Time, for the winter solstice (December 21), Spring and Fall equinoxes (March 21 and September 21) and summer solstice (June 21).

.12 The project proponent shall demonstrate that water, sewer and drainage systems will be adequate following project development and that adequate provisions have been made for solid waste removal and recycling. The applicant shall provide studies, performed by a registered professional engineer, showing the impact the proposed development will have on existing water, sewer and drainage systems. For any proposal within the RIO, a sewer shall be deemed "adequate" if its capacity is sufficient to accept discharge equivalent to the maximum discharge per dwelling unit, as set forth in the Department of Environmental Protection standards; a drainage system shall be deemed "adequate" if its capacity is sufficient to accept post-development runoff resulting from a 10 year storm; a water system shall be deemed "adequate" if development will result in no reduction to existing pressure and volume.

.13 All RIO developments are subject to site plan review, see section 300.28.

300.27 Site Plan Review

.1 Purpose and Intent. To ensure that the design and layout of new development will not be detrimental to surrounding land uses. The intent of the Site Plan Review process is to regulate rather than prohibit uses through reasonable conditions which may be recommended by the Site Plan Review Committee (SPRC) concerning the location of buildings, signs, open space, landscaping, parking areas, access and egress, drainage, sewage, water supply and fire safety and similar site plan related issues. The Site Plan Review is an administrative review and shall not be construed as a special permit for review or appeal purposes.

.2 Applicability. A Site Plan Review is required for all developments using the Residential Incentive Overlay (RIO).

Email from Michelle Romero on 6/21/05:

When was RIO first adopted? Last amended?

Ordained in 2002; never amended.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board 300.22 Planned Development projects may be allowed by special permit by the Malden Planning Board in the Highway Business (BH) district if said projects are consistent with the special permit criteria of this subsection.

Has any housing been built under the cluster/flexible provisions?

Michelle Romero, city planner, (6/14/04) said that, to her knowledge, Malden has never used PUD development. The PUD was created for one specific project that was 50 acres and was not used for that project, or been used since.

Email received from Michelle Romero on 6/21/05:

Has any housing been built under the "Residential Incentive Overlay"?

"One project under construction; one project permitted."

Manchester-by-the-Sea

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes From ordinance.com:

6.7 Special Provision for Open Space Planning

6.7.1 Purpose:

For the purpose of encouraging the preservation of open space and promoting the more efficient use of land in harmony with its natural features and the economical and efficient street, utility, and public facility layout, installation, construction and maintenance, efficient allocation, distribution, and maintenance of common open space and overall compatibility with the character of surrounding areas in Single Residence District A,C or E. The Planning Board may, subject to this Section 6.7, and after notice and hearing in accordance with the law, grant a Special Permit authorizing exceptions from a lot area and lot frontage requirements specified in Section 5.4. in Single Residence A, C, or E Districts.

6.7.2 Condition to Special Permit:

No Special Permit shall be granted under the foregoing Section 6.7.1 unless the following conditions are met

6.7.2.1 The minimum size of a parcel to be considered for development shall be ten (10) acres in the Single Residence District A and twenty (20) acres in the Single Residence District C and Single Residence District E.

6.7.2.2 Prior to or included with an application for a Special Permit the applicant shall submit to the Planning Board such plans, studies and data sufficient to enable the Planning Board to make a determination as to the number of lots which could be created on said parcel without a Special Permit.

6.7.2.3 The number of building lots on any plan for which a Special Permit is granted under this Section 6.7 shall not exceed the number of lots which could be created on said parcel without such permit.

6.7.2.4 There shall be excluded from the calculation of the number of lots in Section 6.7.4 all areas of the parcel which the Planning Board finds are not buildable because of the conditions such as steep slope, presence of wetlands, poor drainage or water supply problems or a combination of the foregoing. The Planning Board may rely upon findings and recommendations of the Board of Health and the Conservation Commission.

6.7.2.5 Every lot laid out under this Section shall conform to the following: In Single Residence A, 16,500 sq. ft. minimum area, 75 ft. minimum frontage. In Single Residence C and Single Residence E, 22,500 sq. ft. minimum area, 75 ft. minimum frontage.

6.7.2.6 Every lot shall be connected to municipal sewer and water, unless the Planning Board, after consultation with the Board of Health, determines that other suitable provisions for sewer and water have been made.

6.7.2.7 Limitation of Subdivision:

No lot shown on a plan, for which a permit is granted under this section, may be further subdivided and a notation to this effect shall be shown on the plan.

6.7.2.8 Each building lot shall contain a house site which is in the harmony with the general intent of the Zoning By-Law.

6.7.2.9 No plan shall be approved unless the Planning Board, following its public hearing and consultation with the Fire Chief, Board of Public Works and Selectmen, determines that access to public or private ways affected by the development will be adequate in light of the anticipated traffic.

6.7.2.10 All studies, plans, design criteria with regard to all engineering aspects of a plan submitted under the Section shall conform to the Subdivision Rules and Regulations of the Town of Manchester-by-the-Sea.

6.7.2.11 All procedural matters with regard to notice and hearing shall conform to Section 7.5 of the Zoning By-Laws of the Town of Manchester-by-the-Sea.

6.7.3 Open Land:

6.7.3.1 All land shown on a plan for which a Special Permit is granted that is not included in building lots shall be open land. Provisions shall be made by agreement, duly executed in form, suitable for recording that such open land shall be:

(a) Owned and maintained either by a trust or association, or in common by the owners of the lots.

(b) Subject to restrictions which shall be contained in a covenant duly recorded with and referred to on the approved plan, unlimited by time that such open land shall be used only for conservation in its natural state, walking, or other passive recreational activities in harmony with the intent of this By-Law.

(c) Adequately distributed throughout the parcel and accessible to all residential lots without crossing through private property.

(d) Designed to preserve natural features such as topography, vegetation, views, vistas, access to water courses and water bodies, and incorporate them into the total development scheme.

6.7.3.2 The manner of ownership of such land shall be determined by the applicant after consultation with the Planning Board.

6.7.3.3 At least 30% of the gross area of a parcel for consideration under this By-Law must be dedicated to open land as referred to in Subsection 6.7.4.1 and be of such type and in such a configuration as to meet the intent of the By-Law.

6.7.4 Determination of Buildable Lots:

6.7.4.1 The number of lots which can be developed shall be determined using the following formula: total acreage of tract, minus areas considered to be unbuildable, multiplied by .7, divided by the zoning district lot area requirements in which the parcel is located, as provided in Section 5.4 of the Zoning By-Law.

6.7.5 Land in Two or More Districts:

6.7.5.1 If the land shown on the plan includes land located in two or more districts, it shall be considered lying within the districts having the largest area and frontage requirements.

6.7.6 Further Restrictions:

6.7.6.1 The Planning Board may impose further restrictions upon a parcel, or parts thereof, as a condition to granting the Special Permit.

6.7.7 Recording of Restrictive Agreement:

6.7.7.1 No building or structure shall be erected pursuant to any Special Permit to this Section 6.7 until and unless the restrictive agreement provided for in Section 6.7.3. 1 shall have been duly recorded in the Registry of Deeds.

6.7.8 Relation to Subdivision Control Act:

A Special Permit issued hereunder by the Planning Board shall not be a substitute for compliance with the Planning Board's Rules and Regulations or the Subdivision Control Act. The Planning Board, by granting a Special Permit, is not obligated to approve any definitive plan nor reduce any time periods for the Board's consideration under the Subdivision Control Act. [Added 1984]

6.8 Planned Residential Development (PRD) District C and E Only

6.8.1 Purpose:

Planned residential developments allowed by special permit from the Planning Board, an alternative pattern of land development to the pattern permitted in Residential District C and Residential District E. It is intended to encourage the conservation of open space,

promote less land excavation - especially in rocky, hilly terrain, preserve existing wetlands, recharge areas, rivers, streams, marshes, historic sites, unique geological and botanical areas or features, trails, paths and open space links, while at the same time providing for a greater mixture of housing types in the Town than are permitted in residential districts and cluster developments. In a PRD, dwelling units should be constructed in clusters which are harmonious with the neighborhood development and will not detract from the ecological and visual qualities of the environment. The overall site design and amenities should enhance the quality of living for the residents of the development, the immediate neighborhood, and the Town generally. Attention, however, shall be given by the Planning Board as to whether the proposed site design, development layout, number, type and design of housing constitute a suitable development of the neighborhood within which it is to be located.

6.8.2 Standards:

No special permit shall be granted under the foregoing Section 6.8.1 unless the following conditions are met:

6.8.2.1 Minimum tract size:

Planned residential developments shall be permitted upon a single tract, in one ownership with definite boundaries ascertainable from a recorded deed or recorded plan, which has an area of not less than 50 acres. Existing public or private ways need not constitute boundaries of the tract, but the area within any such ways shall not be counted in determining the tract size.

6.8.2.2 Environmental Impact Study (EIS):

Not less than 120 days prior to submission of the Definitive Site Plan, the permit applicant shall file with the Planning Board a NOTICE which shall consist of a Preliminary EIS and Preliminary Site Plans giving the Board notice of the applicant's intent to request a Special Permit under this Section. The Preliminary EIS shall identify the site and describe in general terms the plan for development including, in particular but not in limitation, the number and type of dwelling units and population density. The Preliminary Plan shall show potential utilization of the development site as a single family development and a second Preliminary Plan shall show the proposed clustering of units. Not more than 45 days after filing the NOTICE, the Planning Board shall receive and consider written comments from the Conservation Commission and the Board of Health regarding the NOTICE and shall issue a Determination of Scope of the final EIS. These written comments shall include at a minimum,

(a) an evaluation of the proposed methods for waste disposal, surface and sub-surface drainage, with particular reference to the protection which such methods afford to any river, stream, lake, pond, marsh, or other wetlands which may be affected by the proposed PRD;

(b) an evaluation of the impact on public lands and recreational areas;

(c) an evaluation of the impact on public sewers. The Determination of Scope shall identify potential impacts on the human and natural environment to be addressed in the Final EIS; shall designate, subject to agreement with the developer, the author of the Final EIS, and shall include the author's binding estimate for the cost preparing the Final EIS. In particular, but not in limitation, the Final EIS should consider the impact of the proposed development on wetlands, water recharge areas, streams and ponds, public lands and recreation areas, the impact on historic and architecturally significant properties, the impact on traffic and public safety, and the impact on public services.

The Final EIS shall be submitted by the applicant to the Planning Board within 45 days following the issuance of the Determination of Scope, and the full cost of preparing the Preliminary and Final EIS shall be borne by the applicant.

The Planning Board shall be empowered to require, during both the Preliminary and Definitive stages, supplements and amendments to the EIS at the cost of the applicant if, after review, the Planning Board determines the relevant issues have not been adequately considered.

6.8.2.3 Permissible Density:

The number of dwelling units for which a special permit can be granted in this Section shall not be more than the maximum number of dwelling units which could be constructed on the tract without such permit. Developer must demonstrate the maximum number of single family dwelling units that could be developed on the site by submitting a Preliminary Site Plan in accordance with the requirements of the Town of Manchester-by-the-Sea Subdivision Rules and Regulations. There shall be excluded from the calculations of the number of such units all areas of the tract which the Planning Board determines are not buildable because of conditions such as steep slope, presence of wetlands, poor drainage, or inadequacy of water supply.

6.8.2.4 Permitted Uses:

There shall be permitted in a PRD:

(a) Single family detached and attached, and multifamily structures of all types, provided however, that the average number of bedrooms per dwelling unit does not exceed two.

6.8.2.5 Lot Area, Frontage and Yard Requirements:

There shall be no minimum lot area, frontage or yard requirements within a PRD. However, no dwelling shall be erected within 500 feet of an existing public way, within 50 feet of a lot line, or within 30 feet of any way within the development.

6.8.2.6 Water and Sewerage:

Every dwelling unit shall be connected to municipal sewer and water unless the Planning Board, after consultation with the Board of Health, determines that other suitable provisions for sewer and water have been made.

6.8.2.7 Density Increases Subsequent to Final Approval:

Following final approval of the PRD no additional dwelling units shall be permitted within the tract whether by subdivision or additions to existing multifamily structures. The Planning Board shall require as a condition of approval that a restrictive covenant, enforceable by the Town, is executed by the developer and duly recorded.

6.8.2.8 Height:

All structures in the Planned Residential Development (PRD) shall comply with the Height Regulations of Section 5.5 of this By-Law.

6.8.2.9 Area of Residential Development:

The area developed for a residential use, including buildings, parking and other areas paved for vehicular use shall not exceed 30 percent of the total area of the PRD tract.

6.8.2.10 Traffic:

No PRD shall be approved unless the Planning Board following a public hearing and consultation with the Police Chief, Fire Chief, Board of Public Works and Selectmen, determines that the public and/or private ways providing access to the tract are adequate:

(a) in light of the preexisting traffic on such way, and

(b) the additional traffic which will be generated by the PRD. At its discretion, the Planning Board may require that ways to be constructed within the PRD shall comply with the design requirements of the rules and regulations adopted by the Planning Board pursuant to the Subdivision Control Law.

6.8.2.11 Buffer Zone:

The Planning Board shall require that there shall be provided in a PRD an area of open land between the parcel of land proposed for construction of dwelling units and any adjacent property. This buffer shall be planted or preserved in a natural state and augmented where necessary to provide visual separation from abutting property. The distance from a lot line of existing zones shall be no less than 500' from any cluster and 50' from any single family home. The buffer area shall not be used for roads, parking, structures, except as where necessary to gain access to the site. The Planning Board, at its discretion, can require additional buffers near specific areas of the PRD, to preserve privacy, promote safety, and maintain the overall aesthetic value of the development. The Planning Board shall require as a condition of approval that the buffer areas are protected against development by a suitable covenant, enforceable by the Town, which shall be recorded.

6.8.2.12 Common Open Space:

(a) All land within the PRD tract which is not covered by buildings, driveways, parking areas or service areas, or which is not set aside as private yards, patios or gardens for the residents, or is not part of a single family residence within the development, shall be common open space. The area of common open space shall equal at least 70 percent of the total area of the PRD tract. (Such land shall have a shape, dimension, character and location suitable to assure its use for park, recreation, conservation or agricultural purposes by all residents of the PRD, 70 percent of the common open space shall be devoted exclusively to conservation use and shall be encumbered with a restriction to that effect as herewith described.) Such conservation open space, regardless of the form of ownership, shall be treated as part of the PRD for purposes of computing permissible density as provided for in Section 6.8.2.3 of this By-Law.

(b) Provision shall be made so that the common open space is owned in common by and readily accessible to the owners of all units in the PRD, or by a corporation, nonprofit organization or trust whose members are all the owners or occupants of units, or by the Town, or otherwise as the Planning Board may approve. In all cases, a perpetual restriction of the type described in G.L.c. 184 s31 (including future amendments thereto and corresponding provisions of the future law) running to or enforceable by the Town shall be recorded in respect to such land. Such restrictions shall provide that the conservation open space shall be retained in perpetuity for conservation purposes. Such restrictions shall be in such form and substance as the Planning Board shall prescribe and may contain such additional restrictions on development and use of the conservation open space as the Planning Board may deem appropriate.

(c) In order to ensure that the corporation, nonprofit organization or trust shall properly maintain the common open space an instrument shall be recorded at the Registry of Deeds which shall at a minimum provide:

(1) A legal description of the common open space.

(2) A statement of the purposes for which the common space is intended to be used and the restrictions on its use and alienation.

(3) The type and name of the corporation, nonprofit organization or trust which will own, manage and maintain the common open space.

(4) The ownership or beneficial interest in the corporation, nonprofit organization or trust of each owner of a dwelling in the PRD and a provision that such ownership or beneficial interest shall be appurtenant to the dwelling to which it relates and may to be conveyed or encumbered separately therefrom.

(5) Provision of the number, term of office, and manner of election to office, removal from office of directors and/or the corporation or nonprofit organization or trustees of the trust.

(6) Procedures for the conduct of the affairs and business of the corporation, nonprofit organization or trust including provision for the calling and holding of meetings of members and directors and/or officers of the corporation or nonprofit organization or beneficiaries and trustees of the trust and provisions for quorum and voting requirements for action to be taken. Each owner of a dwelling shall have voting rights proportional to his ownership or beneficial interest in the corporation, nonprofit organization or trust.

(7) Provision for the management, maintenance, operation, improvement and repair of the common space and facilities thereon, including provision for obtaining and maintaining adequate insurance and levying and collection from dwelling owners, common charges to pay for expenses associated with the common open space, including real estate taxes. It shall be provided that common charges are to be allocated among the dwelling unit owners in proportion to their ownership or beneficial interest in the corporation, nonprofit organization or trust, and that each dwelling owner's share of the common share shall be a lien against his real estate in the PRD, which shall have priority over all other liens with the exception of municipal liens and first mortgages of record.

(8) The Planning Board shall require the developer of the PRD to submit the Master Deed of the PRD to the Board for review.

6.8.3 Procedure for Approval:

Any person who desires a special permit to construct a PRD shall submit an application in writing in such form as the Planning Board and Conservation Commission separately may require which shall include the following:

6.8.3.1 A development statement which shall consist of a petition, a list of the parties in interest with respect to the PRD tract, a list of the development team and a written statement setting forth the development concept including in tabular form the number of units, type, size (number of bedrooms, floor plan), ground coverage and summaries showing the areas of residential development and common open space as percentages of the total area of the PRD tract and a development schedule for all site improvements.

6.8.3.2 Copies of the proposed instruments to be recorded with the plans including the common open space perpetual restriction, the deed and membership corporation, nonprofit organization or trust.

6.8.3.3 Development plans bearing the seal of a Massachusetts registered architect, registered civil engineer or similar professional as appropriate and consisting of:

(a) Site plans and specifications showing all site improvements and meeting, to the extent applicable, the requirements set forth for a definitive plan in the Subdivision Rules and Regulations of the Planning Board.

(b) Site perspectives, sections, elevations, as required under the subdivision control rules and regulations.

(c) Detailed plans for disposal of sanitary sewerage and surface drainage.

(d) Detailed plans for landscaping.

(e) An Environmental Impact Study.

(f) Such additional information as the Board may determine necessary.

6.8.3.4 The Conservation Commission and the Board of Health shall submit, in writing, prior to the hearing, their recommendations to the Planning Board. The reports shall include at minimum,

(a) an evaluation of the proposed methods of waste disposal, surface and sub-surface drainage, with particular reference to the protection which such methods afford to any river, stream, lake, pond, marsh, or other wetlands which may be affected by the proposed PRD;

(b) an evaluation of the impact on public lands and recreational areas;

(c) an evaluation on the impact on public sewers.

6.8.4 Relation to the Subdivision Control Act:

A Special Permit issued hereunder by the Planning Board shall not be a substitute of compliance with the Planning Board's Rules and Regulations or the Subdivision Control Act. The Planning Board, by granting a special permit, is not obligated to approve any definitive plan or reduce the time periods for the Board's consideration under the Subdivision Control Act.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board 6.8.3 Procedure for Approval:

Any person who desires a special permit to construct a PRD shall submit an application in writing in such form as the Planning Board and Conservation Commission separately may require which shall include the following:

6.7 Special Provision for Open Space Planning

6.7.1 Purpose:

For the purpose of encouraging the preservation of open space and promoting the more efficient use of land in harmony with its natural features and the economical and efficient street, utility, and public facility layout, installation, construction and maintenance, efficient allocation, distribution, and maintenance of common open space and overall compatibility with the character of surrounding areas in Single Residence District A,C or E. The Planning Board may, subject to this Section 6.7, and after notice and hearing in accordance with the law, grant a Special Permit authorizing exceptions from a lot area and lot frontage requirements specified in Section 5.4. in Single Residence A, C, or E Districts.

Has any housing been built under the cluster/flexible provisions?

No Email received from Beth Heisey, Administrative Assistant, on 6/7/05:

"#2 The "Special Provision for Open Space Planning" was adopted in 1984 and has not been amended.

#3 We are not aware of any housing that has been built using that provision."

Mansfield

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Town of Mansfield Zoning Bylaw

Researcher's note: What follows is the entire by-law except for graphs that could not be copied (indicated by ...).

5.6 CLUSTER RESIDENTIAL SPECIAL PERMIT

5.6.1 Purpose

5.6.1.1 To promote the more efficient use of land in harmony with its natural features.

5.6.1.2 To encourage the preservation of valuable open space.

5.6.1.3 To protect water bodies and supplies, wetlands, floodplains, agricultural lands, wildlife and other natural resources.

5.6.1.4 To permit greater flexibility and more attractive, efficient, economical design of residential subdivisions.

5.6.1.5 To facilitate economical and efficient provision of utilities.

5.6.1.6 To guide development consistent with the Town's Master Plan.

5.6.1.7 To meet housing needs and to promote diverse, and thereby efficient, housing at a variety of costs.

5.6.2 Applicability

5.6.2.1 The Planning Board may grant a special permit for the construction of a cluster residential development in residential districts.

5.6.2.2 The Planning Board approval of a special permit here under shall substitute for compliance with the Subdivision Control Act.

5.6.3 Special Permit Considerations: In issuing a special permit, the Board shall make the following determinations: that the plan complies with the requirements of this Section; that the plan is superior to a conventional one in preserving open space for conservation or recreation and in utilizing the natural features of the land; that the plan allows more efficient provision of streets, utilities, and other public services; that it will not have detrimental effects on the abutting neighborhoods, and that considerations have been given to the general guidelines set forth in the Mansfield Master Plan.

5.6.4 Minimum Tract Size. For each application for a special permit, the applicant shall have a tract in a single or consolidated ownership at the time of application that is no less than 5 times the minimum lot size required in the underlying district.

5.6.5 Permitted Uses. The following principal uses of the lots within the Cluster Residential Development shall be permitted: one-family detached dwellings; church or other religious purposes; agriculture; public park; conservation area and preserved open spaces and membership clubs and recreation facilities for the exclusive use of the residents of the development.

5.6.6 Permitted Density

5.6.6.1 In a residential cluster development, the maximum number of individual single family detached house lots permitted shall not exceed the number of buildable lots obtained under conventional subdivision upon which single family dwellings could be constructed in the residential district(s) within which the tract is located. In Residence 1, 2, 3 and Reservoir Districts, a conventional subdivision shall be designed in accordance with the following schedule in order to determine the permitted number of cluster lots:

5.6.6.2 The Planning Board may grant additional density in accordance with the following schedule if the stated number of units are assured in perpetuity through covenant, repurchase agreement or other means to serve critical housing needs of local residents, through such means as being sold or leased at cost, and with income qualifications meeting the guidelines of a state or federal housing assistance program, such as the MHFA First Time Homebuyers Program:

...

5.6.6.3 The Planning Board may grant additional density up to the maximum amount in accordance with the following schedule:

District Percent of Total Units

Residence 1 up to 10%

Residence 2 up to 5%

Residence 3 up to 5%

Reservoir District up to 5% provided that the petitioner or applicant shall, as a condition of the grant of the Special Permit provide the following:

- a) open space in addition to the 15% minimum required by the by-law;□
- b) traffic or pedestrian improvements as may be identified in Mansfield's Master Plan and/or Capital Improvements Plan, including but not limited to bikeways, walking trails, and sidewalks;
- c) or other amenities such as playgrounds, playfields, tot lots or other active recreation facilities.

5.6.7 Dimensional Regulations and Development Standards. In a cluster residential development, the following shall apply:

5.6.7.1 All buildings shall be limited to 35 feet in height.□

5.6.7.2 In all cases of cluster single family detached house lot development, the following dimensions and standards shall apply:

5.6.7.2.1 Lot size: No lot shall be less than 25% of the minimum lot size permitted in the underlying district, except that no cluster lot shall be less than 7,500 S.F. except in Residence 3 as provided for in Section 5.6.6.2.

5.6.7.2.2 Lot frontage: A cluster lot shall have a minimum frontage of not less than 75 feet.□

5.6.7.2.3 Lot shape: A cluster lot shall be of a size and shape that shall provide a building site which is in harmony with the natural features of the site.□

5.6.7.2.4 Building site: The building site shall be clearly designated on each cluster lot, and shall be situated as to provide open space for each dwelling unit.

5.6.8 Improvements: The Planning Board may require that all streets, drainage, water systems, sewerage, utilities, grading, and other improvements be made in accordance with the Rules and Regulations Governing the Subdivision of Land in the Town of Mansfield. In accordance with the Rules and Regulations for the Subdivision of Land in the Town of Mansfield, the Planning Board may also require a performance bond for the proper installation of all improvements.

5.6.9 Common Open Space: In a residential cluster development, the following shall apply:

5.6.9.1 All land within the cluster tract, as defined in Section 5.6.4, which is not covered by buildings, roads, walkways or parking areas, or which is not set aside as private yards in the cluster lots, shall be set aside and perpetually preserved as common open space.

5.6.9.2 The area of common open space shall equal at least 35% of the tract in the case of single-family clusters. No more than 15% of the common open space shall be situated within the Wetlands and Floodplain Protection District.

5.6.9.3 The common open space shall have a shape, dimension, character and location suitable to assure its use for park, recreation, conservation or agricultural purposes by most of the residents of the tract.

5.6.9.4 Provisions shall be made so that the common open space shall either be conveyed to the city or town and accepted by it for park or open space use, or be conveyed to a non-profit organization the principal purpose of which is the conservation of open space, or to be conveyed to a corporation or trust owned or to be owned by the owners of lots or residential units within the plot. If such a corporation or trust is utilized, ownership thereof shall pass with conveyances of the lots or residential units. In any case where such land is not conveyed to the city or town, a restriction enforceable by the city or town shall be recorded providing that such land shall be left in an open or natural state and not be built for residential use or developed for accessory uses such as parking or roadway. MGL 40A Sec. 8.

5.6.10 Additional Requirements: In a residential cluster development, the following shall apply:

5.6.10.1 Parking of automobiles shall not be permitted in those areas designated as open land between any building clusters or any groups of cluster lots.

5.6.10.2 No cluster lot shown on a plan for which a permit is granted under this section may be further subdivided, and a notation to this effect shall be shown on the plan.

5.6.10.3 Accessory recreation uses in the common open space are subject to all applicable requirements and regulations of the Town of Mansfield Zoning By-Law. In the event that an accessory use is proposed after the granting of a special permit for cluster residential development, the proposed accessory use shall require a special permit from the Planning Board.

5.6.11 Application Procedures

5.6.11.1 Pre-application review: It is strongly recommended that applicants submit preliminary plans for review by the Planning Board prior to formal application for a special permit. The filing of a preliminary plan and the Board's review thereof shall be in accordance with the requirements of the Subdivision Rules and Regulations of the Town of Mansfield.

5.6.11.2 Preliminary Plan Requirements: A preliminary plan shall conform to the requirements for preliminary plans of the Subdivision Rules and Regulations for the Town of Mansfield, and shall include the following additional information:

5.6.11.2.1 Dimensions, and proposed use, including layout of facilities, of the common open space;

5.6.11.2.2 The location of all proposed buildings and parking spaces;

5.6.11.3 Application: Applicants for a special permit for a Cluster Residential Development shall submit to the Board the following:

5.6.11.3.1 An original and eleven (11) copies of a development plan;

5.6.11.3.2 Eight (8) copies of an application, a deed description, a common open space instrument, and a development schedule.

5.6.11.3.3 A filing fee as required for a Definitive Plan under the Mansfield Subdivision Rules and Regulations.

5.6.11.4 Development Plan Requirements: The development plan shall meet the requirements for a Definitive Plan under the Mansfield Subdivision Rules and Regulations, and shall contain the following additional information:

5.6.11.4.1 A utilities and drainage plan prepared by a registered professional engineer;

5.6.11.4.2 A plan of the common open space, including a depiction of the materials to be used and the quantity, size and species of plantings;

5.6.11.4.3 A plan of the common open space including its dimensions and proposed facilities;

5.6.11.4.4 Other materials as the Board may require regarding: measures proposed to prevent pollution of surface water or groundwater, soil erosion, increased run-off, and flooding; design features intended to integrate the proposed new development into the existing landscape, to enhance aesthetic assets, and to screen objectionable features from neighbors; projected traffic flow patterns into and upon the site for both vehicles and pedestrians and an estimate of the projected number of motor vehicle trips to and from the site for an average day and for peak hours.

5.6.11.5 Deed Description: A deed or other recorded instrument shall be filed showing the applicant to be the owner of the land to be designated as a Cluster Residential Development and that the land is in single or consolidated ownership at the time of final plan application.

5.6.11.6 Common Open Space Instrument: In order to ensure that the corporation, non-profit organization or trust will properly maintain the common open space, an instrument(s) shall be recorded at the Bristol North District Registry of Deeds which shall, at a minimum, provide:

5.6.11.6.1 A legal description of the common open space;

5.6.11.6.2 A statement of the purpose for which the common open space is intended to be used and the restrictions on its use and alienation.

5.6.11.6.3 The type and name of the corporation, non-profit organization, or trust which will own, manage and maintain the common open space.

5.6.11.6.4 The ownership or beneficial interest in the corporation, non-profit organization or trust of each owner of a dwelling in the cluster development and a provision that such ownership or beneficial interest shall be appurtenant to the dwelling to which it relates and may not be conveyed or encumbered separately therefrom.

5.6.11.6.5 Provisions for the number, term of office, and the manner of election to office, removal from office and the filling of vacancies in the office of directors and/or officers of the corporation or non-profit organization or trustees of the trust.

5.6.11.6.6 Procedures for the conduct of the affairs and business of the corporation, non-profit organization or trust including provision for the calling and holding of meetings of members and directors and/or officers of the corporation or non-profit organization or beneficiaries and trustees of the trust and provision for quorum and voting requirements for action to be taken. Each owner of a dwelling shall have voting rights proportional to his ownership or beneficial interest in the corporation, non-profit organization or trust.

5.6.11.6.7 Provision for the management, maintenance, operation, improvement and repair of the common open space and facilities thereon, including provisions for obtaining and maintaining adequate insurance and levying and collecting from the dwelling owners common charges to pay for expenses associated with the common open space, including real estate taxes. It shall be provided that common charges are to be allocated among the dwelling owners in proportion to their ownership or beneficial interests in the corporation, non-profit organization or trust, that each owner's share of the common charge shall be a lien against his real estate in the RD, which shall have priority over all other liens with the exception of municipal liens and first mortgages of record.

5.6.11.6.8 The method by which such instrument or instruments may be amended.

5.6.11.7 Development Schedule: A schedule shall be filed showing the estimated amount of time that will be required for completion of the development, the rate at which development will take place and the sequence of development.

5.6.11.8 Review of Other Boards and Agencies: Upon receipt of the application, the Board shall, within ten (10) days, transmit one copy to pertinent Town professionals, boards and agencies, namely to the Board of Health, Conservation Agent, Town Engineer and Fire Department. These Boards and Agencies shall review said plans and provide recommendations to the Planning Board within 15 days.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board Town of Mansfield Zoning Bylaw

5.6.2 Applicability

5.6.2.1 The Planning Board may grant a special permit for the construction of a cluster residential development in residential districts.

Has any housing been built under the cluster/flexible provisions?

Marblehead

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

No

Which entity is the special permit granting authority for cluster/flexible zoning?

Has any housing been built under the cluster/flexible provisions?

Marlborough

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Open Space Developments are allowed by special permit in Rural Residence (RR), Residential A1, A2, and A3.

City of Marlborough Zoning Ordinance

Article VI, Section 200-28. Open Space Developments.

A. An "Open Space Development" shall mean a development of residential lots in which the houses are in one or more groups on the site, separated from each other and from adjacent properties by permanently protected open space.

B. Purpose and Objectives. The purpose of this Section is to:

- (1) Encourage a less sprawling form of development that has consumed excessive open space...
- (2) Allow for greater flexibility and creativity in the design of residential subdivisions.
- (6) Encourage the production of more affordable and diverse housing types.

C. Applicability.

(1) Special Permit Required. In Open Space Developments, no building or premises shall be used, nor shall any building or structure be constructed or reconstructed, unless a Special Permit has been granted by the PLANNING BOARD in accordance with

the provisions of this Section.

(2)Zoning Districts. Open Space Development shall be limited to the following zoning districts: Rural Residence (RR), Residential A1, A2, and A3.

D. General Requirements.

(1) Uses. Uses in an Open Space Development shall be limited to those uses permitted within the applicable zoning districts as specified in Article V, Section 200-17.

(5) Lot Layout. Each lot shall be of a size and shape to provide a building site which shall be in harmony with the natural terrain and other features of the land.

E. Dimensional and Intensity Requirements.

(1)Minimum Area of Site. The total area of the site proposed for Open Space Development shall be at least 5 acres. Any site shall have a minimum of 50 ft of frontage on a public way.

(2)Maximum Density.

(a)Number of Lots. Except as provided below, the total number of building lots on the tract proposed for Open Space Development shall not exceed the number of lots which could reasonably be expected to be developed under a conventional plan in full conformance with zoning, subdivision regulations, health codes, and wetlands protection regulations. The number of lots allowable without bonuses shall be determined as follows:

(i)The applicant shall prepare a conventional plan to show the number of lots which could be created by right under conventional zoning. In order to ensure that the lots are buildable, the plan shall not include building lots that have more than 50% coverage by wetlands or by slopes of 25% or greater.

(c)Density Bonuses and Incentives. The applicant may apply for density bonuses as an incentive to provide certain amenities which would not otherwise be provided in the Open Space Development. The Planning Board shall authorize an increase in the number of lots of up to 15% above the number otherwise permitted in this Section as specified in the preceding paragraphs (a) and (b), based on the following criteria unless the Planning Board explains in its decision why unusual circumstances cause them to act otherwise:

(i)Affordable Housing. A bonus of one added lot for each affordable housing unit included in the Open Space Development. Said affordable units shall be administered by the Marlborough Housing Partnership or successor agency where applicable. The affordable housing shall meet the following requirements:

[a]The housing shall meet the requirements of the definition of Affordable Housing included in Article Section 200-05.

[c]No multi-family dwelling units shall be permitted. The affordable housing shall consist of either single family dwellings or single family zero lot line dwellings, as defined in this Chapter.

For the purpose of this Section, single family zero lot dwellings shall not be attached to more than one other unit.

Single family zero lot line dwellings shall be permitted in an Open Space Development solely for the purpose of providing affordable units and shall be designed to appear as attached single family dwellings when viewed from the street, shall fit into the overall design, and shall be reasonably mixed with the single family dwellings.

F. Open Space

(5) Minimum Area. The total area of common open space shall equal or exceed the area by which all residential lots are reduced below the basic minimum lot area normally required in the zoning district. In no case shall said total area be less than 40% of a total site in a RR District, 30% in an A-1 or A-2 District, or 20% in an A-3 District.

H. Application and Review Procedure.

(10)Definitive Plan.

(b) Limitation on Subdivision. No Open Space Development, for which approval has been granted under this Section, may be further subdivided and a notation to this effect shall be made on the definitive plan.

Minimum Lot Area requirements:

RR = 20,000 sq. ft.

A-1 = 15,000 sq. ft.

A-2 = 12,000 sq. ft.

A-3 = 10,000 sq. ft.

Parcel Size = 5 Acres

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board City of Marlborough Zoning Ordinance

C. Applicability.

(1)Special Permit Required. In Open Space Developments, no building or premises shall be used, nor shall any building or structure be constructed or reconstructed, unless a Special Permit has been granted by the PLANNING BOARD in accordance with the provisions of this Section.

Has any housing been built under the cluster/flexible provisions?

Marshfield

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Town of Marshfield Zoning Bylaw (Amended 2004)

Article II, Definitions

PLANNED DEVELOPMENT : A development involving the construction of two or more principal buildings on the same lot for any permitted use.

ARTICLE XI SPECIAL PERMIT CONDITIONS

Section 11.01 Special Conditions

Section 11.04 OPEN SPACE RESIDENTIAL DEVELOPMENT

1. PURPOSES

The purpose of the Bylaw is to: allow for flexibility and creativity in the design of residential developments; encourage preservation of scenic vistas, natural resources and existing and potential municipal water supplies; facilitate construction and maintenance of streets, utilities and public services in a more economical and efficient manner; encourage a less sprawling form of development that consumes less open land and conforms to existing topography and natural features better than a standard subdivision; preserve open space areas for active and passive recreational use, including the provision of neighborhood parks and trails; encourage provision of diverse housing opportunities and integration of a variety of housing types; and further the goals and policies of the Town's comprehensive plan.

2. DEFINITION

Open Space Residential Development (OSRD): A single family detached residential development in which the buildings are clustered together with reduced lot sizes and frontage. The land not included in building lots is permanently preserved as open space as defined herein. OSRD is the preferred form of residential development and/or redevelopment in the Town of Marshfield for residential developments of five (5) or more lots.

3. APPLICABILITY

The Planning Board may grant a special permit for an OSRD for any parcel or contiguous parcels of at least five (5) acres in any district permitting single family residences subject to the regulations and conditions herein.

4. PROCEDURAL REQUIREMENTS

a Rules and Regulations: The Planning Board shall adopt Rules and Regulations consistent with the provisions of this bylaw and shall file them with the Town Clerk. Such rules shall address the size, content, and number of copies of Preliminary and Definitive plans and other submittals and the procedure for the review of special permits.

B Density/Number of Dwelling Units: The number of dwelling units permitted shall not exceed that which would be permitted under a conventional subdivision that complies with the Marshfield Zoning Bylaws and the Subdivision Rules and Regulations of the Planning Board and other applicable laws and regulations of the Town or the state. The total number of dwelling units shall be determined by the following formula:

[Total area of land subject to the application] - [Area of wetlands/waterbodies] Applicable Land Area.

[Applicable Land Area] x [.90] Divided by Minimum Lot Area = Total number of dwelling units.

A preliminary subdivision plan may be submitted to assist in demonstrating the allowable number of units. If the parcel lies in more

than one zoning district, the total for each district shall be calculated separately.

c Review and Decision: The Planning Board shall act on applications according to the procedure specified in MGL Chapter 40A, Section 9 with the exception that a decision shall be rendered within the timeframe for Definitive Subdivision Plans specified in Chapter 41, Section 81U whenever this timeframe is shorter. Public hearings for the subdivision application and the special permit application shall be held concurrently.

d Criteria for Special Permit Decision:

...

aa. Findings: The Planning Board may approve the development upon finding that it complies with the purposes and standards of the OSRD Bylaw and is at least equivalent to a conventional subdivision with regard to protection of natural features and scenic resources of the site. The Planning Board shall consider the following criteria in making its decision: i) Upland open space as required by this Bylaw has been provided and generally conforms with Subsection 8 of this Bylaw. ii) Proposed streets have been aligned to provide vehicular access to each house in a reasonable and economical manner. Lots and streets have been located to avoid or minimize adverse impacts on open space areas and to provide views of and access to the open space for the lots. iii) Lots meet the applicable dimensional requirements of Subsection 5 of the OSRD Bylaw and the Marshfield Zoning Bylaws.

The Board's findings, including the basis of such findings, shall be stated in the written decision of approval, conditional approval or denial of the special permit. The Board shall impose conditions in its decision as needed to ensure compliance with the Bylaw.

bb. Time Limit: Special Permits are granted for a period of two years and shall lapse if substantial use or construction has not commenced by such date, except for good cause shown.

cc. Relationship to Subdivision Control Law: Nothing contained herein shall exempt a subdivision from compliance with other applicable provisions of these Bylaws or the Marshfield Subdivision Rules and Regulations, nor shall it affect the right of the Board of Health and Planning Board to approve, condition or disapprove a plan in accordance with the provisions of such Rules and Regulations and the Subdivision Control Law.

5. STANDARDS AND DIMENSIONAL REQUIREMENTS

Where the requirements of this section differ from or conflict with the requirements in the Table of Density and Dimensional Standards found elsewhere in this bylaw, the requirements of this section shall prevail for OSRD developments.

a Minimum Lot Size: One half the square footage otherwise required by the Zoning District in which the project is located or 15,000 square feet, whichever is less.

b Minimum Frontage: The minimum frontage may be reduced from the frontage otherwise required in the Zoning District; provided however that no lot shall have less than 75' of frontage and provided further that such frontage reduction shall apply only to lots fronting on proposed internal roadways.

c Lot Shape: All building lots must be able to contain a circle of a minimum diameter of 75' from the front lot line to the rear building line.□

d Setbacks: The Planning Board may permit a reduction by up to one-half of the setbacks otherwise listed in the Table of Dimensional Regulations in this Bylaw, if the Board finds that such reduction will result in better design, improved protection of natural and scenic resources and will otherwise comply with the Bylaw. Notwithstanding this provision or the requirements of the Zoning Bylaw, every dwelling fronting on the proposed roadways shall be set back a minimum of 15' from the roadway right-of-way, and a minimum of 30' from the outer perimeter of the land subject to the application. This 30' setback shall be maintained in a naturally vegetated state to screen and buffer the development. Wherever feasible, construction of the dwelling at the front setback line is encouraged.

e Required Open Space: All land area not utilized for lots, roads, and drainage shall be set aside as permanent open space. A minimum of 50% of the upland area of the parcel ("applicable land area") shall be provided as open space. Applicants are encouraged to include wetlands and waterbodies within the open space; however, they do not count toward the open space requirement. Roadway layouts do not count toward the open space requirement.

6. PERMISSIBLE USES OF OPEN SPACE

a Purposes: Open space shall be used solely for recreation, conservation, agriculture or forestry purposes by residents of the OSRD development and/or the public. Where appropriate, multiple use of open space is encouraged. At least half of the required open space may be required by the Planning Board to be left in a natural state. The proposed use of the open space shall be specified in the application. If several uses are proposed, the plans shall specify what uses will occur in what areas. The Board may approve or disapprove the proposed uses.

b Recreation Lands: Where appropriate to the topography and natural features of the site, the Planning Board may require that at least 10% of the open space or two acres (whichever is less) be of a shape, slope, location and condition to provide an informal field for recreation or community gardens for the residents of the subdivision.

c Leaching Facilities: Subject to the approval of the Board of Health, as otherwise required by law, the Planning Board may permit a portion of the open space to be used for components of sewage disposal systems serving the subdivision, where the Planning Board finds that such use will not be detrimental to the character, quality, or use of the open space, wetlands, or waterbodies, and enhances the site plan. The Planning Board shall require adequate legal safeguards and covenants that such facilities shall be

permanently maintained by the lot owners. Where a parcel straddles the boundary of the Water Resource Protection District, leaching facilities shall be located outside of the District to the maximum extent feasible.

d Accessory Structures: Up to 5% of the open space may be set aside and designated to allow for the construction of structures and facilities accessory to the proposed use of the open space including parking. With this exception, no other impervious areas may be included within the open space.

7. OWNERSHIP OF OPEN SPACE

a Ownership Options: At the developer's option and subject to approval by the Planning Board, all areas to be protected as open space shall be:

aa. Conveyed to the Town to be placed under the care, custody and control of the Conservation Commission, and be accepted by it for a park or open space use;

bb. Conveyed to a non-profit organization, the purpose of which is the conservation or preservation of open space, with a conservation restriction as specified in Subsection 7.2 below. Such organization shall be acceptable to the Town as a bona fide conservation organization; or

cc. Conveyed to a corporation or trust owned or to be owned by the owners of lots or residential units within the development ("homeowners association") and placed under conservation restriction as specified in Subsection 7.2 below. If such a corporation or trust is utilized, ownership thereof shall pass with conveyance of the lots or residential units. The developer is responsible for the maintenance of the open space and other common facilities until such time as the association is capable of assuming such responsibility. Thereafter, the members of the association shall share the cost of maintaining these areas. The Planning Board shall require the applicant to provide documentation that the homeowners association is an automatic (mandatory) association that has been established prior to the conveyance of any lots within the subdivision.

b Permanent Restriction: In any case, where open space is not conveyed to the Town, a permanent conservation, agricultural or historical preservation restriction approved by Town Counsel and enforceable by the Town, conforming to the standards of the Massachusetts Executive Office of Environmental Affairs, Division of Conservation Services, shall be recorded to ensure that such land shall be kept in an open or natural state and not be built for residential use or developed for accessory uses such as parking or roadways except as permitted by this bylaw and approved by the Planning Board. Restrictions shall provide for periodic inspection of the open space by the Town. Such restriction shall be submitted to the Planning Board prior to approval of the project and recorded at the Registry of Deeds/Land Court simultaneously with recording of the endorsed definitive subdivision plan. A management plan may be required by the Planning Board which describes how existing woods, fields, meadows or other natural areas shall be maintained with good conservation practices.

c Encumbrances: All areas to be set aside as open space shall be conveyed free of any mortgage interest, security interest, liens or other encumbrances.

d Maintenance of Open Space: In any case where open space is not conveyed to the Town, the Town shall be granted an easement over such land sufficient to ensure its perpetual maintenance as conservation or recreation land. Such easement shall provide that in the event the trust or other owner fails to maintain the open space in reasonable condition, the Town may, after notice to the lot owners and public hearing, enter upon such land to maintain it in order to prevent or abate a nuisance. The cost of such maintenance by the Town shall be assessed against the properties within the development and/or to the owner of the open space. The Town may file a lien against the lots to ensure payment of such maintenance expenses.

e Monumentation: Where the boundaries of the open space are not readily observable in the field, the Planning Board may require placement of surveyed bounds sufficient to identify the location of the open space.

8. DESIGN REQUIREMENTS

The location of open space provided through this bylaw shall be consistent with the policies contained in the Marshfield Comprehensive Plan and the Marshfield Open Space and Recreation Plan. The following design requirements shall apply to open space and lots provided through this bylaw:

a. Open space shall be planned as large, contiguous areas whenever possible. Long thin strips or narrow areas of open space (less than 100' wide) shall occur only when necessary for access, as vegetated buffers along wetlands, or as connections between open space areas.

□□

b. Open space shall be arranged to protect valuable natural and cultural areas such as stream valleys, wetland buffers, forestland and significant trees, wildlife habitat, open fields, scenic views, trails and archeological sites and to avoid development in hazardous areas such as floodplains and steep slopes. The development plan shall take advantage of the natural topography of the parcel and cuts and fills shall be minimized.

c. Open space may be in more than one parcel provided that the size, shape and location of such parcels are suitable for the designated uses. Where feasible, these parcels shall be linked by foot trails.□□

d. Where the proposed development abuts or includes a body of water or a wetland, these areas and a minimum 50' buffer to such areas should be incorporated into the open space. Where appropriate, reasonable access shall be provided to shorelines.

e. The maximum number of house lots compatible with good design shall abut the open space and all house lots shall have

reasonable physical and visual access to the open space through internal roads, sidewalks or paths. An exception may be made for resource areas vulnerable to trampling or other disturbance.

f. Open space shall be provided with adequate access, by a strip of land at least 20 feet wide, suitable for a footpath, from one or more streets in the development.

g. Where a proposed development abuts land held for conservation purposes, the development shall be configured to minimize adverse impacts to abutting conservation land. Trail connections shall be provided where appropriate.

Section 11.05 Planned Mixed-Use Development

This section of the zoning by-law is to allow a planned mixed-use development overlay district within a portion of the industrial district as shown on the Zoning Map.

1. Purpose: The purpose of this planned mixed use development section is as follows:

To provide an opportunity to comprehensively plan a large tract of land in a pedestrian friendly, campus-like setting, around a public green.

To ensure high quality site planning, architecture and landscape design to create a distinct visual character and identity for the development that provides an environment with safety, convenience and amenity.

To ensure any potential traffic impacts of the planned mixed-use development are properly mitigated and in keeping with the character of the Town of Marshfield.

To generate positive tax revenue, while providing the opportunity for new business growth and additional local jobs.

2. Process: A planned mixed-use development is a two-step process, which allows the town and an applicant greater flexibility in the development of the industrial zone. In addition to compliance with this bylaw, all applicants shall comply with the requirements set forward in the Rules and Regulations Governing Development within the Planned Mixed-Use Development Overlay District as adopted by the Marshfield Planning Board and as may be amended from time to time.

Phase I: The applicant files a Definitive Subdivision and Land Classification Plan as described in Section 5.0 for a phase or combination of phases for land within the PMUD overlay district. The plan locus for each phase must include at least thirty (30) contiguous acres within the PMUD overlay district as shown on the Town of Marshfield zoning map, as amended. Additional land can be added to or substituted within a phase, from time to time, provided the total acreage of the Phase is not less than thirty (30) acres and that a revised Definitive Subdivision Plan is filed. The Definitive Subdivision Plan and Land Classification Plan for each phase shall contain the overall road network, roadway drainage, location of the public green, bike and pedestrian ways, lots and proposed uses by phase.

Phase II: The applicant files a Special Permit Application with the Planning Board serving as the SPGA, for an element (or combination of elements) within a phase. An element may be a single use or group of uses within a phase of the overlay district. When site plan approval is required, the granting authority shall be the Zoning Board of Appeals except in the Planned Mixed-Use District where a special permit is also required and that special permit granting authority is the Planning Board. In that case, the special permit granting authority for the site plan approval shall be the Planning Board.

****Webmasters Note:** The previous subsection has been amended as per an update approved at a town meeting held on 4/26/04.

3. Applicability and Uses: In addition to the uses allowed in the I-1 zone, the following uses may be allowed by special permit: Limited retail (including Grocery Store); Eating and drinking places excluding drive-in establishments; Bank within or as a liner to the main retail building; Membership club; Other amusement / recreation service; Housing for the elderly not to exceed 3 units per acre (subject to Section 11.08); Nursing, rest or convalescent home not to exceed 24 beds per acre.

[...]

Section 11.08 Age-Restricted Adult Village

****Webmasters Note:** The previous Title has been amended as per an update approved at a town meeting held on 4/28/03.

For elderly residential housing not subject to the Table Of Dimensions and Density Regulations nor subject to Sec. 10.10 of the Zoning Bylaw, the following conditions [Amended 11/15/99] shall apply:

1. Applicability and Use

a. The tract of single or consolidated ownership at the time of application shall be at least six (6) acres in size in all residential zones and at least 10,000 square feet in the B-1 District, and shall be subject to approval by the Board acting as the Special Permit Granting Authority.

****Webmasters Note:** The previous subsection has been amended as per an update approved at a town meeting held on 10/27/03.

□□

b. The following uses shall be permitted: attached elderly and handicapped housing units; and community facilities (religious,

recreational or educational); membership club for the exclusive use of the residents of the development.

2. Required Performance Standards

- a. In the R-1 district, the total number of proposed dwelling units within the development shall not exceed three (3) units per upland acre.
- b. In the R-2 and RB districts, the total number of proposed dwelling units within the development shall not exceed four (4) units per upland acre.
- c. In the R-3 district, the total number of proposed dwelling units within the development shall not exceed four (4) units per upland acre.
- d. In the B-1 district, the total number of proposed dwelling units within the development shall not exceed eight (8) units per upland acre.

****Webmasters Note:** The previous subsection has been amended as per an update approved at a town meeting held on 10/27/03.

- e. In the B-1 District, at least twenty (20) percent of the total tract area shall be upland open space and shall be set aside as common land and shall be either deeded to the town or placed under a conservation restriction and maintained as permanent "Open Space" in private or cooperative non-profit ownership. The SPGA shall provide for the disposition and control of the open space land in a manner and form acceptable to them and approved by Town Counsel.

****Webmasters Note:** The previous subsections, a. through e., have been amended as per an update approved at a town meeting held on 4/28/03.

- f. At least ten (10) percent of the total number of units shall be developed as affordable housing and meet the Local Initiative Program (LIP) dwelling units in compliance with the requirements for the same as specified by the Department of Community Affairs, Division of Housing and Community Development and that said units count toward the Town's requirements under M.G.L. c. 40B, sec. 20-23.

****Webmasters Note:** The previous subsection has been added and the following subsections re-lettered as per an update approved at a town meeting held on 4/28/03.

...

- y. If an elderly and handicapped development is owned or converted to ownership of more than one ownership entity, a non-profit community association shall be established, requiring membership of each property owner in the development. The community association shall be responsible for the permanent maintenance of all communal water and septic systems, common open space, recreational and thoroughfare facilities. A community association agreement or covenant shall be submitted with the special permit approval application guaranteeing continuing maintenance of such common utilities, land and facilities, and assessing each lot a share of maintenance expenses. Such agreement shall be subject to the review and approval of Town Counsel and the SPGA.

****Webmasters Note:** The previous subsection has been amended as per an update approved at a town meeting held on 10/27/03.

- z. If an elderly and handicapped development is owned or converted to ownership or more than one ownership entity, a non-profit, incorporated community association shall be established, requiring membership of each property owner in the development. The community association shall be responsible for the permanent maintenance of all communal water and septic systems, common open space, recreation and thoroughfare facilities. A community association agreement or covenant shall be submitted with the special permit application guaranteeing continuing maintenance of such common utilities, land and facilities, and proportionately assessing maintenance expenses. Such agreement shall be subject to the review and approval of Town Counsel and the SPGA.
- aa. Such agreements or covenants shall provide that in the event that the association fails to maintain the common open land or other facilities in reasonable order and condition in accordance with the agreement, the Town may, after notice to the association and public hearing, enter upon the property and maintain it in order to preserve the taxable values of the properties within the development and to prevent a public nuisance. The covenants shall be assessed ratably against the properties within the development.

[...]

Survey received from Town Planner Angus Jennings on 6/8/05:

What year was the first provision for flexible zoning adopted?

"Mid to late 90s"

What was the last year that the municipality amended the cluster/flexible provisions?

"2004"

Can more units be built under cluster/flexible zoning than would be allowed through conventional zoning?

"Yes for 55+, same for cluster"

Has any housing been built under the cluster/flexible provisions? (none, 1-8 projects, more than 8)

"1-8 projects"

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board Town of Marshfield Zoning Bylaw (Amended 2004)

3. APPLICABILITY

The Planning Board may grant a special permit for an OSRD for any parcel or contiguous parcels of at least five (5) acres in any district permitting single family residences subject to the regulations and conditions herein.

Has any housing been built under the cluster/flexible provisions?

Yes Survey received from Town Planner Angus Jennings on 6/8/05:

Has any housing been built under the cluster/flexible provisions? (none, 1-8 projects, more than 8)

"1-8 projects"

Maynard

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

No

Which entity is the special permit granting authority for cluster/flexible zoning?

Has any housing been built under the cluster/flexible provisions?

Medfield

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes From ordinance.com:

**SECTION 7 OPEN SPACE RESIDENTIAL ZONING
7.1 FOR OPEN SPACE RESIDENTIAL DEVELOPMENT OF LAND:**

7.1.1 For the purpose of encouraging the preservation of open space and promoting the more efficient use of land in harmony with its natural features and within the general intent of the Zoning Bylaw, an owner or owners or their agent of a tract of land, may, in connection with the submission of a subdivision plan for Planning Board approval under the Subdivision Control Law also make

application to the Appeals Board for a Special Permit excepting his plan from the lot size and yard dimension regulations as required in the Zoning Bylaw. In no event, however, shall such permit operate as an exception from any other provision of this Bylaw. The owner or such agent shall at the same time file a copy of the application with all accompanying plans and Environmental Impact Statement with the Board of Health, the Water and Sewerage Board, Superintendent of Public Works, the Conservation Commission and the Planning Board, which Boards shall, within thirty days from the date of receipt of such documents by them, file their written recommendations concerning said applications with the Appeals Board. If no such recommendations are filed within thirty days, said Board shall have been deemed to have no recommendations on the application.

7.1.2 After notice and public hearing, and after due consideration of recommendations required to be filed, the Appeals Board may grant such a permit for residential use provided that:

7.1.2.1 It finds that the proposed plan will promote the purposes of this section; and

7.1.2.2 Not less than 25% of the area of the tract, exclusive of land set aside for road area and parking area, shall be Open Land; and

7.1.2.3 The maximum number of lots permitted on a given piece of land shall be determined by reducing the total acreage of the proposed subdivision by the area of ponds as shown on Town of Medfield Zoning Map, but not deducting for street right-of-way, and by dividing the remaining area by the minimum lot area requirements of the zoning district in which the subdivision is to be located; and

7.1.2.4 The size of the tract of land shall be not less than ten times the minimum lot size permitted in the zoning district in which the tract is located and land area of not more than 25 percent of open land in the tract may be wetlands, Flood Plain District, Watershed Protection District, or have a greater than twenty per cent slope; and

7.1.2.5 The entire development shall be serviced with a public water supply and a public sewer or an on-site sewage disposal system capable of processing an excess of 2,000 gallons of sewage effluent per day and to which all units in the development shall be connected and which shall be approved by the Board of Health and the Water and Sewerage Board, and

7.1.2.6 To insure the protection of existing residences, proposed lots abutting lots with existing single-family residences shall conform to the area requirements of the adjacent zone. The Board of Appeals may substitute a requirement for a buffer zone which shall be at least fifty feet in width for the protection of the abutting lots, and

7.1.2.7 All lots adjoining existing ways shall meet all existing regulations for zoning districts in which the lots are located. Land adjoining existing ways may be used for open land, provided that its minimum dimension is fifty feet, and

7.1.2.8 Minimum lot size shall be 12,000 square feet in area, 80-foot frontage and a perfect square 80 feet x 80 feet, 100-foot width, 100-foot depth, 20-foot front yard, 12-foot side yards and 30-foot rear yard.

7.1.2.9 Only land located within the Town of Medfield shall be included in determining whether a proposed development meets the open land and minimum lot dimensional requirements of Section 7; land or that portion of land located outside of the Town's borders shall not be included.[Added STM 11/8/99 & Approved AG 11/19/99]

7.1.3 Open Land shall be:

7.1.3.1 Owned by a membership corporation, trust or association whose members are all the owners or occupants of the dwelling units in the tract, by the Town or otherwise as the Appeals Board may approve, and

7.1.3.2 Restricted by a conservation restriction as defined in General Laws, Chapter 184, Sections 31, 32, and 33, running to the Town appropriate to retaining the Open Land predominantly in its natural scenic and open condition in such form as shall be approved by the Conservation Commission, the Planning Board and the Board of Selectmen. The applicant shall provide satisfactory assurance that such conservation restriction, following approvals, has been properly recorded in the appropriate Registry of Deeds or Registry District and the interest in land thereby created is not subject to any mortgage, security, interest lien or other monetary encumbrance of any kind other than the aforesaid conservation restriction, and

7.1.3.3 Further restricted by covenants in deeds to all grantees in the tract for recreational, agricultural, conservation, or park uses on which no building may be erected more than fifteen feet in height and only incidental to the foregoing uses, and

7.1.3.4 Open to such uses by at least the owners and occupants of the dwelling units in the tract, and

7.1.3.5 Open to Town officials for purposes of maintaining public facilities, and

7.1.3.6 Subject to such further restrictions and conditions as the Board may impose.

7.1.4 A special permit for an open space development issued hereunder by the Appeals Board is primarily an authorization for the use of lots which have less than the normal lot size and yard dimension. Subsequent approval by the Planning Board of such portions of the development as constitute a subdivision will be required as set forth in the Subdivision Control Law, including approval of the street and utility systems. A favorable recommendation by the Appeals Board that the special permit be issued shall not, therefore, be deemed to either constitute subdivision approval under the Subdivision Control Law or the Subdivision Rules and Regulations or imply that such approval will be given.

7.1.5 Consistent with the general purposes of this Zoning Bylaw and the specific purposes of this section, the Appeals Board may recommend and may impose, as conditions to the approval of a permit hereunder such provisions as to parking, loading, road construction and sidewalks, community service and recreational facilities, screening, and care and maintenance of Open Land as may be deemed advisable for the protection and well being, of the occupants of dwelling units in the tract and of the inhabitants of the Town.

7.1.6 No lot shown on a plan for which a permit is granted under this section may be further subdivided, and a notation to this effect shall be shown upon the subdivision plan recorded with the Registry of Deeds or Registry District.

Researcher notes:

Since the Cluster Zoning is an overlay, the underlying district's requirements apply. However, most of the cluster development occurs based on the R-U districts requirements, which is 12,000 sq. ft. for single family homes.

Which entity is the special permit granting authority for cluster/flexible zoning?

Board of Appeals 7.1.2 After notice and public hearing, and after due consideration of recommendations required to be filed, the Appeals Board may grant such a permit for residential use provided that:

Has any housing been built under the cluster/flexible provisions?

Yes According Norma Cronin, Medfield Planning Administrator (7/14/04), there have been three cluster developments.

Medford

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

No The provisions for mixed use zoning are primarily for apartments and commercial buildings. It is not traditional "cluster" zoning. Researcher included the text here because it has elements of "flexibility."

DIVISION 4. MIXED USE ZONING DISTRICTS

Sec. 94-211. General provisions.

Any land contained within the mixed use zoning district shall be subject to all of the provisions of this division, and to all of the other provisions of the this chapter, except where the provisions of this division conflict with other provisions of the this chapter, in which event the provisions of this division shall govern. Without limiting the foregoing, the provisions of article V, (Signs), shall apply in the mixed use zoning district. (Ord. No. 522, § 5(10A.1), 2-2-1988)

Sec. 94-212. Height limitations.

Any building or structure in an MUZ district shall not exceed 100 feet or seven stories in height (exclusive of mechanical and elevator penthouses), except that: A building principally devoted to hotel or multiple dwelling residential use adjacent to a public open space may have a height which does not exceed the lesser of 130 feet or 12 stories. A building shall be considered to be adjacent to a public open space if it is on a lot which abuts land held for or devoted to recreational use open to the public, such as a park, marina or forest, and there exists no principal structure between such building and such land so held or devoted. (Ord. No. 522, § 5(10A.2), 2-2-1988; Ord. No. 701, § 5, 6-3-2003)

Sec. 94-213. Landscaped open space; lot coverage.

(a) Any lot in an MUZ district, other than a lot having a principal structure devoted primarily to parking uses, shall have landscaped open space equal to at least ten percent of the lot area. Any lot having a principal structure devoted primarily to parking uses shall contain landscaped open space equal to at least ten percent of the lot area. Notwithstanding any contrary provision of this chapter, in the MUZ district, landscaped open space shall include, in addition to planted areas, such items as streetscape elements

(lights, planters, benches, etc.), outdoor areas devoted to dining, cafe or similar uses, and decorative surface treatments for sidewalks and other hard surfaces (such as pavers, cobblestones or concrete surface treatments designed to resemble pavers or cobblestones).

(b) Any lot in an MUZ district, other than a lot having a principal structure devoted primarily to parking uses, shall have lot coverage which does not exceed 45 percent, except that the city council may, by special permit granted pursuant to section 94-220, increase by ten percent (i.e., to 49.5 percent) the maximum lot coverage. Any lot in an MUZ district having a principal structure devoted primarily to parking uses may have lot coverage not in excess of 85 percent, except that the city council may, by special permit granted pursuant to section 94-220, increase by ten percent (i.e., to 93.5 percent) the maximum lot coverage. Lot coverage shall exclude below grade parking. (Ord. No. 522, § 5(10A.3), 2-2-1988; Ord. No. 701, §§ 6, 7, 6-3-2003)

Sec. 94-214. Floor area ratio.

(a) Floor area ratio ("FAR") shall mean the ratio of gross floor area of a structure or structures on a lot to the area of the lot. For the purposes of calculating floor area ratio, gross floor area (GFA) shall have the meaning set forth in section 94-3; provided however, that no parking garage or underground parking area, whether or not required to meet the minimum parking requirements of this chapter, shall constitute GFA.

(b) In an MUZ district, any lot shall not have an FAR in excess of the "FAR base" (as hereinafter defined), except as set forth in subsection (c) below. There shall be no FAR for residential uses in the MUZ district.

(c) Notwithstanding the foregoing, in an MUZ district the FAR on a lot may exceed the FAR base if there is a corresponding decrease in GFA and FAR on another lot within the same MUZ district, as hereinafter specified, provided, however, that the FAR on a lot shall not exceed the "FAR Maximum" (as hereinafter defined). The FAR base shall be 2.25, except that the city council may, by special permit granted pursuant to section 94-220, increase by ten percent (i.e., to 2.475) the FAR base, and, the FAR maximum shall be 2.475, except that the city council may, by special permit granted pursuant to section 94-220, increase by ten percent (i.e., to 2.7225) the FAR maximum. FAR shall be increased on a lot or lots (a lot on which such an increase occurs being referred to as a "benefited lot") and correspondingly decreased on another lot or lots (a lot on which such a decrease occurs being referred to as a "burdened lot") as follows:

(1) The FAR on a benefited lot shall be increased as follows: the then permitted FAR on the benefited lot (i.e., 2.25, as the same may have been previously increased or decreased by operation of this section 94-214) shall be multiplied by the lot area of the benefited lot; to that product there shall be added the number of square feet of GFA transferred from the burdened lot or lots, and the resulting sum shall be divided by the lot area of the benefited lot to yield the then-permitted FAR for the benefited lot.

(2) The FAR on a burdened lot shall be reduced as follows: the then-permitted FAR on the burdened lot (i.e., 2.25, as the same may have been previously increased or decreased by operation of this section 94-214) shall be multiplied by the lot area of the burdened lot; from that product there shall be subtracted the number of square feet of GFA transferred to the benefited lot or lots, and the resulting sum shall be divided by the lot area of the burdened lot to yield the then-permitted FAR for the burdened lot.

By way of example, if, in an MUZ district, Lot A contained a lot area of 80,000 square feet and Lot B contained a lot area of 100,000 square feet, and neither the FAR base nor the FAR maximum has been increased by special permit, without any transfer of GFA or FAR under this section, the maximum GFA on Lot A would be 180,000 s.f. (80,000 2.25) and the maximum GFA on Lot B would be 225,000 s.f. (100,000 2.25). The FAR on Lot A could be increased and the FAR on Lot B could be decreased by the transfer from Lot B to Lot A of 10,000 s.f. of GFA. In that event, the FAR of Lot A would be increased to 2.375 and the FAR of Lot B would be decreased to 2.15, determined as set forth in (1) and (2) above, as follows:

Lot A: 2.25 (then-permitted FAR) times 80,000 (Lot area of Lot A) = 180,000 plus 10,000 (GFA transferred) = 190,000; divided by 80,000 (lot area of Lot A) = 2.375.

Lot B: 2.25 (then-permitted FAR) times 100,000 (lot area of Lot B) 225,000; minus 10,000 (GFA transferred) = 215,000, divided by 100,000 (Lot area of Lot B) = 2.15.

Under the foregoing example, because the resulting FAR on Lot A would not exceed 110 percent of the 2.25 FAR (i.e. 2.475), such a transfer is allowed.

No building permit shall be issued for a building which would result in an FAR in excess of the FAR base on a benefited lot unless (i) the record owner of the burdened lot or lots has executed and recorded at the Middlesex South Registry of Deeds or the Middlesex South Registry district of the land court, as the case may be, an agreement, running with his land and binding on his successors and assigns, agreeing to a decrease in his GFA and FAR pursuant to the terms of the immediately preceding paragraphs and (ii) the building inspector has been supplied with copies of such evidence as he deems reasonably necessary to satisfy himself that the person executing such agreement is the true record owner of the burdened lot, and that such agreement has been duly recorded or registered. (Ord. No. 522, § 5(10A.4), 2-2-1988; Ord. No. 701, § 8, 6-3-2003)

Sec. 94-215. Setbacks.

In an MUZ district there are no side or rear yard setback requirements, so that a building may abut a side or rear lot line or a single building may be located on more than one lot and in so doing may be located over a side or rear lot line; provided that:

(1) The front yard setback of 15 feet for property within an MUZ district shall apply only to front yards abutting a municipally owned

street, laid out and accepted as a city street pursuant to M.G.L.A. c. 82 as of the date on which such property is placed in an MUZ district; for any other street not so laid out and accepted, there shall be no front yard setback requirement, except as set out in section 94-215(2) below.

(2) No principal building or structure shall be located within 40 feet of the street sideline, existing on the date that property is placed in an MUZ district, of any of the numbered state highways, or county streets laid out and accepted as a street pursuant to M.G.L.A. c. 40A, § 82 as of the date on which such property is placed in an MUZ district, in or adjacent to the city; in such locations the 40-foot setback shall be maintained as a front yard and loading spaces shall not be permitted within said 40-foot area.

In addition, that portion of any building or structure which is above the lesser of five stories or 75 feet in height shall not be located within 50 feet of the street sideline, existing on the date that property is placed in an MUZ district, of any of the numbered state highways or said county ways in or adjacent to the city.

(3) All freestanding multi-story principal buildings or structures in the same MUZ district shall be located at least 40 feet from each other (unless attached to each other), without regard to the location of lot lines.

(4) No principal building or structure shall be located within five feet of property located in a zone other than MUZ. (Ord. No. 522, § 5(10A.5), 2-2-1988; Ord. No. 701, § 9, 6-3-2003)

Sec. 94-216. Parking and loading requirements.

...

Sec. 94-217. Uses.

The table of uses set forth in subsection 94-148(d) governs the use of land in an MUZ district. In addition to the requirements of that section the following additional requirements shall apply:

(1) Use item 3C, (private entertainment and recreational facilities), are limited to health clubs.

(2) Use item 6, (hospital, not operated as a gainful business). In no event shall any hospital, whether or not operated as a gainful business, be permitted in an MUZ district.

(3) Use item 28, (outdoor automobile sales and storage). In no event shall outdoor storage of automobiles, whether or not associated with automobile sales, be permitted in an MUZ district.

(4) Use item 35 (manufacturing, including assembly, fabrication and processing and reprocessing of materials) is permitted in an MUZ district only to the extent (i) that such use is light industrial in nature (such as the manufacture, fabrication, processing, assembling and testing of products), (ii) is accessory to a principal use, and (iii) does not exceed 25 percent of the gross floor area of the structure; any manufacturing which is not accessory to a main use or exceeds 25 percent of the gross floor area of a structure shall be permitted only upon the grant of a special permit by the city council pursuant to section 94-220, provided that in any event only manufacturing which is light industrial in nature shall be permitted.

(5) Use item 35A (accessory day care center), and day care under Use Item 11, is permitted in an MUZ district only to the extent that there is provided, on the same lot or on another lot in the same MUZ district or in an ROS district, an outdoor play area conforming to size requirements under 102 CMR 7.00 (Commonwealth of Massachusetts Standards for the Licensure or Approval of Group Day Care Centers). To the extent that an outdoor play area which services a day care use in an MUZ district is located in an ROS district, such use of an ROS district for an outdoor play area is permitted, notwithstanding anything to the contrary in subsection 94-148(d) (Table of Uses).

(6) Notwithstanding anything to the contrary contained in subsection 94-148(d) (Table of Uses), any private way included in a MUZ district may be used for ingress, egress and access to industrial uses in adjacent districts. (Ord. No. 522, § 5(10A.7), 2-2-1988; Ord. No. 615, § 1, 3-25-1997)

Sec. 94-218. Performance standards in MUZ district.

All uses of land in an MUZ district shall comply with the following performance standards; provided, however, that these performance standards shall not be applicable to demolition, construction or rehabilitation work performed pursuant to an applicable demolition or building permit. If the building inspector has reasonable grounds to believe there is a violation of performance standards, such violation shall be subject to the performance standards procedure set forth in section 94-219.

(1) Sound. ...

(2) Vibration. ...

(3) Radioactivity. ...

(4) Odor. ...

(5) Toxic or noxious matter. ...

(6) Dust and fly ash. ...

(7) Smoke. ...

Sec. 94-219. Performance standards procedure.

...

Sec. 94-220. Special permit.

Whenever the grant of a special permit is authorized pursuant to this division, the following procedures and standards shall govern.

(1) In each instance in which the grant of a special permit is authorized pursuant to this division, the city council shall decide such questions as are involved in determining whether special permits should be granted, hear applications for special permits, and grant a special permit when all necessary conditions are met or deny that special permit when all necessary conditions are not met, or when the matter which requires a special permit is, in their judgment, not in harmony with the general purpose and intent of this chapter. Special permits shall only be issued following public hearings held as provided for in M.G.L.A. c. 40A, § 9.

(2) The city council shall act within 90 days following a public hearing for which notice has been given by publication and posting as provided in M.G.L.A. c. 40A, § 11 and by mailing to all parties in interest.

(3) The city council, upon receipt of an application for a special permit, shall:

a. Forward such application to the community development board.

b. The community development board shall, within 45 days, review said application and make recommendations as it deems appropriate and send copies thereof to the city council and to the applicant. Failure of the board to make recommendations within 45 days of receipt by said board of the petition shall be deemed lack of opposition thereto.

(4) A special permit granted under this section shall lapse within two years, and including such time required to pursue or await the determination of an appeal referred to in M.G.L.A. c. 40A, § 17, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause.

(5) Applications for special permits shall not be approved unless the following standards are met and the city council so finds:

a. That the use of the structures is permitted as of right or by special permit.

b. That the use and structures are so designed, located and proposed to be operated that the public health, safety, welfare and convenience will be protected.

c. That the use and structures will not cause substantial injury to the value of other property in the neighborhood where it is to be located.

d. That the use and structures will be compatible with adjoining development and the proposed character of the zone district where it is to be located.

e. That adequate landscaping and screening is provided as required herein so as to minimize the impact of the proposed use or structure and any incidental effects thereof.

f. That adequate off-street parking and loading is provided and ingress and egress is so designed as to cause minimum interference with traffic on abutting streets.

g. That the use conforms with all applicable regulations governing the district where located.

h. That such other requirements under M.G.L.A. c. 40A for the grant of a special permit have been satisfied.

(6) In granting a special permit, additional specific conditions, safeguards and limitations on time or use as are deemed necessary to insure compliance with the intent of this chapter or to protect the neighborhood may be attached. (Ord. No. 522, § 5(10A.10), 2-2-1988)

Sec. 94-221. Site plan review in an MUZ district.

...

Which entity is the special permit granting authority for cluster/flexible zoning?

Has any housing been built under the cluster/flexible provisions?

Medway

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes By special permit, Medway has a Open Space Residential Development (OSRD) zoning as well as an Adult Retirement Community Planned Unit Development (ARCPUD).

ZONING BY-LAW & MAP
Medway Planning Board

Medway, Massachusetts

Updated – September 3, 2002

(Includes amendments approved by Town Meeting on November 5, 2001, May 13, 2002 and June 24, 2002)

SECTION V. USE REGULATIONS

S. OPEN SPACE RESIDENTIAL DEVELOPMENT

1. Purpose

- a) To encourage the preservation of open space by permanently preserving open and wooded areas within the parcel.
- b) To provide green buffers, eco-corridors, and recreational areas consistent with the Town of Medway's "Open Space and Recreation Plan, 1996-2001", as amended.
- c) To permit maximum flexibility and creativity in design for the development of single-family subdivisions which will be superior to conventional plans.
- d) To promote the most harmonious use of the land's natural features, resources, and topography that will promote the general health and safety of the public.
- e) To discourage sprawled development, minimize environmental disruption, and provide a shorter network of streets and utilities that will promote a more efficient distribution of services.
- f) This By-law is not intended to make undevelopable land developable, or to permit an increase in the number of building lots that would otherwise be possible on a conventional plan, but rather to encourage the preservation of important site features.

2. General Requirements

- a) Tracts of land consisting of a minimum of ten (10) acres located in the Agricultural and Residential District I may be developed as an Open Space Residential Development (hereinafter referred to as "OSRD").
- b) OSRD's will be authorized only by Special Open Space Residential Development Permit (hereinafter referred to as "Special OSRD Permit") granted by the Planning Board (hereinafter referred to as "the Board").
- c) The number of building lots created in an OSRD may not exceed 100% of the number of building lots as permitted by Board of Health and Conservation Commission regulations, existing zoning and a conventional subdivision without waivers from the town's Planning Board Rules and Regulations Governing Subdivision of Land ("subdivision regulations"). Refer to Section C.b for further information.
- d) All lots and structures shall comply with the dimensional requirements of Section 5. Whenever possible the Board will require septic systems and housing units to be located outside of those areas of protected by Zone II regulations for public drinking water supply.
- e) Permitted Uses

- 1) Detached single-family dwellings, including all accessory uses, as permitted in the Zoning By-Law for the AR-I district;
- 2) Uses permitted within the dedicated open space as described in these regulations; and
- 3) Recreational facilities consistent with open space use and design requirements.

3. Pre-Application Process: A pre-application review and public hearing are required. The intent of such is to allow the town the opportunity to discuss with the applicant and review each proposal prior to the Special OSRD Permit process. After the pre-application review, an applicant may then proceed to the Special OSRD process. A pre-application review will be conducted in accordance with the following procedure:

a) A pre-application package consisting of two preliminary sets of plans, one illustrating a conventional subdivision plan and one showing the proposed OSRD, shall be filed with the Town Clerk and the Board. The application shall be accompanied by 12 copies of the plans that must be prepared and stamped by a registered, professional civil engineer and land surveyor, and any other supporting materials that must be prepared by appropriate professionals (i.e. architects, landscape architects, hydrogeologists, certified soil evaluators, etc.). This submittal shall comply with the preliminary plan requirements of the subdivision regulations. In addition, the applicant must notify all abutters within three hundred (300') feet of the parcel in writing regarding the time, date, and nature of the public hearing at least 10 days prior to the hearing. Proof of this notice to each abutter must be provided to the Board. Failure to notify the abutters will result in an incomplete filing.

After an OSRD application has been submitted, no tree removal, utility installation, earthwork, road or building construction shall be done on the site until a decision on the application has been made by the Board, except soil testing may be allowed to satisfy project requirements.

b) The preliminary conventional plan shall be used by the Board to determine the maximum number of lots that could be created via a conventional subdivision. The number of lots allowed in an OSRD definitive subdivision submittal is equal to 100% of the number of lots allowed in the conventional layout.

1) The burden of proof shall be upon the applicant to prove the proposed lot(s) are suitable for building. The Board reserves the right to challenge the status of any lot and not allow such to be included in any definitive plan filing.

2) Formal percolation and depth to groundwater tests shall be conducted for each building lot unless town sewerage is available. The results of these tests shall be submitted with the application. Due to seasonal testing requirements, the Planning Board may accept an application without these certified tests. However, the applicant may only proceed at his or her own risk, and no development of a building lot may commence until approved by the Board of Health. In addition, test holes are also required as part of the preliminary submittal to determine the adequacy of drainage facilities.

3) The boundaries of the Flood Plain/Wetland Protection District and all wetlands pursuant to MGL Ch. 131 shall be shown on the plans.

c) The preliminary OSRD plan shall contain the proposed location of the road(s), lots, drainage, and dedicated open space, and other information listed above

d) The Board shall hold a public hearing and act on the preliminary plans within 45 days after the receipt of the application. Comments and recommendations shall be incorporated in plans included in any subsequent filings.

e) If the preliminary conventional and conceptual OSRD plans are approved, the Board shall, in so far as practical under the law, allow the submittal of a combined Special OSRD Permit and definitive subdivision plan. A combined submission will not be authorized in those cases where either the preliminary conventional plan or OSRD is disapproved by the Board.

4. Special OSRD Permit Application and Review

a) A Special OSRD Permit application for an OSRD shall include twelve (12) copies of a definitive subdivision plan. It shall be prepared in accordance with the Definitive Subdivision requirements of the subdivision regulations, and incorporate items from the pre-application review. In addition, the applicant shall provide the following information in a written narrative:

1) A description of the existing site, including topography, wetlands, soil conditions, trees over six (6") inches in diameter in areas identified by the Board, areas within the 100-year flood plain, scenic vistas, significant natural and/or man-made features, and other items as the Board may request;

2) A description of the proposed design characteristics of the site pursuant to these regulations;

3) Engineering data showing effects of proposed development on both on- and offsite water resources (within one-hundred [100'] feet of the property line or further if within a Zone II of a public water supply well), wetlands, and natural recharge of the groundwater, yield from abutter's private wells and possible impacts upon the quality of surface and groundwater;

4) A copy of any restrictive covenant(s) for the required buffer strips, association rules and regulations, and/or other documentation relating to the creation of a Homeowners Association or similar entity.

b) The Board shall conduct a public hearing in accordance with the provisions of these By-Laws.

c) The Board may grant a Special OSRD Permit under this Section only if it finds each of the following:

- 1) The proposed plan will be in harmony with the intent and requirements of this Section and these Zoning By-Laws;
- 2) The development will not have a detrimental impact on the neighborhood or abutting properties;
- 3) The purposes of the open space as stated in Section 1 are met;
- 4) The dimensional standards contained in Section 5 are met;
- 5) The open space design requirements specified in Section 6 and 7 are met;
- 6) The parcel could be developed as a conventional subdivision under existing local, state, and federal regulations; and
- 7) The OSRD provides for efficient use and delivery of municipal and other services and infrastructure.

d) If the Board disagrees with any recommendations of another board, it shall state its reasons therefore in writing.

e) The Board may impose conditions as a part of any approval which furthers the purposes of this Section and these By-Laws. Deed restrictions per Section 7 shall be recorded. All open space shall be dedicated at the time the permit holder proceeds with construction under a building permit.

f) The Board shall require a performance guarantee to secure the proper completion of all infrastructure, as well as, the fulfillment of any conditions of approval.

g) The Board reserves its right to grant or deny the Special OSRD Permit or modify the plan for any reason, at its discretion.

5. Dimensional and Design Requirements

a) The requirements noted in Table S-1 shall apply to all lots and dwelling units located within an OSRD. All accessory structures and uses shall comply with the requirements of the Zoning By-Laws unless otherwise provided for herein.

[insert dimensions table]

NOTES_

1) Within those areas governed by Zone II regulations, the minimum lot area shall be upland as defined in MGL, Ch. 131.

2) Each dwelling unit shall have sufficient parking for two vehicles.

3) The lot width shall be measured in a straight line between the points on the side lot lines 35 feet distant from the street line.

b) Lots approved at the preliminary plan stage may be located on existing streets in the Special OSRD Permit filing and shall comply with the requirements of Table S-1.

c) The site design shall preserve and, where possible, enhance the natural features of the property including scenic views by adapting the location and placement of structures and ways to the existing topography to minimize soil removal, tree cutting, and general disturbance to the landscape and surrounding properties. The plans shall identify and preserve significant and special natural features such as rock outcrops, specimen trees and clumps of trees and man-made features such as stone walls.

d) Screening and Buffering: The intent of this provision is to ensure and preserve the visual privacy between abutting dwellings and new lots within the OSRD. To accomplish this, fifty (50') feet of screening and buffering is required in those locations where dwellings abut the OSRD. This is in addition to the required dedicated open space buffer scope required per Section six (6). The Board may alter the width of this screening if it determines that the existing vegetation and/or topography, or the proposed method of screening fulfils the intent of these requirements. The distance between existing homes and the OSRD shall also be considered.

1) Screening/buffering may consist of landscaped berms, evergreen plantings, solid walls or fences complimented by suitable plantings, "no-cut" provisions (for existing vegetation), or a combination of these items.

2) Buffer strip(s) on individual building lots, shall have a written deed restriction permanently preserving such, with no-cut provisions, conservation restrictions or other appropriate measures agreed to by the Board. This document shall be submitted for review by the Board and recorded at the Registry of Deeds with any approval.

3) In those situations where the width of the screening/buffering is reduced, plantings and/or landscaped berms may be located within the dedicated open space. No walls or fences shall be allowed within the dedicated open space.

4) The exact location of the screening/buffering and species of vegetation shall be noted on the definitive plan. All new plantings shall consist of nursery-quality stock and be situated in a manner acceptable to the Board. If required by the Board, a landscaping plan prepared by a landscape architect shall be prepared and submitted for review and approval.

e) The Board may place limitations on the types and location of accessory structures which may be located within the buffer strips. Existing/proposed screening, distances between the OSRD and existing abutters and the topography shall all be considered. The intent is to minimize impacts on existing abutters. A deed restriction may be required if such limitations are applied.

f) Swimming pools may not be located within thirty (30') feet of a property line of an existing single-family dwelling abutting the OSRD. The Board may increase this distance after considering those items noted in Subsection 5(e) above.

6. Dedicated Open Space

a) A minimum of forty-five (45%) percent of the parcel shall become dedicated open space pursuant to MGL, Ch. 40A, Section 9. It shall not include land for paved parking lots, roads or for building lots. The Board may reduce this figure to a minimum of 35% if it determines there are unique circumstances (i.e. shape of parcel, topography, wetlands, etc.) which would individually or together preclude the construction of the OSRD.

1) The minimum width of dedicated open space between abutting property and the OSRD shall be twenty-five (25') feet. An open space buffer of one-hundred (100') feet between an existing roadway and a building lot on a roadway within the OSRD is required, where possible, as determined by the Board. Other than new screening/buffering, these areas shall remain in a natural state. The Board may alter the width of this dedicated open space. When considering such, it shall review, among other things, the width of the required buffer strip, the density and type of existing vegetation, and the location of, distance and topography between existing structures abutting the OSRD.

2) Unless required by the Board, dedicated open space is not required between an existing dwelling(s) located within the OSRD and parcels abutting the OSRD.

b) Areas which have been designated as unsuitable for building (as per Chapter 131, MGL, Title V, or Zone A1 through the National Flood Insurance Program, otherwise) may be included in the dedicated open space. However, a minimum of seventy (70%) of the required, dedicated open space shall consist of upland areas.

c) Drainage Facilities (i.e. detention and retention basins) shall not be located in the open space areas. Dedicated open space may be utilized as natural courses for disposal of storm runoff from impervious surfaces. Other than minor berming (maximum 3:1 slopes which shall blend into the landscape) and riprap at pipe outflows, no significant disruption of the land (contour changes greater than three feet) for drainage are permitted.

d) The dedicated open space shall be designed and maintained in accordance with the following standards:

1) Wherever possible, open space shall be laid out in conformance with the town's "Open Space and Recreation Plan, 1996-2001" as amended, to provide Eco-corridors and other areas identified for open space preservation. Refer to Section 8 of the Open Space and Recreation Plan for further information.

2) Areas to remain as naturally-existing woods, fields, meadows and wetlands shall be maintained and may be improved in accordance with good conservation practices.

3) Dedicated open space shall be planned as large contiguous units whenever possible. Strips of narrow parcels of open space shall be permitted only when necessary for access or as vegetated buffers along the site's perimeter.

4) The open space may be more than one parcel provided that the size, shape and location of such parcels are suitable for the designated uses.

5) The parcels shall be laid out so as to promote convenient access by the homeowners within the OSRD, the general public or both, whatever the case may be. Wherever practical, parcels shall be accessible via upland areas.

6) No more than twenty (20%) of the dedicated open space shall be covered with man-made impervious surfaces.

7) The open space may be used for active and passive recreation, conservation, forestry, agriculture, natural buffers, structures necessary for approved uses, utilities and other facilities necessary for the convenience and enjoyment of the residents, subject to the approval of the Board.

7. Ownership of Dedicated Open Space

a) As agreed upon by the applicant and the Board, dedicated open space shall be permanently preserved as such, and shall be conveyed to one of the following:

1) The Town for park and open space;

2) A non-profit organization, the principal purpose of which is the conservation of open space; or

3) A corporation or trust owned or to be owned by the owners of all building lots within the development. If such corporation or trust is utilized, ownership thereof shall pass with the conveyances of the lots or residential units.

In any case, where such land is not conveyed to the Town, a restriction enforceable by the Town pursuant to (MGL, Ch. 40A, Section) shall be recorded providing that such land shall be kept in an open, natural state and shall not be developed for residential homes or roadways. If necessary, such restrictions shall further provide for maintenance for the common land in a manner which will ensure its suitability for its function, appearance, cleanliness and proper maintenance of drainage, utilities and the like.

- 1) If the dedicated open space is not to be conveyed to the town, then the applicant shall include, as part of the covenant, a provision that the dedicated open space will be deeded as approved by the Board. In addition, the covenant shall not be released until proof of ownership of the open space has been provided to the Board.
 - 2) If the dedicated open space is not to be conveyed to the town, the applicant must provide a written program describing how the open space will be maintained in perpetuity to standards satisfactory to the Board. The applicant shall also provide an agreement empowering the town to perform maintenance of the open space in the event of failure to comply with the program. This agreement shall provide that, if the town is required to perform any maintenance work, the owner(s) of the open space shall pay the cost thereof and any unpaid costs shall constitute liens upon the homeowners' property until said costs have been paid.
 - 3) If the dedicated open space is to be owned by the owners of all building lots within the development, the agreement shall provided that if the town is required to perform any maintenance work, the owner(s) of the open space shall pay the cost thereof and any unpaid costs shall constitute liens upon the homeowners property until said costs have been paid.
- b) Subject to the above, the dedicated open space may be kept in an open and natural state or may be used for recreational uses including, but not limited to, golf courses, riding trails, athletic fields or gardens.

8. Revisions to Special OSRD Permit

Subsequent to granting a Special OSRD Permit, the Board may permit the relocation of lot lines or changes to landscaping within the project. However, any change in the number of lots, street layout, square footage or composition of dedicated open space or disposition thereof, as determined by the Board, shall require further review and public hearing.

9. Duration of Approval

Notwithstanding anything to the contrary contained herein and any other Town By-Law and State Law, any Special OSRD Permit granted by the Board shall become void within two (2) years from the date of issue, not including time required to pursue or await determination of an appeal referred to in Section 17 of Chapter 40 of the General Laws, unless any construction work contemplated thereby shall have commenced and proceeded in good faith continuously to completion, except for good cause.

T. ADULT RETIREMENT COMMUNITY OVERLAY DISTRICT

1. Purpose: The purpose of the Adult Retirement Community Overlay District is to advance the public health, safety and welfare by specifically providing for the development of retirement communities within Medway that provide a choice of housing opportunities to senior residents and accommodate the long-term social, cultural, recreational and continuing care needs of these citizens. The specific purposes of the Adult Retirement Community Overlay District are:

- a) To provide for and promote development of alternative housing opportunities for the growing senior citizen population.
- b) To permit a greater variety of housing types than would otherwise be allowed in the underlying zoning district(s) in order to accommodate the housing needs of the senior citizen population.
- c) To enable, through the special permit process by the Planning Board, creative and innovative site planning and development of Medway's limited land resources.
- d) To Promote preservation of the rural character of Medway by encouraging property owners and developers to set aside and protect natural open space as part of the land development effort.
- e) To encourage the development of affordable housing for seniors with low and moderate incomes.

2. General Requirements:

- a) Location: The Adult Retirement Community Overlay District is an overlay zoning district that shall be superimposed on the Agricultural and Residential I District and/or Agriculture and Residential II District of the Town of Medway. The Adult Retirement Community Overlay District shall be considered superimposed on all the lands of these underlying Districts existing at the time that any land in any said underlying district is also included in the Adult Retirement Community Overlay District. The rezoning of any or all of the land included in the Adult Retirement Community Overlay District from one underlying zoning district classification to another shall not affect its inclusion in the Adult Retirement Community Overlay District, unless said land is specifically removed from the said Adult Retirement Community Overlay District.
- b) ARCPUDs will be authorized only by Special Adult Retirement Community Overlay District permit (hereinafter referred to as "Special ARCPUD Permit") granted by the Planning Board (hereinafter referred to as "the Board").

3 Permitted Uses:

a) Uses Allowed As of Right: The following uses shall be allowed as of right within an Adult Retirement Community Overlay District:

- 1) Uses directly related to the conservation of water, plants and wildlife.
- 2) Non-profit outdoor recreation activities and facilities, including unpaved play areas, nature study, boating, fishing and hunting where otherwise legally permitted.
- 3) Wildlife management areas, landings, foot, bicycle and/or horse paths and bridges.
- 4) Grazing and farming, including truck gardening and harvesting of crops.
- 5) Forestry and nurseries.
- 6) All uses permitted as of right in the underlying base zoning district.

b) Uses Allowed by Special Permit: The following uses may be permitted within an Adult Retirement Community Overlay District upon the granting of a special permit:

- 1) An Adult Retirement Community Planned Unit Development (ARCPUD).

4. Adult Retirement Community Planned Unit Development (ARCPUD):

a) Purpose and Intent: the purpose of Adult Retirement Community Planned Unit Development, or ARCPUD, is to encourage development of master-planned residential communities for persons fifty-five (55) years of age and older by allowing for a greater variety of uses and building types at a higher density than would normally be allowed, and allowing greater flexibility in site planning so as to promote affordable housing and the preservation of open space within the development. It is intended that an ARCPUD development provide a range of housing types and facilities that are responsive to the socio-cultural, healthcare and recreational needs of senior residents. The intent of an ARCPUD also is to achieve, to the greatest possible degree, land development that is responsive to an analysis of the environmental assets and constraints of a site, both natural and man-made. The ARCPUD should be a well-integrated development in terms of land use, functional systems and major design elements such as buildings, roads, utilities, drainage systems and open space. Design standards should be supportive of a New England character, with a cohesive center and a sense of neighborhood. An ARCPUD is allowed greater design flexibility so that site planning for a development may protect natural features and consider most fully the surrounding land use and development context. This may allow for development to be more highly concentrated on one portion of a site than would otherwise be the case with a resulting lower intensity of development and preservation of open space elsewhere on the site. Development should be concentrated in the most suitable and least environmentally sensitive areas of the landscape. Preservation of natural open space is strongly promoted, as is provision and enhancement of additional open space for recreational use and enjoyment of residents. It is intended that the benefits of ARCPUD development will act to encourage property owners/developers to consolidate land parcels so that comprehensive and responsible site planning will occur.

b) Pre-Application Meeting: A pre-application meeting and review with the Planning Board is required. This will provide the applicant with the opportunity to present preliminary development plan concepts and gain informal feedback from the Planning Board, other Town officials and interested citizens. This review also will allow the Planning Board and involved Town officials to provide guidance to the applicant on the Special Permit application and review process.

c) ARCPUD General Standards: An Adult Retirement Community Planned Unit Development (ARCPUD) shall comply with the following general standards:

- 1) All dwellings in an ARCPUD shall be subject to an age restriction described in a deed/deed rider, restrictive covenant, or other document approved by the Planning Board that shall be recorded at the Registry of Deeds or Land Court. The age restriction shall limit the Dwelling Units to occupancy by seniors, age fifty-five (55) or older; or their spouses of any age; provide for reasonable time-limited guest visitation rights; and may authorize special exceptions that allow persons of all ages to live in a Dwelling Unit together with a senior resident, if the Planning Board so approves and specifies this in its special permit. The Special Permit including the age restriction shall run with the land in perpetuity and shall be enforceable by any owner(s) of dwelling units in the ARCPUD and/or the Planning Board of the Town of Medway.
- 2) An ARCPUD shall be on a site that is a minimum of ten (10) acres in area. The site may consist of a single lot or of multiple, contiguous lots.
- 3) The ARCPUD shall include a mixture of two or more types of adult retirement community residential uses as defined in Section II of this By-Law and may be developed in multiple phases.
- 4) Upon approval by the Planning Board, an ARCPUD also may include Local Convenience Retail use of no more than 7,500 square feet of gross building area. If located within an ARCPUD development, by definition, the total amount of building area occupied by Local Convenience Retail uses shall not exceed five percent (5%) of the ARCPUD total gross building area or 7,500 square feet, whichever is greater.
- 5) Upon approval by the Planning Board, an ARCPUD also may include an ARCPUD Community Center or Community

Building(s) intended for use and benefit of the ARCPUD residents, provided that such use(s) shall occupy not more than ten percent (10%) of the gross building floor area constructed within the approved ARCPUD, and that in the opinion of the Planning Board, such use enhances the general purpose of this ARCPUD and enhances better site and community planning, and if the Planning Board finds that adequate assurances and covenants exist to ensure proper maintenance of such facilities by the residents, owners or their agents and that the residents, owners or their agents will bear all expenses related thereto.

6) The maximum number of permitted housing units in an ARCPUD shall be determined by multiplying the gross acreage of the ARCPUD site by a factor of three (3.0). A housing unit shall be defined as equal to:

(a) A home Site in an ARCPUD Residential Subdivision, a townhouse, or a dwelling unit as defined in the By-Law;

(b) Two (2) dwellings or rooms in an Assisted Living or Congregate Living Residence Facility, provided such dwellings do not meet the definition of a dwelling unit;

(c) Three (3) dwellings or rooms in a Long-Term Care Facility.

An applicant or developer of an ARCPUD is not entitled to the maximum number of housing units described above. The allowable increased density, up to the calculated maximum number of housing units for the given ARCPUD site, is at the discretion of the Planning Board based on evaluation of the proposed development plan, its impacts and its benefits to the community.

7) When an ARCPUD is within more than one (1) base zoning district, applicable use standards will be based on the percentage of acreage in each district.

8) The maximum number of permitted housing units within all permitted ARCPUD developments in the Town of Medway shall be limited to a number equivalent to ten percent (10%) of the existing single-family residential housing units (excluding ARCPUD units) located in the Town of Medway. For the purpose of this By-Law, the number of single-family residential housing units shall be as established by the Board of Assessors as of January 1 of the calendar year.

d) ARCPUD Open Space Standards: A minimum of forty percent (40%) of the total land area of the ARCPUD shall be set aside and maintained as open space. The following standards shall apply to the required ARCPUD open space land area:

1) The following shall not be counted as part of the required ARCPUD open space: Community Buildings or other buildings housing common facilities, median strips, landscaped areas within parking lots, or lawn/landscaped areas on individual Home Site lots, or any impervious areas for the open collection and management of storm water.

2) A minimum of forty percent (40%) of the required ARCPUD open space shall be suitable for use for passive and/or active recreational purposes.

3) A minimum of fifty percent (50%) of the required ARCPUD open space shall be preserved in its natural pre-development condition, unless the Planning Board finds that it is not practical for the ARCPUD to preserve this amount of natural land due to previous land alteration activities.

4) Wetland resource areas as defined and regulated pursuant to the Massachusetts Wetlands Protection Act (M.G.L. Ch. 131A) shall comprise not more than fifty percent (50%) of the required ARCPUD open space.

5) The required ARCPUD open space shall be contiguous, unless the Planning Board finds that it is not practical for all the open space to be contiguous due to the particular shape and topography of the ARCPUD site or, for the same reasons, that it is advantageous to allow separated open space areas in order to best protect natural features of the site.

6) To the greatest extent possible, the allocation and reserve of ARCPUD open space should establish a network of open space within the site. Wherever possible, the ARCPUD open space shall be contiguous to and interconnect with other existing open spaces bordering the ARCPUD. The ARCPUD plan should take into account any Town of Medway or other public agency plans for preservation or improvements to public open space adjacent to the ARCPUD site, so as to provide potential for linkage and access to said adjacent public open space. As a condition of issuance of the Special Permit for an ARCPUD. The Planning Board may require the ARCPUD applicant to provide paths, walkways or other appropriate physical connections to adjacent open spaces.

7) A minimum of fifty percent (50%) of the required ARCPUD open space shall be set aside permanently as Protected Open Space. The Protected Open Space shall be maintained as open space in perpetuity. If protected by a deed restriction or conservation restriction pursuant to M.G.L. Chapter 40A, Section 9 for common open space, the Protected Open Space may be owned in whole or part by a private corporation or trust representing the owners or persons responsible for development of the ARCPUD, resident owners within the ARCPUD, or a non-profit conservation organization. A covenant shall be placed on the land such that no part of the ARCPUD shall be sold or occupied until a satisfactory written agreement has been executed for protection of the Protected Open Space. Otherwise, the required Protected Open Space shall be conveyed by deed to the Medway Conservation Commission or a land trust designated by the Medway Conservation Commission. The Planning Board may require such conveyance as a condition of approval of the ARCPUD, though the Planning Board shall not make a requirement of public dedication of more than the required Protected Open Space.

8) Drainage facilities (i.e. detention and retention basins) shall not be located in the open space areas. Dedicated open space may be utilized as natural courses for disposal of storm runoff from impervious surfaces. Other than minor berming (maximum 3:1 slopes which shall blend into the landscape) and riprap at pipe outflows, no significant disruption of the land (contour

changes greater than three (3) feet) for drainage is permitted.

9) Open space shall be laid out to provide eco-corridors and other areas identified for open space preservation. Land within fifty (50) feet of any dwelling unit shall not be counted toward the open space acreage. Areas to remain as naturally-existing woods, fields, meadows and wetlands shall be maintained and a plan for funding the maintenance provided.

10) If the dedicated open space is not to be conveyed to the town, the applicant must provide a written program describing how the open space will be maintained in perpetuity to standards satisfactory to the Board. The applicant shall also provide an agreement empowering the town to perform maintenance of the open space in the event of failure to comply with the program. This agreement shall provide that, if the town is required to perform any maintenance work, the owner(s) of the open space shall pay the cost thereof and any unpaid costs shall constitute liens upon homeowners' property until said costs have been paid.

e) ARCPUD Site Development Standards: The following site development standards shall apply to all ARCPUD developments.

1) Each lot or contiguous lots upon which an ARCPUD is located shall have a minimum of two hundred fifty linear feet (250') of total frontage on an existing public way(s).

2) Each building in the ARCPUD shall face either upon an existing street or upon a public or private way constructed within the ARCPUD.

3) Each building in the ARCPUD shall have a minimum front yard of no less than twenty feet (20') from the edge of the paved way to the closest point of the structure and a side yard of not less than ten feet (10') from the edge of the paved way to the closest point of the structure.

4) Each building in the ARCPUD shall be set back a minimum of fifty feet (50') from the ARCPUD's perimeter lot line. The setback area shall be maintained as natural open space or as a landscaped buffer.

5) Each building in the ARCPUD shall be set back a minimum of fifty feet (50') from the right-of-way line of any public way.

6) In an ARCPUD Residential Subdivision, each Home Site lot shall be a minimum of 6,000 square feet in area and meet upland and lot shape requirements specified within this By-Law.

7) There shall be no minimum standards for internal lot line setbacks within the ARCPUD unless required by the Planning Board in its issuance of a special permit based on specific findings that there is need for greater physical separation of specific buildings or uses.

8) Within the ARCPUD a minimum of two (2) off-street parking spaces shall be required for each dwelling unit. The required parking space(s) shall be provided on the same lot as the dwelling(s) or on a contiguous lot (within the ARCPUD) provided that there are easements ensuring rights of access, use and maintenance. The Planning Board may, as a condition of granting a special permit for the ARCPUD, require additional off-street parking areas to be provided for use in common by dwelling unit owners or residents and their guests.

9) A minimum of one (1) off-street parking space shall be required for each 500 square feet of gross building area occupied by a permitted Local Convenience Retail use. The Planning Board may reduce this requirement if the nature and design of a particular ARCPUD indicates that parking demand will be lower due to enhanced pedestrian access or a reduced reliance on motor vehicle travel within the ARCPUD. The required parking space(s) shall be provided on the same lot as the permitted use or on a contiguous lot (within the ARCPUD) provided that there are easements ensuring rights of access, use and maintenance. The Planning Board may, as a condition of granting a special permit for the ARCPUD, require additional off-street parking areas to be provided for accessory uses within the ARCPUD.

10) All roadways and driveways serving more than one dwelling shall be a minimum paved width of twenty-two feet (22').

11) All roadways, driveways and parking areas within the ARCPUD shall be maintained by the applicant, developer of the ARCPUD, its assigns, or owners or their agents.

12) Landscape design shall give preference to the maintenance of existing healthy trees and groundcover. The development of large lawn areas shall be minimized.

13) All utilities shall be underground.

14) No mobile homes or trailers shall be allowed to be used as dwelling units in the ARCPUD.

15) Utilities and on-site storage shall be shielded from view by walls or fences.

16) All solid waste removal within the ARCPUD shall be the responsibility of the residents, owners or their agents and they shall bear all expenses related hereto.

f) Planning Board Findings for ARCPUD Special Permit: The Planning Board shall review and make findings that the following requirements and features of an ARCPUD are satisfied in the proposed development. The permitted ARCPUD shall

clearly demonstrate:

- 1) That the ARCPUD is a defined tract of land of a minimum of ten (10) acres in area;
- 2) That the ARCPUD is developed in a comprehensive, design-integrated manner according to an overall master plan with two (2) or more types of senior residential use, or at least one (1) type of senior residential use and at least one (1) type of Local Convenience Retail use;
- 3) That the ARCPUD is consistent with all ARCPUD general standards and all applicable ARCPUD site development standards set forth herein;
- 4) That the ARCPUD is consistent with the goals and objectives of the Town of Medway Master Plan;
- 5) That the ARCPUD locates or clusters development sites, especially buildings and parking areas, in a manner that preserves natural open space and historic features of the site and provides usable open space for the recreation and enjoyment of ARCPUD residents;
- 6) That the ARCPUD makes efficient use of land by properly considering topography and protection of significant natural features including, but not limited to: waterways, wetlands floodplains and wildlife habitat;
- 7) That the ARCPUD demonstrates coordinated site development including, but not limited to:
 - (a) The appropriate integration or separation of land uses and housing types;
 - (b) The use of consistent or compatible architecture that serves to visually unify the elements of the ARCPUD;
 - (c) The establishment of contiguous expanses of preserved open space;
 - (d) The development of an efficient vehicular access and circulation system and other infrastructure, that is to the degree practical, designed to serve all the various elements of the ARCPUD development;
 - (e) The establishment of pedestrian networks within the site as appropriate to serve residents.
- 8) That the ARCPUD roadway and other infrastructure systems are sized to accommodate the overall service demand of all uses in the ARCPUD development;
- 9) That the ARCPUD roadway and other infrastructure systems are linked to and coordinated with the surrounding off-site public roadways and infrastructure in a manner that is safe, efficient and non-injurious to the public and an improvement or benefit to the public where possible;
- 10) That the ARCPUD includes provisions for the ownership and preservation of required ARCPUD open space;
- 11) That the ARCPUD includes appropriate deed restrictions or covenants requiring compliance of all development with the ARCPUD master plan and with any site plan or architectural guideless or standards specifically included by the Planning Board as part of the ARCPUD.
- 12) The Planning board may, as a special permit condition, require that all proposed laws or similar binding ARCPUD regulations which may be relevant to the issuance of the special permit, including but not limited to: by-law provisions prohibiting the presence of persons under age 55 residing in the ARCPUD and limiting or prohibiting the presence in the ARCPUD of mobile homes or trailers, boats, boat trailers or recreational vehicles, be made a part of the Special Permit, and that any change to or failure to enforce said provisions shall be a violation of said Special Permit.
- 13) Depending on the nature of the particular ARCPUD and it uses, the Planning Board may, as a condition of any Special permit for an ARCPUD, require that the land area on which the ARCPUD is located be permanently maintained as one undivided lot and that from and after the date of the issuance of the Building Permit for said ARCPUD or any portion thereof, no subdivision of said lot shall be allowed without the express approval of the Planning Board. However, the recording of a condominium master deed and the conveyance of condominium units within the area covered by said deed shall be allowed.
- 14) Depending on the nature of the particular ARCPUD and its uses, the Planning Board may, as a condition of any Special Permit for an ARCPUD, require a legal mechanism as will, in the opinion of the Planning Board, assure that the said ARCPUD will not be subdivided, nor its individual units shall not be further subdivided, or that the ARCPUD will remain as rental housing, or that ownership will remain consolidated.
- g) Administration:
 - 1) Overview: The Planning Board shall, in its discretion, require the following Basic Information (a) to (e) below for all applications for special ARCPUD permits and any additional information, if applicable, including, but not limited to items listed in (f) to (r) below. Only that information which is applicable to a proposed use or structure will be required of the applicant. The applicant is required to have a preliminary meeting with the Planning Board before submitting the application to help the applicant identify the applicable information requirements.

2) Basic Information:

- (a) Names, addresses and telephone numbers of the applicant, the owner if other than the applicant and other agents for the applicant, such as the architect, engineer and/or attorney, and the name and address of the proposed project;
- (b) A plot plan (certified by a land surveyor) indicating total land area boundaries, angles and dimensions of the site and a north arrow;
- (c) Locus of the land shown on the plan at a scale of no smaller than 1"=100', with sufficient information to accurately locate the land and adjacent land, all property lines and buildings within 500' of the land;
- (d) Plans showing:
 - i. Present and proposed use(s) of the land and existing buildings, if any;
 - ii. Dimensions of existing and proposed building(s) or other structures including height, setback(s) from property lines and total square footage of all floors;
 - iii. Locations and dimensions of any easements, public or private rights-of-way, or other burdens existing or proposed;
 - iv. At-grade parking and loading areas showing number, location and dimensions of parking and loading spaces, driveways, access and sidewalks, preferably indicated on plot plan; and
- (e) A brief written description of the proposed project, such as proposed construction or demolition, all uses, who the project is intended to serve, expected number of employees, and/or occupants and methods and hours of operation, as applicable.

Additional Information, if applicable:

- (f) The total floor area and ground coverage ratio of each proposed building and structure;
- (g) Front, side and rear elevations;
- (h) Existing and proposed contour elevations in two foot increments;
- (i) Provisions for vehicular and pedestrian access ways, including proposals for new or relocated curb-cuts and access for emergency vehicles;
- (j) Color, materials and exterior features of proposed structures;
- (k) Landscaping and screening, including trees, stones, walls, fences and other features to be retained and removed as well as color, size and type of landscaped surface materials;
- (l) Measures taken to preserve and protect natural resources;
- (m) Outdoor lighting, including location and intensity of lighting facilities;
- (n) Location and significance of historical structures;
- (o) Locations of and adequacy of existing and proposed on-site public utilities, facilities and conditions (water, sewerage and drainage), showing size and direction of flow;
- (p) A traffic study including estimated peak hour traffic volumes generated by the proposed use in relation to existing volumes and projected future conditions;
- (q) Wetlands ponds and surface water bodies, as defined under the Wetlands Protection Act, M.G.L. Chapter 131, section 40, and rules promulgated hereunder, 310 CMR 10.00 and any other applicable local bylaws, rules or regulations; and
- (r) Such other information as will aid the Board in judging the application and in determining special conditions and safeguards and as the Board should deem necessary in its determination of completeness of said application.

3. Procedures for Special Permits, Application Procedures and Information

Required: Applications for a special ARCPUD permit shall be made to the Planning board on forms provided for that purpose, accompanied by the required fee. Copies of the completed application shall be distributed to those boards and departments as specified in the Rules and Regulations, which shall include, but not be limited to: the Selectmen, Inspector of Buildings and Conservation Commission.

Notes:

Open Space Residential Development (OSRD):

Tracts of land consisting of a minimum of ten (10) acres located in the Agricultural and Residential District I may be developed as an Open Space Residential Development (hereinafter referred to as "OSRD").

AR-I:

Min Lot Dimensions:

Area: 22,500 sq ft

Frontage: 75 ft

AR-II:

Min Lot Dimensions:

Area: 30,000 sq ft

Frontage: 75 ft

Adult Retirement Community Planned Unit Development (ARCPUD):

2) An ARCPUD shall be on a site that is a minimum of ten (10) acres in area. The site may consist of a single lot or of multiple, contiguous lots.

6) The maximum number of permitted housing units in an ARCPUD shall be determined by multiplying the gross acreage of the ARCPUD site by a factor of three (3.0). A housing unit shall be defined as equal to:

(a) A home Site in an ARCPUD Residential Subdivision, a townhouse, or a dwelling unit as defined in the By-Law;

(b) Two (2) dwellings or rooms in an Assisted Living or Congregate Living Residence Facility, provided such dwellings do not meet the definition of a dwelling unit;

(c) Three (3) dwellings or rooms in a Long-Term Care Facility.

d) ARCPUD Open Space Standards: A minimum of forty percent (40%) of the total land area of the ARCPUD shall be set aside and maintained as open space.

6) In an ARCPUD Residential Subdivision, each Home Site lot shall be a minimum of 6,000 square feet in area and meet upland and lot shape requirements specified within this By-Law.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board b) OSRD's will be authorized only by Special Open Space Residential Development Permit (hereinafter referred to as "Special OSRD Permit") granted by the Planning Board (hereinafter referred to as "the Board").

b) Pre-Application Meeting: A pre-application meeting and review with the Planning Board is required. This will provide the applicant with the opportunity to present preliminary development plan concepts and gain informal feedback from the Planning Board, other Town officials and interested citizens. This review also will allow the Planning Board and involved Town officials to provide guidance to the applicant on the Special Permit application and review process.

1) All dwellings in an ARCPUD shall be subject to an age restriction described in a deed/deed rider, restrictive covenant, or other document approved by the Planning Board that shall be recorded at the Registry of Deeds or Land Court. The age restriction shall limit the Dwelling Units to occupancy by seniors, age fifty-five (55) or older; or their spouses of any age; provide for reasonable time-limited guest visitation rights; and may authorize special exceptions that allow persons of all ages to live in a Dwelling Unit together with a senior resident, if the Planning Board so approves and specifies this in its special permit. The Special Permit including the age restriction shall run with the land in perpetuity and shall be enforceable by any owner(s) of dwelling units in the ARCPUD and/or the Planning Board of the Town of Medway.

Has any housing been built under the cluster/flexible provisions?

No Researcher called the planning board (508-533-3291) on 4/15/05. The person who spoke with the researcher said that OSRD was adopted more than five years ago - it predates the planner. There will be a proposed amendment this year, an overhaul to give the bylaw more flexibility and creative options.

She said that the first OSRD development was approved this fall and will be under construction soon. She said "clearly there was something wrong with the bylaw. We're hoping to fix it. The new one is modeled on MAPC's."

According to ordinance.com, OSRD was approved in 1999.

Melrose

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes According to Section 5.4 of the zoning ordinance, cluster zoning is allowed in Suburban Residence, A Suburban Residence and B Suburban Residence. Planned Unit Development is allowed in A Suburban Residence, B Urban Residence, C Urban Residence, D Urban Residence, General Business, Local Business, and Medical Business.

The definition and requirements for Cluster Development and Planned Unit Development are listed in Section 11 of the ordinance.

From ordinance.com:

Section 11.7 Cluster Residential Development.

1. For single-family residential development in a cluster pattern in the SR, SR-A, and SR-B districts, subject to dimensional and density regulation less than the minimum required for development of an individual lot in the same district, the following conditions shall apply:

- a. The tract of land in a single or consolidated ownership at the time of application shall be at least fifteen (15) acres in size and the plan of which shall be subject to approval by the Planning Board under the Melrose Land Subdivision Regulations.
- b. A site plan shall be presented to the Planning Board for the entire tract.
- c. Each individual lot in the SR, SR-A, and SR-B districts shall be subject to all requirements for a one-family detached dwelling in the UR-A district.
- d. The total number of proposed lots in the development Within the SR district shall not exceed the number of lots which could be developed under normal application requirements of the SR district. The total number of proposed lots in the development within the SRA district shall not exceed the number of lots which could be developed under normal application requirements of the SR-A district. The total number of proposed lots in the development within the SR-B district shall not exceed the number of lots which could be developed under normal application of the requirements of the SR-B district. For purposes of this paragraph, it shall be assured that a maximum of eighty (80) percent of the total tract area could be utilized to meet lot area requirements.
- e. The proposed plan shall be in accordance with the Melrose Future Land Use Plan as last revised.
- f. The development shall be served by both public water and public sewerage systems.
- g. The minimum open space requirement shall be fifty (50) percent of the total tract area. A portion of the open space land, amounting to at least ten (10) percent of the total tract area, shall be set aside as common land covenanted to be maintained as permanent open space in private or cooperative ownership. The form of covenant covering such common land shall provide for its permanent ownership and maintenance and shall be subject to the approval of the Planning Board and the City Solicitor. (With the consent of the Aldermen this common land may be deeded to the City). This common land shall be of such a physical character and appropriately planned so as to be of use to the residents of the cluster development.
- h. Such common land shall be deeded to the city or permanently covenanted simultaneously with the Planning Board's approval of the Definitive Subdivision Plan.
- i. Such common land shall be restricted to open space recreational uses such as tot-lot, park, playground, play field, golf course, or conservation area.
- j. Such common land shall have suitable access to a street.

Section 11.8 Planned Unit Development in the SR-A District.

For development in a planned unit concept in the SR-A district for uses including among others, residential, business, and institutional, and not subject to the Table of Dimensional and Density Regulations, the following conditions shall apply:

1. The tract shall be in single or consolidated ownership and the plan for the tract shall be subject to the approval by the Planning Board under the Melrose Land Subdivision Regulations. The tract shall be at least thirty (30) contiguous acres which may be intersected by a street or streets.

2. The development may be totally new development or it may incorporate existing development either in its present form or as altered through rehabilitation.

3. The following uses shall be permitted: residential including town houses and multi-family dwellings; community facilities (religious or educational; membership club for exclusive use of the residents of the planned unit development; public recreation or open space; fire station); public transportation terminal facility; and business establishments selling convenience goods such as food, drugs, and proprietary goods; general merchandise such as dry goods, apparel and accessories, hardware, home furnishings, and similar items; personal and consumer services establishments; medical, other professional, and business offices including financial, insurance, and real estate offices.

4. A maximum of five (5) percent of the total residential gross floor area at any one time may be devoted to business gross floor area.

5. The minimum open space requirements shall be as follows:

Percent of total tract area 60

Percent of developed area 20

A portion of the open space land, amounting to at least ten (10) percent of the total tract area, shall be set aside as common land covenanted to be maintained as permanent open space in private or cooperative ownership. The form of covenant covering such common land shall provide for its permanent ownership and maintenance and shall be subject to the approval of the Planning Board and the City Solicitor (with the consent of the Aldermen, this common land may be deeded to the City). This common land shall be of such a physical character and appropriately planned so as to be of use to the residents and patrons of the development.

6. The remaining land area may be developed for residential, community facilities, and business uses. In considering the application, the Planning Board should determine the need for sites for community facilities such as schools, playgrounds, fire stations and the like. Where such a need is found, appropriate sites within the development shall be set aside.

7. The residential density shall not exceed twenty (20) dwelling units per acre of the total tract area.

8. The locations of buildings shall be governed by the following:

a. All buildings shall be at least one foot from any lot line for each foot of building height, but in no case shall any building be closer than fifteen (15) feet from any lot line.

b. All principal buildings shall be at least twenty-four (24) feet apart except that where building heights exceed forty (40) feet, these distances shall be increased by one foot for each foot of height over forty (40) feet.

c. All principal buildings shall be at least fifteen (15) feet from any common parking area.

9. Buildings of greater height than eight (8) stories may be allowed only as long as the minimum distances required in paragraphs a. and b. of No. 8 above be increased by one foot for each two (2) feet of height over eighty (80) feet.

10. The development shall be served by both public water and public sewerage systems.

11. The principal streets shall be offered for acceptance as public ways. Where retained as private ways, they shall be posted as such by standard street signs.

12. A location plan at a scale of one inch equals six hundred fifty (650) feet shall be submitted.

13. A site plan for the entire tract at a scale of one inch equals forty (40) feet, prepared by a recognized land planner, registered architect or registered professional engineer, shall be submitted to the Planning Board in duplicate and shall show in addition to other items as may be required by the Planning Board at least the following:

a. Two-foot contours on the tract and within fifty (50) feet thereof.

b. The location and acreage of areas to be devoted to specific uses.

c. Existing and proposed streets, parking, drainage, and utility systems.

d. Proposed residential density of development in terms of dwelling units per acre and type, and proposed business uses in square footage and types.

e. A separate plan showing the location of parks, open recreation areas and other open spaces, schools, and other public community uses.

f. A plan for landscaping including existing natural features and proposed landscaping, prepared by a registered landscape architect.

14. The development plan shall be consistent with the Melrose Future Land Use Plan as last revised.

15. Signs shall be governed by the regulations of Article VII as applied to the use in the planned unit development except that projecting signs shall not be permitted.

Section 11.9 Planned Unit Development in the UR-B, UR-C , and UR-D Districts.

For development in a planned unit concept in the UR-B, UR-C, and UR-D districts for uses including among others, residential, business, and institutional, and not subject to the Table of Dimensional and Density Regulations, the following conditions shall apply:

1. The tract shall be in single or consolidated ownership and the plan for the tract shall be subject to the approval by the Planning Board under the Melrose Land Subdivision Regulations. The tract shall be, at least five (5) contiguous acres which may be intersected by a street or streets.

2. The development may be totally new development or it may incorporate existing development either in its present form or as altered through rehabilitation.

3. The following uses shall be permitted: residential including town houses and multi-family dwellings; community facilities (religious or educational; membership club for exclusive use of the residents of the planned unit development; public recreation or open space; fire station); public transportation terminal facility; and business establishments limited to the following business uses: retail establishments selling convenience goods such as food, drugs, and proprietary goods; general merchandise such as dry goods, apparel and accessories, hardware, home furnishings, and similar items; personal and consumer services establishments; medical, other professional, and business offices including financial, insurance, and real estate offices.

4. A maximum of five (5) percent of the total residential gross floor area at any one time may be devoted to business floor area.

5. For a planned unit development where the tract includes land in both the residential districts and the business districts under Section 11.10, the proportion of any type of development at any one time shall be computed by applying the limits of paragraph 4 above to that portion of the total tract in the residential district and by applying the limits of paragraph 4 of Section 11.10 to that portion of the total tract in the business district. However, the location of each type of use shall not be restricted by the zoning boundary.

6. The minimum open space requirements shall be as follows:

Percent of total tract area 20

Percent of developed area 10

A portion of the open space land, amounting to at least ten (10) percent of the total tract area, shall be set aside as common land covenanted to be maintained as permanent open space in private or cooperative ownership. The form of covenant covering such common land shall provide for its permanent ownership and maintenance and shall be subject to the approval of the Planning Board and the City Solicitor (with the consent of the Aldermen, this common land may be deeded to the City). This common land shall be of such a physical character and appropriately planned so as to be of use to the residents and patrons of the development.

7. The remaining land area may be developed for residential, community facilities, and business uses. In considering the application, the Planning Board should determine the need for sites for community facilities such as schools, playgrounds, fire stations and the like. Where such a need is found, appropriate sites within the development shall be set aside.

8. The residential density shall not exceed sixty (60) dwelling units per acre of the total tract area.

9. The locations of buildings shall be governed by the following:

a. All buildings shall be at least one foot from any lot line for each foot of building height, but in no case shall any building be closer than fifteen (15) feet.

b. All principal buildings shall be at least twenty four (24) feet apart except that where building heights exceed forty (40) feet, these distances shall be increased by one foot of height over forty (40) feet.

c. All principal buildings shall be at least fifteen (15) feet from any common parking area.

10. Buildings of greater height than eight (8) stories may be allowed only as long as the minimum distances required in paragraphs a. and b. of No. 9 above be increased by one foot for each two (2) feet of height over eighty (80) feet.

11. The development shall be served by both public water and public sewerage systems.

12. The principal streets shall be offered for acceptance as public ways. Where retained as private ways, they shall be posted as

such by standard street signs.

13. A location plan at a scale of one inch equals six hundred fifty (650) feet shall be submitted.

14. A site plan for the entire tract at a scale of one inch equals forty (40) feet, prepared by a recognized land planner, registered architect or registered professional engineer, shall be submitted to the Planning Board in duplicate and shall show in addition to other items as may be required by the Planning Board at least the following:

- a. Two-foot contours on the tract and within fifty (50) feet thereof.
- b. The location and acreage of areas to be devoted to specific uses.
- c. Existing and proposed streets, parking, drainage, and utility systems.
- d. Proposed residential density of development in terms of dwelling units per acre and type, and proposed business uses in square footage and types.
- e. A separate plan showing the location of parks, open recreation areas and other open spaces, schools, and other public community uses.
- f. A plan for landscaping including existing natural features and proposed landscaping, prepared by a registered landscape architect.

15. The development plan shall be consistent with the Melrose Future Land Use Plan as last revised.

16. The off-street parking requirements may be reduced where a common parking area(s) serves a cluster(s) of business development. However, reduction in parking space requirements shall not exceed more than ten (10) percent of those required under normal application of the requirements set forth elsewhere in this Ordinance.

17. Signs shall be governed by the regulations of Article VII as applied to the use in the planned unit development except that projecting signs shall not be permitted.

Section 11.10 Planned Unit Development in the BA, BA-1, BB, BB-1, BC, and BD Districts.

For development in a planned unit concept in the BA, BA-1, BB, BB-1, BC and BD districts for uses including among others, residential, business, and institutional, and not subject to the Table of Dimensional and Density Regulations, the following conditions shall apply:

1. The tract shall be in single or consolidated ownership and the plan for the tract shall be subject to the approval by the Planning Board under the Melrose Land Subdivision Regulations. The tract shall be at least five (5) contiguous acres, which may be intersected by a street or streets.
2. The development may be totally new development or it may incorporate existing development either in its present form or as altered through rehabilitation:
3. The following uses shall be permitted: residential including town houses and multi-family dwellings; community facilities (religious or educational; membership club for exclusive use of the residents of the planned unit development; public recreation or open space; fire station); public transportation terminal facility; and business establishments limited to the following business uses: retail establishments selling convenience goods such as food, drugs, and proprietary goods; general merchandise such as dry goods, apparel and accessories, hardware, home furnishings, and similar items; personal and consumer services establishments; medical, other professional, and business offices including financial, insurance, and real estate offices.
4. A maximum of twenty (20) percent of the total land area at any one time may be devoted to residential use.
5. For a planned unit development where the tract includes land in both business districts and the residential districts under Section 11.9, the proportion of any type of development at any one time shall be computed by applying the limits of paragraph 4 above to that portion of the total tract in the business district and by applying the limits of paragraph 4 of Section 11.9 to that portion of the total tract in the residential district. However, the location of each type of use shall not be restricted by the zoning district boundary.
6. The minimum open space requirements shall be as follows:

A portion of the open space land, amounting to at least ten (10) percent of the total tract area, shall be set aside as common land covenanted to be maintained as permanent open space in private or cooperative ownership. The form of covenant covering such common land shall provide for its permanent ownership and maintenance and shall be subject to the approval of the Planning Board and the City Solicitor (with the consent of the Aldermen this common land may be deeded to the City). This common land shall be of such a physical character and appropriately planned so as to be of use to the residents and patrons of the development.

7. The remaining land area may be developed for residential, community facilities, and business uses. In considering the application, the Planning Board should determine the need for sites for community facilities such as schools, playgrounds, fire stations and the like. Where such a need is found, appropriate sites within the development shall be set aside.

8. The residential density shall not exceed sixty (60) dwelling units per acre of the portion of the total land area devoted to residential use.

9. The locations of buildings shall be governed by the following:

a. All buildings shall be at least one foot from any lot line for each foot of building height, but in no case shall any building be closer than fifteen (15) feet.

b. All principal buildings shall be at least twenty four (24) feet apart except that where building heights exceed forty (40) feet, these distances shall be increased by one foot for each foot of height over forty (40) feet.

c. All principal buildings shall be at least fifteen (15) feet from any common parking area.

10. Buildings of greater height than eight (8) stories may be allowed only as long as the minimum distances required in paragraphs a. and b. of No. 9 above be increased by one foot for each two (2) feet of height over eighty (80) feet.

11. The development shall be served by both public water and public sewerage systems.

12. The principal streets shall be offered for acceptance as public ways. Where retained as private ways, they shall be posted as such by standard street signs.

13. A location plan at a scale of one inch equals six hundred fifty (650) feet shall be submitted.

14. A site plan for the entire tract at a scale of one inch equals forty (40) feet, prepared by a recognized land planner, registered architect or registered professional engineer, shall be submitted to the planning board in duplicate and shall show in addition to other items as may be required by the Planning Board at least the following:

a. Two-foot contours on the tract and within fifty (50) feet thereof.

b. The location and acreage of areas to be devoted to specific uses.

c. Existing and proposed streets, parking, drainage, and utility systems.

d. Proposed residential density of development in terms of dwelling units per acre and type, and proposed business uses in square footage and types.

e. A separate plan showing the location of parks, open recreation areas and other open spaces, schools, and other public community uses.

f. A plan for landscaping including existing natural features and proposed landscaping, prepared by a registered landscape architect.

15. The development plan shall be consistent with the Melrose Future Land Use Plan as last revised.

16. The off-street parking requirements may be reduced where a common parking area(s) serves a cluster(s) of business development. However, reduction in parking space requirement shall not exceed more than ten (10) percent of those required under normal application of the requirements set forth elsewhere in this ordinance.

17. Signs shall be governed by the regulations of Article VII as applied to the use in the planned unit development except that projecting signs shall not be permitted.

Section 11.11 Planned Business Development.

Notes on density:

Where cluster zoning is allowed by special permit, the lot sizes are the same as would be required in each zone with the following exceptions: each individual lot in the SR, SR-A and the SR-B districts shall be subject to the requirements for one-family detached dwelling in the UR-A district (7,500 sq. ft. minimum lot area).

For the planned unit development, certain requirements exist for those in the SR-A District (5 acre tract requirement) while different requirements exist for planned unit developments in the UR-B, UR-C and UR-D (30 acre tract requirement).

Note: According to survey received from Melrose on 4/22/05, cluster was adopted in 1972 and PUD was also adopted in 1972. It is written: "Very few parcels available that meet the requirements of these types of development." Cluster zoning was last amended in 1974.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board According to Section 11.5, the Planning Board acts as the SPGA for multifamily residential use in nonresidentially zoned areas, for cluster developments, and planned unit developments.

Has any housing been built under the cluster/flexible provisions?

According to survey received from Melrose on 4/22/05, cluster was adopted in 1972 and PUD was also adopted in 1972. It is written: "Very few parcels available that meet the requirements of these types of development." Cluster zoning was last amended in 1974.

Mendon

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

No

Which entity is the special permit granting authority for cluster/flexible zoning?

Has any housing been built under the cluster/flexible provisions?

Merrimac

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Merrimac Zoning Bylaw 2004

ARTICLE 6. AGRICULTURAL RESIDENTIAL DISTRICT (AR)

6.4. Uses and Structures Permitted by Special Permit

In the Agricultural Residential District, the Planning Board may issue a SPECIAL PERMIT for the following uses:

6.4.7. Open Space-Residential Development, subject to "Open Space-Residential Development" regulations at Article 15 of this Bylaw.

ARTICLE 12. RURAL-AGRICULTURAL PRESERVATION OVERLAY DISTRICT (RESERVED)

12.1. Purposes.

The purpose of the Rural-Agricultural Preservation Overlay District is to encourage a development pattern that preserves

established agricultural and forested landscapes along the Town's rural roadways and protects the scenic beauty of the Town.

12.2. Applicability.

The Rural-Agricultural Preservation Overlay District is an overlay district that applies to all land in the Agricultural Residential District within 300 linear feet of the roadway centerline of the following roads: Bear Hill Road, Brush Hill Road, Highland Road, Battis Road, Hadley Road, West Hadley Road, Birchmeadow Loop, and Heath Road. Uses and structures permitted in the underlying district shall be permitted in the Rural-Agricultural Preservation Overlay District. In addition, the Planning Board shall have the authority to issue a SPECIAL PERMIT for Small-Area Cluster Development in accordance with this Bylaw.

12.3. Definitions

SMALL-AREA CLUSTER DEVELOPMENT (SACD) . A development of three to five single-family dwellings set back from the road, on lots with reduced frontage but that meet the minimum lot area requirement for the Agricultural Residential District, and with permanently protected open space equal to at least 50% of the total land area in the development. Small-Area Cluster Development is intended as an alternative to a conventional division of land into "Approval Not Required" lots under G.L. c.41, Section 81P.

DESIGNATED RURAL CORRIDOR . A roadway along which the Rural-Agricultural Overlay District applies: Bear Hill Road, Brush Hill Road, Highland Road, Battis Road, Hadley Road, West Hadley Road, Birchmeadow Loop, and Heath Road.

12.4. Permitted Uses and Structures.

All uses permitted in the Agricultural Residential District shall be permitted in the Rural- Agricultural Overlay District.

12.5. Uses and Structures Permitted by Special Permit.

12.5.1. All special permitted uses in the Agricultural Residential District shall be special permitted uses in the Rural-Agricultural Overlay District.

12.5.2. Small-Area Cluster Development (SACD).

12.6. Prohibited Uses.

All uses prohibited in the Agricultural Residential District shall be prohibited uses in the Rural-Agricultural Overlay District.

12.7. Use, Dimensional and Design Standards for Small-Area Cluster Development

The Planning Board may issue a Special Permit to waive the minimum FRONTAGE and lot shape requirements that normally apply to land in the Agricultural Residential District in order to open space, stone walls, mature trees and scenic views in an SACD. To be eligible for a Special Permit, an SACD must meet the following requirements:

12.7.1. Dwelling units in an SACD shall be limited to single-family dwellings.

12.7.2. The parcel or contiguous parcels to be divided into new SACD lots shall have enough area so that each proposed lot meets the minimum lot area requirement of the Agricultural Residential District.

12.7.3. At least 40% of the land in an SACD shall be permanently protected as common open space. The open space shall be protected by a conservation restriction held by the Merrimack Conservation Commission or a non-profit conservation land trust, and the restriction shall meet the requirements of G.L. c.184.

12.7.4. Existing views from the road shall be protected by locating at least 60% of the common open space along and immediately adjacent to the designated rural corridor.

12.7.5. An SACD with a cluster or grouping of three dwelling units shall be served by a common driveway. An SACD of four or five dwelling units may consist of two clusters or groupings of dwelling units, with each cluster or grouping served by a common driveway. No dwelling unit in an SACD shall be served by an individual driveway.

12.7.6. Dwelling units shall be set back at least 65 feet from the road. The preferred location for dwelling units in an SACD is in a cluster or grouping of buildings set back from the designated rural corridor.

12.7.7. An SACD located adjacent to land in active agricultural use shall preserve a continuous buffer along the perimeter of at least 100 feet, unless waived by the Planning Board.

12.7.8. An SACD must comply with the Design Standards for the Agricultural Residential District as set forth in Section 6.10 of this Bylaw unless waived by the Planning Board.

12.7.9. Reduced Frontage Lots. An SACD may consist of not less than three nor more than five lots with reduced FRONTAGE on a designated rural corridor, provided that all other requirements for an SACD Special Permit are met. The Planning Board may authorize a reduction in lot frontage for lots in an SACD provided that:

12.7.9.1 Each LOT in an SACD must have a minimum continuous street FRONTAGE of not less than one hundred fifty (150) feet

12.7.9.2. The area of each LOT with a reduced FRONTAGE shall comply with the minimum LOT size of the Agricultural Residential District.

12.7.9.3. Each LOT shall have at least one area suitable for the construction of a dwelling that can accommodate a circle with a diameter of 150 feet.

12.7.9.4. Not more than five reduced FRONTAGE LOTS shall abut each other.

12.7.9.5. Reduced frontage lots in an SACD shall be served by common driveways in accordance with Section 12.7.3 and Section 23.3 of this Bylaw:

12.7.9.6. Reduced FRONTAGE LOTS shall be located such that they do not interfere with the use and enjoyment of an abutting LOT and do not adversely affect the neighborhood.

12.7.9.7. Notwithstanding any other provision, a reduced FRONTAGE LOT created by SPECIAL PERMIT from the Planning Board shall not be further subdivided, or reduced in area, or changed in size or shape. The Planning Board shall require deed restrictions to assure these requirements.

12.7.10. Irregular lot shapes are permitted in an SACD when, in the opinion of the Planning Board, they further the purposes of the bylaw.

12.7.11. The Planning Board may authorize a reduction in side and rear yard setbacks on SACD reduced frontage lots when a reduction furthers the purposes of this Bylaw.

12.7.12. Except as provided in this Bylaw, any LOT in an SACD shall comply with any other dimensional requirements of the Agricultural Residential District.

12.8. Special Permits for Small-Area Cluster Development

12.8.1. The SPECIAL PERMIT Granting Authority (SPGA) for Small Area Cluster Development in the Rural-Agricultural Overlay

District shall be the Planning Board.

12.8.2. The requirements for a SPECIAL PERMIT application for a Small-Area Cluster Development shall include the requirements for a SPECIAL PERMIT application in the Agricultural Residential District under Section 6.7 of this Bylaw, and the Small-Area Cluster Development Submission Requirements and Procedures adopted by the Planning Board and on file with the Town Clerk. After adoption of this Bylaw, the Planning Board shall prepare and adopt Small Area Cluster Development Submission Requirements and Procedures following a public hearing.

12.8.3. Special Permit Granting Criteria. The Planning Board may approve a SPECIAL PERMIT for an SADC upon finding that the application complies with the purposes of this Bylaw. In making its decision, the Planning Board shall consider the following criteria:

12.8.3.1. Consistency with the Merrimac Master Plan.

12.8.3.2. Consistency with Design Standards for the Agricultural Residential District in Section 6.10 of this Bylaw.

12.8.3.3. Consistency with Use, Dimensional and Design Standards for Small Area Cluster Development in Section 12.7 of this Bylaw.

12.8.3.4. Protection of adjoining premises against detrimental or offensive uses on the site.

12.8.3.5. The degree to which the proposed SADC protects open space, farmland and historic resources along a designated rural corridor.

12.8.3.6. The degree to which the proposed use, viewed in its entirety, is of superior design or provides more environmental benefits to the Town than the alternative of a use permitted as of right.

12.8.3.7. Adequacy of space for vehicular access to the site and off-street parking and loading/unloading on the site.

12.8.3.8. Adequacy of water supplies and distribution for domestic use fire protection.

12.8.3.9. Adequacy of the methods of

12.8.3.9.1. Disposal of sanitary sewage.

12.8.3.9.2. Storage and disposal of refuse and solid wastes resulting from the uses permitted on the site.

12.8.3.9.3. Drainage and retention of surface water.

ARTICLE 15. OPEN SPACE-RESIDENTIAL DEVELOPMENT

15.1. Purposes and Intent.

The purposes of the Open Space-Residential Development (OSRD) bylaw are to preserve open space in perpetuity, protect natural resources, wildlife habitat and farmland, encourage residential development that is of superior design to conventional subdivisions, provide housing alternatives that are suitably designed for and attractive to older households, avoid sprawl and achieve more efficient use of land, thereby helping to reduce the negative fiscal impacts of conventional development.

15.2. Applicability.

The Planning Board may grant a SPECIAL PERMIT for an OSRD in the Agricultural Residential District on a parcel or contiguous parcels of land with at least ten (10) acres of land area. Existing public and private WAYS need not constitute boundaries of the tract, but the area within such WAYS shall not be counted in determining parcel or tract size.

15.3. Permitted Uses.

An OSRD may include the following uses:

15.3.1. SINGLE-FAMILY DWELLINGS.

15.3.2. Attached or common-wall units, not to exceed four units in a single building, restricted for occupancy by over-55 households.

15.3.3. AGRICULTURE and horticulture.

15.3.4. Open space.

15.3.5. Passive recreation, including but not limited to trails for walking, hiking and horseback riding, and areas for wildlife observation.

15.3.6. Accessory recreational uses, such as a tennis court or playground.

15.4. Relationship to Subdivision Control.

A subdivision plan is not required for an OSRD, but an applicant who proposes a subdivision plan shall submit the same to the Planning Board in accordance with the Planning Board's Subdivision Rules and Regulations.

15.5. Cul-de-sac streets.

An OSRD may contain cul-de-sac streets as defined in and regulated by the Planning Board's Subdivision Regulations. However, an OSRD may have cul-de-sac streets up to a linear distance of 1,000 feet.

15.6. Future Subdivision.

No LOT shown on a plan for which an OSRD SPECIAL PERMIT is granted may be further subdivided, and a notation to this effect shall be placed on the plan of record, which shall be recorded at the registry of deeds.

15.7. Pre-Submission Meeting.

All applicants seeking an OSRD SPECIAL PERMIT shall schedule a pre-submission meeting with the Planning Board to review the scope of the project and the site for which it is proposed. Whenever possible, the Planning Board shall invite other Town boards to the presubmission meeting. Additional pre-submission meetings may be held by mutual agreement of the Planning Board and the applicant. At a minimum, the intent of the pre-submission meeting shall be to:

15.7.1. Identify the key natural features of the proposed development site.

15.7.2. Identify historic or culturally important features of the site

15.7.3. Identify any safety, traffic, or infrastructure issues directly related to the site.

15.7.4. Identify areas that the Town prefers to see preserved for open space, view shed, agricultural, or agricultural buffer purposes.

15.7.5. Discuss the proposed site plan and any issues relative to the Town's site plan review process or review criteria.

15.7.6. Discuss any issues relevant to OSRD requirements.

15.7.7. Assist the developer in understanding all related permitting issues required for the project.

15.8. Site Plan Review.

An OSRD is subject to Article 19 of this Bylaw and the following additional site plan standards.

15.8.1. An OSRD shall maintain natural features and vegetation for a depth of at least 40 feet along all public ways in existence prior to the effective date of this Bylaw.

15.8.2. No building may be constructed on a ridge line, or otherwise located so as to block or obstruct scenic views:

15.8.3. To the maximum extent feasible, all open space resulting from an OSRD shall be designed to connect with other public open space or permanently protected private open space, and foster the goals of the most recent Merrimac Master Plan and Open Space and Recreation Plan, as determined by the Planning Board.

15.8.4. To the maximum extent feasible, an OSRD shall preserve and protect farmland.

15.8.5. An OSRD shall be designed to protect significant upland features and landscape views.

15.8.6. All local historic sites, buildings or stone walls shall be preserved as part of an OSRD.

15.8.7. Grade changes shall be in keeping with the general appearance of surrounding developed area

15.8.8. All landscaping shall consist only of native species.

15.8.9. Streets shall be designed and located in such a manner as to preserve natural topography, cover, significant landmarks and trees, and to minimize cut and fill.

15.8.10. Shared septic systems may be permitted, provided that the requirements of the Merrimac Board of Health are met, including appropriate provisions for legal obligations related to maintenance and replacement.

15.9. Common Open Space; Use, Shape, Location.

An OSRD must provide at least 50% of the total land area as permanently protected, usable open space. The open space shall have no STRUCTURES, parking, loading or unloading space or access WAYS thereto, and it shall not include private yards, patios, or gardens that are restricted for the exclusive or PRINCIPAL USE by residents of individual dwelling units. The following additional requirements apply to common open space in an OSRD:

15.9.1. To the maximum extent feasible, the open space shall be undisturbed, unaltered and left in its natural condition. It shall be appropriate in size, shape, dimension, location, and character to assure its use as a conservation area, or where appropriate, a recreational area, and serve as a visual and natural amenity for the development and the Town.

15.9.2. At least 60% of the common open space shall be linked as a unit, with links at least 100 feet wide.

15.9.3. Common open space shall be functional for wildlife habitat, passive recreation, resource preservation or agriculture.

15.9.4. The location(s) of the common open space shall be subject to approval by the Planning Board as part of site plan review.

15.9.5. Each parcel of common open space shall offer adequate access to residents of the OSRD. Toward that end, the nearest part of the common open space shall not be more than three hundred (300) feet in distance from the nearest point of any building that it is proposed to serve.

15.9.6. They common open space may be used to site a common or shared septic system.

15.9.7. Not more than 15% of the common open space in an OSRD may be located in a flood plain or consist of wetlands as defined in G.L. c.131, Sec.40.

15.9.8. Unless approved by the Planning Board, common open space shall not be considered usable if the slope of the finished grade exceeds thirty (30) percent.

15.9.9. Existing rights of way and utility easements may not be counted as common open space.

15.9.10. All usable open space shall be open to the sky and pervious.

15.10. Ownership of Common Open Space.

The common open space shall be conveyed in the following ways as approved by the Planning Board:

15.10.1. To a corporation or trust comprising a homeowners association whose membership includes the owners of all LOTS or units-contained in the development. The developer shall include in the deed to owners beneficial rights in said open land, and shall grant a perpetual conservation restriction to the Merrimac Conservation Commission or a non-profit corporation or organization over such land to insure that it be kept in an open state and not be built upon for residential use, or developed for accessory uses such as parking or roadways. Such restriction shall be in such form and substance as the Planning Board shall prescribe, and may contain such additional restrictions on development and use of the open space as the Planning Board may deem appropriate.

15.10.2. To a non-profit organization, the principal purpose of which is the conservation of open space. The developer or non-profit organization shall grant an open space restriction as set forth above.

15.10.3. To the Town for a park or open space use, subject to the approval of the Board of Selectmen, for management by the Parks Commission or by the Conservation Commission, with a clause insuring that it be maintained as open space.

15.11. Dimensional Standards.

The Planning Board may waive the minimum requirements for lot area, FRONTAGE and/or yard requirements that would normally apply to land in the Agricultural Residential District in order to maximize the amount of open space, protect significant landscapes and reduce site disturbance. The Planning Board also may permit more than one single or two-family dwelling to be located on a LOT in an OSRD, except as provided below.

15.11.1. The parcel proposed for development must have a minimum of fifty (50) feet of FRONTAGE on a public WAY or private WAY that is open to the public.

15.11.2. Irregular LOT shapes and shared driveways are permitted in an OSRD when, in the opinion of the Planning Board, they further the purposes of the bylaw.

15.11.3. Attached units shall contain no more than four (4) units in a single building.

15.11.4. The minimum distance between clusters of multiple-unit dwellings shall be fifty (50) feet, unless waived by the Planning Board.

15.11.5. The minimum width of existing and proposed open space between dwelling units in the OSRD and adjacent property shall be one hundred and fifty (150) feet.

15.11.6. The minimum setback from internal roads shall be twenty-five (25) feet.

15.11.7. The maximum height of proposed buildings shall be thirty-five (35) feet and shall not exceed two and one-half 2% stories.

15.11.8. Except as provided in this Bylaw, any LOT in an OSRD shall comply with any other dimensional requirements of the zoning district in which it is located.

15.12. Base Density; Determination of Development Capacity,

Except as provided under "Development Incentives" below, the maximum number of LOTS and dwelling units permitted in an OSRD shall not exceed the number arrived at under the following formula:

In the instance of a fraction, a fraction may be counted as an additional LOT if the fraction is over one half.

15.13. Development Incentives.

The Planning Board may authorize an increase in LOTS or dwelling units up to a maximum of fifty (50%) percent, when all of the units in the OSRD are restricted for occupancy by over-55 households and at least one of the following conditions is met:

15.13.1. The applicant proposes an increase in open space above the fifty percent (50%) minimum and preserves significant natural resources, in the opinion of Planning Board, or

15.13.2. The applicant sets aside ten percent (10%) or more of LOTS or dwelling units on the site for affordable housing for LOW- AND MODERATE-INCOME households. Such units must be eligible for listing on the SUBSIDIZED HOUSING INVENTORY under G.L. c.40B, Sections 20-23, in accordance with the requirements of the Local Initiative Program (LIP) at 760 CMR 45.00, as may be amended. The Planning Board shall review and approve the actual percentage distribution of qualifying low- and moderate-income units.

15.14. Affordable Housing.

Units set aside as housing affordable to low- and moderate-income households shall have a GROSS FLOOR AREA comparable to market-rate units and shall be integrated into the development and not grouped together. When viewed from the exterior, the affordable units shall be indistinguishable from the market-rate units. The developer shall provide adequate guarantee, acceptable to the Planning Board, to ensure the continued availability and affordability of the units. At minimum, this guarantee will meet LIP requirements in effect when the Planning Board approves the SPECIAL PERMIT. The Planning Board may place conditions on the SPECIAL PERMIT to assure appropriate phasing of market-rate and affordable unit construction

15.15. Off-Street Parking.

All dwelling units shall be required to provide two off-street parking spaces per unit.

15.16. Submittal Requirements.

Applicants shall file an application with the Planning Board for a SPECIAL PERMIT, including a site plan that meets all of the submission requirements of SITE PLAN REVIEW at Article 19 of this Bylaw. The SPECIAL PERMIT application and site plan shall present the location and size of the proposed development site, the total number of proposed buildings or LOTS and the size of each in square feet, the amount of land to be preserved as permanent open space and the proposed use(s) and form of ownership thereof, and sufficient detail to demonstrate compliance with the dimensional, design, common open space and other standards of this Bylaw. Applicants seeking an increase in base density for over-55 developments shall include a request for, the same in the SPECIAL PERMIT application and provide evidence in support of their proposal.

The Planning Board may adopt rules and regulations concerning submission requirements and procedures for an Open Space Residential Development.

15.17. Approval Criteria.

The Planning Board may grant a SPECIAL PERMIT for an OSRD with any conditions, safeguards, and limitations, upon determining that the applicant meets all SPECIAL PERMIT granting criteria for the Agricultural Residential District and the following additional OSRD criteria:

15.17.1. That the application was filed in proper form and the content is complete.

15.17.2. That the Site Plan is properly completed.

15.17.3. That all requirements of the OSRD Bylaw have been met.

15.17.4. That based on available information, the design and layout of the proposed OSRD is superior to a conventional subdivision because it preserves open space for conservation and recreation, protects natural features, makes efficient provision of streets, utilities and other public services and offers exemplary design quality, considering OSRD standards and the Design Guidelines for Development in the Agricultural Residential District.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board ARTICLE 6. AGRICULTURAL RESIDENTIAL DISTRICT (AR)

6.4. Uses and Structures Permitted by Special Permit

In the Agricultural Residential District, the Planning Board may issue a SPECIAL PERMIT for the following uses:

6.4.7. Open Space-Residential Development, subject to "Open Space-Residential Development" regulations at Article 15 of this Bylaw.

Has any housing been built under the cluster/flexible provisions?

No OSRD was passed in 2004.

Methuen

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes

An application for a Planned Unit Development Special Permit shall be allowed in the MA, MB, CBD, and BL zoning districts.

Adopted 1989

Methuen Zoning Ordinance

Section XI-D - Special Permit Specific Regulations

1. Planned Unit Development

A. Purposes:

a. To promote the more efficient use of land. b. To permit the planned mixture of attached and multi-family residences and certain types of convenience commercial uses. c. To meet the affordable housing needs of the Town and to promote diverse and energy efficient housing at a variety of costs.

B. Applicability: An application for a Planned Unit Development Special Permit shall be allowed in the MA, MB, CBD, and BL zoning districts.

C. Procedural Requirements:

a. Application: Applicants for a Special Permit for a Planned Unit Development shall submit to the Community Development Board an original and eleven (11) copies of an application and a site plan (12 copies) as described in Section XI-C, 3(B). The application shall indicate each land owner's interest in the land to be developed, the form of organization proposed to own and maintain the common open space land, the substance of covenants and grants of easement to be imposed upon the use of the land and structures and a development schedule. If the application for a special permit involves land with more than one ownership, each owner of the land included in the plan shall be a party to the application, and upon approval, subject to its provisions. An applicant for Special Permit under this section, who has deeded to the Town, in conjunction with a development project, abutting land for public purpose, may include said abutting land area in determining compliance with requirements for planned unit development as herein set forth, as if said abutting land was legally held in common ownership by the applicant, and incorporated within the project submission, as open space.

b. Procedures and Considerations: The procedures for obtaining a special permit for a Planned Unit Development are specified in Section XI-E. In order to grant a special permit for a Planned Unit Development, the Community Development Board must find that all of the general requirements for a special permit as specified in Section XI-C have been fulfilled, the specific requirements of Section XI-D, 1(D) have been fulfilled and the supply of convenience commercial establishments in the immediate area is not adequate to service the proposed development.

D. Requirements:

A Planned Unit Development shall conform with the following requirements:

a. Minimum Tract Size: The development shall contain a minimum of ten (10) acres of land.

b. Allowable Density: The development shall comply with the maximum density requirements for the zoning district in which the development will be located. The maximum gross density of dwelling units (du) per gross acre of land for the applicable zoning district shall be as follows: MA (2du), MB (4du), CBD (6du), and BL (4du). A density bonus may be approved by the Community Development Board in accordance with Section XI-D, 7 hereof.

c. Allowable Uses: Detached, attached and multi-family dwelling units and up to three (3) convenience commercial establishments per 100 dwelling units shall be allowed. Convenience commercial establishments include but are not limited to such uses as a grocery store, drug store, barber and/or beauty shops, self-service laundromat, etc. The Community Development Board may, for the health, safety and welfare of the public, limit the number of convenience commercial establishments to less than three (3) convenience commercial establishments per 100 dwelling units. In any case, there shall be no more than six (6) convenience commercial establishments per a Planned Unit Development.

d. Dimensional and Other Requirements:

1. The minimum dimensional controls for the zoning district in which the development will be located shall be met for each dwelling type building being proposed for development as specified in the Table of Dimensional Regulations of Section VI-D unless stated otherwise in this Section. In addition to these minimum requirements, the attached and multi-family dwelling units shall comply with the requirements specified in Section XI-D, 2(D) (d).

2. The convenience commercial establishments shall be grouped together unless waived by the Community Development Board.

3. The Parking and Loading Requirements for the convenience commercial space shall be at least the minimums set forth in Section VIII for the type of use. The signage for the convenience commercial area shall comply with the signage requirements for a BN zoning district as set forth in Section VII-G.

4. Dimensional controls for the convenience commercial area shall be at least the minimums set forth in Section VI-D for the BN zoning district.

5. A Buffer Screen of up to six (6) feet in width and height may be required by the Community Development Board around the convenience commercial area, exclusive of driveways. (See Section II for definition of Buffer Screen).

6. The Community Development Board may require a Buffer Screen of up to ten (10) feet in width and six (6) feet in height be installed and/or maintained around the perimeter of the development by the applicant or owner of the development. (See Section II for the definition of Buffer Screen.)

e. Open Space Requirements:

1. The Planned Unit Development shall contain a minimum of thirty percent (30%) of the gross area of the development as permanent Open Space Land. Open Space Land shall be defined as all land within a development not designated for buildings, structures, parking, loading, roadway or driveway areas or privately owned lots, but may contain active or passive recreation areas, including incidental paving related thereto, e.g. tennis courts, swimming pools, etc.

2. A minimum of forty percent (40%) of the Open Space Land shall be Useable Open Space Land. Useable Open Space Land shall be defined as Open Space Land that has a shape, slope, location, and condition that is useable and suitable as a place for active

and/or passive recreation uses in the opinion of the Community Development Board. Useable Open Space Land shall contain no wetlands as defined by The Wetland Protection Act, Chapter 131, Section 40 M.G.L. and DEP regulations made thereunder; and The Wetland Protection Ordinance, Chapter 12, Methuen Municipal Code. A minimum of twenty five percent (25%) of the Useable Open Space Land shall have a grade not exceeding six percent (6%) and shall include at least one area that meets or exceeds the dimensions of 100' by 150'.

3. The Open Space Land included in a Planned Unit Development shall be set aside as common land covenanted to be maintained as permanent common land in private, cooperative and/or public ownership.

4. The Open Space Land shall be owned and maintained by the applicant until such time as it is conveyed to one or more of the following entities: the Town of Methuen, subject to Town Council approval; a public conservation commission or a nonprofit organization the principal purpose of which is the conservation of open space; a corporation, trust or association owned or to be owned by the owners of lots or residential units within the development; or some other legal entity as may be approved by the Community Development Board. The applicant shall specify the method of ownership in which the open space land will be held as part of the application for a Special Permit.

5. If a corporation, trust or association method of ownership of Open Space Land is to be used, the articles of the corporation, trust or association shall be submitted to the Community Development Board prior to final approval of the Special Permit and shall specify that ownership thereof shall pass with the conveyances of the lots or residential units. In any case where such Open Space Land is not conveyed to the Town, a restriction enforceable by the Town of Methuen shall be recorded providing that such land shall be kept in an open or natural state and not be built upon or developed for accessory uses as parking or roadway. All such open space land shall be restricted by deed from all future building. Said deed shall be approved by the Community Development Board.

6. Any Open Space Land to be deeded to the Town shall contain at least one-hundred (100) feet of frontage along a public way.

4. Mixed Use Developments

A. Purposes:

1. To promote a better utilization of existing buildings and properties by allowing a mixture of residential and commercial uses in the same building.
2. To meet the affordable housing needs of the Town.
3. To promote diverse and energy efficient housing at a variety of costs.

B. Applicability:

An application for a Mixed Use Development shall be allowed in the CBD, and BL zoning districts.

C. Procedural Requirements:

a. Application: Applicants for a Mixed Use Development Special Permit shall submit to the Community Development Board an original and eleven (11) copies of an application and a site plan (12) copies as described in Section XI-C, 8(B). If the application for a special permit involves land with more than one ownership, each owner of the land included in the plan shall be party to the application, and upon approval, subject to its provisions.

b. Procedures and Considerations: The procedures for obtaining a Mixed Use Development Special Permit are specified in Section XI-E. In order to grant a special permit for a Mixed Use Development, the Community Development Board must find that all of the general requirements for a special permit as specified in Section XI-C have been fulfilled, the specific requirements of Section XI-D, 4(D) have been fulfilled and the proposed uses of the building or property will not impact the health, safety or welfare of the abutters to the property or the users of the building and property.

A Mixed Use Development shall comply with the following requirements:

a. Allowable Density: The residential portion of the development shall comply with the maximum density requirements for the zoning district in which the development will be located. The maximum gross density of dwelling units (du) per gross acre of land for the applicable zoning district shall be as follows: CDB (6du), and BL (4du). A density bonus may be approved by the Community Development Board in accordance with Section XI-D, 7 hereof.

b. Allowable Uses: All residential, retail, service and office uses as described in Section V-D shall be allowed in a Mixed Use Development. In cases where a use is allowed only by a special permit and the use is being sought under a Mixed Use Development then the Community Development Board shall as part of the Mixed Use Development Special Permit serve as the Special Permit Granting Authority for the use.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board Methuen Zoning Ordinance

Section XI-B Designation of Special Permit Granting Authorities

The Community Development Board shall be the Special Permit Granting Authority for the following Special Permits required under this ordinance:

- 1) Planned Unit Development,
- 2) Multi-family and Attached Dwellings,
- 3) Unimproved ways,
- 4) Mixed use buildings,
- 5) Day Care Centers,
- 6) Adult Entertainment,
- 7) Affordable Housing Density Bonuses,
- 8) Parking in Central Business District, and
- 9) Business Complexes and Shopping Centers. Special Permits for Beauty Parlors (number 10), and all other special permits shall be granted or denied by the Board of Appeals unless this ordinance specifically designates another board or agency as the Special

Permit Granting Authority. Each of the Boards shall adopt rules and regulations governing the granting of special permits.

Has any housing been built under the cluster/flexible provisions?

Yes According to Curt Bellavance, Director of Planning and Community Development, (10/26/04) the PUD has not been used regularly. He believes that there were one or two developments under PUD, but there have been no such developments in the last five years. Mr. Bellavance mentioned that the town is currently working to create a separate PUD ordinance that makes the option more flexible and desirable to developers. Ideally, the new ordinance (expected to be completed in January of 2005) will make available a variety of density and design options.

Middleborough

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Middleborough Zoning Bylaw

SECTION XVI OPEN SPACE AND RESOURCE PRESERVATION DEVELOPMENT DISTRICT BY-LAW

A. Purpose

(Added 9/9/96)

As an alternative to a conventional subdivision and in order to provide for the public interest by the preservation of open space and natural resource features in perpetuity and to promote variety in single-family residential housing patterns by encouraging development which is designed to accommodate a site's physical characteristics such as: topography, vegetation, water bodies, wetlands, open spaces such as farmlands and meadows, major scenic views, wildlife habitats, archaeological and significant historic resources, the following by-law is established. It is not the intent of this by-law to make undevelopable land developable or to permit an increase in the number of building lots that would otherwise be possible on a conventional plan but rather to encourage the preservation of important site features.

B. Applicability and Establishment of District

1. The Open Space and Resource Preservation Development District shall be considered as overlaying "Residence A" and "Residence Rural" Zoning Districts in their entirety and "General Use" Districts in their entirety as to residential uses only and shall be subject to the requirements of this By-Law for those districts, and in accordance with the additional requirements specified herein. In addition, the Planning Board shall always compare the impact of an Open Space and Resource Preservation Development with the impact of a conventional development on the same site to assure that the Open Space and Resource Preservation Development is not more adverse.

2. The Planning Board shall be the Special Permit Granting Authority. The Planning board shall adopt rules and regulations for the issuance of the special permits applicable to this section, in accordance with M.G.L. Ch. 40A.

C. General Requirements

It is the general policy of the Town to encourage the development of interior land parcels when appropriate as Open Space and Resource Preservation Developments and to discourage the development of land along existing road frontage, thereby retaining and enhancing the visual quality of the Town and maintaining the safety and efficiency of public ways. To implement this policy, the following requirements shall be complied with:

1. Any parcel of land located within a zone permitting Open Space and Resource Preservation Development containing five (5) acres or more and which may be developed as a conventional grid subdivision may be considered for an Open Space and Resource Preservation Development subject to a special permit issued by the Planning Board.

2. After an Open Space and Resource Preservation Development application has been submitted, no tree removal, no utility installation, no ditching, grading or construction of roads, no grading of land or lots, no excavation except for purposes of soil testing with the approval of the Planning Board, no dredging or filling and no construction of buildings or structures shall be done on any part of the development site until the application has been reviewed and received final action pursuant to this By-law.

3. No Open Space and Resource Preservation Development will be approved within an established Single-Family residential neighborhood if the Planning Board determines that such land use would have a detrimental effect to the established or future

character of the neighborhood and/or the Town.

4. It shall be the responsibility of an applicant for an Open Space and Resource Preservation Development Special Permit to demonstrate to the Planning Board that this form of development will be as or more appropriate than traditional development patterns for the proposed site.

D. Permitted Uses

1. Detached single-family dwellings, including all accessory uses as permitted in the Zoning By-law for the district in which the land lays.
2. Uses permitted within the Common Open Space as described in this By-law.
3. Recreational facilities consistent with this By-law.

E. Minimum Requirements

1. Size: The total area of the tract proposed for Open Space and Resource Preservation Development shall be at least five (5) acres.n

2. Density: The number of building lots on the tract proposed for Open Space and Resource Preservation Development may not exceed the number of lots that could be constructed with a conventional grid subdivision that complies with the zoning in the district and the Subdivision Rules and Regulations of the Planning Board, and any other applicable laws or regulations of the Town and Commonwealth of Massachusetts in force at the time of submission. A preliminary layout of a conventional grid subdivision meeting the above requirements shall be submitted to demonstrate the allowable number of units, and the burden of proof shall be upon the applicant in determining the allowable number of units including but not limited to drainage ability and septic capacity.

3. Area Regulations: The Planning Board may grant a variation of all area regulations as set forth in Resource Preservation Development if the Planning Board finds that such reduction will result in better design, improved protection of natural and scenic resources, and will otherwise comply with this By-law, provided that in no instance shall any lot deviate from the following Table of Minimum Requirements.

TABLE OF MINIMUM REQUIREMENTS

Minimum Area 30,000 sq ft

Minimum Frontage 100 ft

Lot Width at Building Line 100 ft

Minimum Front Yard Setback 40 ft

Minimum Side Yard Setback 15 ft

Minimum Rear Yard Setback 20 ft

Minimum Upland Requirement 20,000 sq ft

Minimum Shape Factor $\{(Perimeter\ of\ the\ lot-squared)/Area\ of\ the\ lot\}$ must be no greater than 30.0

4.

****Webmasters Note:** The previous subsection has been deleted as per an update approved at a town meeting held on 6/3/02.

5. Development Standards: Prior to the issuance of a special permit for an Open Space and Resource Preservation Development, the applicant shall submit the information necessary to demonstrate that the following development standards have been met. These standards are in addition to the requirements of the Subdivision Rules and Regulations and are in no way intended to replace any portion of those regulations.

a. It is a policy of the Town to limit the number of curb cuts on public ways. Therefore, within an Open Space and Resource Preservation Development, normally only two (2) curb cuts will be allowed, although the Planning Board may approve additional curb cuts if the applicant can demonstrate that they are necessary for the site and will not result in traffic hazards or congestion. In all instances, it will be the responsibility of the applicant to demonstrate that the location, number and design of curb cuts are both necessary and the most appropriate for the site.

b. The development will not cause unreasonable traffic congestion or unsafe traffic conditions both within or outside of the Development.

c. The development will provide for and maintain convenient and safe emergency vehicle access to all buildings and structures at all times.

d. The site design shall preserve and, where possible, enhance the natural features of the property, including scenic views, by adapting the location and placement of structures and ways to the existing topography in order to minimize the amount of soil removal, tree cutting and general disturbance to the landscape and surrounding properties.

e. The site design shall identify and ensure preservation of significant and special natural features.

f. The nature of the soils and subsoils shall be suited for the intended purposes based upon the Soil Conservation Guidelines. This determination shall focus upon, but shall not be limited to the locations, design and construction of roadways, buildings, septic systems, and surface water drainage systems. Soil borings or test pits may be made to provide information on soil texture, color, percolation rates and depth to the ground water table at its maximum elevation.

g. Post-development runoff from the site shall not exceed pre-development runoff from the site for up to 100 year storm event. The applicant shall submit formal drainage calculations prepared by a registered professional engineer for this purpose.

h. All drainage structures, swales, retention and/or detention ponds shall be placed on separate lots and not located on lots where a dwelling shall be placed, unless waived by the Planning Board.

i. Proper soil erosion and sedimentation control measures shall be employed to prevent sedimentation and siltation of existing surface water bodies and wetlands. In areas where the land slopes downward toward any surface water body, or fresh water wetland, proposed filling, cutting, clearing or grading shall be minimized and all such development activities shall be carried out in such a way as to retain the natural vegetation and topography wherever possible. The Planning Board may require that an erosion and sedimentation control plan be submitted if significant erosion is anticipated in slope areas.

j. The development shall comply with all other provisions of the Subdivision Rules and Regulations and any other land use regulations of the Town in effect at the time of application, insofar as they are applicable. In accordance with Massachusetts General Laws, Chapter 41, Section 81R, the applicant may request a waiver from the Subdivision Rules and Regulations if such action is in the public interest and consistent with the intent and purposes of this By-law and the Subdivision Control Law.

F. Common Open Space Use and Design Standards

1. Within an Open Space and Resource Preservation Development, no less than forty (40%) percent of the land area shall be devoted to common open space. The common open space shall not include land set aside for roads and/or parking uses. No more than fifty (50%) percent of the common open space shall contain wetlands as defined by Massachusetts General Laws, Chapter 131, Section 40.

2. The common open space shall be designed and maintained in accordance with the following standards:

(a) Areas to remain as naturally-existing woods, fields, meadows and wetlands shall be maintained and may be improved in accordance with good conservation practices.

(b) Common open space shall be planned as large, contiguous units wherever possible. Strips of narrow parcels of common open space shall be permitted only when necessary for access or as vegetated buffers along the site's perimeter.

(c) Common open space may be in more than one parcel provided that the size, shape and location of such parcels are suitable for the designated uses.

(d) No more than fifteen (15%) percent of the common open space shall be covered by man-made impervious surfaces.

(e) Common open space may be used for active and passive recreation, conservation, forestry, agriculture, natural buffers, structures necessary for approved uses, utilities and other facilities necessary for the convenience and enjoyment of the residents. Access ways, parking, underground utilities and structures necessary for and accessory to uses permitted within this paragraph are allowable uses within the common open space. Use of common open space as provided for within this paragraph shall in all instances require approval by the Planning Board, and all structural improvements and impervious surfaces must be shown on the definitive Open Space and Resource Preservation Development plan.

(f) If detention and/or retention ponds are necessary for the construction of the improvements shown on the subdivision plan, such detention and/or retention ponds shall not be located within the common space shown on such plan. The Planning Board may waive this requirement if the Board finds that the integrity and significance of the open space and the benefit of the open space to the Town are not compromised, and that the open space created conforms with the intent and purpose of the By-law. In no case, however, shall permanent clearing for drainage improvements or utilities, including detention and/or retention ponds, exceed ten (10%) percent of any common open space parcel.

(g) In cases where the common open space has been environmentally damaged prior to the completion of the development as a result of soil removal, harvesting of trees or other natural features, refuse disposal or other activity deemed inappropriate with the proposed uses of the common open space, the Planning Board may require the developer to restore or improve the condition and appearance of the common open space, and may require the posting of a bond or other appropriate form of performance guarantee to ensure such restoration or improvement.

3. There shall be a buffer at the perimeter of the development consisting of trees, shrubs, vegetation and topographic features

sufficient to separate and/or screen the development from abutting properties. This buffer shall be no less than one hundred (100) feet in width, except where the subdivision roadway and associated infrastructure intersect with the "street" as defined in Section II of this By-law. The buffer shall be considered common open space. Upon a finding by the Planning Board that a buffer of lesser width would be sufficient to screen and/or separate the development from adjacent property, the buffer may be reduced. If, however, the perimeter of the site abuts a General Use (GU), General Use X (GUX), Business (B) or Industrial (I) zoning district, the Planning Board may require the buffer area abutting a GU, B or I District to be greater than one hundred (100) feet in order to ensure adequate separation and/or screening from the abutting commercial zoning districts.

The Board may require no-cut easements, conservation restrictions, or the like, where the buffer requirement has been reduced. These easements and restrictions shall be on private property located within the subdivision, shall not be considered a "buffer" and shall not be included in common open space calculations.

Drainage structures, swales, retention and/or detention ponds may not be located within the buffer area. The Planning Board may waive this requirement if the Board finds that the integrity and significance of the buffer and the benefit of the buffer to the abutting parcels are not compromised.

Buffer shall remain in their current natural state. If in the opinion of the Planning Board the current natural state is insufficient to adequately separate and/or screen the site from abutting properties, additional trees, shrubs and/or plantings shall be required.

G. Common Open Space Ownership and Management

1. Common open space in any Open Space and Resource Preservation Development shall be conveyed by the owner(s) to: (1) The Town, and may be accepted by it for park or open space use; (2) A nonprofit corporation, the principal purpose of which is the conservation of open space; or (3) A corporation or trust owned or to be owned by all the owners of lots within the development. If a corporation or trust owned by all the owners of lots is utilized, ownership thereof shall pass with the conveyances of the lots. In any case where such land is not conveyed to the Town, a perpetual restriction of the type described in M.G.L., Ch. 184; Sections 31-33, Section 34 (including future amendments thereto and corresponding provisions of future laws) or some alternative legal instrument, recorded in the Registry of Deeds and providing permanent restrictions made running to or enforceable by the Town, providing that such land shall be kept in an open or natural state and shall not be built upon for residential use or developed for accessory uses such as parking or roadway.

2. If the common open space is not to be conveyed to the Town, then the applicant shall include as part of the subdivision covenant, a provision that the common open space shall be deeded as approved by the Planning Board. In addition, the subdivision covenant shall not be released until proof of compliance with the ownership requirements set forth herein has been provided to the Planning Board.

3. If the common open space is not to be conveyed to the Town, the applicant for an Open Space and Resource Preservation Development special permit must include a program describing how the common open space will be maintained in perpetuity to standards satisfactorily to the Planning Board. The applicant shall also provide as part of the common open space proposal an agreement empowering the Town to perform maintenance of the common open space in the event of failure to comply with the program included in the application pursuant to the preceding sentence providing that, if the Town is required to perform an maintenance work, the owners of lots within the Open Space and Resource Preservation Development shall pay any costs incurred by the Town to maintain said common open space and shall constitute a lien upon their properties until said cost has been paid.

4. The Planning Board may require that all such part of the common open space as the Planning Board deems appropriate shall be clearly identified and marked on the ground prior to the commencement of any construction activity.

H. Application and Review Process

All applications for Open Space and Resource Preservation Development shall be submitted in conformity with the requirements and procedures for submission and review under the Subdivision Rules and Regulations of the Planning Board and the following additional requirements:

1. Applicants shall submit preliminary materials to the Planning Board, Board of Health, Conservation Commission and Historical Commission and obtain the opinion of the Planning Board as set forth in Section H.2. below prior to filing a formal special permit application, in order to obtain a consensus regarding the suitability of the site for Open Space and Resource Preservation Development general design concepts, and to determine allowable density prior to preparation of further materials. The preliminary materials shall include the following:

(a) A sketch plan shall be submitted showing the allowable number of units in accordance with the underlying zoning. Said plan shall comply with the requirements of a preliminary plan as specified in the Subdivision Rules and Regulations, and in addition shall show the following information:

(1) Existing landscape features such as steep topography a delineation of areas with slopes over 25%, wetlands, rare and endangered species and habitat, springs, lakes and ponds, streams, rock outcrops, boulder fields, stone walls, cliffs, forest glades, drumlines, high points, hill top, ridges, archaeological and significant historic sites.

(2) Existing open areas such as forests, farm fields, meadows and major long views.

(3) Wetlands shall have been delineated and formally certified by the Middleborough Conservation Commission.

(4) Location of the 100 year flood plain shall be designated.

(5) 2 foot contours shall be used to indicate the topography.

(6) The location and dimensions all building lots and extent of all ways and easements, existing and proposed drainage areas, and such other improvements as may be proposed.

(7) Test pit, soil and water information as the Planning Board may request.

(b) A sketch plan shall be submitted showing the proposed Open Space and Resource Preservation Development. Said plan shall comply with the requirements of a preliminary plan as specified in the Subdivision Rules and Regulations. In addition, said plan shall include all the information outlined in Sections H.1.(a)(1) through (7) and the following information:

(1) The location and dimensions and extent of the common open space, the location and use of any common facilities or structures, and such other improvements as may be proposed.

(2) In the event the parcel includes previously disturbed land, the applicant shall include a reclamation plan.

(c) Supporting documents describing the proposed uses of the common open space and the preferred form of ownership and maintenance thereof, and of facilities to be owned in common.

(d) Any documentation tending to establish that the proposed Open Space and Resource Preservation Development is better suited to the site than a conventional subdivision plan, including matters relating to the layout of ways and open space in relationship to the surrounding property and the site, the degree to which the plan provides for protection of important natural features including wetlands, steep slopes and agricultural land, the extent to which the plan provides for development of those areas best suited for building purposes.

2. Within sixty (60) days after the receipt of preliminary materials as specified herein, the Planning Board shall give its opinion, with or without recommendations. The Town Clerk shall be notified in writing of such opinion.

3. The Planning Board shall base its review on the requirements for granting a Special Permit on the provisions of Section E.5., herein, and no such permit shall be granted unless the applicant demonstrates compliance therewith. All other improvements shall comply with the Subdivision Rules and Regulations, so far as applicable, unless a waiver is granted by the Planning Board pursuant to M.G.L., Ch. 41, Sec. 81R.

(a) The application for an Open Space and Resource Preservation Development Special Permit shall be accompanied by all documentation, specifications and plans necessary to allow the Board to fully understand the intent of said use, construction and development including, but not limited to, the information outlined in Section H.1. above. The application shall submit engineering and site plans for the entire property prepared by the appropriate registered professional showing, but not limited to, anticipated location of the building(s) on the lot with proposed setbacks, lot dimensions, adjacent public ways, location of off-street parking, lighting, utility systems, location and nature of common open spaces with proposed improvements and amenities, specific notations as to project landscaping, locus plan, and other details deemed necessary by the Planning Board.

(b) The applicant shall submit the application and the accompanying plans to the Conservation Commission, Health Department, Department of Public Works, Historical Commission, Board of Selectmen, Town Manager, Police Department, Fire Department, Building Inspector, Planning Board Engineer and the Middleborough Gas and Electric Department for their review and comment.

4. Applicants for a Special Permit for Open Space and Resource Preservation Development shall, at the time of filing the application, submit a Definitive Subdivision Plan in conformity with the Subdivision Rules and Regulations of the Planning Board and subdivision control law M.G.L. Ch.41, Sec. 81, which plan shall be derived from the overall development concept plan required by Section H.1., herein. In addition to the materials required for submission of a definitive subdivision plan, the following documents and information shall be provided:

(a) The Definitive Subdivision Plan shall accurately show the proposed layout of all lots, ways and common areas and structures in relation to the common open space. In addition, the following note shall appear on the plan to the effect that "No lot, including the common open space as shown on these plans may be further subdivided".

(b) Re-grading and erosion plans, where required.

(c) Information as to the degree to which the proposed plan departs from the requirements of the underlying zoning, and the reasons why such departures are deemed to be in the public interest.

(d) Drafts of proposed deeds, management plans for all common areas and structures, and the proposed open space restrictions, if any.

5. Upon receipt of an Open Space Residential Development application, the Planning Board shall proceed as with applications for the Special Permits under M.G.L. Ch. 40A. Hearings on applications under this section may be held simultaneously with the Definitive Subdivision Plan hearings in accordance with M.G.L. Ch.41, Sec. 81.

6. The Special Permit shall be granted only if the Planning Board finds each of the following:

- (a) The development meets the purpose of an Open Space and Resource Preservation Development as described in Section A., herein.
- (b) The Development Standards contained in Section E.5., herein, have been met.
- (c) The common open space is designed in accordance with the Open Space Use and Design Standards set forth in Section F., herein.
- (d) The parcel could be developed as a conventional subdivision under existing local, state and federal land use regulations.
- (e) The Open Space and Resource Preservation Development provides for efficient use and delivery of municipal and other services and infrastructure.
- (f) Those findings set forth in Section VII C.2.a.

I. Duration of Approval

1. Notwithstanding anything to the contrary within/without this By-law, any Special Permit granted by the Planning Board for an Open Space and Resource Preservation Development, shall become void within two (2) years from the date of issue, which two (2) years shall not include time required to pursue or await determination of an appeal referred to in Section 17 of Chapter 40A of the General Laws, unless any construction work contemplated thereby shall have commenced and proceeded in good faith continuously to completion, except for good cause in the discretion of the Planning Board. All open space shall be dedicated at the time the permit holder proceeds with construction under a building permit.

Town of Middleborough Community Development Plan, June 6, 2005:

"The Open Space and Resource Preservation Development Overlay District allows for an alternative to conventional subdivision within the RA, RR GU, and GUX Districts. (Although stated as an overlay district, its area is defined as the entire area within these zoning districts.) A minimum of 5 acres is required. All dwelling units must be detached single family homes. The number of buildings may not exceed the number of lots that could be constructed with a conventional subdivision. The minimum lot size is 30,000 square feet, while 40% of the land area must be set aside as open space."

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board Middleborough Zoning Bylaw

2. The Planning Board shall be the Special Permit Granting Authority. The Planning board shall adopt rules and regulations for the issuance of the special permits applicable to this section, in accordance with M.G.L. Ch. 40A.

Has any housing been built under the cluster/flexible provisions?

Middleton

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Town of Middleton Zoning Bylaw, Section 4.13 (Last Amended 2003).

"4.13 Cluster Development:

A. Cluster Development may be allowed by Special Permit by the Planning Board in an R-1b or R-A Residence District. Procedures to be followed shall be according to the Rules and Regulations for Granting Special Permits adopted by the Planning Board.

B. In order to grant a Special Permit for Cluster Development, the Planning Board must find that the developer has met all of the

general requirements for a Special Permit. In addition, the following specific requirements shall be met:

1. The proposed Subdivision shall contain a minimum of twenty (20) acres of land.
2. There shall be a maximum density of one (1) dwelling unit per forty thousand (40,000) square feet in the R-1b district and one (1) dwelling per eighty-seven thousand one-hundred twenty (87,120) square feet in the R-A District. Any land classified as wetlands (as defined by M.G.L. Ch. 131, Sec. 40 C.M.R. 10.55) or in the flood plain (according to the F.I.R.M. maps) shall be excluded from the gross area before calculating maximum density. In no case shall a Cluster Development, create more lots than could have been created in a conventional subdivision.
3. Within a Cluster Development, the minimum required lot area shall be thirty-thousand (30,000) square feet (subject always to the ability to provide adequate on-site septic disposal systems satisfactory to the Board of Health).
4. The minimum dimensional requirements for placement of single family dwellings in a Cluster Development shall be as follows:

[Table]

No building in a Cluster Development shall be closer to the property line delineating the overall Cluster Development than one hundred (100) feet and within that one hundred (100) feet there shall be a buffer screen (see definitions). No building shall exceed thirty-five (35) feet in height or cover more than twenty-five (25) percent of the lot area.

5. Applications for both Subdivision approval and Special Permit approval may be submitted concurrently and Cluster Development may not proceed until both Subdivision approval and Special Permit approval have been obtained,

6. The proposed development shall be served by water supply and sewerage disposal systems satisfactory to the Board of Health.

7. In a Cluster Development, at least fifty (50) percent of the gross area shall be reserved for Open Space Land and at least fifty (50) percent of the Open Space Land shall be Usable Open Space (see definitions). The Open Space land shall consist of not more than two reasonably shaped (not unduly long and narrow) parcels accessible to all those for whom it is intended. The resulting Open Space from a Cluster Development shall be set aside as land covenanted to be maintained as permanent Open Space in private or public ownership. The form of covenant covering such Open Space land shall provide for its permanent ownership and maintenance and shall be subject to the approval of the Planning Board and the Town Counsel. With the consent of the Town Meeting, this Open Space Land may be deeded to the Town, but only if ownership by the Town is deemed to serve a public purpose.

8. Any Open Space Land and a notation whether or not it is proposed to be deeded to the Town shall be indicated on the Definitive Subdivision Plan.

9. Any Open Space Land proposed to be deeded to the Town shall be restricted to conservation or informal or active recreation and shall not include areas exclusively for the use of cluster residents.

10. Any Open Space Land proposed to be deeded to the Town shall have not less than fifty (50) feet of frontage along a public way. "

APPENDIX - TABLE 2 Uses Requiring a Special Permit in Residential and Special Districts

16.) Cluster Developments on parcels of 20 acres, with overall density same as zoning and provisions as per Section 4,13 as regards open space and an application for subdivision submitted and heard concurrently and subject to Board of Health approval: R-1b(PB), R-A(PB), I*, IH*, WP**

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board A. Cluster Development may be allowed by Special Permit by the Planning Board in an R-1b or R-A Residence District. Procedures to be followed shall be according to the Rules and Regulations for Granting Special Permits adopted by the Planning Board.

Has any housing been built under the cluster/flexible provisions?

No mention of cluster development in the 2004 Community Development Plan, although some of the development referenced could be cluster:

"The majority of residential construction over the past 5 years has been for single family homes followed by condominiums. One two-family home assessed for more than one million dollars was constructed in 2001 and in 2002 an apartment building containing more than eight units was

constructed at 38 Village Road. A "mansionization" trend is visible in many Middleton neighborhoods, whereby small homes on small lots are replaced by significantly larger homes. Much of this new construction has taken place in the R-1b zoning district in S. Middleton, the Northwest Pond Area and Middleton's northeast quadrant. The Ryebrook Development, which replaced the former Middleton Pines camp area, is typical of the new 1 acre zoning subdivisions in Town. Other new developments are found on Peabody Street heading into the northeast quadrant, and Mill Street also located in the northeast quadrant. New condominium and townhouse construction has occurred next to Nathan's Lane and Maple Street and 75 additional condominiums are scheduled for construction on Locust Street."

Milford

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes PRD allowed by special permit in RB, RC, RD.

Town of Milford Zoning Bylaw (Amended 2003)

ARTICLE VI PLANNED RESIDENTIAL DEVELOPMENT

6.1 Planned Residential Development: Notwithstanding the provisions of Article II of this By-Law, the Planning Board may grant a Special Permit for tracts of land in Single-Family Residential (RB), Rural Residential C (RC), or Rural Residential D (RD) Districts to be utilized as a Planned Residential Development (PRD), subject to the requirements and conditions of this Article VI, thereby exempting such PRD Special Permits from the lot area and frontage requirements of Section 2.5 of this By-Law.

6.2 Purpose: This Article VI provides for the public interest by: Preserving open space in perpetuity; Promoting maximum protection of groundwater, watersheds, open space, and visual quality; Encouraging efficient use of land in harmony with its natural features; Encouraging efficient extension of utilities and services; and, Providing variety in residential development styles more consistent with town growth policies than traditional development styles.

6.3 Standards: The Planning Board may only grant a PRD Special Permit for applications that meet the provisions of this Article VI, and of Sections 1.10 and 1.15 of this By-Law.

6.4 Requirements

6.4.1 Minimum Tract Size: The size of the tract to be developed as a PRD shall be a minimum of 5 contiguous acres in the RB District, or 10 contiguous acres in the RC and RD Districts.

6.4.2 Dwelling Style: A maximum of four (4) dwelling units per structure shall be permitted in structures that, to the extent feasible, resemble single-family residences.

6.4.3 Density: The maximum number of dwelling units shall be determined by dividing 85% of the total area of the site by the minimum lot size of the zoning district in which the site is located. Said number of units shall be rounded to the nearest whole number.

6.4.3.1 Density Bonus: The maximum number of dwelling units as calculated in Section 6.4.3 of this Article VI may be exceeded provided the Planning Board determines that the proposed PRD includes the provision of substantial facilities that clearly provide an overriding public benefit. Substantial facilities that clearly provide an overriding public benefit are:

6.4.3.1.1 The provision of at least 25% of the total number of dwelling units as deed restricted in perpetuity for occupancy by two persons only, at least one of which is 55 years of age or older;

6.4.3.1.2 The provision of at least 25% of the total number of dwelling units that are deed restricted in perpetuity for the sale to persons who qualify as low- or moderate-income as determined by Massachusetts Department of Housing and Community Development; or,

6.4.3.1.3 On tracts of 100 acres or larger, the construction of substantial public recreation facilities (regulation athletic fields, regulation tennis courts, municipal parks with community center or public assembly facility, and golf courses) to be deeded upon

completion to the Town. Any substantial public recreation facility shall include adequate off-street parking, public access, and restroom facilities as determined by the Planning Board. Substantial public recreation facilities shall be considered part of the required Common Open Space (COS).

6.4.3.2 The maximum density bonus under Sections 6.4.3.1.1 and 6.4.3.1.2 of this Article VI shall not exceed the addition of more than 50% of the number of dwelling units determined under Section 6.4.3 of this Article VI. The actual density bonus may vary from site to site depending upon the physical and environmental characteristics of the site in question.

6.4.3.3 The maximum density bonus under Section 6.4.3.1.3 of this Article VI shall not exceed the addition of more than:

6.4.3.3.1 25% of the number of dwelling units determined under Section 6.4.3 of this Article VI for the construction of regulation athletic fields consisting of a minimum of 10 contiguous acres.

6.4.3.3.2 25% of the number of dwelling units determined under Section 6.4.3 of this Article VI for the construction of at least six regulation tennis courts.

6.4.3.3.3 50% of the number of dwelling units determined under Section 6.4.3 of this Article VI for the construction of a municipal park consisting of a minimum of 10 contiguous acres with a community center building or public assembly building.

6.4.3.3.4 50% of the number of dwelling units determined under Section 6.4.3 of this Article VI for the construction of a public golf course.

The actual density bonus will vary from site to site as determined by the Planning Board depending upon the magnitude of the facility being provided and the physical and environmental characteristics of the site in question.

6.4.3.4 Notwithstanding the provisions of Sections 6.4.3.2 and 6.4.3.3 of this Article VI, in no case shall the maximum density bonus exceed the addition of more than 50% of the number of dwelling units determined under Section 6.4.3 of this Article VI.

6.4.4 Dimension Requirements: There shall be no minimum lot area, frontage, lot shape factor, or yard requirements within a PRD. However, no building shall be erected within 75' of an existing public street, or 30' from an internal public street (if any). Structures shall be at least 10' apart within the PRD.

6.4.4.1 Perimeter Buffer: Except for access to the PRD, there shall be a 100' wide Perimeter Buffer around the entire tract, within which no structure or interior roadway shall be constructed. The Planning Board may by a vote of at least four members, reduce the Perimeter Buffer if it is determined that lesser widths are appropriate given the size, shape, and environmental features of the site, and/or proximity to surrounding land uses. However, in no case shall the Planning Board reduce the Perimeter Buffer to less than 25' wide.

6.4.4.2 Landscape Buffer: Within the Perimeter Buffer, there shall be a 25' wide screen of densely planted vegetation or suitable alternative subject to Planning Board approval, to provide a continuous landscaped buffer that protects adjacent properties with a natural visual barrier. The Perimeter Buffer shall be considered part of the required Common Open Space (COS).

6.4.5 Sewer: Each unit shall be served by municipal sewerage

6.4.6 Design and Construction Requirements: All streets or principal ways within the PRD shall have a paved width of at least 24'. As determined applicable by the Planning Board, all other design and construction requirements of ways, utilities and drainage shall comply with the Subdivision Rules and Regulations. All streets, roads, driveways, parking areas, utilities and other PRD facilities shall be fully maintained, and operated by all the owners of the units.

6.4.7 Maximum Building Height: Structures shall not exceed 35' in height or 2½ story whichever is less.

6.4.8 Compatibility: The PRD shall be designed in harmony with the natural features of the site and shall preserve the topography, wetlands, watercourses, views and vistas, and shall provide access thereto. To the extent practicable, the PRD shall be designed to be compatible with adjacent existing developments.

6.4.9: Number of Bedrooms: Each dwelling unit shall contain no more than two bedrooms, except that deed restricted units under Section 6.4.3.1.2, or any bonus units granted under Section 6.4.3.1.3 of this Article VI, may contain any number of bedrooms. For purposes of this Article VI, any room that is not a kitchen, living room, dining room, bathroom, hallway, or stairway, shall be considered a bedroom.

6.5 Common Open Space: The PRD shall provide for at least 50% of the total lot area as Common Open Space (COS). The COS shall, as the primary design element, preserve and respect the natural features of the site including,

but not limited to water bodies, watercourses, wetlands and flood plains, steep slopes, rock formations, woods, open meadows, and scenic vistas. Streets, roadways, or rights of way shall not be considered COS.

6.5.1 Each area of COS shall have at least a 40' wide access to a public or private street or internal access drive within the development.

6.5.2 All COS shall have a shape, dimension, character and location suitable to assure its use for conservation, agricultural, park, or recreation purposes.

6.5.3 Not less than 50% of the COS minimum requirement shall be uplands. COS upland is all land excluding vegetated wetland, the surface of any lake or pond, land in a Flood Hazard District and land with slopes greater than 15%.

6.5.4 Where the COS has been environmentally damaged prior to application, or prior to the completion of an approved PRD, as a result of soil removal, harvesting of trees or other natural features, refuse disposal or any other activity deemed inappropriate with the proposed uses of the COS, the Planning Board may require the developer to restore or improve the condition and appearance of the COS, and may require the posting of a bond or other appropriate form of performance guarantee to ensure such restoration or improvement.

6.6 Ownership of COS: All COS shall be owned by an entity established to own and manage the facilities and land held in common. Provisions shall be made so that the COS land or applicable portions thereof shall be readily accessible to the owners and occupants of the units of the PRD, or as warranted to the general public. The developer shall provide for the permanent preservation and maintenance of the COS within the PRD as follows:

6.6.1 The developer shall, with approval of the Planning Board, convey such COS to: A corporation or trust to be owned by all of the owners of units within the PRD; A non-profit organization having as its primary purpose the maintenance of the COS land; The Town of Milford; or any combination thereof. In instances where substantial public recreation facilities are being provided, such facilities shall be deeded to the Town.

6.6.2 A perpetual restriction as per Chapter 184, §31 of the Mass. General Laws, running to or enforceable by the Town, shall be recorded in respect to such COS. Such restriction shall provide that the COS shall be retained in perpetuity, and may only be used for: Conservation, Agriculture, Park, Recreation purposes or a combination thereof, except that easements for utilities including stormwater remediation are allowed.

6.6.3 Any owner of land set aside as COS shall be under the legal duty enforceable severally by the Town and any owner of a unit within the PRD to so limit the use of land and not permit the erection of any building or structure other than those devoted to approved COS uses, and structures necessary for the storage of equipment related to the maintenance of such uses.

6.7 Maintenance of COS: In order to insure that the corporation, non-profit organization, trust, or nonprofit corporation will properly maintain the COS and other common property in the PRD, an instrument shall be recorded at the Worcester District Registry of Deeds which shall at a minimum provide:

6.7.1 A legal description of the COS.

6.7.2 A statement of the purpose of which the COS is intended to be used and the restrictions on its use and alienation.

6.7.3 The type and name of the corporation, nonprofit organization, or trust which will own, manage and maintain the COS.

6.7.4 The ownership or beneficial interest in the corporation, nonprofit organization or trust of each owner of a dwelling in the PRD and a provision that such ownership or beneficial interest shall be appurtenant to the dwelling to which it relates and may not be conveyed or encumbered separately there from.

6.8 Procedure

6.8.1 Pre-Application Process: Applicants are strongly encouraged to confer with the Town Planner and Town Engineer prior to preparing submittal materials for PRD Special Permit application. The purpose of the pre-application conference(s) is to minimize unnecessary engineering and design costs for the applicant, and to assure the Town that appropriate design principles are being employed in the layout of the proposed PRD application.

6.8.2 Application: Any person seeking a Special Permit for PRD shall file the appropriate fee along with ten copies of an application, in writing with the Planning Board, and a copy with the Town Clerk, which application shall contain the following information:

6.8.2.1 A PRD Site Plan meeting the requirements of Section 1.15.2.1 of this By-Law and including the following information:

6.8.2.1.1 The soil associations as delineated by the U.S. Soil Conservation Service;

6.8.2.1.2 The limit of each construction phase and a tabular summary of the total area of the tract.

6.8.2.1.3 The location, size and percent of COS.

6.8.2.1.4 The number, type and gross floor area of the residential buildings, including the number of bedrooms.

6.8.2.1.5 The building coverage and coverage of all impervious surfaces.

6.8.2.2 Architectural Plans and Elevations (at a scale of not less than 1/8" = 1') showing the elevation of the proposed buildings, noting their height and the layout of each floor.

6.8.2.3 Copies of all instruments to be recorded with the PRD Special Permit including the proposed deed(s) for the COS, the articles of any corporation or trust to be established for the ownership of the COS and the perpetual restriction to be imposed on the COS.

6.8.2.4 In instances where the PDR includes a Definitive Plan, the Special Permit and Definitive Plan required public hearings shall be conducted concurrently.

6.9 Decision of the Planning Board

6.9.1 The Planning Board shall not issue a Special Permit unless it finds that:

6.9.1.1 The PRD meets each of the conditions of Section 1.10.1 (a. through d.) of this By-Law.

6.9.1.2 The PRD meets each of the conditions of Section 1.15.6.2 (a. through g.) of this By-Law.

6.9.1.3 The PRD Site Plan complies with Sections 6.1 through 6.8 of this Article VI.

6.9.2 The Planning Board may require such changes in the proposed development plans and may impose such additional conditions, limitations and safeguards as it may deem appropriate to ensure compliance with all of the terms of this By-Law, including the posting of a bond or other appropriate form of performance guarantee.

6.10 Occupancy Permits: Occupancy Permits shall not be issued until the Planning Board has notified the Building Commissioner in writing that the roads, utilities and drainage have been completed in accordance with the terms and conditions of the PRD Special Permit.

6.11 Changes: Any substantial change in the approved PRD Special Permit shall require a new application, and may only be approved after additional notice and hearing as provided for in this By-Law. A substantial change shall be any of the following:

6.11.1 An increase in the number of dwelling units;

6.11.2 A decrease in the COS acreage;

6.11.3 A significant change in the shape of the COS;

6.11.4 A change in the use or ownership of the COS;

6.11.5 A significant change in the lot layout, if applicable;

6.11.6 Any change that adversely affects natural features and open space preservation;

6.11.7 Significant changes to the stormwater management facilities.

Survey received from Milford on 5/3/05, completed by Town Planner Larry Dunkin.

What year was the first provision for flexible zoning adopted?

"1985"

What was the last year that the municipality amended the cluster/flexible provisions?

"2002"

What types of structures are allowed under cluster/flexible zoning?

"SF & MF & townhouse/attached"

Has any housing been built under the cluster/flexible provisions? (none, 1-8 projects, more than 8)

"6"

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board Town of Milford Zoning Bylaw (Amended 2003)

ARTICLE VI PLANNED RESIDENTIAL DEVELOPMENT

6.1 Planned Residential Development: Notwithstanding the provisions of Article II of this By-Law, the Planning Board may grant a Special Permit for tracts of land in Single-Family Residential (RB), Rural Residential C (RC), or Rural Residential D (RD) Districts to be utilized as a Planned Residential Development (PRD), subject to the requirements and conditions of this Article VI, thereby exempting such PRD Special Permits from the lot area and frontage requirements of Section 2.5 of this By-Law.

Has any housing been built under the cluster/flexible provisions?

Yes From Milford Comprehensive Plan 2003, page 52:

"In 1985, Milford amended the zoning by-law to include Planned Residential Developments (PRD) by special permit in zones RB and RC.

The purpose of this incentive zoning provision is to preserve open space in perpetuity; promote maximum protection of water resources; encourage efficient growth patterns, especially in terms of extending utilities and services; and to promote a greater variety of housing styles that are consistent with the Town's growth policies. The incentives were added in 2002 and allow up to 50 percent density bonuses to be achieved if the developer provides additional public benefit such as dedicating 25 percent of the units to affordable or elderly housing. PRD allows up to four attached units, making it the only type of new residential construction that may be greater than 2 units."

Survey received from Milford on 5/3/05, completed by Town Planner Larry Dunkin.

What year was the first provision for flexible zoning adopted?

"1985"

What was the last year that the municipality amended the cluster/flexible provisions?

"2002"

What types of structures are allowed under cluster/flexible zoning?

"SF & MF & townhouse/attached"

Has any housing been built under the cluster/flexible provisions? (none, 1-8 projects, more than 8)

"6"

Millbury

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Adopted in 1980, last amended in 1986.

Town of Millbury Zoning Bylaws (Updated 2003)

Section 44. Open Space Community.

44.1□Applicability. The Planning Board may grant a Special Permit for the construction and occupancy of an open space community in the Suburban District, provided that the community contains at least ten (10) contiguous acres, and subject to the following regulations and conditions. (By-laws of 4-5-80, Art. 75; By-laws of 4-4-81, Art. 23)

44.2□Intent. The intent of Open Space Communities is to allow relatively intensive use of land, while at the same time preserving open space for conservation and recreation; to introduce variety and choice into residential development; and to facilitate economical and efficient provision of public services.

44.3□Procedures.

44.31□Pre-Application Review. To promote better communications and avoid misunderstanding, applicants are encouraged to submit preliminary materials for informal review to the Planning Board prior to formal application. Preliminary subdivision plans shall be submitted to the Planning Board prior to application for a Special Permit. (By-laws of 4-5-80, Art. 75)

44.32□Application. Applicants for a Special Permit for an Open Space Community shall submit to the Planning Board five copies of an application and an Overall Development Plan. All land shown on such plan must be contiguous, except for streets, though not necessarily in one ownership. If the plan involves more than one ownership, each owner of land included in the plan shall be party to the application and, upon plan approval, subject to its provisions. (By-laws of 4-5-80, Art. 75)

44.33□Overall Development Plan. The Overall Development Plan shall indicate location and boundaries of the site, proposed land and building uses, location of common open space, existing topography, grading plan, location and width of streets and ways, parking, areas of proposed and retained vegetation, distinctions between upland and wetland, drainage, sewerage, and height, bulk, use, location of any proposed structures, and the buildable land area as defined in 44.52. The plans shall have been prepared by a registered civil engineer.

44.34□Other Materials. The application materials shall indicate each landowner's interest in the land to be developed, the form of organization proposed to own and maintain the common open space, the substance of covenants and grants of easements to be imposed upon the use of land and structures, and a development schedule which shall be limited to 7 years.

44.4 Decision

44.41□Review and Decision. Within seven (7) calendar days, upon their receipt of the application and required plans, the Planning Board shall transmit one copy of each to the Board of Health and Conservation Commission. The Board of Health and Conservation Commission shall submit reports to the Planning Board within thirty-five (35) days of the application date, and the Planning Board shall make no decision upon the application until receipt of all such reports, or until thirty-five (35) days have elapsed since the date of application without such reports. (By-laws of 4-1-78, Art. 40; By-laws of 4-5-80, Art. 75)

44.42□Criteria. Approval of an Open Space Community shall be granted only upon the Planning Board's determination that the plan is superior to a conventional one in preserving open space for conservation or recreation; in utilizing natural features of the land; in allowing for more efficient provision of streets, utilities, and other public services; and at least equal to a conventional plan in other respects. Means of achieving these objectives include:

□Avoidance of frequent driveway openings onto through streets, or near street intersections.

Avoidance of extensive topographic change necessitating vegetation and tree removal.

Preservation of natural landscape in large contiguous areas, enhancing the likelihood of continuation of existing ecosystems.

Contiguity with preserved open space for a large proportion of the lots having reduced lot area.

Variations in lot sizes and building arrangements.

Use of common open space to protect valuable natural environments such as stream valleys, outstanding vegetation, or scenic spots, and to avoid development on geologically unsuitable land.

Avoidance of access via existing minor streets serving single-family homes, especially where multifamily dwellings are sited. (By-laws of 4-5-80, Art. 75)

44.5 Requirements

44.51 Number of Dwelling Units. The following maximum densities shall be applied to the total area encompassed by the overall development plan in order to determine the maximum number of single-family dwelling units allowed in an open space community.

Services	Maximum Density
No Public Services	0.9 single-family dwelling units/acre
Public Water Only	1.13 single-family dwelling units/acre

Public Sewerage Only	1.81 single-family dwelling units/acre
Public Water & Sewerage	2.82 single-family dwelling units/acre

☐The maximum number of multifamily dwelling units allowed within an open space community shall equal two (2) times the difference between the number of single-family dwelling units allowable under this section, and the number of single-family dwelling units proposed to be developed within the open space community.

☐Where the community includes more than one ownership, and/or lies in more than one district, the number of units allowed shall be calculated as above for each district summoned to give an overall allowable total, which may be located on the plan without respect to allowable subtotals by district or ownership.

The Planning Board may, at its discretion, approve an open space community containing more than the basic maximum number of dwelling units upon its determination that the proposed development, through the quality of its site selection, programming and design, displays exceptional sensitivity to the objectives of this by-law. The percentage increase over the basic maximum number of dwelling units allowed shall normally be five-tenths times the number of bonus points, as listed below, up to a maximum of fifty percent (50%).

The Board shall employ the following as a guide to its determination, and shall explain in its decision any departure from the bonus guide.

(A)☐Objective: Encourage residential choice and mix

Bonus Points: 0.25 x percentage of all dwelling units equipped for and legally reserved for the elderly or handicapped.

Maximum Points: Ten (10)

(B)☐Objective: Avoid excessive school impact

Bonus Points: 0.05 x percentage of multifamily dwelling units with only one bedroom.

Maximum Points: Five (5)

(C)☐Objective: Protect existing natural areas; reduce visual impact

☐Bonus Points: 0.15 x percentage of trees of eight inches (8") plus caliper which are to be retained. Any required open space area shall not be used in the bonus point calculation. Any trees which must be removed to obtain adequate solar access may be excluded from the bonus point calculation.

Maximum Points: Ten (10)

(D)☐Objective: Protect existing natural areas: wetland protection.

☐Bonus Points: 1.0 x acres of wetland (as defined by M.G.L. Chapter 131, Section 40) to be retained in its natural state, minus 1.5 x acres of wetlands to be altered.

☐Maximum Points: Ten (10)

(E)☐Objective: Protect existing natural areas: Erosion prevention

☐Bonus Points: 0.4 x acres of land with a slope of fifteen per cent (15%) or greater which are to be retained in its natural state.

☐Maximum Points: Ten (10)

(F)☐Objective: Protect existing natural areas: Water body protection

☐Bonus Points: 1.0 x acres of land within two hundred (200) horizontal feet of a river, pond, lake, or stream to be retained in its natural state.

☐Maximum Points: Ten (10)

(G)☐Objective: Minimize incongruity with surrounding area.

Bonus Points: 0.1 x percentage of plan boundary abutted by a two hundred foot or more buffer strip to be retained in a natural state or planted with indigenous trees.

Maximum Points: Ten (10)

(H)☐Objective: Minimize visual impact.

Bonus Points: 0.1 x percentage of dwelling units with the highest habitable floor at a level below the highest ground elevation within five hundred feet (500').

Maximum Points: Ten (10)

(I)☐Objective: Encourage active or passive recreation.

Bonus Points: 0.5 x acres of common open space which is developed for active or passive recreational activities and is open to the general public or the number of acres in excess of the minimum area requirements of section 44.55, open space.

Maximum Points: Fifteen (15)

(J)☐Objective: Preservation of agricultural lands.

Bonus Points: 0.5 x acres of agricultural land in which the development rights are transferred to the Town of Millbury or the Commonwealth of Massachusetts.

Maximum Points: Thirty (30)

(K) ☐ Objective: Encourage the use of solar energy.

Bonus Points: 0.25 x percentage of dwelling units in which solar energy supplies at least fifty per cent (50%) of the total annual energy requirements for heating and hot water.

Maximum Points: Twenty-five (25)

Applicants seeking any of the above bonuses shall submit calculations and any other documentation necessary to demonstrate qualification for the bonus. (By-laws of 4-5-80, Art. 74; By-laws of 4-4-81, Art. 23)

44.52 ☐ Buildable Land Area. The "buildable land area" shall be calculated by a registered land surveyor or registered civil engineer and shall be equal to the total area encompassed by the overall development plan, minus:

(a) ☐ Land within a floodplain as defined by Section 36.1.

(b) ☐ Fresh water wetlands, as defined by Section 40, Chapter 131, General Laws.

(c) ☐ Land having slopes in excess of 25%.

(d) ☐ Land previously prohibited from development under a conservation restriction held by the Conservation Commission.

(e) ☐ Land otherwise prohibited from development by local or state bylaw, regulation, or statute.

Not more than 5% of the land designated for roads or lots for dwellings or other development within the Open Space Community shall fall outside the boundaries of the "Buildable Land Area".

44.53 ☐ Dimensional Requirements. Usual dimensional requirements as they apply to individual lots shall be as follows, rather than as specified in Article 2.

	No Public Services	Public Water	Public Sewerage	Public Water & Sewerage
Min. lot area: <input type="checkbox"/> 28,000 sf <input type="checkbox"/>	22,500 sf	15,000 sf <input type="checkbox"/> <input type="checkbox"/>	12,500 sf	
Min. lot frontage: <input type="checkbox"/>	125 ft	125 ft	100 ft <input type="checkbox"/> <input type="checkbox"/>	100 ft
Min. Front yard <input type="checkbox"/>	25 ft	25 ft	25 ft <input type="checkbox"/> <input type="checkbox"/>	25 ft
Min. side, rear yards: <input type="checkbox"/>	10 ft	10 ft	10 ft <input type="checkbox"/> <input type="checkbox"/>	10 ft
Max. lot coverage: <input type="checkbox"/>	30 % <input type="checkbox"/>	30 % <input type="checkbox"/>	30 % <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	30 %
Max. building height: <input type="checkbox"/>	30 ft	30 ft <input type="checkbox"/>	30 ft <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	30 ft

(By-laws of 4-4-81, Art. 23; By-laws of 4-5-86, Art 51, s. 19)

44.54 ☐ Use Requirements. ☐ Uses to be allowed or allowed by Special Permit shall be as specified in Section 2. However, in developments containing at least 50 dwelling units, retail stores, offices, and service outlets deemed by the Planning Board to be primarily servicing the residents of the Open Space Community may be allowed, provided five percent (5%) of the overall non-business zoned land area of the development tract is allocated to such use, and at no time does the gross floor area of all structures occupied for such uses exceed five percent (5%) of the gross floor area of all structures occupied within the non-business zoned portions of the development tract. (By-laws of 4-5-80, Art. 75; By-laws of 4-5-86, Art. 51, s. 20)

44.55 ☐ Open Space. All land not designated for roads, lots for dwellings, or other development within the Open Space Community shall be held for common open space. Common open space shall be preserved for recreation or conservation, and shall comprise not less than thirty percent (30%) of the land within the overall development plan. Not less than seventy-five percent (75%) of the land preserved for common open space shall contain buildable land as defined in Section 44.52. Such open land shall either be conveyed to the Town of Millbury and accepted by it for park or open space use, or be conveyed to a nonprofit organization, the principal purpose of which is the conservation of open space, or be conveyed to a corporation or trust owned or to be owned by owners of lots or residential units within the plan. If such a corporation or trust is utilized, ownership thereof shall pass with conveyances of the lots of residential units. In any case where such land is not conveyed to the Town, a restriction enforceable by the Town of Millbury shall be recorded providing that such land shall be kept in an open or natural state and not be built upon or developed for accessory uses such as parking or roadway. Building coverage shall not exceed five percent (5%) in such conservation or recreation areas. (By-laws of 4-1-78, Art. 40; By-laws of 4-5-86, Art. 51, s. 21)

44.6 ☐ Later Change. No lot shown on a plan for which a Permit has been granted for an Open Space Community may be further subdivided so as to increase the number of lots, and no structure may be altered so as to increase the number of dwelling units, unless approved on Special Permit following a hearing by the Planning Board. (By-laws of 4-5-80, Art. 75)

44.7 ☐ Prior to the issuance of an occupancy permit or sale of any lot within an Open Space Community, all lots to be so developed shall be shown on a plan recorded in the Registry of Deeds or registered with the Land Court, and a covenant or other instrument satisfactory to the Planning Board shall have been executed assuring the conservation or recreational use of lands so designated in

the application. (By-laws of 4-3-76, Art. 57; By-laws of 4-5-80, Art. 75)

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board Town of Millbury Zoning Bylaws (Updated 2003)

Section 44. Open Space Community.

44.1 ☐ **Applicability.** The Planning Board may grant a Special Permit for the construction and occupancy of an open space community in the Suburban District, provided that the community contains at least ten (10) contiguous acres, and subject to the following regulations and conditions. (By-laws of 4-5-80, Art. 75; By-laws of 4-4-81, Art. 23)

Has any housing been built under the cluster/flexible provisions?

Millis

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes D. Planned Business Development.
E. Planned Industrial Development.

Section XVIII Open Space Preservation
A. Purpose

To provide for the public interest by permanently preserving open space and natural landscape features, and to promote variety in single family residential housing patterns by encouraging development which is designed to accommodate and preserve a site's physical characteristics such as topography, aquifers, vegetation, water bodies, wetlands, and open spaces including, but not limited to farmlands and meadows, forests, major scenic views, and wildlife habitats

B. General Requirements

1. A tract of land consisting of not less than ten (10) acres, within zoning districts residential may be developed for the construction of single family dwellings under the Open Space Preservation Bylaw

2. Development under the Open Space Preservation Bylaw may only be authorized by a Special Permit granted by the Planning Board.

3. The maximum number of building lots in a tract to be developed under the Open Space Preservation Bylaw shall be the number of building lots that could be developed through a conventional subdivision of the tract. The burden of proof shall be upon the applicant in determining the allowable number of building lots, that shall be demonstrated through submission of a preliminary plan of the conventional subdivision. Said Preliminary Plan shall conform in all respects with the Millis Planning Board's Subdivision Rules and Regulations as to plan specifications. The plan shall also demonstrate that the lots conform to the Millis Zoning Bylaws. The applicant shall bear the burden of demonstrating, to the satisfaction of the Planning Board, that the environmental, physical, and dimensional characteristics of the tract shown on such plan can support the development of the number of conventional lots shown on such plan

C. Intensity Requirements

The Planning Board may authorize modification of lot size, shape, and other bulk requirements for any lot within an Open Space Preservation development, subject to the following limitations

1. Any lot having reduced area or frontage shall not have frontage on a street other than a street created by a subdivision involved.
2. No lot frontage shall be less than Seventy-five (75) feet or 50% or the required frontage for that district, whichever is greater.

3. Each lot shall have at least fifty (50%) percent of the required setbacks for the district.

4. The Planning Board, having determined that such waiver will further the goals of the Bylaw, shall be allowed to waive either the frontage requirement or the setback requirement, provided however that the Planning Board shall not be allowed to waive both requirements on the same lot. The number of waivers allowable under this provision shall not exceed 40% of the total number of lots in the development.

5. The minimum area of any individual lots in an Open Space Preservation development shall be no less than thirty-three (33%) percent of the lot area required for the district or 15,000 square feet, whichever is greater, provided however that the average area of all lots in the development shall be no less than fifty (50%) percent of the lot area required for the district.

D. Development Standards

Prior to the issuance of a Special Permit under the Open Space Preservation Bylaw, the applicant shall submit the information necessary to demonstrate that the following development standards have been met:

1. The natural landscape is preserved in large contiguous areas enhancing the likelihood of continuation of existing ecosystems.

2. Extensive topographic change necessitating vegetation and tree removal is minimized.

3. Scenic views from public ways are preserved. All efforts shall be made to avoid driveway cuts on existing public ways.

4. Contiguity with preserved open space is provided for a large proportion of the lots having reduced lot area.

5. There is variation in lot sizes and building arrangements

6. Open space is used to protect valuable natural environments such as stream valleys, outstanding vegetation, or scenic spots. Development of physically or environmentally unsuitable land is avoided.

7. The character of the neighborhood in which the tract lies is enhanced.

8. The development will improve pedestrian and vehicular safety within the site and will not cause unreasonable traffic congestion or unsafe conditions.

9. The development will provide for and maintain convenient and safe emergency vehicle access to all buildings and structures at all times.

E. Open Space Use and Design Standards

1. A tract of land developed as an Open Space Preservation development shall contain land set aside as permanent open space. However, in no case shall the Required open space be less than thirty-five (35%) percent of the total area of the tract of land.

2. The following areas shall not comprise a greater percentage of the required open space than the percentage of such areas found in the overall tract of land

a. Wetlands and buffer areas as defined in M.G.L. Chapter 131 and any rules and regulations of the Millis Conservation Commission;

b. Land within the Town of Millis's Special Flood Hazard District or Watershed Protection District;

c. Floodplains as shown on the National Flood Insurance Program Flood Insurance Rate Map Zones A and A1-30.

3. None of the Required Open Space shall consist of wastewater or stormwater management systems. However, the Planning Board may waive this requirement where it is determined that placement of below grade wastewater or stormwater management systems in Required Open Space would significantly promote the goals of this bylaw and that such placement would be in existing open fields or meadows and not require material alteration of the topography or landscape or, except as the planning board may individually authorize, the removal of trees. Use of this waiver shall be regarded as an exception to this bylaw not to be routinely permitted and then only for the clearly identified furtherance of goals cited in Section A.

4. The required open space shall be contiguous. Contiguous shall be defined as being connected. Open Space may be considered connected if it is separated by a single roadway. The Planning Board may waive this requirement where it is determined that noncontiguous open space will promote the goals of this Bylaw by preserving distinctive characteristics of the landscape that would otherwise be destroyed and that the Required Open Space would consist of not more than three parcels, none less than one acre in size.

5. Where possible, existing trees and vegetation shall be preserved and integrated into the landscape design plan to ensure visual privacy between structures, abutting properties and neighborhoods'.

6. No more than five (5%) percent of all the open space in the development shall be covered by manmade impervious surfaces.

F. Ownership and Management of Open Space

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G. Application Process

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**Webmasters Note: The previous section XVIII has been added as per Case No. 2144 from town meeting dated 5/13/02.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board 2. Development under the Open Space Preservation Bylaw may only be authorized by a Special Permit granted by the Planning Board.

Has any housing been built under the cluster/flexible provisions?

No Email received from Planning Board Administrator Camille Standley on 6/2/05:

Has any housing been built under the Senior Residential Community Development provisions?

"1 project (approx. 40 units) is in the development stage"

Has any housing been built under "Open Space Preservation"?

"No"

Millville

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

No

Which entity is the special permit granting authority for cluster/flexible zoning?

Has any housing been built under the cluster/flexible provisions?

Milton

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Zoning Bylaws Town of Milton, Section III (E) (Current Electronic Draft as of July 1, 2004)

E. Residence E Use. In a Residence E district, except as herein provided, no building or land shall be used

and no building shall be erected or converted except for the following purposes:

1. For any use permitted in a Residence A district. Such uses shall be subject to all regulations of this bylaw applicable in a Residence A district.
2. For Attached Cluster Development pursuant to a special permit issued by the Planning Board pursuant to Section VI, subsection K of this bylaw.

Zoning Bylaws Town of Milton, Section III (I) (Current Electronic Draft as of July 1, 2004)

I. Planned Unit Development

In the Milton Village/Central Avenue Business District on a lot of no less than 80,000 square feet of land, exclusive of wetlands, all of which is no less than 50 feet from any residential zoning district in the town a mixed residential and business use may be permitted by a special permit for planned unit development issued by the Planning Board upon such terms and conditions as the Planning Board shall deem to be reasonable and appropriate. In the event that a special permit for planned unit development shall be issued for a lot of land, no use of the lot may be made except as specifically authorized by the special permit. As used in this subsection I, the word "lot" shall be deemed to include a combination of adjacent lots in more than one ownership. A special permit for planned unit development shall not lapse following substantial completion of construction but may be modified or amended by the Planning Board.

(1) Purpose

The purpose of this subsection is to permit quality development on large lots in the Milton Village/Central Avenue Business District combining both business and residential uses and providing significant amenities to the public, including meaningful usable open space, additional parking, and an attractive design which takes advantage of natural features and promotes access to and from nearby areas in the Business District.

(2) Uses

(a) Business use otherwise permissible in the Business District may be permitted, in conjunction with residential use, by a special permit for planned unit development, except that none of the following uses shall be permitted: drive-through food establishments, used car lots, motor vehicle dealerships, gasoline stations, body shops, motor vehicle repair shops, and sexually oriented businesses.

(b) Residential use shall be permitted in conjunction with an amount and type of business use, which is deemed reasonable and appropriate by the Planning Board, by a special permit for planned unit development. Such residential use may be authorized as rental or ownership of housing units or both. The number of such housing units shall not exceed one unit per 2,000 square feet of lot area, exclusive of wetlands, provided that this number may be increased in the discretion of the Planning Board as hereafter provided in paragraphs 3, 4, 6 and 7 but in no event shall the number of such housing units exceed one unit per 1,000 square feet of lot area, exclusive of wetlands.

(3) Buildings

(a) In a planned unit development the total gross floor area of all buildings, excluding below-grade basements and parking areas within a building shall not exceed 0.8 times the area of the lot, exclusive of wetlands, provided that this total gross floor area may be increased, in the discretion of the Planning Board, as hereafter provided in this paragraph and paragraphs 4, 6 and 7, but in no event shall this total gross floor area be more than 1.6 times the area of the lot, exclusive of wetlands.

(b) Buildings, exclusive of parking structures used solely for parking, shall not cover in excess of 30% of the lot, exclusive of wetlands. The total coverage of parking structures, which are used solely for parking, together with other buildings, shall not cover in excess of 50% of the lot, exclusive of wetlands. Buildings shall not exceed 65 feet in height or more than six stories, including any above grade parking levels in the building. Height shall be measured from mean finished grade, excluding berms, to the highest point of the building provided that Section III - Use Regulations

the Planning Board may permit additional height for protrusions of up to eight feet above the roof line, such as elevator shaft housings or chimneys, so long as the appearance of the top of the building remains architecturally coherent and visually attractive. Buildings shall be designed so that there are no blank walls or box-like structures without visual interest and architectural merit. The back and sides of each building shall be given as much architectural care as the front.

Zoning Bylaws Town of Milton, Section VI (J) (Current Electronic Draft as of July 1, 2004)

J. Cluster Developments

1. (a) Definition — "Cluster Development" means a residential development in which the buildings and accessory uses are clustered together into one or more groups separated from adjacent property and other groups within the development by intervening open land.

(b) Purpose - This subsection, relating to Cluster Development, is intended (i) to permit development on large tracts of land in a manner which preserves open space and topography, wooded areas, and natural features of substantial portions of those tracts, and (ii) to provide

a process requiring careful sit planning and high quality design resulting in developments in harmony with the surrounding open spaces which enhance the neighborhoods in which they occur and the Town as a whole.

2. A Cluster Development shall be established on a parcel of land in one ownership containing not less than ten (10) acres, provided that the Planning Board may permit a Cluster Development to be established on a parcel of land in one ownership, containing not less than five (5) acres, if the Planning Board determines that such a Cluster Development on the parcel is, under the circumstances, demonstrably superior in design, visual appearance, and land use to a subdivision which meets the usual lot size and frontage requirements of this Section.

3. A Cluster Development may be established in a Residence AA, A, B, or C district or on a parcel of land lying in more than one of such residence districts.

4. In a Cluster Development, the number of lots on which dwellings may be erected or maintained shall not exceed the number of buildable lots which would be available in a subdivision, (a) in which each lot all or part in a Residence AA district contains no less than the area and frontage required by Subsection A, Paragraph 7, of this Section; in which each lot all or partly in a Residence A district contains no less than the area and frontage required by Subsection A, Paragraph 1, of this Section; and in which each lot all or partly in a Residence B district or a Residence C district contains no less than the area and frontage required by Subsection A, Paragraph 2, of this Section, and (b) which would be entitled to subdivision approval by the Planning Board pursuant to the Subdivision Control Law, the Zoning Bylaws (apart from the provisions of this Subsection), the Wetlands Bylaws, the Rules and Regulations of the Planning Board, and other applicable law. In determining whether wetlands would render any such lot unbuildable or would preclude the construction of a street, the Planning Board shall rely on the report and recommendations of the Conservation Commission.

5. In a Cluster Development, no dwelling shall be erected or maintained except on a "Buildable Lot". A "Buildable Lot" is a lot containing not less than 10,000 square feet of land, exclusive of wetlands, and having a frontage deemed adequate by the Planning Board. Not more than one

Section VI - Area Regulations

-50-

dwelling shall be erected or maintained on any Buildable Lot. Each Buildable Lot shall have a location, size and shape to provide a building site for a dwelling and an attached or unattached garage. No more than thirty-five percent (35%) of the area of any Buildable Lot shall be covered by buildings or other impervious surface unless the Planning Board determines that special circumstances justify a greater coverage.

6. On any Buildable Lot in a Cluster Development, the dwelling and any unattached garage shall be set back at least 25 feet from the street on which the lot has frontage and at least 15 feet from any other lot line. Every dwelling shall be located at a place on a Buildable Lot where the lot width is at least 75 feet. Every unattached accessory building shall be set back at least 35 feet from the street on which the lot has frontage and at least 10 feet from any other lot line. Matters relating to Projection shall be governed by the provisions of Subsection F of this Section, and matters relating to Corner Clearance at intersecting streets shall be governed by the provisions of Subsection G of this Section, as if the development were in a Residence B district.

7. All utilities in a Cluster Development, including the wiring for lights on the Open Land, paths, and driveways, shall be placed underground. Subject to the approval of the Planning Board, provision may be made for additional parking areas for the residents and guests of the Buildable Lots. Suitable provision shall be made for ownership and maintenance of such parking areas by the owners of the Buildable Lots.

8. Every Cluster Development shall include "Open Land", which, for the purposes of this subsection, shall mean land left in its natural state, gardens, and other open land suitably landscaped in harmony with the terrain of the site and its other features. Open Land may not be used for residential accessory uses such as parking or roadway or any other use of Open Land prohibited by G.L.c40A, §9 or successor statutory provision. Insofar as permitted thereunder and subject to the approval of the Planning Board, Open Land may be used for non-commercial outdoor recreational purposes, including playgrounds, tennis courts, basketball courts and swimming pools, but no more than 20% of the Open Land may be used for such purposes unless the Open Land is owned by the Town of Milton or open to public use. Open Land may be used for necessary underground utility services. The Planning Board may permit Open Land to be utilized for the coursing or temporary retention of storm drainage. No structure shall be erected or maintained on Open Land except as may be reasonably necessary for and incidental to the use of Open Land, such as lampposts, benches, small sheds for tools or sports equipment, bath houses, and fences. The number, use, characteristics, and location of structures shall be subject to the approval of the Planning Board.

At least 35% of the total land area of the Cluster Development, exclusive of the and set as for streets, shall be Open Land, and at least 35% of the non-wetland area of the Cluster Development, exclusive of the land set aside for streets, shall be Open Land. Land which is subject to rights or easements inconsistent with the use of Open Land shall not be counted as Open Land in determining these percentages.

10. Open Land in a Cluster Development shall be contained in one or more parcels of such size, shape and location so that the purposes of this subsection are met. Narrow strips of land, which are not necessary for a high-quality site design, shall not be a part of the Open Land. Open Land

shall be situated so that each Buildable Lot is adjacent to Open Land or has convenient access to Open Land.

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11. In a Cluster Development the public shall not be unreasonably restricted from daytime foot passage on paths in the Open Land. The use of special facilities shall be restricted to the regular occupants and their guests, and use of such facilities by such persons may be made subject to a user's fee and reasonable rules and regulations.

12. Open Land in a Cluster Development may be owned (a) by the Town of Milton for park or open space use with the Town's consent, (b) by a non-profit organization, the principal purpose of which is the conservation of open space and which agrees by suitable guarantees to maintain the Open Land for such purpose in perpetuity and which in the opinion of the Planning Board, has sufficient resources to provide adequate maintenance of the Open Land and/or (c) by a corporation or trust as described in Paragraph 13 of this subsection. In any case where the Open Land is not conveyed to the Town of Milton, a perpetual conservation restriction pursuant to G.L.c184§§.31-33, shall be granted to the Town and recorded with the Norfolk County Registry of Deeds providing that such Open Land shall be kept in an open or natural state and not built for commercial or residential use or developed for accessory uses such as parking or roadway.

13. Any corporation or trust, which owns Open Land in a Cluster Development, shall be owned by the owners of the Buildable Lots. Each such owner's interest in the corporation or trust shall be subordinate to the conservation restriction granted to the Town and shall pass with conveyance of his or her Buildable Lot. Such corporation or trust shall be responsible for the maintenance of the Open Land. The deed of the Open Land to such corporation or trust shall restrict the use of the Open Land to all or some of the uses set forth in this subsection. Each deed to a Buildable Lot shall obligate the owner and his successors in title to pay a pro rata share of the expenses of the corporation or trust and any successor in title in maintaining the Open Land. The corporation or trust by un-amendable provision in this charter or trust indenture (a) shall be obligated to maintain the Open Land, (b) shall be prohibited from mortgaging or pledging the Open Land, and (c) shall be prohibited from conveying or assigning the Open Land, except to an entity described in Paragraph 12 of this subsection, with the consent of the Planning Board. In the event that such corporation or trust shall be legally terminated, another corporation or trust constituted pursuant to the requirements of this paragraph subject to the rights and obligations provided herein shall take title to the Open Land.

14. Every application for a Cluster Development permit shall include (a) a plan and other documentation meeting all requirements for a Definitive Subdivision Plan set out in the Subdivision Control Law and the Rules and Regulations of the Planning Board, (b) a plan which shows the number of lots which would be buildable in a subdivision pursuant to the requirements of Paragraph 4 of this subsection and which provides adequate detail, including data on subsurface waste disposal, to permit the Planning Board to determine whether such a subdivision would be approved, (c) a Site Plan meeting the requirements of Paragraph 15, (d) copies of all proposed deeds, documents and other instruments required by this subsection, and (e) such other information as the Planning Board determines is reasonably necessary for a determination of the application.

15. A. The Site Plan for a Cluster Development may be contained in, one or more plans prepared in a form suitable for recording by a Registered Professional Engineer or a Registered Land Surveyor, and in accompanying text and material. Applicants are encouraged to secure the assistance of a Registered Architect or Landscape Architect in preparation of the Site Plan. A

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Site Plan, approved by the Planning Board, is a prerequisite of a special permit for a Cluster Development granted under this subsection, and construction of the Cluster Development shall be in accordance with the approved site Plan. The Site Plan shall show:

(a) The existing topography of the land showing existing and proposed two-foot contours.

(b) A mapping of all wetlands, a description of these wetlands, and any proposed alteration of wetlands.

(c) Major site features such as large trees, wooded areas, rock-ridges and outcroppings, water bodies, meadows, stone walls, and buildings, a description of these features, and any proposed removal or changes in these features.

(d) The siting, grading, and landscape plan for all proposed streets, Buildable Lots, Open Land, parking areas, paths, walkways, driveways, tennis courts, basketball courts, ball fields, swimming pools, any other athletic facility, playgrounds, gardens and fences.

(e) A written description of the landscape characteristics of the site and its contiguous neighborhood and of the effect of the Cluster Development on such characteristics, including the passage of water through the site and to and from contiguous property.

(f) A written description of the site's current uses, such as watershed, wildlife habitat, woodland, or meadowland and of the effect of the Cluster Development on such uses.

(g) A statement of all significant impacts, which the Cluster Development is likely to cause, and a description of any measures proposed to deal with these impacts.

(h) The design of all structures, proposed for the Open Land or for common parking areas, and the design of the lighting for streets, walkways, paths and common parking areas.

B. The Site Plan shall be prepared in conformity with the purpose and specific requirements of this subsection including the following design standards:

(a) The existing terrain, whether part of the Open Land or a Buildable Lot, shall be preserved insofar as reasonably possible, and earth moving shall be minimized except as may be required for a site design meeting the purpose and requirements of this subsection.

(b) Existing trees and significant natural features whether on the Open Land or a Buildable Lot, shall be preserved and integrated into the landscape design plan insofar as reasonably possible and appropriate to a site design meeting the purpose and requirements of this subsection.

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(c) Street layouts shall take account of the existing terrain and landscape features, and there shall be no extreme or ill designed cuts or fills. The width, construction and lighting of streets shall be appropriate for their intended use.

(d) Preservation of views of the Open Land from existing streets and creation of views of the Open Land from new streets in the Cluster Development shall be among the objectives of overall site design.

(e) The Buildable Lots shall be arranged and oriented to be compatible with the terrain and features of surrounding land and shall be sited so that the arrangement of the Buildable Lots fronting a street creates a landscape setting in context with the street and the surrounding land.

(f) The Buildable Lots shall not be located in such a manner that densities of dwelling units are increased in the immediate vicinity of any existing dwelling beyond the increase which would be caused by a conventional subdivision.

(g) Individually and commonly owned parking areas shall be designed with careful regard to topography, landscaping, ease of access and lighting and shall be developed as an integral part of overall site design.

(h) There shall be an adequate, safe and convenient arrangement of walkways, paths, driveways and parking areas and suitable lighting. Varied construction materials, such as brick or stone, shall be used when feasible and appropriate to site design.

(i) Suitable trees, shrubs and other plant material, used for screening or landscaping, shall be of a size and number sufficient for their purpose.

The Site Plan shall specify the approximate location and approximate dimensions of all dwellings on the Buildable Lots in conformity with the following design standards:

(j) The dwellings on the Buildable Lots shall be conveniently accessible from the street without extreme or ill-designed cuts or fills and without removal of trees or of other natural features beyond what is necessary to a site design meeting the purpose and requirements of this subsection.

(k) The dwellings on adjacent Buildable Lots shall be located with respect to each other so as to promote visual and audible privacy.

(l) The siting of a dwelling on a Buildable Lot shall take into account traditional neighborhood patterns for relationships of dwellings, yards, and common space.

(m) The size of the dwelling on a Buildable Lot shall be commensurate with and appropriate to the size of the lot. The Site Plan need not include architectural plans for dwellings, but, when prepared, such plans should make the appearance of each dwelling on its sides and rear at least equal in amenity and design to the appearance of the dwelling on its front.

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16. Every application for a Cluster Development under this subsection shall be referred to the Conservation Commission and to the Board of Health which shall file reports on the application. The Conservation Commission shall determine the extent of wetlands and any necessary conditions required to be imposed on the proposed development and on the development shown by the plan described in Paragraph 14(b) and shall report its findings and any recommendations. The Board of Health shall determine the adequacy of provisions for subsurface waste disposal and whether any proposed Buildable Lots cannot be used as building sites without injury to the public health and shall report its findings and any recommendations. The Board of Health shall also specify any lots on the plan described in Paragraph 14(b) which cannot be used as building sites. The Conservation Commission or the Board of Health may require the applicant to provide, at the applicant's expense, additional information necessary in order for it to prepare its report.

17. Every application for a special permit for a Cluster Development shall be filed with the Town Clerk and five copies of the application (including the date and time of filing certified by the

Town Clerk) shall be filed forthwith with the Planning Board. The Planning Board shall forthwith transmit a copy of the application to the Conservation Commission and a copy of the application to the Board of Health and shall specify the date of public hearing. Prior to the date of public hearing, the Conservation Commission and Board of Health shall transmit their reports and recommendations to the Planning Board. After due publication notice, the Planning Board shall hold a public hearing within 65 days of the filing of the application or within such further time as may be permitted by G.L.c.40A §9 (or successor statutory provision) or within such further time specified by written agreement between the applicant and the Planning Board filed with the Town Clerk. The written decision of the Planning Board shall be made within 90 days from the date of the public hearing or within such further time as may be permitted by G.L.c.40A §9 (or successor statutory provision) or within such further time specified by written agreement between the applicant and the Planning Board filed with the Town Clerk.

18. The Planning Board shall grant a special permit for a Cluster Development provided that it finds that the proposed Cluster Development meets all the requirements and criteria set out in Paragraphs 1-17 of this subsection and that the proposal is financially practical and will, in reasonable probability, be completed. In granting a special permit, the Planning Boards shall impose such conditions and restrictions as may be required by the reports of the Conservation Commission and the Board of Health and may impose additional conditions or restrictions which it finds are reasonably necessary to accomplish the purpose or satisfy the requirements of this subsection.

19. After a special permit for a Cluster Development has been granted, the development may be altered or amended only upon an application for such alteration or amendment complying with the pertinent requirements of this subsection and after notice and a public hearing and a finding by the Planning Board that the alteration or amendment (a) meets the requirements and purpose of this subsection, (b) is financially practical and in reasonable probability will be completed, and (c) is desirable or reasonably necessary for the Cluster Development. In permitting an alteration or amendment, the Planning Board may impose such conditions or restrictions which it finds are reasonably necessary to accomplish the purpose or satisfy the requirements of this subsection.

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20. In the event no substantial use of a special permit granted under this subsection is made and no substantial construction has commenced within 2 years of the Planning Board's decision (excluding any time involved in judicial review of the decision), the special permit shall expire, except for good cause. The Planning Board may set reasonable time limits for completion of parts or of the whole of the development and may determine the order of construction.

K. Attached Cluster Development

The purpose of this subsection relating to Attached Cluster Development is to provide an alternative pattern of land development to that permitted in the present residential zones. Specifically, it is intended to encourage the conservation of more usable open space than is normally possible in conventional developments while at the same time providing for a greater mixture of housing types at Section VI - Area Regulations

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somewhat greater dwelling unit densities than allowed in the present residential zones without a significant increase in population density or requirements for public services. An attached Cluster Development shall result in:

- i. conservation of significant tracts of open space;
- ii. efficient allocation, distribution and maintenance of common and open spaces;
- iii. economic and efficient street, utility and public facility installation, construction and maintenance;
- iv. a variety of housing types and characteristics;
- v. housing and land development harmonious with natural features;
- vi. the development and maintenance of real property values consistent with the needs of the town.

(1) An Attached Cluster Development is a complex of attached single family units each unit separated by party walls from the other, located on the parcel of land having an area of not less than 25 acres and the development shall be so laid out that there should be groups of dwellings within the complex with suitable common and open space adjacent to and surrounding it (herein, called ATTACHED CLUSTER DEVELOPMENT).

(2) No Attached Cluster Development shall be established except under a special permit issued by the Planning Board as provided in this Subsection K.

(3) An attached Cluster Development may be located only in a Residence E district.

(4) Lot Area — In an Attached Cluster Development the area for lots or units shall be in accordance with an approved site plan submitted in accordance with Section K, paragraph 2.

(5) Every Attached Cluster Development may include "common land" which for purposes of this Section K means land within the development available for common use for streets and immediate and essential access to the residential dwelling units and accessory building and facilities within the development. Common land shall not include land which in the opinion of the Planning Board is unsuitable for use as common land because it is wet, swampy, dangerous or otherwise unsuitable for the construction of a dwelling or unit, or subject to rights or

easements inconsistent with purposes of common land in a Cluster Development in the Town.

(6) Every Attached Cluster Development shall include "open land" which for the purpose of this Subsection K, means lands within the development available for open space, recreation, flower gardens, gardens, landscaping and land left in its natural state, and, if approved by the Planning Board, for other similar purposes consistent with the development and the character of the neighborhood. No land shall be counted as open land which is included in an area on which the erection or maintenance of a dwelling or accessory structures is permissible. (Such lots or land are hereinafter called "buildable lots or land".) No common land shall constitute open land, nor, for purposes of section 7, 8, 9, and 14 of this Section K shall be land which in the opinion of the Planning Board is unsuitable for use as open land because it is wet, swampy, dangerous, or otherwise unsuitable for the construction of a dwelling or unit, or subject to rights or easements inconsistent with purposes of open land in an Attached Cluster Development in the Town.

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(7) As hereinafter used the term "qualifying land" shall mean the aggregate of all land within the Attached Cluster Development which qualifies as buildable land, common land and open land.

(8) Layout of open land — In an Attached Cluster Development, at least seventy (70%) percent of the qualifying land of the development shall be open land and used for no other purpose except for underground utility services necessary for the development, and each dwelling unit or lot within such a development shall be so laid out that each dwelling or dwelling unit shall have reasonable access to open land although individual dwellings or dwelling units need not front directly on such open land.

(9) Density — In an Attached Cluster Development, the number of dwelling units to be constructed in the development may not exceed one unit for each 25,000 square feet of qualifying land area and the average number of bedrooms per dwelling unit may be not greater than two and one-half (2.5) bedrooms per dwelling unit.

(10) Height regulation — In Attached Cluster Developments no building shall exceed two and one-half stories in height above mean finished grade measured at the foundation.

(11) Yard regulations — In accordance with an approved site plan submitted pursuant to Section K, paragraph 2.

(12) Miscellaneous dimensional regulations — Matters relating to appurtenant open space, projections and corner clearances at intersecting streets shall be in accordance with an approved site plan submitted pursuant to Section K, paragraph 2.

(13) All utilities, including wiring for lights on open spaces, paths and driveways, shall be placed underground.

(14) On open land only structures such as lamp posts, small sheds for tools or sports equipment, fences, including the kind enclosing a tennis court or swimming pool, bath houses and other structures for accessory uses incidental to open land in an Attached Cluster Development, shall be permitted and the number of such accessory structures and their locations, uses and sizes shall be subject to approval by the Planning Board, provided however that all such uses shall not involve the use of more than 10% of all the open land in the Cluster Development.

(15) The Developer shall include in his overall plans for the Development:

(a) provisions whereby the title to all open land shall be always and only vested in a non-profit corporation, the members of which shall be all and only those having title from time to time in fee simple to the buildable lots within the Development;

(b) provisions whereby the said corporation under its charter and bylaws shall have the exclusive right to manage and maintain the open land, determine the uses thereof and the construction, use and maintenance of facilities thereon, all as permitted under the Zoning Bylaw:

(c) provisions whereby all open land in the Attached Cluster Development shall be always open to use at least by every regular occupant of any of the dwellings located in the development, except that use of special facilities such as a swimming pool,

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tennis court or the like may be restricted to those who have and are contributing

to the cost and maintenance thereof:

(d) provisions for owners of buildable lots or dwelling units to bear equitably the cost of said corporation and provisions for the imposition of real estate liens on the buildable lots or dwelling units of owners who fail to meet their said obligations:

(e) provision in the corporate charter that the open land shall be permanently dedicated and restricted to the open land uses incident to Attached Cluster Developments and that any mortgage or other security arrangement with respect to such land expressly provide that the mortgage or beneficiary of such security arrangement to be subject to such restrictions:

(f) provisions that should common land, open land or the corporation be subjected involuntarily to any lien or the corporation be subject to dissolution or bankruptcy or receivership, the members of the corporation shall use all reasonable means to secure the discharge of any such lien and to arrange for the payment of any debt of the corporation; and provisions that each such member shall hold the corporation harmless and indemnify the corporation from all loss, cost or damage resulting from

the use of the open land by that member or the members of his household; and (g) additional provisions whereby the said corporation, when it acquires Title to common and open land, shall be bound to establish an Easement or Covenant running to the Town but vesting in the Town only if, notwithstanding provisions in (F) above, the corporation is dissolved. The terms of the Easement or Covenant shall be such as to assure that the open and common uses of such land shall not be violated.

The rights and obligations set forth in the foregoing paragraphs lettered (a) through (g) shall be duly set forth in one or more legally binding and enforceable instruments prepared by the Developer and, when appropriate, shall be drawn so as to insure to the benefit of and be binding upon successors in title and the heirs, executors, administrators, successors and assigns of the parties; and in said instruments and the charter and bylaws of the corporation, provision shall be made foreclosing any right of amendment to or diminution of the rights and obligations described in said paragraphs (A) through (G), unless for cause shown the same shall be permitted by a court of competent jurisdiction.

(16) Every application for an Attached Cluster Development permit shall be filed with the Planning Board. The application and all required plans, drawings and documents shall be filed in duplicate and shall include samples of all instruments on which the Developer intends to rely to assure compliance with paragraph I5 of the Subsection K. Plans and drawings shall be prepared by or under the direction of a Registered Professional Engineer or Registered Land Surveyor, stamped or sealed accordingly, and shall comply with all applicable rules of the Subdivision Control Law and the Rules and Regulations of the Planning Board pertaining to subdivisions and streets. The plans shall show all land immediately adjacent to the proposed Development, including nearby buildings and structures.

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No special permit pursuant to this Section K shall be issued until a public hearing has been held as provided in Mass. General Law Chap. 40A, Section 9.

(17) The Planning Board shall take into account that every Attached Cluster Development involves long term planning with respect to open land requirements relating to Cluster Development, and the Board shall issue a permit for such a Development only if it is satisfied that the plan presented for approval is financially practical and will in reasonable probability be completed. The Board may set time limits for completion of parts of and the whole of an Attached Cluster Development, determine the order of construction, and set other conditions and limitations on such Development as are consistent with this Section K.

A special permit issued under this Section K shall lapse if, within two (2) years from the grant thereof, construction has not begun unless such construction has been delayed beyond the two year period for good cause as provided in Mass. General Law Chap. 40A, Section 9.

(18) After an Attached Cluster Development permit has been issued, lines of buildable lots and dwelling units, the uses of open and common land and the uses and locations of structures thereon may be changed upon petition to the Planning Board and a public hearing, (with the provisions of paragraph 16 applying) provided that the proposed change or changes do not substantially derogate from the intent and purpose of this subsection K.

(19) The provisions of this subsection K shall be construed as being additional to and in substitution for all provisions of Section VI except subsections E, F, and G. Otherwise Attached Cluster Developments shall be subject to all other provisions of this bylaw where the intent and context permits.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board 2. For Attached Cluster Development pursuant to a special permit issued by the Planning Board pursuant to Section VI, subsection K of this bylaw.

A special permit for planned unit development shall not lapse following substantial completion of construction but may be modified or amended by the Planning Board.

2. A Cluster Development shall be established on a parcel of land in one ownership containing not less than ten (10) acres, provided that the Planning Board may permit a Cluster Development to be established on a parcel of land in one ownership, containing not less than five (5) acres, if the Planning Board determines that such a Cluster Development on the parcel is, under the circumstances, demonstrably superior in design, visual appearance, and land use to a subdivision

which meets the usual lot size and frontage requirements of this Section.

Has any housing been built under the cluster/flexible provisions?

No According to Aaron Henry, Director of Planning, cluster zoning has not been used in Milton. He said that it has been on the books for 30 years and has not been used. He suggested that there must be something wrong with it, such as that there is no density bonus offered. (9/2/04)

Nahant

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

No

Which entity is the special permit granting authority for cluster/flexible zoning?

Has any housing been built under the cluster/flexible provisions?

Natick

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Zoning Bylaw Town of Natick, Section III F (from Natick website as of August 19, 2004)

III-F CLUSTER DEVELOPMENT ALLOWED IN CERTAIN DISTRICTS

III-1. F. TOWN HOUSE CLUSTER DEVELOPMENT

1. PURPOSE AND INTENT:

To permit more economical and efficient use of land than may be accomplished through standard subdivision development by protecting the existing character of the landscape and preserving open space areas for conservation and recreation.

2. APPLICABILITY:

The Planning Board may grant a special permit for the construction and occupancy of a Town House Cluster Development located in the RSA District, provided that the gross land area of the parcel is at least 40 contiguous acres. The applicant must either own or submit authorization in writing to act for all the owners of the parcel. Two or more adjacent parcels which are separated by a distance of 100 ft., or less, may be combined and treated as a single parcel for the purpose of this section (ART. 50 1988 ATM).

3. PERMITTED USES:

Any use permitted as a matter of right or under a special permit in the RS

District as set forth elsewhere in this By-Law may be undertaken on a parcel to which this Section III-F is to be applied; however, the Planning Board, acting as a Special Permit Granting Authority as hereinafter provided may grant a special permit in accordance with the provisions of this By-Law and MGL Chapter 40A to allow the following additional uses:

- a. Town Houses;
- b. Country Club, including golf by natural light only, swimming, tennis and other similar recreational uses, provided they are included within the Overall Development Plan of a Town House Cluster Development and are available to the general public;
- c. Clubhouse, incidental to the operation of a country club including eating facilities for members and guests, provided it is included within the Overall Development plan of a Town House Cluster Development, and the building housing the facilities does not exceed 20,000 sq. ft. in gross floor area, and the planning Board determines that its operation will not be detrimental or injurious to adjacent residential uses or the value or adjacent properties.

III-45

7. REQUIREMENTS:

A town house Cluster Development must conform to the following :

a. Number of Dwelling Units

The maximum number of dwelling units shall equal the Net Usable Land Area within the parcel to be used for the Town House Cluster Development in accordance with this Section III-F divided by 15,000, rounded to the nearest whole number. Net Usable Land Area as used herein shall mean sixty-five (65) per cent of the area remaining after subtracting the areas of any bodies of water, wetland, or land lying within the 100 year flood elevation from the gross area of the parcel to be used for residential use and open space. The flood plain and wetlands maps and aerial surveys adopted as official maps by the Planning Board from time to time shall be used to determine areas of water, 100 year flood plain elevations and wetland boundaries.

8. INTENSITY REGULATIONS:

- a. No building or parking shall be located closer than fifty (50') feet from the boundaries of the Overall Development Plan unless appropriate protective screening and buffer areas as approved by the Planning Board have been provided.
- b. No construction shall take place within the 100 year flood elevation except in conformity with the requirements and procedures established by the Town for such areas pursuant to the National Flood Insurance Program (42 USC 4001-4128) and the regulations of the Secretary of Housing and Urban Development issued thereunder.
- c. Maximum height of any building shall not exceed 35 feet above mean grade.
- d. Maximum per cent of building coverage shall be 10 per cent.
- e. All buildings shall be separated from other buildings by a distance of 10 feet or 10 per cent of the length of the shorter of the adjacent building involved, whichever is greater.

III-46

9. Preserved Open Space:

The preserved open space shall comprise not less than thirty (30) per cent of the total land area of the parcel for which there is an Overall Development Plan. At Least eighty (80) per cent of the dwelling units shall abut or be within three hundred (300') feet of the Preserved Open Space and have access via a public way or easement for a distance of no more than one hundred (100') feet to such Preserved Open Space. At Least fifty (50) per cent of the Preserved Open Space shall not be wetlands or land subject to seasonal or periodic flooding unless a higher percentage is specifically approved by the Planning Board. The Special Permit authorizing the Town House Cluster Development shall further provide that the Preserved Open Space shall be conveyed to a corporation or trust owned, or to be owned, by the owners of the lots or residential units within the parcel for recreational and/or conservation purposes, with each lot subject to a proportionate charge for its share of the reasonable and appropriate maintenance expenses. The Town

shall be granted an easement or restriction over such parcel sufficient to ensure its perpetual reservation for conservation, recreation or park land.

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III-2.F SINGLE FAMILY TOWN HOUSE CLUSTER DEVELOPMENT

1. PURPOSE AND INTENT:

To permit more economical and efficient use of residential land than may be accomplished through standard subdivision development by: protecting the existing character of the landscape, introducing some variety into residential development, and preserving for the Town more open space for water supply; flood protection; woodland, field and wetland habitat; conservation; and recreation. Such objectives may be obtained as an alternative or optional choice by a landowner in certain residential districts.

2. APPLICABILITY

The Planning Board may grant a Site Plan Approval in accordance with Section VI-DD & VI-EE of these by-laws for the construction and occupancy of a Single Family Town House Cluster Development located in the RS-B, RS-D or RS-E Districts, provided that the gross land area of the parcel is at least 1,000,000 square feet. The applicant must either own or submit authorization in writing to act for all the owners of the lots comprising the parcel.

Two or more adjacent parcels, each of which contain 1,000,000 square feet, which are separated by a distance of 100 feet, or less, may be combined and treated as a single parcel for the purposes of this section.

3. ALLOWED USES:

The following uses may be undertaken under the alternative procedure and requirements provided for in Section III-2.F upon Site Plan Approval by the Planning Board in accordance with the provisions and requirements of Section VI-DD & VI-EE of these Zoning By-laws:

- a. Any use permitted in the RS District as set forth in Section III-A.2;
- b. Town Houses, provided that the total number of Town House units does not amount to more than thirty-five (35 per cent) per cent of the total number of dwelling units allowable in the entire cluster development pursuant to Section III-2. F-7; and
- c. Zero-lot-line single family homes, provided that the total number of Single Family homes so attached plus the total number of Town House units does not amount to more than thirty-five (35 percent) per cent of the total number of dwelling units allowable in the entire cluster development pursuant to Section III-2F-7.

As used herein, "zero-lot-line" shall mean the joining of two dwelling units together at a common property line by reducing the normal required side yard to zero on each lot and then attaching the units by a common wall located on the property line; no more than two units may be joined at a single property line, and no more than three units may be so attached in a row.

- d. Existing Residential Buildings: Any residential building existing prior to January 1, 1980 which contains 4,000 square feet or more gross floor area may be subdivided into residential units having at least 2,000 square feet each, provided that the building is not expanded in size. However, in no event shall the Planning Board permit the number of these additional units, when added to the number of units determined in accordance with Section III-2F.6, to increase the latter by more than fifteen (15%) percent. Such units shall be in addition to the number of dwelling units calculated under Section III-2.F-7.

III-50

6. NUMBER OF DWELLING UNITS:

The maximum number of dwelling units allowed in a Single Family Town House Cluster Development Shall equal the "Net Usable Land Area" within the parcel divided by the minimum lot area requirements for a single family dwelling in that District as determined from Section IV-B of these By-laws then rounded to the nearest whole number. As used herein, "Net Usable Land Area" shall mean eighty (80 per cent) per cent of the resultant area obtained by subtracting seventy (70 per cent) per cent of the land area lying below the one hundred (100) year flood elevation as delineated on the Townwide Drainage Study maps by Coffin & Richardson Engineers (scale 1" equals 100') and fifty (50 percent) percent of the primary zone wetland area (also as shown on said Townwide Drainage Study maps) which is shown outside the limits of the

one hundred (100) year flood elevation from the gross land area of a parcel or portion thereof classified within a single zoning district. If the Overall Development Plan lies in more than one zoning district, the number of dwelling units allowed shall be calculated as above for that portion of the parcel in each of the zoning districts separately and the resultant determinations added together to give an overall allowable total number of dwelling units for the parcel. Dwelling units may be transferred between zoning districts, being limited only by the overall allowable total and by the design restriction of the Overall Development Plan for the parcel.

7. INTENSITY REGULATIONS:

Dwellings shall be on designated building lots with dimensional control varying from those otherwise permitted in the District as follows:

1. If in the RS-E or RS-D Districts, single family houses shall meet the requirements for the RS-B Districts;

2. If in the RS-B District; single family homes shall meet the requirements for the RS-C District;

3. Town Houses located in the RSB, RSD or RSE districts shall be on lots meeting the minimum lot area requirements of the RM Districts as set out in Section IV-B of these By-Laws and footnotes (d) thereto. The minimum lot frontage shall be eighty (80) feet, providing that a front building line is designated on the Overall Development Plan for such lot and the width of the lot at this building line is at least one hundred twenty (120) feet. However, no Town House within the Overall Development Plan shall contain more than three (3) dwelling units. Furthermore, the lot lines of each lot containing Town Houses in the Overall Development Plan shall be separated from the lot lines of any other lot containing Town Houses by at least fifty feet (50').

All Town Houses and above-ground structures or facilities related thereto and used in support thereof, including Town House parking, shall be set back at least one hundred (100) feet from the boundaries of the Overall Development Plan and all Town Houses shall be located at least two hundred (200) feet from all single family homes not located within the Overall Development Plan.

4. Exceptions to the otherwise applicable Intensity Regulations and to the otherwise applicable General Requirements of article IV-A are:

(i) More than one one Town House may be erected on a lot.

(ii) No building or parking shall be located within one hundred (100') feet of the boundaries of the Overall Development Plan;

(iii) Frontage need not exceed fifty (50') feet on any lot for a single family home providing a front building line is designated on the Plan for such lot, and if the width of the lot at this building line is at least equal to the frontage otherwise required under this Section; and

(iv) No construction shall take place within the one hundred (100) year flood elevation except in conformity with the requirements of Chapter 131, Section 40, and procedures established by the Town for such areas pursuant to the National Flood Insurance Program (42 USC 4001-4128) and the Regulations of the Secretary of Housing and Urban Development issued thereunder.

(v) Subject to the limitations of Sections III-2.F.3. (b) and (c), dwelling units which would otherwise qualify as Town Houses on an RM minimum sized lot and meet the intensity regulations of Section III 2.F.7. (3) for Town Houses may instead be divided into zero-lot-line single family homes provided that each lot resulting from the division of the RM lot has at least fifty (50) feet of frontage and meets the minimum lot area requirements of Section III-2 F. 7 for single family homes, and the unattached sides of such units meet the side yard setbacks otherwise required under this Section.

(Art. 50, Spring A.T.M., 4/17/97)

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8. PRESERVED OPEN SPACE

In Single Family Town House Developments, it is desired to create an environment in which preserved open space is intermixed with housing. Preserved open space must include at least twenty (20 per cent) per cent of the frontage on the roads servicing the Development. A portion of the preserved open space may be used as a common surrounded by a one-way road, in which event all of the road abutting such common will

be counted as frontage for the purpose of fulfilling the foregoing requirement. The preserved open space shall comprise not less than thirty (30 per cent) per cent of the total land area of the parcel for which there is an Overall Development Plan. At least eighty (80 per cent) per cent of the dwelling units shall abut or be within three hundred (300') feet of the preserved Open Space and have access via a public way or easement for a distance of no more than one hundred (100') to such Preserved Open Space. At least fifty (50 per cent) per cent of the Preserved Open Space shall not be primary zone wetlands or land within the 100 year flood elevation both as shown on the Townwide Drainage study maps unless a higher percentage is specifically approved by the Planning Board. The Special Permit authorizing the Cluster Development shall further provide that the Preserved Open Space shall be:

III-3. F SINGLE - FAMILY TOWN HOUSE CLUSTER DEVELOPMENT-- RSC DISTRICT

1. PURPOSE AND INTENT:

To permit more economical and efficient use of residential land than may be accomplished through standard subdivision development by: protecting the existing character of the landscape, introducing some variety into residential development, and preserving for the Town more open space for water supply; flood protection, woodland, field and wetland habitat; conservation; and recreation. Such objectives may be obtained as an alternative or optional choice by a land-owner in the RSC residential districts.

2. APPLICABILITY

The Planning Board may grant a Site Plan Approval in accordance with Section VI-DD and VI-EE of these by-laws for the construction and occupancy of a Single Family Town House Cluster Development located in the RS-C District, provided that the gross land area of the parcel is at least forty (40) acres. The applicant must either own or submit authorization in writing to act for all the owners to the lots comprising the parcel.

Two or more parcels, each of which contain 1,000,000 square feet, which are separated by a distance of 100 feet, or less, may be combined and treated as a single parcel for the purposes of this section.

3. ALLOWED USES

The following uses may be undertaken under the alternative procedure and requirements provided for in Section III-3. -F upon Site Plan Approval by the Planning Board in accordance with the provisions and requirements of Section VI-DD & VI-EE of these Zoning By-laws:

- a. Any use permitted in the RSC District as set forth in Section III-A.2;
- b. Town Houses, provided that the total number of Town House units does not amount to more than fifty (50 percent) percent of the total number of dwelling units allowable in the entire cluster development pursuant to Section III-3. F-7; and
- c. Zero-lot-line single family homes, provided that the total number of Single Family homes so attached plus the total number of TownHouse units does not amount to more than fifty (50 percent) of the total number of dwelling units allowable in the entire cluster development pursuant to Section III-2.F-7.

As used herein, "Zero-lot-line" shall mean joining of two, dwelling units together at a common property line by reducing the normal required side yard to zero on each lot and then attaching the units by a common wall located on the property line; no more than two units may be joined at a single property line, and no more than three units may be so attached in a row.

d. Outdoor tennis courts, outdoor swimming pools and other outdoor recreational facilities intended for use by residents of the RSC Single Family Town House Cluster Development only, including accessory structures necessary for appropriate use and operation of such outdoor recreational facilities.

e. In the event the owner or owners of land included in an Overall Development Plan which has received Site Plan Approval pursuant to Section III-2.F obtain a building permit to develop such land under the approved Overall Development Plan, then the uses permitted prior to approval of the Overall Development Plan for such land shall no longer be permitted, and only the uses as allowed under the approved Overall Development Plan shall be allowed.

4. PROCEDURES:

The procedures to be followed in obtaining approval for the alternative

Cluster Development are:

a. PRE-APPLICATION REVIEW:

To promote better communication and to avoid misunderstanding, the applicant is encouraged, prior to preparation of a formal application, to meet with the Planning Board and Planning Director for general discussion, using the soil survey, drainage, topographic and other data available from the Town.

b. FORMAL APPLICATION: The applicant for a Single Family Town House Cluster Development shall submit to the Planning Board a formal application for a Site Plan Approval, which includes an Overall Development Plan, and is otherwise in compliance with Rules and Regulations especially established by the Planning Board relative thereto. The application shall be filed in the name of the record owner (s) of the parcel (s) to be developed. Date of application shall be the date when filing is made with the Planning Board.

c. FURTHER PROCEDURES:

The hearing and further proceedings regarding the application shall be in accordance with M.G.L. Chapter 40A. The Planning Board may adopt Rules and Regulations for the proceedings under Section III. 3. F., so far as apt, in accordance with M.G.L. Chapter 41, Section 81Q; and may waive strict compliance therewith, so far as apt, in accordance with 41 M.G.L. 81R.

6. NUMBER OF DWELLING UNITS:

The maximum number of dwelling units allowed in a RSC Single Family Town House Cluster Development shall equal the "Net Usable Land Area" within the parcel divided by the minimum lot area requirements for a single family dwelling in the RSC District, as determined from Section IV-B of these By-laws, then rounded to the nearest whole number. As used herein, "Net Usable Land Area: shall mean seventy-five (75%) percent of the resultant area obtained by subtracting one hundred (100%) percent of the land area lying below the one hundred (100) year flood elevation as delineated on the Townwide Drainage Study maps prepared by Coffin & Richardson Engineers (scale 1" equals 100') and one hundred (100) percent of the primary zone wetland area (also as shown on said Townwide Drainage Study maps) which is shown outside the limits of the one hundred (100) year flood elevation from the gross land area of parcel or portion thereof classified within a single zoning district. If the Overall Development Plan lies in more than one zoning district, the number of dwelling units allowed shall be calculated as above for that portion of the parcel in each of the zoning districts

separately and the resultant determinations added together to give an overall allowable total number of dwelling units for the parcel. Dwelling units and other allowed uses may be transferred between zoning districts, being limited only by the overall allowable total and by the design restrictions of the Overall Development Plan for the parcel. Should the Town revise or amend the aforesaid Townwide Drainage Study maps, or adopt other such maps, then the maps then in effect shall be applicable as provided above.

7. INTENSITY REGULATIONS:

Dwellings shall be on designated building lots with dimensional control varying from those otherwise permitted in the District as follows:

1. Single family houses shall meet the requirements for the District in which they are located as set out in Section IV-3 of these By-laws.
2. Town Houses located in the RS-C District shall be on lots meeting the minimum lot area requirements of the RM District as set out in Section IV-B of these By-laws and footnotes (d) thereto. The minimum lot frontage shall be eighty (80) feet, providing that a front building line is designated on Overall Development Plan for such lot and the width of the lot at this building line is at least one hundred and twenty (120) feet. However, no Town House within the Overall Development Plan shall contain more than three (3) dwelling units. Furthermore, the lot lines of each lot containing Townhouses in the Overall Development Plan shall be separated from the lot lines of any other lot maintaining Town Houses by at least fifty feet (50').

All Town Houses and above-ground structures or facilities related thereto and used in support thereof, including Town House parking, shall be set back at least one hundred (100) feet from the boundaries of the Overall Development Plan and all Town Houses shall be located at least two hundred (200) feet from all single family homes

not located within the Overall Development Plan.

3. Exceptions to the otherwise applicable Intensity Regulations are:

(i) More than one Town House may be erected on a lot.

(ii) No building or parking shall be located within one hundred (100') feet of the boundaries of the Overall Development Plan; (iii) Frontage need not exceed fifty (50') feet on any lot for a single family home providing a front building line is designated on the Plan for such lot, and if the width of the lot at this building line is at least equal to the frontage otherwise required under this Section; and

(iv) No construction shall take place within the one hundred (100) year flood elevation except in conformity with the requirements of Chapter 131, Section 40, and procedures established by the Town for such areas pursuant to the National Flood Insurance Program (42 USC 4001-4128) and the regulations of the Secretary of Housing and Urban Development issued thereunder.

(v) Subject to the limitations of Sections III-3 F.3. (b) and (c) dwelling units which would otherwise qualify as Town Houses on an RM minimum sized lot and meet the intensity regulations of Section III-2.F.7. (3) for Town Houses, may instead be divided into zero-lot-line single family homes provided that each lot resulting from the division of the RM lot has at least fifty (50) feet of frontage and meets the minimum lot area requirements of Section III-3.F.7 for single family homes, and the unattached sides of such units meet the side yard setbacks otherwise required under this Section.

(vi) Outdoor recreational facilities intended for use by residents of more than one dwelling unit shall be located on a separate lot containing no dwelling units.

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8. PRESERVED OPEN SPACE

In Single Family Town House Developments, it is desired to create an environment in which preserved open space is intermixed with housing. Preserved open space must include at least twenty (20 percent) percent of the frontage on the roads servicing the Development. A portion of the preserved open space may be used as a common surrounded by a oneway road, in which event all of the road abutting such common will be counted as frontage for the purpose of fulfilling the foregoing requirement. The preserved open space, including land used for outdoor recreational facilities and accessory structures pursuant to Section III-3. F.3. (e), shall comprise not less than thirty (30 percent) percent of the total land area of the parcel for which there is an Overall Development Plan. At least eighty (80 percent) percent of the dwelling units shall abut or be within five hundred (500') feet of the Preserved Open Space and all dwelling units shall have access via a public way or easement to such Preserved Open Space. At least fifty (50 percent) percent of the Preserved Open Space shall not be primary zone wetlands or land within the 100 year flood elevation both as shown on the Townwide Drainage study maps unless a higher percentage is specifically approved by the Planning Board. The Special Permit authorizing the Cluster Development shall further provide that the Preserved Open Space shall be:

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III-4.F CLUSTER DEVELOPMENT AP AND PCD DISTRICTS

1. PURPOSE AND INTENT - AP DISTRICTS

To permit an alternative use for land zoned for office use by allowing multifamily clustered residential development; preserving for the Town more open space, providing additional housing stock; and enabling the creation of some recreational space in such development; aiding in the preservation of the Town water supply; flood protection, woodland, field and wetland habitat, and conservation. Such objectives may be obtained as an alternative optional choice by a landowner in the AP District.

2. APPLICABILITY - AP DISTRICTS

The Planning Board, acting as the SPGA, may grant Site Plan Approval in accordance with Section VI-DD of these bylaws for the construction and occupancy of a Cluster Development located in the AP District, provided that the gross land area of the parcel seeking such alternative development is at least 30,000 square feet. The applicant must either own, or submit the authorization in writing to act for all of the owners of

the lots included in the parcel for which cluster development is sought.

3. ALLOWED USES - AP DISTRICTS

The following uses may be undertaken under the alternative procedure and requirements provided for under this Section III-4.F upon Site Plan Approval by the Planning Board in accordance with the provisions and requirements of Section VI-DD of these Zoning By-laws:

a. The following uses as set forth in Section III-A.2:

Use No. 1,3,5 (further provided that sufficient parking area exists on the lot in question to allow for off-street parking and free access of all such parked vehicles to and from the site without requiring the movement of any parked vehicle, or at least two vehicles per dwelling unit), 9, 35, 54* and 55*. (*Art. 2, 1986 STM#2)

b. Town Houses.

7. NUMBER OF DWELLING UNITS - AP DISTRICTS

The maximum number of dwelling units allowed in a AP Cluster Development shall equal the "net usable land area" as defined herein divided by 5,000, rounded to the next whole number. Provided that the resident parking required by Section V-D.3 for each such unit is provided for in a garage, the maximum number of dwelling units shall be calculated by dividing the net usable land area by 3500, rounded to the next highest whole number. As used in this paragraph "net usable land area" shall mean one hundred (100%) percent of the resultant area obtained by subtracting (a) one hundred (100%) percent of the land area lying below the one hundred (100) year flood elevation as delineated on the Townwide Drainage Study maps as prepared by Coffin & Richardson Engineers (or as said maps may be revised, amended or other similar maps substituted), and (b) one hundred (100%) percent of the primary zone wetland area (also as shown on said Townwide Drainage Study maps) which is shown outside the limits of the one hundred (100) year flood elevation from the gross land area of the parcel or portion thereof for which Site Plan approval is sought. If the Overall Development Plan covers land lying in more than one zoning district, all of which districts permit alternative cluster development, the number of dwelling units allowed shall be calculated as provided in these Zoning Bylaws for each portion of the parcel in each of the zoning districts separately and the resultant determinations shall be added together to give an overall allowable total number of dwelling units for the parcel. Dwelling units and other allowed uses may be transferred between zoning districts included in the parcel for which Site Plan Approval is sought, being limited only by the overall allowable total, and by the design restrictions of the Overall Development Plan as approved.

8. INTENSITY REGULATIONS - AP DISTRICTS

The following regulations shall apply to the Cluster Development permitted in the AP District:

1. Single family houses shall meet the requirements of the RSA zoning district as set forth in Section IV-D of these Bylaws, except that the minimum frontage and depth of a lot may be 100 feet.

2. Multi-family structures shall be on lots having the following requirements:

Minimum lot area----- 30,000 square feet

Continuous frontage ----- minimum of 120 feet

Minimum depth ----- 140 feet

Minimum setback, front ----- 30 feet

Minimum sideyard setback---- 20 feet

Minimum rearyard setback---- 25 feet

Maximum building coverage--- 25%

Maximum building height ----- 2-1/2 stories or 35 ft.

9. OPEN SPACE – AP AND PCD DISTRICTS

In an AP District at least thirty five (35%) percent of the total land area of the parcel for which alternative development as a Cluster Development is desired hereunder, shall be preserved open space. All dwelling units shall abut such open space or be accessible thereto via a public way or easement. At least fifty (50%) percent of the open space shall not be primary zone wetlands or land within the 100 year flood elevation as hereto described. However, the Planning Board may waive or increase this requirement for a meritorious plan. The Special Permit authorizing the Cluster Development shall further provide that the open space shall

be either:

Also found on ordinance.com:

III-5. F COMPREHENSIVE CLUSTER DEVELOPMENT OPTION

1. PURPOSE AND INTENT:

The Comprehensive Cluster Development (CCD) option is designed to help the Town maximize available land for open space, increase the amount of affordable housing, encourage the creation of handicapped accessible housing and provide both age-qualified housing and conventional housing while preserving Natick's New England character.

This development alternative permits a more economical and efficient use of residential land than may be accomplished through standard subdivision development by: protecting the existing character of the landscape; introducing diversity into residential developments; and preserving more public open space for water supply, wetland, and other natural habitat, conservation, and recreation. In addition, it reduces the typical costs of providing municipal services to residential developments. Such objectives may be obtained as an alternative or optional choice by a landowner in the Residential Single-B (RSB) District.

Applicants can benefit from choosing this option because they are able to increase the density of their development over other available options in the RSB district.

2. APPLICABILITY

The Planning Board may grant a Special Permit, Site Plan Approval in accordance with Section VI-DD and VI-EE of these by-laws and subdivision approval in accordance with the subdivision rules and regulations, and other rules and regulations as adopted pursuant to Section III-5.F.4(c) herein, for the construction and occupancy of a CCD located in the RSB District, provided that the gross land area of the parcel is at least one million (1,000,000) square feet. The applicant must either own or submit authorization in writing to act for all the owners to the lots comprising the parcel prior to submitting a formal application.

3. PERMITTED AND ALLOWED USES

The Planning Board, acting as a Special Permit Granting Authority as hereinafter provided, may grant a special permit pursuant to the provisions of the By-Law and M.G.L. Chapter 40A for the following uses:

- a. Single family homes which meet the dimensional requirements of single family lots as stated in Section III-5.F.7(a) herein.
- b. Town Houses, provided that the total number of Town House units does not exceed fifty-five (55) percent of the total number of units permitted for the entire CCD pursuant Section III-5.F.6 herein.
- c. Indoor & outdoor tennis courts, swimming pools and other noncommercial recreational facilities with use restricted to residents of the CCD, including accessory structures necessary for appropriate non-commercial use and operation of such recreational facilities.
- d. Age-qualified housing units, provided that the total number of agequalified housing units does not exceed fifty-five (55) percent of the total number of units permitted for the entire CCD pursuant Section III-5.F.6 herein.
- e. The Planning Board may adopt regulations further providing for the relative percentage mix of single family homes; Town Houses, and age-qualified housing units.

4. PROCEDURES:

The procedures to be followed in obtaining approval for the CCD are:

a. Pre-Application: To promote better communication and to avoid misunderstanding, the applicant shall request a pre-application review at a regular business meeting of the Planning Board. The Planning Board shall invite the Conservation Commission, Board of Health and any other Committee and/or Board with interest in the proposal to the pre-application review. The purpose of a pre application review is to minimize the applicant's costs of engineering and other technical experts and to commence negotiations with the Planning Board at the earliest possible time in the development cycle. At the pre-application review, the applicant may outline the proposal, seek preliminary feedback from the Planning Board and/or its technical experts, and set a timetable for submittal of a formal application. At the request and expense of the applicant, the Planning Board may engage technical experts to the informal plans of the applicant and to facilitate submittal of a formal application for approval of a CCD.

In order to facilitate review of the CCD at the pre-application stage, applicants are strongly encouraged to submit the following information:

i. Site Context Map. This map illustrates the parcel in relation to its surrounding neighborhood. Based upon existing data sources and field inspections, it should show various kinds of major natural resource areas or features that cross parcel lines or that are located on adjoining lands. This map enables the Planning Board to understand the site in relation to what is occurring on adjacent

properties.

ii. Existing Conditions/Site Analysis Map. This map familiarizes officials with existing conditions on the property. Based upon existing data sources and field inspections, this base map locates and describes noteworthy resources that should be left protected through sensitive subdivision layouts. These resources include wetlands, riverfront areas, floodplains and steep slopes, but may also include mature un-degraded woodlands, hedgerows, farmland, unique or special wildlife habitats, historic or cultural features (such as old structures or stone walls), unusual geologic formations and scenic views in to and out from the property. By overlaying this plan onto a development plan, the parties involved can clearly see where conservation priorities and desired development overlap and/or conflict.

Applicants are encouraged to request a site visit by the Planning Board and/or its agents in order to facilitate the pre-application review of the CCD.

b. Formal Application: The applicant for a CCD shall submit to the Planning Board a formal application for a Special Permit which includes a Final Site Plan in accordance with Section VI-DD.3 and a definitive plan for subdivision approval, and which is otherwise in compliance with Rules and Regulations especially established by the Planning Board relative thereto. The application shall be filed in the name of the record owner(s) of the parcel(s) to be developed. The date of application shall be the date when filing is made with the Planning Board.

c. Further Procedures: The hearing and further proceedings regarding the application shall be in accordance with M.G.L. Chapter 40A; M.G.L. Chapter 41, Section 81 K et seq; and the Town of Natick By-laws. The Planning Board may adopt Rules and Regulations for the proceedings under Section III-5.F, and in accordance with M.G.L. Chapter 41, Section 81A, and 81 Q; and may waive strict compliance therewith, in accordance with M.G.L. Chapter 41, Section 81 R.

5. CRITERIA:

Approval of the application for a Site Plan Approval-and for subdivision approval to allow the construction of a CCD shall be granted only upon Planning Board determination that the plan is superior to a conventional subdivision plan.

a. The following criteria shall be used to make the determination as to whether or not the plan is superior:

i. The preservation and public accessibility of open space for conservation or recreation and other objectives outlined in the town's current Open Space Plan;

ii. The protection of significant large contiguous areas of natural features of the land; which would avoid extensive topographic change necessitating vegetation and tree removal or earth removal;

iii. The protection of historical or other significant features;

iv. More efficient provision of street, utilities and other public services; and

v. The provision of a diversity of dwelling unit styles, sizes, and architectural elements

b. Specific means of achieving these objectives include:

i. Avoidance of frequent driveway openings onto through streets, or near street intersections;

ii. Avoidance of extensive topographic change necessitating vegetation, earth and/or tree removal;

iii. Preservation of scenic views from public ways;

iv. Preservation of natural landscapes in large contiguous areas and corridors, which are visible from roadways and residences, enhancing the likelihood of the continuation of existing ecosystems and providing an interconnection to adjoining open spaces for both wildlife and public access;

v. Accessibility of the Preserved Open Space to substantially all of the dwelling units and the public;

vi. Variations in lot sizes, building styles, building sizes and building arrangements; and

vii. Use of Preserved Open Space - to protect significant natural environment such as but not limited to ground water recharge areas; wetlands that provide flood protection; stream valleys; outstanding vegetation; woodland; field and wetland habitat; or scenic spots; and - to avoid development on geologically unsuitable land.

6. NUMBER OF DWELLING UNITS:

The maximum number of dwelling units allowed in a CCD shall equal the "Net Usable Land Area" within the parcel divided by 15,000 square feet then rounded to the nearest whole number. At least ten percent (10%) of this total number of dwelling units shall be Affordable Housing Units as defined in Section 200 herein (see also the definition of Subsidized Housing herein).

As used herein, "Net Usable Land Area": shall mean eighty percent (80%) of the resultant area obtained by subtracting the

required preserved open space, as defined in Section III-5F.12 from the gross land area of the parcel. Additionally, if the sum of the land area lying below the 100-year flood elevation and the wetland resource area, as defined in Section III-5.F.12, exceeds twenty five (25) percent of the gross land area of the parcel, then the Net Usable Land Area will further be reduced by the amount that this sum exceeds the twenty five (25) percent threshold. Furthermore, if the Final Site Plan includes a recreational facility, all the land area dedicated to that facility will be deducted from the "net usable land area" for the purpose of calculating the maximum number of dwelling units.

7. INTENSITY REGULATIONS

a. Single -family structures shall be on lots having the following requirements:

- i. Minimum lot area 20,000 square feet
- ii. Continuous frontage minimum of 120 feet
- iii. Minimum depth 125 feet*
- iv. Minimum setback, front 30 feet with garage
- v. Minimum side-yard setback 12 feet
- vi. Minimum rear-yard setback 25 feet
- vii. Maximum building coverage 20%
- viii. Maximum building height 2 & 1/2 stories or 35 feet
- ix. *subject to waiver, see Section II-5.F.8e

b. Town Houses shall be built on separate Town House lot(s), with each such Town House lot consisting of at least 7,000 square feet of land times the number of dwelling units to be built on that lot. Access to the lot shall be built from a right of way, having at least fifty (50) feet of width. All Town Houses shall be built at least fifty (50) feet from the lot lines of the Town House lot and shall have a maximum building height of 35 feet.* If the Town House lot abuts any portion of the exterior boundary of the overall development parcel, the setback requirements of Section III-5.F.8a shall apply.

8. EXCEPTIONS TO THE OTHERWISE APPLICABLE INTENSITY REGULATIONS

a. No building or parking shall be located within one hundred (100) feet of the boundaries of the parcel unless the Planning Board determines that a lesser setback would be sufficient to visually screen or separate the development from adjacent property, however, under no circumstances will the setback be less than fifty (50) feet.

b. No construction shall take place within the one hundred (100) year flood elevation line except in conformity with the requirements of M.G.L. Chapter 131, Section 40, and procedures established by the Town for such areas pursuant to the National Flood Insurance Program (42 USC 4001-4128) and the regulations of the Secretary of Housing and Urban Development issued thereunder.

c. Frontage need not exceed fifty (50) feet on any lot for a single family home providing a front building line is designated on the plan for such lot, and if the width of the lot at this building line is at least equal to the frontage otherwise required under this section.

d. Indoor and outdoor recreational facilities intended for use by CCD residents of more than one dwelling unit shall be located on a separate lot containing no dwelling units.

e. The depth of the lots as delineated in Section III-5.F.7 (a) may be reduced, if in the opinion of the Planning Board that a waiver would improve the layout of the overall plan.

9. AGE-QUALIFIED HOUSING UNITS

The age-qualified housing units shall be subject to an age restriction described in a deed, deed rider, restrictive covenant, or other document that shall be recorded at the Registry of Deeds or the Land Court. The age restriction shall require at least one occupant in each age-qualified housing unit to be at least age 55; provide for reasonable, time-limited guest visitation rights; and authorize special exceptions as the Planning Board shall further define and specify in its special permit. The age restriction shall run with the land in perpetuity and shall be enforceable by any or all of the owners of the age qualified housing units.

10. AFFORDABILITY

It is mandatory that a percentage of dwelling units in a CCD be sold, rented, or leased at prices and rates that are affordable to low- and moderate-income individuals, as more specifically set forth in the following:

a. Affordable Housing shall be determined in accordance with the definition of Subsidized Housing found in Section 200. All Affordable Housing units that are built shall be provided for sale through the Natick Housing Corporation or any similar organization,

as determined by the Planning Board.

b. Basic Affordability Component - At least 10% of the units in the CCD, to the nearest whole number, shall be Affordable Housing units. None of the Affordable Housing units shall be age-qualified housing units.

c. Affordability Standards - Subject to Planning Board approval, an applicant for a CCD special permit may utilize any available State or Federal assistance program or shall meet the Affordable Housing unit requirements by utilizing income and asset standards, and by establishing rents, leases, sales prices, entry fees, condominium fees, and other costs for individuals that are generally consistent with available Affordable Housing assistance programs.

d. Affordability Restrictions - affordable units shall be maintained in perpetuity. Each affordable unit shall be rented or sold to its initial and all subsequent buyers or tenants subject to deed riders, restrictive covenants, contractual agreements, or other mechanisms restricting the use and occupancy, rent levels, sales prices, resale prices, and other cost factors to assure their long term affordability. These restrictions shall be in force for such maximum time as may be permitted under applicable state law governing such restrictions. They shall be enforceable and renewable by the Town of Natick through standard procedures provided by applicable law.

i. The Planning Board may require that the restrictions for affordable units contain a right of first refusal to the Town of Natick or its designee at the restricted resale value, and that the owner provides notice of such right of first refusal to the Planning Board or its designee prior to selling or reselling the affordable unit with such reasonable time as the Planning Board may determine in its discretion for the town or its designee is necessary to exercise the right of first refusal.

ii. Nothing in this Section shall be construed to cause eviction of an owner or tenant of an Affordable Housing unit due to loss of his/her income eligibility status during the time of ownership or tenancy. Rather, the restrictions governing an Affordable Housing unit shall be enforced upon resale, re rental, or re-lease of the Affordable Housing unit. The mechanisms and remedies to enforce the restrictions governing an Affordable Housing unit upon resale, re-rental, or re-lease shall be set forth in its deed restrictions.

iii. All contractual agreements with the Town of Natick and other documents necessary to insure the long term affordability of an affordable unit shall be executed prior to the issuance of any building permit-under this option.

e. The exterior of the affordable units shall be compatible with, and as much as possible indistinguishable from, market-rate dwelling units in the CCD development.

f. Local Preference - Unless otherwise regulated by an applicable Federal or State agency under a financing or other subsidy program, at least fifty percent (50%) of the affordable units shall be initially offered to residents and employees of the Town of Natick.

i. Residency and employment in Natick shall be established through Town Clerk certification based on the Town Census, voter registration, or other acceptable evidence approved by the Town Clerk.

ii. Purchaser/tenant selection - Procedures for the selection of purchasers and/or tenants shall be subject to regulations adopted by the Planning Board .

iii. These restrictions shall be in force for one hundred and twenty (120) days from the date of the first offering of sale or rental of a particular affordable unit.

11. BUILDING DESIGN CRITERIA

All buildings and structures shall be designed, located and constructed to afford the following:

a. Compatibility of architectural styles, scales, building materials and colors within the development;

b. Variations in facade, roof lines and interior layouts of dwelling units, including the design of units that are handicapped accessible;

c. Harmonious relationship of buildings and structures to each other and their environs with adequate light, air, circulation, privacy and separation; and

d. The capability for constant surveillance, orientation and recognition; to this end, and in lieu of providing conventional street lighting, individual building lot front yards and other areas along roadways not fronting building lots and approaches to common-use buildings and structures, shall be provided with architecturally compatible street-level-type lamp post lighting necessary to provide safety, security and visual indications, as determined by the Planning Board.

12. PRESERVED OPEN SPACE

In Comprehensive Cluster Developments, it is desired to create an environment in which large tracts of contiguous land are preserved for publicly accessible open space. Preserved open space must include at least twenty percent (20%) of the frontage on the roads servicing the CCD. A portion of the preserved open space may be used as a common surrounded by a one-way road, in which event all of the road abutting such common will be counted as frontage for the purpose of fulfilling the foregoing requirement.

For the purposes of this section, the preserved open space shall comprise not less than fifty (50) percent of the total land area of the parcel for which there is a Final Site Plan and will not include rights of way for roads, detached single-family lots, Town House lots or recreational facilities as defined in Section III-5.F.3(c). Also, land which is under an existing conservation restriction or agricultural, forest land, or recreational restriction, (APR or Chapter 61, Chapter 61 A, Chapter 61 B) may not be included in the preserved open space. At least eighty percent (80%) of the dwelling units shall abut or be within five hundred (500') feet of the Preserved Open Space and all dwelling units shall have access via a public way or easement to such Preserved Open Space. At least fifty percent (50%) of the Preserved Open Space shall not be primary zone wetlands or land within the 100-year flood elevation either as shown on the Townwide Drainage study maps or as delineated by a qualified wetland scientist. All the Preserved Open Space shall be accessible to the general public. The Special Permit authorizing the CCD shall further provide that the Preserved Open Space shall be:

- a. Conveyed to and accepted by the Town of Natick under a conservation restriction pursuant to M.G.L. Chapter 184, as amended;
- b. Conveyed to a non-profit organization, the principal purpose of which is the conservation of open space; or
- c. Conveyed to the owners of all the lots within the CCD as tenants in common, provided that title to such open space and to the lots is not separately alienable; or
- d. Conveyed to a corporation or trust owned or to be owned, by the owners of the lots or residential units within the CCD for recreation or conservation purposes, with each lot subject to a proportionate charge for its share of the reasonable and appropriate maintenance expenses.
- e. If method (b), (c), or (d) is elected, in addition, the Town shall be granted a conservation restriction over the Preserved Open Space pursuant to M.G.L. Chapter 184, as amended; and in the event the Town is required to expend funds for the reasonable and appropriate maintenance expenses of the Preserved Open Space, then each lot in the CCD shall be subject to a proportionate charge for its share of such expenses. No more than one method shall be elected for the Preserved Open Space within any CCD , unless the Planning Board shall otherwise approve. (Art. 4, S.T.M. #2, 12/03/02)

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board 2. APPLICABILITY:
The Planning Board may grant a special permit for the construction and occupancy of a Town House Cluster Development located in the RSA District, provided that the gross land area of the parcel is at least 40 contiguous acres.

Has any housing been built under the cluster/flexible provisions?

Yes Sarkis Sarkisian, Community Development Director, said (9/9/04) that Natick has approximately 10 - 12 cluster developments.

Needham

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Needham has two forms of flexible zoning -- Planned Residential Development (PRD) and Residential Compound (RC).

The Land Use Ordinance of Needham
NORFOLK COUNTY, MASSACHUSETTS
ZONING BY-LAW

4. DIMENSIONAL REGULATIONS

4.2.4 Flexible Development Consistent with the Subdivision Control Law

(a) General -- The intent of Section 4.2.4 is to facilitate sensitive use of Town resources through allowing flexibility in meeting the basic objectives of the intensity of use requirements of Sections 4.2.1, 4.2.2, and 4.2.3. These provisions shall apply in all Single Residence, General Residence, and Institutional Districts.

(c) Special Permit Consideration. A special permit for flexible development shall be granted only if the Planning Board determines the following:

- (1) Such alternative development better serves By-Law purposes than would development under otherwise applicable requirements.
- (2) Traffic circulation and safety would be improved through a reduction in length of streets or creation of fewer or better located or designed driveways and street egresses from the development onto existing streets.
- (3) Visual intrusion would be reduced by preserving some visual buffering between proposed dwellings and previously existing streets.
- (4) At least one of the following three amenities will be provided:
 - protecting natural features by reducing the volume of cut and fill for roads and construction sites or the area of vegetation displaced or disturbed, or the area of environmentally sensitive lands disturbed by construction, or
 - maintaining water quality within Aquifer Protection Districts by reducing the number of on-site disposal systems or the amount of impermeable surfaces within the development, or
 - serving recreation and conservation needs by reserving common land in a condition appropriate to meet those needs.

4.2.5 Planned Residential Development (PRD)

4.2.5.1 Purpose

To provide an alternative at density levels established by this By-Law to conventional development patterns which foster innovative site planning based on the natural characteristics of the land; to encourage the preservation of significant open space for conservation and recreation; to facilitate the economic and efficient provision of public utilities and services; to promote aesthetic and other amenities; and to insure development which is harmonious and compatible to the surrounding neighborhoods.

4.2.6 Residential Compound

(a) Purpose – To provide limited residential development within large tracts of land in a manner which minimizes Town maintenance, responsibility and cost, and simultaneously preserves the existing character of the Town.

4.2.5 Planned Residential Development (PRD)

4.2.5.1 Purpose

To provide an alternative at density levels established by this By-Law to conventional development patterns which foster innovative site planning based on the natural characteristics of the land; to encourage the preservation of significant open space for conservation and recreation; to facilitate the economic and efficient provision of public utilities and services; to promote aesthetic and other amenities; and to insure development which is harmonious and compatible to the surrounding neighborhoods.

4.2.5.2 Standards

(a) Minimum Tract Size - Planned Residential Development (PRD) shall be permitted on a tract of land in the Rural Residence-Conservation, Single Residence A and Single Residence B Districts having an area not less than 10 times the minimum lot area of the zoning district within which it is located and shall have frontage of at least 50 feet on a way.

(b) Number of Dwelling Units - The number of dwelling units shall be determined by one of the two following methods:

(1) The Net Usable Land Area within the tract divided by the minimum lot area requirement for the zoning district in which the tract is located. Net Usable Land Area shall equal 85% of the gross tract area minus 100% of all water bodies minus 70% of land located in a Flood Plain District minus 70% of the land subject to M.G.L. Ch. 131, S.40 and 40A and to federal flood storage restrictions included within the Charles River Valley Storage project.

(2) Submission of a "conventional" subdivision plan certified to comply with normal applicable regulations by both a Registered Land Surveyor and a Professional Engineer. In this case the number of dwelling units shall equal the number of legal building lots created.

(c) Open Space - No less than 40% of the PRD tract shall be designated as open space and shall not be covered with buildings, roads, driveways, parking areas or service areas, yards, exclusive use areas, patios, and gardens for the residents. Open space shall be available and reasonably accessible to each dwelling unit. No more than 50% of the open space shall be wetland or other land subject to seasonal or periodic flooding unless a greater percentage is specifically authorized by the Planning Board. Land designated as open space shall have a shape, dimension, character, and location suitable to assure its use for park, recreation, conservation, or agricultural purposes by at least all the residents of the PRD.

Provisions shall be made for the open space to be owned:

- (1) In common by the owners of all units in the PRD; or
- (2) by a trust or association of the owners of all units in the PRD; or
- (3) by the Town; or
- (4) otherwise as may be authorized by the Planning Board.

In all cases a perpetual restriction running to or enforceable by the Town shall be recorded in respect to such open space land. Such restriction shall provide that the open space shall be retained in perpetuity for one or more of the following uses: conservation, agriculture, recreation, or park. Such restrictions shall be in a form or substance approved by the Planning Board.

(d) Permitted Uses - Single-family detached and attached structures without regard to form of ownership provided no more than 50% of such structures shall be attached and accessory uses incidental to the principal uses.

(e) Structure Location - the location, size, and shape of any structures to be constructed shall be appropriate to the terrain in which they are located and shall not be detrimental to the neighborhood and shall not adversely affect the character of the neighborhood. Structures with attached dwelling units shall contain no more than four units.

(f) Height - The maximum permitted height of any structure in a PRD shall be 35 feet or 2 1/2 stories.

(g) Area, Frontage and Setback Requirements - There shall be a minimum lot area in the case of a subdivision or exclusive use area (an area located adjacent to a dwelling unit and reserved for its exclusive use) in all other cases of 10,000 square feet in the RRC and SRA Districts and 5,000 square feet in the SRB District. Each lot or exclusive use area shall have frontage of at least 50 feet on a paved way or driveway. No structure shall be within 30 feet of another structure other than in the case of attached dwelling units. No building shall be erected within 30 feet of a way on which the PRD tract has frontage or 20 feet from the boundary line of the PRD tract.

(h) Parking - There shall be an adequate arrangement and number of parking spaces in relation to the dwelling units constructed. No more than six (6) parking spaces shall be grouped together.

(i) Drainage and Sewage Disposal - The PRD shall have adequate methods of sewage disposal and drainage. Said methods shall be subject to approval by the Public Works Department and/or the Board of Health.

(j) Ways, Interior Drives, and Utilities - The construction of all ways, interior drives and utilities shall be in accordance with the standards specified in the Subdivision Regulations and Procedural Rules of the Planning Board and subject to the recommendations of the Public Works Department. In the event the applicant chooses not to subdivide the tract under the Subdivision Control Act, the Planning Board shall require nevertheless sufficient security to insure compliance with the installation of Ways, Interior Drives, and Utilities. Upon the written request of the applicant, the Planning Board may waive or modify the requirements of the Subdivision Rules and Regulations where it is demonstrated that such waiver or modification is consistent with the purpose of this section.

(k) Circulation - The PRD shall provide for the convenience and safety of vehicular and pedestrian movement on the site and for adequate location of driveways in relation to street traffic. Said circulation shall be reviewed by the Fire Department for access by safety vehicles.

(l) Prohibition of Future Development - No tract, lot, or exclusive use area for which a special permit is granted under this section shall be further subdivided and such notation shall be shown on the plan.

PRD:

(a) Minimum Tract Size – Planned Residential Development (PRD) shall be permitted on a tract of land in the Rural Residence-Conservation, Single Residence A and Single Residence B Districts having an area not less than 10 times the minimum lot area of the zoning district within which it is located and shall have frontage of at least 50 feet on a way.

(b) Number of Dwelling Units – The number of dwelling units shall be determined by one of the two following methods:

(1) The Net Usable Land Area within the tract divided by the minimum lot area requirement for the zoning district in which the tract is located. Net Usable Land Area shall equal 85% of the gross tract area minus 100% of all water bodies minus 70% of land located in a Flood Plain District minus 70% of the land subject to M.G.L. Ch. 131, S.40 and 40A and to federal flood storage restrictions included within the Charles River Valley Storage project.

(2) Submission of a "conventional" subdivision plan certified to comply with normal applicable regulations by both a Registered Land Surveyor and a Professional Engineer. In this case the number of dwelling units shall equal the number of legal building lots created.

RC:

(b) Standards – A group of not more than five single-family dwellings sharing common frontage and private access road may be permitted by Special Permit by the Planning Board in all single-family residential districts subject to the following provisions:

(1) Tract Frontage – A Residential Compound may be permitted on a single tract of land in one ownership, having a minimum frontage on a way of 150 feet in the RRC and SRA Districts and 80 feet in the SRB District.

(2) Density – A Residential Compound shall contain at least two acres per dwelling unit in the RRC and SRA Districts and 20,000 square feet per dwelling unit in the SRB District. Land which, at the time of submission of an application under this section, is subject to a perpetual restriction of the type described in M.G.L. Ch. 184, S.31 or any restriction similar thereto, shall not be included in the minimum tract size.

Flexible:

(3) Lot Area. The area of any individual building lot created shall be at least 70% of the normally applicable minimum lot area requirement.

According to survey received from Needham on 3/28/05, the first provisions for flexible zoning were adopted on "May 13, 1985." The same date is listed as the last year they were amended.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board (c) Special Permit Consideration. A special permit for flexible development shall be granted only if the Planning Board determines the following:

Has any housing been built under the cluster/flexible provisions?

Yes According to survey received from Needham on 3/28/05: "3 within the last five years."

Newbury

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes OSRD created in 2001, last amended in 2004.

Town of Newbury Zoning Bylaw (Adopted 1959, Amended 1999)

ARTICLE XIA

Open Space Residential Development Bylaw

[Added 4-24-2001 ATM, Art. 27; amended 4-22-2003 ATM, Art. 6]

§ 97-47.1. Purpose and intent.

A. The Primary Purposes for the Open Space Residential Development (OSRD) bylaw are the following:

(1) To allow for greater flexibility and creativity in the design of residential developments;

(2) To encourage the permanent preservation of open space, agricultural land, forestry land, wildlife habitat, other natural resources including aquifers, waterbodies and wetlands, and historical and archaeological resources in a manner that is consistent with Newbury's open space plan;

(3) To encourage a less sprawling and more efficient form of development that consumes less open land and conforms to existing topography and natural features better than a conventional or grid subdivision;

- (4) To minimize the total amount of disturbance on the site;
- (5) To further the goals and policies of the open space plans;
- (6) To facilitate the construction and maintenance of housing, streets, utilities, and public service in a more economical and efficient manner.

B. The Secondary Purposes for OSRD are the following:

- (1) To preserve and enhance the community character;
- (2) To protect the value of real property;
- (3) To provide for a diversified housing stock;
- (4) To provide affordable housing to persons of low and moderate income.

§ 97-47.2. Eligibility.

A. Any development that will create more than four lots or units shall submit an application for OSRD to the Planning Board. The applicant shall have the option of development under the conventional subdivision process or under the OSRD.

B. Contiguous Parcels. To be eligible for consideration as an OSRD, the tract shall consist of a parcel or set of contiguous parcels.

C. Land Division. To be eligible for consideration as an OSRD, the tract may be a subdivision or a division of land pursuant to G.L. c. 41, § 81P provided, however, that an OSRD may also be permitted where intended as a condominium on land not so divided or subdivided.

§ 97-47.3. Special permit required.

The Planning Board may authorize an OSRD pursuant to the grant of a special permit. Such special permits shall be acted upon in accordance with the following provisions.

§ 97-47.4. Pre-application.

A. Conference. The applicant is very strongly encouraged to request a pre-application review at a regular business meeting of the Planning Board. If one is requested, the Planning Board shall invite the Conservation Commission, Board of Health, and Historical Commission. The purpose of a pre-application review is to minimize the applicant's costs of engineering and other technical experts, and to commence negotiations with the Planning Board at the earliest possible stage in the development. At the pre-application review, the applicant may outline the proposed OSRD, seek preliminary feedback from the Planning Board and/or its technical experts, and set a timetable for submittal of a formal application. At the request of the applicant and at the expense of the applicant, the Planning Board may engage technical experts to review the informal plans of the applicant and to facilitate submittal of a formal application for an OSRD special permit.

B. Submittals. In order to facilitate review of the OSRD at the pre-application stage, applicants are strongly encouraged to submit the following information:

(1) Site Context Map. This map illustrates the parcel in connection to its surrounding neighborhood. Based upon existing data sources and field inspections, it should show various kinds of major natural resource areas or features that cross parcel lines or that are located on adjoining lands. This map enables the Planning Board to understand the site in relation to what is occurring on adjacent properties.

(2) Existing Conditions/Site Analysis Map. This map familiarizes officials with existing conditions on the property. Based upon existing data sources and field inspections, this base map locates and describes noteworthy resources that should be left protected through sensitive subdivision layouts. These resources include wetlands, riverfront areas, floodplains and steep slopes, but may also include mature undegraded woodlands, hedgerows, farmland, unique or special wildlife habitats, historic or cultural features (such as old structures or stone walls), unusual geologic formations and scenic views into and out from the property. Where appropriate, photographs of these resources should accompany the map. By overlaying this plan onto a development plan the parties involved can clearly see where conservation priorities and desired development overlap/conflict.

(3) Other Information. In addition, applicants are invited to submit the information set forth in § 97-47.5A in a form acceptable to the Planning Board.

C. Site Visit. Applicants are encouraged to request a site visit by the Planning Board and/or its agents in order to facilitate pre-application review of the OSRD. If one is requested, the Planning Board shall invite the Conservation Commission, Board of Health, and Historical Commission.

D. Design Criteria. The design process and criteria set forth below in § 97-47.5 should be discussed by the parties at the pre-application conference and site visit.

§ 97-47.5. Design process.

At the time of the application for a special permit for OSRD in conformance with § 97-47.6A, applicants are required to demonstrate to the Planning Board that the following Design Process was performed by a multidisciplinary team of which one member must be a certified Landscape Architect and considered in determining the layout of proposed streets, house lots, unit placement if treated as a condominium, including designation of all common areas and open space.

A. Step One: Identifying Conservation Areas. Identify preservation land by two steps. First, Primary Conservation Areas (such as wetlands, riverfront areas, and floodplains regulated by state or federal law) and Secondary Conservation Areas (including unprotected elements of the natural landscape such as steep slopes, mature woodlands, prime farmland, meadows, wildlife habitats and cultural features such as historic and archaeological sites and scenic views) shall be identified and delineated. Second, the Potentially Developable Area shall consist of land outside identified Primary and Secondary Conservation Areas.

B. Step Two: Locating House Sites. Locate the approximate sites of individual houses within the Potentially Developable Area and include the delineation of private yards and shared amenities, so as to reflect an integrated community, with emphasis on consistency with the Town's historical development patterns. The number of homes or units if a condominium proposal enjoying the amenities of the development should be maximized.

C. Step Three: Aligning the Streets and Trails. Align streets in order to access the house lots or units. Additionally, new trails should be laid out to create internal and external connections to existing and/or potential future streets, sidewalks, and trails.

D. Step Four: Draw in the lot lines, if not treated as a condominium.

§ 97-47.6. Procedures.

A. Application. An application for a special permit for an OSRD shall be submitted on the form(s) provided by the Planning Board in accordance with the rules and regulations of the Board. Applicants for OSRD shall also file with the Planning Board eight copies of the Concept Plan. The Concept Plan shall include a Sketch Plan and a Yield Plan [see Subsection A(1) and (2) of this section]. The applicant shall submit both the Site Context Map and Existing Conditions/Site Analysis Map prepared according to § 97-47.5B above. Additional information reasonably necessary to make the determinations and assessments cited herein shall be provided, including existing site contour maps and existing current soil maps.

(1) Sketch Plan. The Sketch Plan shall be prepared by a certified Landscape Architect, or by a multi-disciplinary team of which one member must be a certified Landscape Architect, and shall address the general features of the land, and give approximate configurations of the lots, of unit placements if treated as a condominium, of open space, and roadways. The Sketch Plan shall incorporate the Four-Step Design Process, according to § 97-47.5 above, and the Design Standards, according to § 97-47.10 below, when determining a proposed design for the development. The Sketch Plan shall include the following:

(a) The subdivision name, boundaries, north point, date, legend, title "Concept Plan," and scale.

(b) The name and address of the record owner or owners, the applicant, and the Landscape Architect or other designer that prepared the plan.

(c) The names, approximate location, and widths of adjacent streets.

(d) The proposed topography of the land shown at a contour interval no greater than two feet. Elevations shall be referred to mean sea level.

(e) The location of existing landscape features, including forests, farm fields, meadows, wetlands, riverfront areas, waterbodies, archaeological and historic structures or points of interest, rock outcrops, boulder fields, stone walls, cliffs, high points, major land views, forest glades, major tree groupings, noteworthy tree specimens, and habitats of endangered or threatened wildlife, as identified as primary and secondary resources according to § 97-47.5A. Proposals for all site features to be preserved, demolished, or moved shall be noted on the Sketch Plan.

(f) All on-site local, state, and federal regulatory resource boundaries and buffer zones shall be clearly identified, and all wetland flag locations shall be numbered and placed upon the Sketch Plan.

(g) Lines showing proposed private residential lots, as located during Step Four, § 97-47.5D, with approximate areas and frontage dimensions, or unit placements and proposed common areas.

(h) All existing and proposed features and amenities, including trails, recreation areas, pedestrian and bicycle paths, community buildings, and off-street parking areas shall be shown on the plan and described in a brief narrative explanation, where appropriate.

(i) The existing and proposed lines of streets, ways, common driveways, easements and any parcel of land intended to be dedicated for public use or to be reserved by deed covenant for use of all property owners in the subdivision, or unit development, or parcels of land or lots to be used for any purpose other than private residential shall be so designated within the subdivision in a general manner.

(j) Proposed roadway grades.

(k) Official soil percolation tests for the purpose of siting wastewater treatment options shall be required as determined by the Planning Board. However, a narrative explanation shall be prepared by a certified Professional Engineer detailing the proposed wastewater systems that will be utilized by the development and its likely impacts on-site and to any abutting parcels of land. For example, the narrative will specify whether individual on-site or off-site systems, shared systems, alternative to Title V systems, or any combination of these or other methods will be utilized. [Amended 6-22-2004 STM, Art. 7]

(l) A narrative explanation prepared by a certified Professional Engineer proposing systems for stormwater drainage and its likely impacts on-site and to any abutting parcels of land. For example, the narrative will specify whether soft or hard engineering methods will be used and the number of any detention/retention basins or infiltrating catch basins; it is not intended to include specific pipe sizes. Any information needed to justify this proposal should be included in the narrative. The approximate location of any stormwater management detention/retention basins shall be shown on the plan and accompanied by a conceptual landscaping plan.

(m) A narrative explanation prepared by a certified Professional Engineer, detailing the proposed drinking water supply system.

(n) A narrative explanation of the proposed quality, quantity, use and ownership of the open space. Open space parcels shall be clearly shown on the plan.

(o) All proposed landscaped and buffer areas shall be noted on the plan and generally explained in a narrative.

(p) A list of all legal documents necessary for implementation of the proposed development, including any Conservation Restrictions, land transfers, and Master Deeds or condominium documents, with an accompanying narrative explaining their general purpose.

(q) A narrative indicating all requested waivers, reductions, and/or modifications as permitted within the requirements of this bylaw.

(2) Yield Plan. Applicant shall submit a narrative explanation detailing the results of the determination of any proposed allocation of yield determined according to § 97-47.7, Basic Maximum Number (of lots/units/bedrooms).

(3) Relationship between Concept Plan and Definitive Subdivision Plan. The Concept Plan special permit shall be reconsidered if there is substantial variation between the Definitive Subdivision Plan and the Concept Plan. If the Planning Board finds that a substantial variation exists, it shall hold a public hearing on the modifications to the Concept Plan. A substantial variation shall be any of the following:

(a) An increase in the number of building lots and/or units;

(b) A significant decrease in the open space acreage;

(c) A significant change in the lot layout or unit placement;

(d) A significant change in the general development pattern which adversely affects natural landscape features and open space preservation;

(e) Significant changes to the stormwater management facilities; and/or

(f) Significant changes in the wastewater management systems.

B. Procedures. Whenever an application for an OSRD special permit is filed with the Planning Board, the applicant shall also file, within five (5) working days of the filing of the completed application, copies of the application, accompanying development plan, and other documentation, to the Board of Health, Conservation Commission, Historical Commission, Building Inspector, Highway Department, Police Chief, Fire Chief, and Town Engineer for their consideration, review, and report. The applicant shall furnish the copies necessary to fulfill this requirement. Reports from other boards and officials shall be submitted to the Planning Board within thirty-five (35) days of receipt of the reviewing party of all of the required materials; failure of these reviewing parties to make recommendations after having received copies of all such required materials shall be deemed a lack of opposition thereto. In the event that the public hearing by the Planning Board is held prior to the expiration of the thirty-five-day period, the Planning Board shall continue the public hearing to permit the formal submission of reports and recommendations within that thirty-five-day period. The Decision/Findings of the Planning Board shall contain, in writing, an explanation for any departures from the recommendations of any reviewing party.

C. Site Visit. Whether or not conducted during the pre-application stage, the Planning Board shall conduct a site visit during the public hearing. At the site visit, the Planning Board and/or its agents shall be accompanied by the applicant and/or its agents.

D. Other Information. The submittals and permits of this section shall be in addition to any other requirements of the Subdivision Control Law or any other provisions of this Zoning Bylaw. To the extent permitted by law, the Planning Board shall coordinate the public hearing required for any application for a special permit for an OSRD with the public hearing required for approval of a definitive subdivision plan.

§ 97-47.7. Basic maximum number of lots.

The Basic Maximum Number shall be derived from a Yield Plan. The Yield Plan shall show the maximum number of lots (or dwelling units) that could be placed upon the site under a conventional subdivision. The Yield Plan shall contain the information required for

a Sketch Plan as set forth above in § 97-47.6. The proponent shall have the burden of proof with regard to the Basic Maximum Number of lots resulting from the design and engineering specifications shown on the Yield Plan.

§ 97-47.8. Reduction of dimensional requirements.

The Planning Board encourages applicants to modify lot size, unit placement, shape, and other dimensional requirements for lots within an OSRD, subject to the following limitations:

A. Lots having reduced area or frontage shall not have frontage on a street other than a street created by the OSRD; provided, however, that the Planning Board may waive this requirement where it is determined that such reduced lot(s) will further the goals of this bylaw.

B. At least 50% of the required setbacks for the district shall be maintained in the OSRD unless a reduction is otherwise authorized by the Planning Board. Where structures containing three to four dwelling units are being proposed, the side lot lines between units may be 0 feet, however the distance between structures shall be a minimum of 20 feet.

C. Minimum Frontage: The minimum frontage may be reduced from the frontage otherwise required in the zoning district; provided, however, that no lot shall have less than 50 feet of frontage.

D. Setbacks: Every dwelling fronting on the proposed roadways shall be set back a minimum of 20 feet from the roadway right-of-way, and 10 feet from any rear or side lot line. In the event that dwellings are located on exclusive use areas or contain no interior lot lines, a minimum distance of 20 feet between single and two-family dwellings shall be required.

§ 97-47.9. Open space requirements.

A. Open Space. A minimum of fifty percent (50%) of the upland shown on the development plan shall be open space. Any proposed open space, unless conveyed to the Town or its Conservation Commission, shall be subject to a permanent conservation or agricultural preservation restriction in accordance with G.L. c. 184 § 31, approved by the Planning Board and Board of Selectmen/Town Counsel and enforceable by the Town, conforming to the standards of the Massachusetts Executive Office of Environmental Affairs, Division of Conservation Services, providing that such land shall be perpetually kept in an open state, that it shall be preserved exclusively for the purposes set forth herein, and that it shall be maintained in a manner which will ensure its suitability for its intended purposes. Any proposed open space that does not qualify for inclusion in the Conservation Restriction or that is rejected from inclusion in the Conservation Restriction by the State of Massachusetts will be subject to a Restrictive Covenant, that shall be approved by the Planning Board and Board of Selectmen/Town Counsel and enforceable by the Town. [Amended 6-22-2004 STM, Art. 7]

(1) The open space shall be contiguous. Contiguous shall be defined as being connected. Open Space will still be considered connected if it is separated by a roadway or an accessory amenity. The Planning Board may waive this requirement for all or part of the required open space where it is determined that allowing noncontiguous open space will promote the goals of this bylaw and/or protect identified primary and secondary conservation areas.

(2) The open space shall be used for wildlife habitat and conservation and the following additional purposes: historic preservation, outdoor education, passive recreation, agriculture, horticulture, forestry, a combination of these uses, and shall be served by suitable access for such purposes. The Planning Board may permit a small portion of the open space to be paved or built upon for structures accessory to the dedicated use or uses of such open space (i.e., pedestrian walks and bike paths) so long as it supports the primary and secondary purposes of the OSRD.

(3) Wastewater and stormwater management systems serving the OSRD may be located within the open space. Surface systems, such as retention and detention ponds, shall not qualify towards the minimum open space required.

B. Ownership of the Open Space. The open space shall, at the Planning Board's election, be conveyed to:

(1) The Town or its Conservation Commission;

(2) A nonprofit organization, the principal purpose of which is the conservation of open space and any of the purposes for such open space set forth above;

(3) A corporation, homeowners association or trust owned jointly or in common by the owners of lots or units within the OSRD. If such corporation or trust is utilized, ownership thereof shall pass with conveyance of the lots in perpetuity. Maintenance of such open space and facilities shall be permanently guaranteed by such corporation or trust which shall provide for mandatory assessments for maintenance expenses to each lot and unit. Each individual deed, and the deed or trust or articles of incorporation, shall include provisions designed to effect these provisions. Documents creating such homeowners association, trust or corporation shall be submitted to the Planning Board for approval, and shall thereafter be recorded.

(4) A private owner for agricultural, horticultural or forestry.

C. Maintenance of Open Space. In any case where open space is not conveyed to the Town, the Town shall be granted an easement over such land sufficient to ensure its perpetual maintenance as conservation or recreation land. Such easement shall provide that in the event the trust or other owner fails to maintain the open space in reasonable condition, the Town may, after notice to the lot owners and public hearing, enter upon such land to maintain it in order to prevent or abate a nuisance. The cost of

such maintenance by the Town shall be assessed against the properties within the development and/or to the owner of the open space. The Town may file a lien against the lot or lots to ensure payment of such maintenance.

§ 97-47.10. Design standards.

The following Generic and Site Specific Design Standards shall apply to all OSRD's and shall govern the development and design process:

A. Generic Design Standards.

(1) The landscape shall be preserved in its natural state, insofar as practicable, by minimizing tree and soil removal. Any grade changes shall be in keeping with the general appearance of the neighboring developed areas. The orientation of individual building sites shall be such as to maintain maximum natural topography and cover. Topography, tree cover, and natural drainageways shall be treated as fixed determinants of road and lot configuration rather than as malleable elements that can be changed to follow a preferred development scheme.

(2) Streets shall be designed and located in such a manner as to maintain and preserve natural topography, significant landmarks, and trees; to minimize cut and fill; and to preserve and enhance views and vistas on or off the subject parcel.

(3) Mixed-use development shall be related harmoniously to the terrain and the use, scale, and architecture of existing buildings in the vicinity that have functional or visual relationship to the proposed buildings. Proposed buildings shall be related to their surroundings.

(4) All open space (landscaped and usable) shall be designed to add to the visual amenities of the area by maximizing its visibility for persons passing the site or overlooking it from nearby properties.

(5) The removal or disruption of historic, traditional or significant uses, structures, or architectural elements shall be minimized insofar as practicable, whether these exist on the site or on adjacent properties.

B. Site Specific Design Standards.

(1) Mix of Housing Types. The OSRD may consist of any combination of single-family and two-family structures. Multifamily structures of not more than four (4) units may also be permitted by the Planning Board if they serve the purpose and intent of the Open Space Residential Development Bylaw, as stated in section 97-47.1. [Amended 6-22-2004 STM, Art. 7]

(2) Parking. Each dwelling unit shall be served by two (2) off-street parking spaces. Parking spaces in front of garages may count in this computation.

(3) Drainage. The Planning Board shall encourage the use of "soft" (nonstructural) stormwater management techniques (such as swales) and other drainage techniques that reduce impervious surface and enable infiltration where appropriate.

(4) Screening and Landscaping. All structural surface stormwater management facilities shall be accompanied by a conceptual landscape plan.

(5) On-site Pedestrian and Bicycle Circulation. Walkways, trails and bicycle paths shall be provided to link residences with recreation facilities (including parkland and open space) and adjacent land uses where appropriate.

(6) Disturbed Areas. Every effort shall be made to minimize the area of disturbed areas on the tract. A disturbed area is any land not left in its natural vegetated state.

§ 97-47.11. Decision of the Planning Board.

The Planning Board may grant a special permit for an OSRD if it determines that the proposed OSRD has less detrimental impact on the tract than a conventional development proposed for the tract, after considering the following factors:

A. Whether the OSRD achieves greater flexibility and creativity in the design of residential or unit developments than a conventional plan;

B. Whether the OSRD promotes permanent preservation of open space, agricultural land, forestry land, other natural resources including waterbodies and wetlands, and historical and archaeological resources;

C. Whether the OSRD promotes a less sprawling and more efficient form of development that consumes less open land and conforms to existing topography and natural features better than a conventional subdivision;

D. Whether the OSRD reduces the total amount of disturbance on the site;

E. Whether the OSRD furthers the goals and policies of the [choose] open space/master/comprehensive plan(s);

F. Whether the OSRD facilitates the construction and maintenance of streets, utilities, and public services in a more economical and efficient manner;

G. Whether the Concept Plan and its supporting narrative documentation complies with all sections of this zoning bylaw.

§ 97-47.12. Increases in permissible density.

The Planning Board may award a density bonus to increase the number of dwelling units beyond the Basic Maximum Number. The density bonus for the OSRD shall not, in the aggregate, exceed fifty percent (50%) of the Basic Maximum Number. Computations shall be rounded to the lowest number. A density bonus may be awarded in the following circumstances:

A. For each additional ten percent (10%) of the site (over and above the required 50%) set aside as open space, a bonus of five percent (5%) of the Basic Maximum Number may be awarded.

B. For every one (1) dwelling unit restricted to occupancy for a period in perpetuity by persons or families who qualify as low or moderate income, as those terms are defined for the area by the Commonwealth's Department of Housing and Community Development, one (1) dwelling unit may be added as a density bonus. [Amended 6-22-2004 STM, Art. 7]

C. For every historic structure preserved and subject to a historic preservation restriction, one (1) dwelling unit may be added as a density bonus.

§ 97-47.13. Severability.

If any provision of this bylaw is held invalid by a court of competent jurisdiction, the remainder of the bylaw shall not be affected thereby. The invalidity of any section or sections or parts of any section or sections of this bylaw shall not affect the validity of the remainder of the town's zoning bylaw.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board § 97-47.2. Eligibility.

A. Any development that will create more than four lots or units shall submit an application for OSRD to the Planning Board. The applicant shall have the option of development under the conventional subdivision process or under the OSRD.

Has any housing been built under the cluster/flexible provisions?

Yes Survey received on 5/22/05 from Newbury Town Planner Judy Tymon:

"2 projects are partially built"

Newburyport

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes City of Newburyport Zoning Ordinance, Amended 2004

Section II - Definitions

14. Cluster development. A residential development in which the buildings and accessory uses are clustered together into one (1) or more groups separated from adjacent property and other groups within the development by intervening open land.

[SECTION] XIV. CLUSTER RESIDENTIAL DEVELOPMENT

[XIV]-JA Objectives.

The objectives of cluster residential developments are:

1. To allow relatively intensive use of land, while at the same time maintaining the existing character;
2. To preserve open space for conservation and recreation;
3. To permit greater flexibility and more attractive, efficient and economical design of residential subdivisions;

4. To meet housing needs;
5. To facilitate economical and efficient provision of utilities.

[XIV-JB Applicability.

The planning board may grant a special permit for a cluster residential development in the R-1 and R-2 zoning districts.

[XIV-JC Procedural requirements.

These procedural requirements shall be in addition to the general requirements for a special permit specified elsewhere.

1. Pre-application review. To promote better communication and to avoid misunderstanding, applicants are encouraged to submit preliminary materials for informal review by the planning board prior to formal application. Preliminary subdivision plans, if any, should be submitted to the planning board prior to the application for a special permit. Such preliminary plans shall comply with the rules and regulations governing the subdivision of land in the City of Newburyport.
2. Application. Applicants for a special permit for a cluster residential development shall submit to the planning board five (5) copies of each of the following: An application, an overall development plan, and a site analysis. If the plan involves more than one ownership, each owner of land included in the plan shall be a party to the application and, upon approval, subject to its provisions. The plans shall be prepared by a registered professional engineer or land surveyor and shall be in black ink on mylar at a scale of 1" = 40' on 24" x 36" sheets.
3. Overall development plan, landscape plan and building elevations. [Pursuant to 2. above:]
 - a. The overall development plan shall indicate locations and boundaries of the site, proposed land topography, grading plan, location and width of streets and ways, drainage and sewage.
 - b. The landscape plan shall indicate areas of proposed and retained vegetation, distinction between upland and wetland, location and use of buildings, ways and parking and proposed landscaping type and location.
 - c. Building elevation plan shall indicate the height and bulk of proposed structures, type of material for outside walls (brick, stucco, etc.), architectural style and elements including roof lines, windows and doors.
4. Site analysis. The site analysis shall consist of a transparent copy of the overall development plan, plus a series of site analysis drawings at the same scale, each on a separate sheet, indicating analysis of hydrological systems, vegetative cover, slope and land form, soils and geology, and such other characteristics as the applicant deems advisable. The board, at its discretion, may require an environmental delivery and assessment.
5. Other materials. The application materials shall also indicate each landowner's interest in the land to be developed, the form of organization proposed to own and maintain the common open space, the substance of covenants and grants of easements to be imposed upon the use of land and structures and a development schedule.
6. Review of other boards and agencies. Upon receipt of the application and related plans/analyses, the planning board shall within ten (10) days transmit one (1) copy each to the board of health and conservation commission. These boards and agencies shall review said plans and provide recommendations to the planning board within thirty-five (35) days.
7. Criteria. In addition to the general special permit findings required by this ordinance, the planning board shall also make the following determinations: that the plan complies with all requirements of these sections; that the plan is superior to a conventional one in preserving open space for conservation or recreation and in utilizing the natural features of the land; that clustering does not generate new and substantial adverse impacts on abutting neighborhoods; that the plan allows more efficient provision of streets, utilities and other public services.

[XIV-JD Requirements.

A cluster residential development shall conform to the following:

1. Minimum tract size and required perimeter setback. The tract in single and consolidated ownership at the time of application shall be at least ten (10) acres in size. A continuous fifty-foot setback shall be maintained around the entire perimeter of the property except where the property fronts on an existing public street. Where the property fronts on an existing public street, the required setbacks shall conform to the original zoning district requirements.
2. Number of dwelling units. The maximum number of dwelling units allowed is to be determined by dividing applicable land area by the lot area requirements for a single-family dwelling in that district. Applicable land area shall be determined by a registered land surveyor and equal the total area encompassed by the overall development plan minus land subject to either inland or coastal wetland regulations (M.G.L.A. c. 131, § 40), minus land otherwise prohibited from development by local ordinance or regulations, minus land used for streets and minus land designated on the plan for uses not primarily serving residents of the development. Where the cluster residential development includes more than one (1) ownership, and/or lies in more than one (1) district, the number of units allowed shall be calculated as above for each district and summed to give an overall allowable total, which may be located on the plan without respect to allowable subtotals by district or ownership area.
3. Allowable uses. The following principal uses within the cluster residential development shall be permitted: one-family detached dwellings; church or other religious purposes; public park, conservation area and preserved open spaces; and membership club for the exclusive use of the residents of the development. The accessory uses permitted by right or special permit shall be as indicated elsewhere in this ordinance, for the appropriate zoning district in which the cluster residential development lies. In the R-2 district up to four (4) dwelling units per structure may be allowed.
4. Dimensional regulations and location conditions. Each individual structure within the cluster residential development shall be subject to the dimensional and density regulations for a structure in the district it is located, except as follows:
 - (i) The minimum lot area, frontage, and front, side and rear yard setbacks may be as little as one-half the amount required for single-family dwellings in that district.
 - (ii) Lot size and shape, frontage, front yard setback and building site shall be subject to approval by the planning board, which may also impose special conditions pertaining to buffers, screening, building separation, height and setback of buildings and parking.
5. Improvements. All streets, drainage, water systems, sewage, utilities and grading shall be made in accordance with the rules and regulations governing the subdivision of land in the City of Newburyport. Landscaping shall be installed in accordance with the landscape plan submitted under section V.F.3.c. and as approved by the

planning board.

Facade design shall conform to the building elevation plans as submitted under section V.F.3.c. and as approved by the planning board.

6. Open space. Not less than thirty (30) percent of the applicable land area within the overall development plan shall be preserved as common open space for recreation and conservation. Ownership of common open space shall be arranged and maintenance permanently assured through an incorporated nonprofit homeowners' association, condominium deeds, or other recorded land agreement through which each unit owner in the development is automatically a member and each unit is subject to a charge for a share of the maintenance expenses, or through comparable arrangement satisfactory to the planning board. The preservation of the common open space shall be guaranteed through dedication, by covenant, or comparable legal instrument, to the community use and enjoyment of residents of the development tract, for recreational purposes servicing those residents and their nonpaying guests only, or for conservation. In addition, the city shall be granted an easement or restriction providing that such land shall be kept in an open or natural state, not subdivided or reduced in size and not built upon or developed for any use other than open space for recreation or conservation. Buildings or structures used for common recreational purposes may occupy up to five (5) percent of the required common open space.

7. Other provisions. No lot shown on a plan for which a permit is granted under this section may be further subdivided, and a notation to this effect shall be shown on the plan.

No certificate of occupancy shall be issued by the building inspector until he has certified to the planning board that the premises have been built in accordance with the plan approved by the board under section XIV[-C].3a., b., c.

All streets, ways, and utilities within or serving the cluster development shall conform with all planning board and subdivision regulations, even if the proposed development is not subject to the subdivision control law.

The planning board shall have jurisdiction to grant or deny a special permit hereunder for a cluster residential development even if the proposed development is not subject to the subdivision control law.

Subsequent to granting the permit, the a planning board may permit relocation of lot lines within the cluster. However, any change in overall density, street layout, or open space layout will require further hearings.

SECTION XXII. FEDERAL STREET OVERLAY DISTRICT (FSOD)

[XXII]-A Purpose.

Due to the distinct features of land use, historic architecture, cultural history and property area of the Archdiocese properties located along Federal St., the Newburyport City Council finds it necessary to enact the Federal St. Overlay District (FSOD) under M.G.L.A. c. 40A § 5 for the following purposes:

1. To preserve and enhance the significant historic structures exhibited in the St. Louis Gonzague Church, William Bartlett and William Pierce/Johnson Houses;
2. To protect the heritage of the city through preservation and adaptive reuse of these historic structures and abutting vacant property which constitute or reflect distinctive features of the architectural, cultural, economic and cultural history of the city;
3. To prevent adverse influences to this purpose;
4. To foster appropriate use, scale, setbacks, height, design and density of this property and structures that is consistent complimentary to the overall neighborhood character;
5. To encourage consideration of the recommendations of the master plan and preservation plan;
6. To encourage attractive and viable development projects within the district;
7. To encourage affordable housing within an overall density that is generally consistent with the zoning ordinances and the immediate neighborhood.

(Ord. of 10-28-02(4))

[XXII]-B Establishment.

The FSOD is hereby established as an overlay district. The FSOD shall include the buildings and property situated on approximately 67,865 S.F. of land located on Federal, Beck and Ship St. as shown on the attached map. Within the FSOD, the provisions of the underlying R-3 district shall remain in full force and effect except where a special permit is issued under [section] X-H.7.

(Ord. of 10-28-02(4))

[XXII]-C Permitted uses.

In addition to uses permitted in the R-3 zoning district the following uses are permitted under the special permit:

1. Multifamily dwelling units up to eight (8) units per structure or lot;
2. Single- or two-family residential dwelling unit(s), meeting space or theater assembly uses within the St. Louis Gonzague Church.

(Ord. of 10-28-02(4))

[XXII]-D Dimensional and density regulations.

For all new construction, alterations or additions, the following criteria shall apply:

1. Dimensional setbacks, lot area and maximum height:

Front yard setbacks:

Federal St. - Match existing setback line of William Bartlett and William Pierce/Johnson Houses up to zero (0) feet;

Beck and Ship St. - zero (0) feet;

Side yard setbacks: Five (5) feet with a waiver to zero (0) for attached or accessory structures;

Rear yard setbacks: Twenty (20) feet. Except along the existing buildings on Ship St. where no impervious area, including but not limited to driveways or parking areas within the rear yard setback is permitted;

Minimum lot area:

Single-family: 3,000 SF;

Two-family: 4,500 [SF];

Multi-family: 8,000 SF;

Maximum height: No proposed buildings shall exceed the existing height of the William Bartlett House;

Off-street parking: All residential dwelling units shall provide off-street parking in accordance with section VII: Parking except that a maximum of two (2) stacked parking spaces may be permitted per driveway provided stacked parking spaces are separated from other parking spaces or driveways by at least a six (6) foot landscaped buffer strip.

2. Permitted density: The permitted density in the R-3 zoning district is generally up to ten (10) dwelling units per acre with no more than eight (8) dwelling units per structure or lot. Within the FSOD, the board will increase this by-right density by twenty-five percent (25%), for a maximum overall density of sixteen (16) units, if the special permit criteria listed in section 3.E. is met.

3. Density bonus: The board may provide a density bonus of four (4) units for a project that proposes to preserve and donate the St. Louis Gonzague Church property to a non-profit organization for community, organizational or other nonresidential use. The board may also grant a density bonus of two (2) units per existing building for a project that proposes to preserve and redevelop either the William Bartlett and William Pierce/Johnson Houses as single-family residences with deeded preservation restrictions adhering to the rehabilitation standards of the secretary of the interior's "Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings." Note, a second dwelling unit may be permitted within either the William Bartlett or William Pierce/Johnson House properties if the unit is not within the principle existing structure.
(Ord. of 10-28-02(4))

[XXII]-E Special permit procedure and criteria.

Following the review procedures listed in section X-H.8., an applicant or property owner may request a special permit from the planning board provided the project meets the following criteria. The planning board may issue a special permit for the project provided the requirements of section X-H.5. and the following criteria are met:

1. At least 10%, not less than two (2) units, of the proposed dwelling units shall be affordable as defined under M.G.L.A. c. 40B § 20 (including amendments);
 2. Deeded preservation restrictions governing the rehabilitation of the St. Louis Gonzague Church, William Bartlett and William Pierce/Johnson House shall be required that are consistent with the historic rehabilitation standards from the secretary of the interior's "Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings";
 3. Except in the case of catastrophe or fire, the main structures shall be not be demolished or razed. Demolition of accessory structures or additions may be permitted;
 4. All projects require design review where all proposed structures shall be consistent in design, style, height, materials, scale, massing, setbacks and general character with the neighborhood and abutting properties.
- (Ord. of 10-28-02(4))

[XXII]-F Factors considered in design review.

The board shall review all new construction, alterations, and additions within the context of the overall neighborhood character. Exterior architectural features such as roof lines, building materials, placement, massing, setbacks and other site features.

Accordingly, the applicant shall submit the following application requirements:

1. A site plan, scale 1" = 20 feet, of the existing conditions, including a dimensional footprint of all existing buildings, parking areas and driveways shall be shown;
 2. A plot plan, scale 1" = 20 feet of all proposed construction, parking and driveways, fence lines, landscaping, lighting, sidewalks, pathways and park areas;
 3. Exterior building elevations, including building and roof materials, cupolas, roof decks, height, colors and fenestration;
- After advisory review, the planning director will submit comments to the board as a technical report on the suitability of the proposed project.

(Ord. of 10-28-02(4))

[XXII]-G Special permit appeal procedure.

Any appeal to a final decision of the planning board may be appealed to the zoning board of appeals as outlined under section X-H.5. of the Newburyport Zoning Ordinances.

(Ord. of 10-28-02(4))

[XXII]-H Severability.

The provisions of this section are severable and, in the event that any provision of this section is determine to be invalid for any reason, the remaining provisions shall remain in full force and effect.

(Ord. of 10-28-02(4))

SECTION XXI. PLUM ISLAND OVERLAY DISTRICT (PIOD)

XXI-A Statement of purpose.

The purpose of the Plum Island Overlay District (PIOD) is to: reduce damage to public and private property resulting from flood waters; ensure public safety by reducing threats to life and personal injury; eliminate costs associated with the response and cleanup of flooding conditions; avoid the loss of utility services which if damaged by flooding would disrupt or shut down the utility network and impact areas of the community beyond the site of flooding; prevent the occurrence of public emergencies resulting from water quality contamination and pollution due to flooding; eliminate new hazards to emergency response officials; and, limit the expansion of nonconforming single and two-family structures so as to prevent the exacerbation of existing problems with density and intensity of use.

(Ord. of 7-9-01)

XXI-B Establishment.

The PIOD is described on a map entitled "City of Newburyport Plum Island Overlay District," dated May 9, 2001. All maps are hereby made a part of the zoning ordinance and are on file in the office of the city clerk.

(Ord. of 7-9-01)

XXI-C Overlay district.

The PIOD is hereby established as an overlay district. Within the PIOD, the provisions of the underlying district(s) shall remain in full force and effect, except to the extent that the provisions of the PIOD are more stringent. In such cases, the provisions of PIOD shall supersede the provisions of the underlying district(s).
(Ord. of 7-9-01)

XXI-D Permitted uses.

1. Municipal uses owned or operated by the City of Newburyport;
2. Single-family dwellings, subject to the dimensional requirements set forth in the table below:

Minimum lot area: Twelve thousand (12,000) square feet.

Minimum lot frontage: One hundred twenty (120) feet.

Maximum building height: Thirty-five (35) feet.

Maximum number of stories: Two (2).

Minimum front setback: Twenty (20) feet.

Minimum side setback: Twenty (20) feet.

Minimum rear setback: Twenty (20) feet.

Maximum floor area ratio: .25.

Maximum lot coverage by buildings: Twenty (20) percent.

(Ord. of 7-9-01)

XXI-E Prohibited uses.

Any use not set forth in section XXI-D is prohibited in the PIOD.

(Ord. of 7-9-01)

XXI-F Nonconforming uses and structures, excluding single and two-family structures.

The provisions of the PIOD shall not apply to pre-existing nonconforming structures or uses lawfully in existence as of [July 9, 2001]. Nonconforming uses and structures within the PIOD shall not be enlarged or extended; provided, however, that the following types of changes or alterations to nonconforming uses or structures may be authorized upon grant of a special permit for nonconformities by the board of appeals upon its determination that the proposed alteration to the nonconforming structure or use shall not be substantially more detrimental than the existing nonconforming structure or use to the neighborhood or the PIOD:

1. Change of a pre-existing nonconforming use;
2. Change of a pre-existing nonconforming use to another, less detrimental, nonconforming use;
3. Reconstruction or structural change to a nonconforming structure;
4. Alteration of a nonconforming structure to provide for a substantially different purpose or for the same purpose in a substantially different manner.

(Ord. of 7-9-01)

XXI-G Nonconforming single and two-family residential structures.

1. General. No preexisting nonconforming single- or two-family residential structure within the PIOD shall be altered, reconstructed, extended, or structurally changed except as set forth in this section XXI-G.

2. Additional bedroom. One (1) additional bedroom may be created in a lawfully preexisting nonconforming single- or two-family structure with one (1) or two (2) bedrooms, subject to the applicable regulations set forth in subsections XXI-G.3 and XXI-G.4.

3. As of right changes. Except as restricted by section XXI-G.1, the alteration, reconstruction, or extension of, or change to such structures may be authorized upon the issuance of a building permit where the building inspector determines that such alteration, reconstruction, extension, or change shall:

- a. Not increase the footprint of the existing structure; and
- b. Not exceed the height of the existing structure, or thirty-five (35) feet, whichever is lower.

4. Special permit for nonconformities. The alteration, reconstruction, extension of, or change to such structures to an extent other than that authorized by section XXI-G.3, may be authorized by the grant of a special permit by the board of appeals upon its determination that such alteration, reconstruction, extension, or change shall not be substantially more detrimental than the existing nonconforming structure to the neighborhood or the PIOD. The board of appeals shall not grant a special permit for any alteration, reconstruction, extension of, or change to such structures that would cause such structure to be within ten (10) feet of the side lot line, more than two (2) stories, or more than thirty-five (35) feet in height.

5. Catastrophe or demolition: rebuilding as of right. A nonconforming single- or two-family residential structure may be demolished and rebuilt or rebuilt after destroyed or damaged by a catastrophe; provided, however, that:

- a. The rebuilt structure shall not exceed the total aggregate area of all demolished or destroyed residential structures on the locus; and
- b. The rebuilt structure shall not exceed the height of the tallest demolished or destroyed residential structure on the locus; and
- c. The rebuilt structure shall not be located within ten (10) feet of the side lot line;
- d. The rebuilt structure shall not contain more than the total number of bedrooms in all demolished or destroyed structures on the locus; provided, however that one (1) additional bedroom may be created where the total number of bedrooms before the catastrophe or demolition was one (1) or two (2).
- e. Such structure shall be rebuilt not more than two (2) years after the demolition or catastrophe; such period may be extended for one (1) year good cause shown upon a written request to the building inspector.

6. Catastrophe or demolition: rebuilding after issuance of special permit for nonconformities. A nonconforming single- or two-family residential structure may be demolished and rebuilt or rebuilt after destroyed or damaged by a catastrophe so as to exceed the total aggregate area of all demolished or destroyed residential structures on the locus and/or exceed the height of the tallest demolished or destroyed residential structure on the locus; upon the grant of a special permit for nonconformities by the board of appeals.

- a. Such structure shall be rebuilt not more than two (2) years after the issuance of the special permit for nonconformities; such period may be extended for one (1) year if good cause is shown upon a written request to and approval of the building inspector.

b. Such a special permit for nonconformities may be granted only upon the determination that the proposed rebuilding of the nonconforming structure shall not be substantially more detrimental than the existing nonconforming structure to the neighborhood of the PIOD.

c. The rebuilt structure shall not contain more than the total number of bedrooms in all demolished or destroyed structures on the locus; provided, however that one (1) additional bedroom may be created where the total number of bedrooms before the catastrophe or demolition was one (1) or two (2).
(Ord. of 7-9-01)

XXI-H Frontage.

No building permit for a single-family residential structure within the PIOD shall be issued unless the lot to be built upon has frontage on a street.
(Ord. of 7-9-01)

XXI-I Unconstructed ways.

No building permit shall be issued for a lot with frontage an unconstructed way which does not qualify as a "street" until the planning board approves a plan, prepared by the applicant, demonstrating that the proposed way has sufficient width and suitable grades to provide for the needs of vehicular traffic in relation to the proposed use of the land thereon or served thereby and for the installation of municipal services to serve such land and the building erected or to be erected thereon and the first course of pavement for such way has been installed in accordance with such plan, as certified in writing by the director of the department of public works. No certificate of occupancy shall be issued for such lot until the second and final course of pavement has been installed in accordance with such plan, as certified in writing by the director of the department of public works.
(Ord. of 7-9-01)

XXI-J Use variances.

The board of appeals shall not grant use variances within the PIOD.
(Ord. of 7-9-01)

XXI-K Definitions.

The following terms shall have the meanings set forth below within the PIOD:

Bedroom shall mean a bedroom as defined in 310 CMR 15.002 of the State Environmental Code.

Floor area, gross shall mean the total square feet of floor space within the outside dimensions of a building including each floor level, without deduction for hallways, stairs, closets, thickness of walls, columns, or other features.

Floor area ratio (FAR) shall be constructed as a mathematical expression determined by dividing total gross floor area of a building by the area of the lot on which is located. For example, a lot with twelve thousand (12,000) square feet in a district with a maximum FAR of .25 could contain three thousand (3,000) square feet of gross floor area ($12,000 \times .25 = 3,000$).

Footprint shall mean the total square feet within the outside dimensions of a building at the top of the foundation, without deduction for hallways, stairs, closets, thickness of walls, columns, or other features.

Reconstruction shall mean the structural alteration of the existing building, but shall not include the demolition and rebuilding thereof.

Street shall mean:

1. A public way or a way which the city clerk certifies is physically constructed and maintained and used as a public way; or
 2. A private way shown on a definitive subdivision plan endorsed subsequent to 1953 and built to the specifications set forth therein; or
 3. A way presently having in the opinion of the planning board sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed uses of the land abutting thereon or served thereby, and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon.
- (Ord. of 7-9-01)

Section V-C.1

I. Definitions:

A. "Applicant." For the purposes of this ordinance, an applicant shall be deemed to include an individual, a trustee of a trust, partner or partnership, the beneficiary of a trust, corporation, corporate office or other legal entity in which the entity requesting to submit an application for a building permit holds any legal, beneficial or equitable ownership in the property to be affected.

B. "Multiple-family dwellings." For the purposes of this ordinance, a multiple family dwelling shall mean a building containing two (2) or more dwelling units.

C. "Subdivision." For the purposes of this ordinance, subdivision shall have the same meaning as a development.

D. "Housing development." For the purposes of this ordinance, housing development shall mean the establishment or construction of any new dwelling unit, whether on a single lot/unit, multi-lot, or within a multi-family development as well as replacement housing unit(s) from demolished structures deemed historically significant

E. "Dwelling unit." For the purposes of this ordinance, a dwelling unit shall mean a single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

F. "Mixed-use." For the purposes of this ordinance, a mixed-use project shall mean at least 33% of the proposed building or property is dedicated for a residential use.

Survey received from Newburyport on 5/4/05 (completed by Nicholas Cracknell, Planning Director.)

What year was the first provision for flexible zoning adopted?

"1982"

What was the last year that the municipality amended the cluster/flexible provisions?

"2005"

Can more units be built under cluster/flexible zoning than would be allowed through conventional zoning?

"Yes" (marked as a change)

Has any housing been built under the cluster/flexible provisions? (none, 1-8 projects, more than 8)

"1-8"

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board

City of Newburyport Zoning Ordinance, Amended 2004

[XIV-JB Applicability.

The planning board may grant a special permit for a cluster residential development in the R-1 and R-2 zoning districts.

Has any housing been built under the cluster/flexible provisions?

Yes According to Gary Calderwood, Building Inspector, (11/4/04) there have been three recent cluster developments in Newburyport. There are two single-family developments (consisting of about 78 units and 28 units respectively) and one two-family development (consisting of about 12-14 units). Mr. Calderwood explains that cluster developments have worked well, but feels that they are sometimes allowed to stray too far from regulations such as road width requirements.

Survey received from Newburyport on 5/4/05 (completed by Nicholas Cracknell, Planning Director.)

Has any housing been built under the cluster/flexible provisions? (none, 1-8 projects, more than 8)

"1-8"

Newton

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Newton Zoning Ordinance, Chapter 30, Article 2, DIVISION 2. RESIDENTIAL DISTRICTS, Sec. 30-8. Use Regulations for Single Residence Districts.(2001).

As appeared in ordinance: * Editor's note—"Open Space Preservation Development" was formerly called "Cluster Development"

(k) Open Space Preservation Development. In all residence districts, the board of aldermen may give site plan approval in accordance with the procedures provided in section 30-23 and grant a special permit in accordance with the procedures provided in section 30-24 for the reduction of the minimum lot area, the minimum lot frontage, minimum setback lines, the minimum side lot line and/or the minimum rear lot line required for each single or two-family dwelling erected below that required by, or subject to the following:

(1) The area being developed contains a minimum of five (5) acres and a maximum of thirty-five (35) acres, provided, however, that not more than thirty-five (35) acres in any one lot or in contiguous lots in common ownership as of April 19, 1977, shall be developed under the provisions of this subsection (k);

(2) a) The minimum lot area per dwelling unit may not be reduced below the following:

Single Residence 1	15,000 square feet
Single Residence 2	10,000 square feet
Single Residence 3	7,000 square feet
Multi-Residence 1	7,000 square feet
Multi-Residence 2 and 3	7,000 square feet

- b) The minimum lot frontage for each lot may not be reduced below fifty (50) feet.
- c) The minimum setback line for each lot may not be reduced below fifteen (15) feet.
- d) The minimum side yard line for each lot may not be reduced below seven and one-half (7.5) feet.
- e) The minimum rear yard line for each lot may not be reduced below fifteen (15) feet.

(3) For each dwelling unit, an area equal to the differential between the minimum lot area requirement established by Table 1 Density and Dimensional Controls. In Residential Districts and the reduced minimum lot area permitted in accordance with subsection (2)(a) of this section shall be set aside within the development as permanent open space, provided, however, that no more than twenty-five (25) percent of the area set aside in fulfillment of this requirement shall be within an area delineated by section 22-22 of the Revised Ordinances, as amended. The board of aldermen, in designating such open space, shall exercise special concern with regard to the preservation of natural features, including, but not limited to, hills, ponds, watercourses, wetlands, trees, tree groves, wooded areas, rock outcrops, native plant and wildlife habitats and areas of aesthetic or ecological interest. Such land shall be of such size, shape, dimension, character and location as to assure its utility for park, conservation or recreation purposes.

(4) The use of the land set aside as permanent open space shall be limited to recreation and open space uses, and no building, structures, driveways or parking areas other than buildings or structures or recreational and maintenance equipment used in connection with such land shall be erected or placed thereon. Said buildings or structures shall have an aggregate floor area of less than one-half per cent (0.5%) of the area of such designated open space.

(5) The land set aside as permanent open space shall be held and maintained by the developer until it is conveyed to, accepted by, and owned by one or more of the following:

- a) The City of Newton;
- b) The Newton Conservation Commission;
- c) An association, trust or corporation of all owners of lots within the development; or
- d) A nonprofit trust or corporation having as its primary purpose the maintenance of open space.

No building permit shall be issued in accordance with this subsection (k) until said designated open space shall have been conveyed to and accepted by one or more of the above and in the event that said open space shall not have been conveyed to the city and/or the Newton Conservation Commission, a restriction, enforceable by the city, ensuring the permanent maintenance of said land as open space, shall have been recorded.

(6) In granting a special permit in accordance with this subsection (k), the board of aldermen may designate one of the options specified in subparagraph (5) above, which shall be utilized and may designate that the public shall have a right of access to the land so set aside or any part thereof.

(7) Notwithstanding the above, the board of aldermen may give permission for further reductions in or the waiver of minimum lot frontage, setbacks and side and rear yards if it finds that such reductions are consistent with the purposes of this ordinance and will enable the preservation of certain natural features, including topography, trees, wooded areas, rock outcrops, native plants, walls, fencing and areas of aesthetic or ecological interest; provided, however, that such further reductions shall not be exercised so as to permit the construction of attached dwellings within single residence districts. (Rev. Ords. 1973, §24-13; Ord. No. 206, 4-19-77; Ord. No. 272, 5-15-78; Ord. No. 284, Pt. XIV, 6-19-78; Ord. No. T-173, 9-16-91; Ord. No. U-28, 9-7-94)

(l) Notwithstanding the lot area per unit set forth in Table 1 below, in all Multi-Residence 1 and 2 Districts, new buildings may be constructed and existing buildings may be altered, extended or reconstructed to provide living quarters for two families, provided that each dwelling unit has a minimum lot area of three thousand (3,000) square feet.

(m) Except as provided in this subsection or where section 30-18A or section 30-21 provide otherwise, unless a variance is granted in accordance with the requirements and procedures set forth in this ordinance, in every residence district, accessory buildings shall conform to the following requirements:

- (1) An accessory building shall be no nearer to any side or rear lot line than five (5) feet, and no nearer to any front lot line than the

distance prescribed in Table 1 of Section 30-15 for a single-family or two-family dwelling on the lot in question;

(2) The maximum height of each accessory building shall not exceed eighteen (18) feet. No space above this maximum height shall be habitable or comprise a dwelling unit, as defined in section 30-1, without the grant of a special permit by the board of aldermen in accordance with section 30-24. Habitable space, for purposes of this subsection, includes any available space which is used, or designed, arranged or constructed as living space, which need not include all components of a full dwelling unit;

(3) An accessory building shall have no more than one and one-half (1½) stories;

(4) The ground floor area, as defined in section 30-1, of an accessory building shall not exceed seven hundred (700) square feet;

(5) If the accessory building is a garage, unless a special permit is granted in accordance with the requirements and procedures set forth in sections 30-8(b)(7), 30-15, 30-19, and 30-24, for each dwelling unit:

a) There shall be no more than one (1) garage, whether or not it is located in an accessory building;

b) A garage shall provide for not more than three (3) automobiles;

c) The ground floor area of a garage shall not exceed seven hundred (700) square feet.

Accessory structures, other than accessory buildings as referenced above, must conform to the applicable setback requirements for the principal building under section 30-15, Table 1. Measurements under this section shall be made from the lot line to that portion of the accessory building or accessory structure nearest the lines, including an outside vestibule or porch. Such measurements are also made from the lot lines to steps or bulkheads in the case of front and side lot lines, but not in the case of rear lot lines.

(n) Underground structures including, but not limited to, basements or parking facilities, may be located within the applicable setback distance, provided that any portion of the underground structure which is visible above ground must conform to the applicable setback distance.

(o) For lots which on August 3, 1987 were undeveloped and which prior to said date were in single and separate ownership and were not available for use in common or in connection with a contiguous or adjacent lot and which have a lot area less than 10,000 square feet, the as-of-right building height shall be one story or twelve (12) feet. By special permit, the building height may be two stories or twenty-four (24) feet. As of right floor area ratio shall be .50 and by special permit the maximum floor area ratio may be .75. Allowed uses shall be restricted to those uses not limited by the provisions of sections 30-11(b), 30-11(f), 30-12(b), and 30-13(d). For the purpose of this provision, lots must have been shown as separate parcels on plans filed in the assessor's office and assessed as such prior to August 3, 1987 or they must have been shown or described in the most recent plans or deeds duly recorded with the Middlesex South District Registry of Deeds prior to August 3, 1987.

Survey received from Newton on 4/26/05:

What year was the first provision for flexible zoning adopted?

"1987"

What was the last year that the municipality amended the cluster/flexible provisions?

"1994"

Can more units be built under cluster/flexible zoning than would be allowed through conventional zoning?

"Yes"

What types of structures are allowed under cluster/flexible zoning?

"1F and 2F"

Has any housing been built under the cluster/flexible provisions? (none, 1-8 projects, more than 8)

"Yes" 1-8 projects circled.

Which entity is the special permit granting authority for cluster/flexible zoning?

Selectmen/Council (k) Open Space Preservation Development. In all residence districts, the board of aldermen may give site plan approval in accordance with the procedures provided in section 30-23 and grant a special permit in accordance with the procedures provided in section 30-24 for the reduction of the minimum lot area, the minimum lot frontage, minimum setback lines, the minimum side lot line

and/or the minimum rear lot line required for each single or two-family dwelling erected below that required by, or subject to the following:

Has any housing been built under the cluster/flexible provisions?

Yes Survey received from Newton on 4/26/05:

Has any housing been built under the cluster/flexible provisions? (none, 1-8 projects, more than 8)

"Yes"

1-8 projects circled.

Norfolk

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes ZONING BYLAW FOR THE TOWN OF NORFOLK, MASSACHUSETTS
Section H. OPTION ZONING

H.2. OPEN SPACE PRESERVATION

H.2.a. Purpose

The purposes of this section are:

- (1) to preserve open space for conservation, recreation, agriculture and forestry;
- (2) to preserve significant natural, historical and archaeological resources;
- (3) to preserve and foster the Town of Norfolk's rural and scenic character;
- (4) To promote development that is in harmony with natural features and resources, the Town's historic and traditional landscapes, the existing and probable future use of adjacent land, and the general intent of the Zoning Bylaws; and
- (5) To establish flexible residential development standards and procedures that will support these objectives.

H.2.b. Overview and Approach

This section of the Zoning Bylaws provides an alternative method of subdividing land for residential development. This "Open Space Preservation" method allows the Planning Board to approve reductions in the area, frontage and/or setbacks of individual lots in a development, in return for setting aside a specified amount of land as Permanent Open Space. The required Permanent Open Space must be at least twentyfive percent of the total tract area, and may be more than 25 percent depending on the actual reduction in the average lot area.

In addition to setting aside open space for protection, the Open Space Preservation approach differs from the conventional subdivision approach in the way that lots are designed. In simple terms, a standard subdivision can be designed by dividing the total tract area into lots that conform to minimum requirements of the Zoning Bylaws and roads that comply with the design standards of the Subdivision Rules and Regulations. In contrast, the design of an Open Space Preservation development begins with the identification of sensitive or significant natural and scenic features that are to be conserved. Locations for individual houses are then established on the remaining developable area, and lot lines are drawn around the building sites.

A well-designed Open Space Preservation development will usually be preferable to a standard subdivision, because it can be more sensitive to the landscape and can contribute to a town-wide system of open space linkages. Therefore, in order to encourage landowners to use this optional approach, the bylaw allows a modest increase in the maximum number of dwelling units compared to a conventional subdivision.

The Planning Board may approve an Open Space Preservation development if it determines that such a development would be better for the Town than a conventional subdivision. The Special Permit decision is made on the basis of a Concept Plan, and is followed by review of a Definitive Subdivision Plan under the Board's Rules and Regulations.

H.2.c. General Requirements

H.2.c.1. The Planning Board may authorize by Special Permit an Open Space Preservation (OPEN SPACE PRESERVATION) development as an alternative to conventional subdivision.

H.2.c.2. To be eligible for the OPEN SPACE PRESERVATION development option, a tract of land shall contain at least five (5) acres, shall be located within the Residence 1, 2 or 3 (R-1, R-2, or R-3) Districts, and

shall be serviced by Town water.

H.2.c.3. The maximum number of BUILDING LOTS permitted in an OPEN SPACE PRESERVATION development shall be equal to the number of BUILDING LOTS which could be developed through a conventional subdivision of the tract, plus ten percent (10%). The burden of proof shall be upon the APPLICANT in determining the allowable number of BUILDING LOTS, which shall be demonstrated through submission of a preliminary plan of the conventional subdivision. The Planning Board reserves the right to challenge the status of any LOT.

H.2.c.4. For the purpose of OPEN SPACE PRESERVATION development under this section, the Planning Board may permit LOTS on directly opposite sides of a STREET to qualify as a single tract of land. To permit such division of a tract of land by a STREET, the Planning Board must find that this would comply with the purposes of this section and not result in any more DWELLING units than would be possible in accordance with the provisions of this Bylaw if the LOTS on each side of the STREET were developed separately. If the Board approves a tract of land divided by a STREET, it may permit the DWELLING units to be concentrated on one side of the STREET and the Permanent Open Space to be concentrated on the opposite side of the STREET.

H.2.c.5. No LOT shown on a plan for which a special permit is granted under this Section may be further subdivided, unless such special permit lapses or is rescinded.

H.2.d. Design Principles and Development Standards

H.2.d.1. OPEN SPACE PRESERVATION developments shall be designed to preserve and protect sensitive natural resources such as wetlands, streams and floodplains.

H.2.d.1.a. A buffer area of natural vegetation of at least 100 feet in width shall be maintained or created adjacent to surface waters and wetlands.

H.2.d.1.b. A buffer area free of residential STRUCTURES of at least 200 feet in width shall be maintained adjacent to surface waters.

H.2.d.2. OPEN SPACE PRESERVATION developments shall be designed to preserve and protect important scenic and cultural features, including steep slopes, mature woodlands, prime farmland, meadows, wildlife habitats, historic and archaeological sites, and scenic views.

H.2.d.2.a. BUILDINGS shall be sited within any woodland contained in the parcel or along the edges of the open fields adjacent to any woodland so as to reduce any impact upon the site's natural, scenic and cultural resources, and to enable new construction to be visually absorbed by the natural landscape features.

H.2.d.2.b. BUILDINGS shall be sited in locations least likely to interrupt scenic vistas as seen from public roadways.

H.2.d.3. OPEN SPACE PRESERVATION developments shall be designed in relation to their surroundings, so as to preserve existing wildlife corridors and ecosystems, and to be consistent with the Town's historical development patterns.

H.2.d.4. The landscape shall be preserved in its natural state, insofar as practicable, by minimizing tree and soil removal. Any grade changes shall be in keeping with the general appearance of the neighboring developed areas. The orientation of individual BUILDING sites shall be such as to maintain maximum natural topography and cover. Topography, tree cover, and natural drainage ways shall be treated as fixed determinants of road and LOT configuration rather than as malleable elements that can be changed to follow a preferred development scheme.

H.2.d.5. Streets shall be designed and located in such a manner as to maintain and preserve natural topography, significant landmarks, and trees; to minimize cut and fill; and to preserve and enhance views and vistas on or off the subject parcel.

H.2.d.6. All landscaped or usable open space shall be designed to add to the visual amenities of the area by maximizing its visibility for persons passing the site or overlooking it from nearby properties.

H.2.d.7. The removal or disruption of historic, traditional or significant uses, STRUCTURES, or architectural elements shall be minimized insofar as practicable, whether these exist on the site or on adjacent properties.

H.2.d.8. Where an OPEN SPACE PRESERVATION development is created adjacent to an existing farm, or where the permanent open space in the development is intended to be used for AGRICULTURAL uses, the development should be designed so as to protect the future viability of the land for farming.

H.2.d.8.a. BUILDINGS and STREETS should be placed on the least fertile soils for AGRICULTURAL uses, and in a manner, which maximizes the usable area remaining for such AGRICULTURAL use.

H.2.d.8.b. The OPEN SPACE PRESERVATION development should be laid out in such a manner that the common boundary between the new house LOTS and AGRICULTURAL land is minimized in length, in order to reduce potential conflicts between the two uses.

H.2.d.8.c. Buffer zones at least seventy-five (75) feet in width shall be maintained between residential and AGRICULTURAL uses and shall be planted with native shrubs and trees to create an effective barrier separating yards from fields and pastures.

H.2.d.9. Septic systems shall be placed on the most suitable soil for subsurface septic disposal.

H.2.e. Design Process

Design of an Open Space Preservation development shall follow the four-step process described in this section. This process emphasizes principles of good landscape design and recognizes the intrinsic importance of the natural, scenic and cultural resources on the site. Applicants shall demonstrate to the Planning Board that this design process was performed by a Registered Landscape Architect and was considered in determining the layout of proposed open space, house LOTS, and STREETS.

H.2.e.1. Step One: Identify Conservation Areas and Potentially Developable Areas

The Open Space Preservation development shall, to the extent feasible, preserve the most sensitive and noteworthy natural, scenic, and cultural resources on the property.

H.2.e.1.a. First, identify and delineate resource areas to be protected, including:

1. Resource areas regulated by state or federal law, including wetlands and floodplains;
2. Unprotected elements of the natural landscape, such as steep slopes, mature woodlands, prime farmland, meadows and wildlife habitats; and
3. Important cultural features such as historic and archeological sites and scenic views.

H.2.e.1.b. Then, delineate potentially developable areas of the site. To the maximum extent feasible, these shall consist of land outside the resource areas identified above.

H.2.e.2. Step Two: Locate House Sites

Locate the approximate sites of individual houses within the potentially developable area and include the delineation of private yards and shared amenities, so as to reflect an integrated community, with emphasis on consistency with the Town's historical development patterns. The number of homes enjoying the amenities of the development should be maximized.

H.2.e.3. Step Three: Align Streets and Trails

Align STREETS in order to provide vehicular access to each house in the most reasonable and economical way. When LOTS and access STREETS are laid out, they shall be located in a way that minimizes adverse impacts on open space. The creation of single-loaded residential access STREETS is encouraged, in order that the maximum number of homes in new developments may enjoy views of open space. Wetlands crossings are strongly discouraged. Additionally, new trails should be laid out to create internal and external connections to existing and/or potential future STREETS, sidewalks, and trails.

H.2.e.4. Step Four: Delineate Lot Lines

Draw in the LOT lines, where applicable. These are generally drawn midway between house locations.

H.2.f. Intensity Requirements

H.2.f.1. The Planning Board may grant a reduction of all intensity regulations of the underlying zoning regulations for all portions of an Open Space Preservation development if the Planning Board finds that such reduction will result in better design and improved protection of natural and scenic resources, and will otherwise comply with this Bylaw, provided that (a) the OPEN SPACE PRESERVATION development as a whole shall meet the minimum average requirements in Section H.2.f.2., and (b) in no instance shall any LOT deviate from the minimum requirements in Section H.2.f.3.

H.2.f.2. Minimum Average Dimensional Requirements

H.2.f.3. Minimum Dimensional Requirements for Individual LOTS Within the OPEN SPACE PRESERVATION Development

H.2.f.4. Regardless of the setback requirements specified in Section H.2.f.3., all DWELLINGS shall be separated from each other by at least 50 feet.

H.2.f.5. The Planning Board may require larger setbacks than specified in Section H.2.f.3., if it finds that such increased setbacks are required to promote the purposes of this Section.

H.2.f.6. Lots having reduced area or FRONTAGE shall not have FRONTAGE on a STREET other than a STREET created by the OPEN SPACE PRESERVATION development.

H.2.f.7. Where the tract contains a pre-existing residential STRUCTURE, the area and FRONTAGE of the LOT on which such STRUCTURE is located after development of the OPEN SPACE PRESERVATION development shall not be reduced below the

minimum LOT size and minimum FRONTAGE required in the underlying zoning district.

H.2.g. Streets and Utilities

H.2.g.1. All STREETS, sewage and drainage facilities, and other utilities shall be designed and constructed in compliance with the Town of Norfolk Subdivision Rules and Regulations.

H.2.g.2. Exceptions to the Subdivision Rules and Regulations may be authorized by the Planning Board in granting a special permit hereunder provided that the Board determines such exceptions are in the public interest and are not inconsistent with the purposes of this Section H.2.

H.2.h. Permanent Open Space

H.2.h.1. Requirement to Provide Permanent Open Space

A tract of land developed as an Open Space Preservation development shall contain land set aside as Permanent Open Space for the use of the OPEN SPACE PRESERVATION development residents or the general public, as further specified in this section.

H.2.h.2. Minimum Required Area of Permanent Open Space

H.2.h.2.a. The minimum required amount of Permanent Open Space shall be computed as follows:

In no case, however, shall the Permanent Open Space be less than twenty-five percent (25%) of the total area of the tract of land.

H.2.h.2.b. The minimum required area of Permanent Open Space shall not contain a greater percentage of wetlands (as defined in MGL Chapter 131) or land included within the Flood Plain/ Wetlands Protection District (see Section D.5.) than the percentage of such areas found in the overall tract of land on which the OPEN SPACE PRESERVATION development is located.

H.2.h.3. Design of Permanent Open Space

H.2.h.3.a. Permanent Open Space shall be planned as large, contiguous parcels whenever possible. Strips or narrow parcels of Permanent Open Space shall be permitted only when necessary for providing access to the Permanent Open Space from a public way, or if the Planning Board finds that a vegetated buffer strip along the site's perimeter is appropriate and consistent with the purpose of OPEN SPACE PRESERVATION development.

H.2.h.3.b. Permanent Open Space may be set aside in more than one parcel provided that the size, shape and location of such parcels are suitable for the designated uses.

H.2.h.3.c. If the tract of land abuts adjacent Permanent Open Space or undeveloped LOTS, the Permanent Open Space shall be connected with such adjacent Permanent Open Space and with such undeveloped abutting LOTS.

H.2.h.3.d. The Permanent Open Space shall include adequate upland access from a way or STREET.

H.2.h.4. Use of the Permanent Open Space

H.2.h.4.a. The Permanent Open Space shall be dedicated and used for natural resource protection, recreation, park purposes, outdoor education, agriculture, horticulture or forestry, or for any combination of such uses. No other uses shall be allowed in the Permanent Open Space, except as follows:

H.2.h.4.a.1. A portion of the Permanent Open Space may also be used for the construction of leaching areas associated with septic disposal systems serving the OPEN SPACE PRESERVATION development or for water supply wells serving the OPEN SPACE PRESERVATION development, if the Planning Board determines that such use will enhance the specific purpose of Open Space Preservation and promote better overall site planning. Septic disposal easements shall be no larger than reasonably necessary. If any portion of the Permanent Open Space is used for the purpose of such leaching areas or wells, the Planning Board shall require adequate assurances and covenants that such facilities shall be maintained by the LOT owners within the OPEN SPACE PRESERVATION development.

H.2.h.4.a.2. A portion of the Permanent Open Space may also be used for ways serving as pedestrian walks, bicycle paths and emergency access or egress to the OPEN SPACE PRESERVATION development or adjacent land, if the Planning Board determines that such a use will enhance the specific purpose of Open Space Preservation and promote better overall site planning, and if the Planning Board finds that adequate assurances and covenants exist to ensure proper maintenance of such facilities by the owner of the Permanent Open Space.

H.2.h.4.a.3. The Permanent Open Space may be subject to easements for the construction, maintenance, and repair of utility and drainage facilities serving the Open Space Preservation or adjacent parcels.

H.2.h.4.b. The Permanent Open Space shall remain unbuilt upon, provided that an overall maximum of five (5) percent of such land may be subject to pavement and STRUCTURES accessory to the dedicated use or uses of the Permanent Open Space.

H.2.h.4.c. Areas to remain as naturally existing woods, fields, meadows or wetlands shall be maintained and may be improved in

accordance with good conservation practices.

H.2.h.4.d. The proposed use of the Permanent Open Space shall be specified on a Land Use Plan, and appropriate dedications and restrictions shall be part of the deed to the Permanent Open Space.

H.2.h.4.e. The Planning Board shall have the authority to approve or disapprove particular uses proposed for the Permanent Open Space in order to enhance the specific purposes of Open Space Preservation, and to further efforts to equitably distribute a variety of open space benefits throughout the community.

H.2.h.5. Ownership of Permanent Open Space

H.2.h.5.a. The Permanent Open Space shall be conveyed in whole or in part to the Town of Norfolk and accepted by it; or to a nonprofit organization, the principal purpose of which is the conservation of open space and/or any of the purposes and uses to which the Permanent Open Space is to be dedicated; or to a corporation or trust owned or to be owned by the owners of the DWELLING units within the Open Space Preservation. The Planning Board shall approve the form of ownership of the Permanent Open Space.

H.2.h.5.b. If any portion of the Permanent Open Space is not conveyed to the Town of Norfolk, a perpetual restriction, approved by the Planning Board and enforceable by the Town of Norfolk, shall be imposed on the use of such land, providing in substance that the land be kept in its open or natural state and that the land shall not be built upon or developed or used except in accordance with provisions of an OPEN SPACE PRESERVATION development as set forth herein and, if applicable, as further specified in the decision of the Planning Board governing the individual OPEN SPACE PRESERVATION development. If the applicant, with the approval of the Planning Board, keeps the open space in private ownership subject to the imposition of a conservation restriction, the applicant shall be responsible for obtaining the approval of the Executive Office of Environmental Affairs (EOEA) relative to the restriction, including the submission of the proposed form of restriction, all application forms, inspection reports, photographs, maps or other supporting documentation as EOEA may require. The Planning Board may require as a condition of any special permit issued under this Section H.2 that the conservation restriction be accepted by the Conservation Commission or Board of Selectmen, approved by EOEA, and recorded in the Registry of Deeds or Land Court, before any building permit is issued for any lot within the Open Space Preservation development.

H.2.h.5.c. The proposed ownership of all Permanent Open Space shall be shown on the Land Use Plan for the OPEN SPACE PRESERVATION development.

H.2.h.5.d. At the time of its conveyance, the Permanent Open Space shall be free of all encumbrances, mortgages or other claims, except as to easements, restrictions and encumbrances required or permitted by this bylaw.

H.2.h.6. Maintenance of Permanent Open Space

If the Permanent Open Space is to be held by a homeowners association, a management plan shall be prepared establishing responsibilities and schedules for maintenance of the Permanent Open Space.

H.2.i. Procedures

H.2.i.1. General

An application for an Open Space Preservation special permit shall cover the entire Open Space Preservation development.

H.2.i.2. Pre-Application

H.2.i.2.a. Conference

The APPLICANT is very strongly encouraged to request a pre-application review at a regular business meeting of the Planning Board. The purpose of a pre-application review is to minimize the APPLICANT'S costs of engineering and other technical experts, and to commence negotiations with the Planning Board at the earliest possible stage in the development. At the pre-application review, the APPLICANT may outline the proposed OPEN SPACE PRESERVATION development, seek preliminary feedback from the Planning Board and/or its technical experts, and set a timetable for submittal of a formal application. At the request of the APPLICANT, and at the expense of the APPLICANT, the Planning Board may engage technical experts to review the informal plans of the APPLICANT and to facilitate submittal of a formal application for an OPEN SPACE PRESERVATION development special permit.

H.2.i.2.b. Submittals

In order to facilitate review of the OPEN SPACE PRESERVATION development at the pre-application stage, applicants are strongly encouraged to submit the Site Context Plan (described in Section H.2.i.3.b. below), and the Site Analysis Plan (described in Section H.2.i.3.c. below). In addition, applicants are invited to submit additional information that will assist the Planning Board to understand the proposed development, which may include preliminary versions of the Concept Plan and/or Yield Plan.

H.2.i.2.c. Site Visit

Applicants are encouraged to request a site visit by the Planning Board and/or its agents in order to facilitate pre-application review

of the OPEN SPACE PRESERVATION development. If one is requested, the Planning Board shall invite the Conservation Commission, Board of Health, and other appropriate Boards and Committees.

H.2.i.2.d. Design Criteria

The design principles, process and standards set forth in Sections H.2.d. through H.2.h. should be discussed by the parties at the pre-application conference and site visit.

H.2.i.3. Application

An application for a special permit for an OPEN SPACE PRESERVATION development shall consist of five parts: applications form(s), Site Context Plan, Existing Conditions/Site Analysis Plan, Concept Plan, and Yield Plan. Additional information reasonably necessary to make the determinations and assessments cited herein shall be provided, including existing site contour plans and current soil maps.

H.2.i.3.a. Application Form

The application shall be submitted on the form(s) provided by the Planning Board in accordance with the rules and regulations of the Board.

H.2.i.3.b. Site Context Plan

The Site Context Plan illustrates the parcel in connection to its surrounding neighborhood. Based upon existing data sources and field inspections, it should show various kinds of major natural resource areas or features that cross parcel lines or that are located on adjoining lands. This plan enables the Planning Board to understand the site in relation to what is occurring on adjacent properties.

H.2.i.3.c. Site Analysis Plan

The Site Analysis Plan familiarizes officials with existing conditions on the property. Based upon existing data sources and field inspections, this plan locates and describes noteworthy resources that should be left protected through sensitive subdivision layouts. These resources include wetlands, riverfront areas, floodplains and steep slopes, but may also include mature under graded woodlands, hedgerows, farmland, unique or special wildlife habitats, historic or cultural features (such as old STRUCTURES or stone walls), unusual geologic formations and scenic views into and out from the property. By overlaying this plan onto a development plan the parties involved can clearly see where conservation priorities and desired development overlap or conflict.

H.2.i.3.d. Concept Plan

The Concept Plan shall be prepared by a Registered Landscape Architect, or by a multi-disciplinary team of which one member must be a Registered Landscape Architect, and shall address the general features of the land, and give approximate configurations of the LOTS, open space, and roadways. The Concept Plan shall incorporate the design principles described in Section H.2.d. and the design process described in Section H.2.e., when determining a proposed design for the development.

H.2.i.3.e. Yield Plan.

The Yield Plan shall show the maximum number of LOTS that could be placed upon the site under a conventional subdivision. The Yield Plan shall contain the information required for a Concept Plan as set forth above. The proponent shall have the burden of proof with regard to the number of LOTS shown on the Yield Plan.

H.2.i.4. Planning Board Action

H.2.i.4.a. Evaluation Criteria

In evaluating the proposed OPEN SPACE PRESERVATION development, the Planning Board shall consider:

1. the general purpose and objectives of this bylaw;
2. the existing and probable future development of surrounding areas;
3. the appropriateness of the proposed layout of STREETS, LOTS and STRUCTURES; and
4. the proposed layout and use of the Permanent Open Space in relation to the proposed DWELLING units in the OPEN SPACE PRESERVATION development, adjoining public or private Permanent Open Space or other open space, or the topography, soils and other characteristics of the tract of land in question.

H.2.i.4.b. Findings

The Planning Board may grant a special permit for an Open Space Preservation development only if it finds that the OPEN SPACE PRESERVATION development:

1. Is consistent with the general purpose and intent of the Zoning Bylaws and with the specific purposes of this Section H.2.
2. Complies with all the requirements of this Section H.2., other applicable requirements of the Zoning Bylaws and, where applicable, the construction and design standards of the Norfolk Subdivision Regulations;
3. Is in harmony with the existing and probable future uses of the area and with the character of the surrounding area and neighborhood;
4. Is superior to a conventional plan in preserving open space, minimizing environmental disruption, and allowing for more efficient provision of services; and
5. Will not exceed by more than ten percent (10%) the number of house LOTS that could be developed under standard LOT area and FRONTAGE requirements.

H.2.i.4.c. Conditions of Approval

In granting a special permit, the Planning Board may require such changes in the proposed development plans and may impose such conditions and safeguards, as it deems necessary to secure the objectives of this bylaw, and to protect the health, safety and welfare of the inhabitants of the neighborhood and of the Town of Norfolk. Such conditions may include, without limitation,

1. Approval of any wetlands delineation by an Order of Conditions/Request for Determination of Applicability by the Norfolk Conservation Commission;
2. Measures to ensure the maintenance of scenic views and vistas;
3. Designation of no-cut or limited clearing areas in LOTS; and
4. Granting of easements providing and defining rights of public access.

H.2.i.4.d. Permanent Open Space Ownership

The Planning Board shall state in its decision the ownership and management of the permanent open space, and said open space ownership shall be recorded in the Registry of Deeds.

H.2.i.4.e. Site Plan Approval for Open Space and Recreation Uses

Specific approval of the uses allowed in the permanent open space and recreational STRUCTURES such as tennis courts, swimming pools, accessory clubhouses, or any other STRUCTURES shall be submitted to the Planning Board for site plan approval.

H.2.i.4.f. Relationship between Special Permit Concept Plan and Definitive Subdivision Plan

The Open Space Preservation special permit shall be reconsidered if there is substantial variation between the Definitive Subdivision Plan and the Concept Plan. If the Planning Board finds that a substantial variation exists, it shall hold a public hearing on the modifications to the Concept Plan. A substantial variation shall be any of the following:

1. Any increase in the number of BUILDING LOTS;
2. A decrease of more than five percent (5%) in the open space acreage;
3. Any change in the LOT layout which results in the potential relocation of a BUILDING site by more than 100 feet, or by more than 50 feet if any part of the LOT is within 300 feet of the boundary of the OPEN SPACE PRESERVATION development;
4. A significant change in the general development pattern which adversely affects natural landscape features and open space preservation;
5. Significant changes to the storm water management facilities; and/or
6. Significant changes in the wastewater management systems.

H.2.i.5. Change in Plans After Grant of Special Permit

H.2.i.5.a. No change in any aspect of the approved plans shall be permitted unless approved in writing by the Planning Board. A new or amended special permit will be required if the Planning Board determines any proposed change to be substantial.

H.2.i.5.b. No land for which a special permit for an Open Space Preservation has been granted shall be further subdivided, unless such special permit lapses or is rescinded.

H.2.j. Building Permits

No BUILDING permit for any STRUCTURE within an approved OPEN SPACE PRESERVATION development shall be issued

without the written approval of the Planning Board.

H.2.k. Rules and Regulations

The Planning Board may adopt and amend reasonable rules and regulations for the administration of this section, including a schedule of fees.

"PLANNED MULTI-LOT DEVELOPMENT - Development of not less than 80,000 square feet of land into a group of LOTS or BUILDING Sites as a part of a common scheme so that such LOTS or BUILDING sites need not be self-sustaining; and adequate, common provisions are made for parking, drainage, septic disposal and other infrastructure needs of the LOTS, BUILDINGS and STRUCTURES so accommodated."

An example of planned multilot zoning is in the B-1 district. It is also in other districts:

I. B-1 DISTRICT (TOWN CENTER)

I.4. Lot and Yard Requirements and Standards

I.4.a. General B-1 District Requirements

I.4.a.2. Planned Multi-Lot Development. PLANNED MULTI-LOT DEVELOPMENT ("PMLD") is the development of not less than 80,000 square feet of land into a formally associated group of LOTS as part of a common scheme by Special Permit by the Planning Board so that such LOTS need not be self-sustaining and adequate common provisions are made for parking, drainage, septic disposal and other infrastructure needs of the LOTS, BUILDINGS or STRUCTURES so accommodated.

I.4.a.11. Residential Density. Residential DWELLING UNITS, except for ASSISTED LIVING FACILITIES, shall not have more than one bedroom per unit. Residential densities, except for ASSISTED LIVING FACILITIES, shall not exceed the ratio of six bedrooms per acre for any single LOT or an entire PLANNED MULTI-LOT DEVELOPMENT. Residential densities for ASSISTED LIVING FACILITIES shall not exceed the ratio of 16 bedrooms per acre for any single LOT or an entire PLANNED MULTI-LOT DEVELOPMENT, except by Special Permit by the Zoning Board of Appeals.

I.4.a.12. Residential Conversions. Residential uses shall not be commenced in BUILDINGS or STRUCTURES existing at the time of the adoption of this section of the zoning bylaw, except by Special Permit by the Zoning Board of Appeals.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board H.2.c.1. The Planning Board may authorize by Special Permit an Open Space Preservation (OPEN SPACE PRESERVATION) development as an alternative to conventional subdivision.

Has any housing been built under the cluster/flexible provisions?

Yes Norfolk 2004 Community Development Plan:

Town Actions Since Adoption of 1992 Master Plan and 2002 Growth Management Project

"Adopt/Amend Open Space Preservation Subdivision Bylaw – The Town adopted and then amended an open space preservation development bylaw to help protect critical resources. Three subdivisions, totaling 58 housing units have been approved under this provision, preserving approximately 40 acres of open space. The bylaw also allows a 10% density bonus above the "yield" as demonstrated in a conventional subdivision plan."

Email received from Planning Administrator Janice Quinlan on 6/2/05:

"Open space preservation was recommended in the master plan in 1992, and adopted shortly thereafter. A major revision was adopted in 2002.

Several projects have been approved under open space plans. One open space plan includes over 50 single family houses, the submission came back in 1997. The Planning Board has approved four open space developments and currently has two more in process.

Christina Estates
Saddle Ridge
Spruce Acres
Old Mill Meadow

North Andover

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Town of North Andover Zoning Bylaw, Section 8.5 (Adopted 1972, Last Amended 2003).
8.5 Planned Residential Development (PRD)

1. Purposes: The purpose and intent of the regulations contained in this section are to promote the public health, safety and general welfare of the citizens of the Town by providing for the following goals:

- a. To promote the more efficient use of land in harmony with its natural features;
- b. To encourage the preservation of open space;
- c. To protect water bodies and supplies, wetlands, floodplains, hillsides (1994/40), agricultural lands, wildlife, and other natural resources;
- d. To permit greater flexibility and more attractive, efficient and economical design of residential developments;
- e. To facilitate economical and efficient provision of utilities;
- f. To meet the town's housing needs by promoting a diversity of housing types.

2. Applicability: An application for a Planned Residential Special Permit (PRD) shall be allowed for parcels of land in the R-1, R-2, and R-3 Districts in accordance with the standards set forth in this section. An application for a Planned Residential Development Special Permit shall be deemed to satisfy the requirements for Site Plan Review.

3. Permit Authority: The Planning Board shall be designated as the Special Permit Granting Authority, and shall grant special permits for PRD's consistent with the procedures and conditions set forth in this section as well as in Sections 10.3 and 10.31 (Special Permits) of this Bylaw.

4. Procedure for Approval:
Preliminary Plan

The applicant must submit a preliminary plan per Section 6(G) (1994/40) and schedule pre-application conference to discuss the proposed PRD with the Planning Board before the submission of the final special permit application and supporting documents, to the Board for review in a public hearing.

Final Plan Submittal

The applicant shall follow the procedures and standards contained in this section and Section 10.3 (Special Permit) in submitting a set of final plans to the Planning Board for review.

5. Information Required: Any applicant who desires a special permit under requirements of this section shall submit an application in writing in such form as the Planning Board may require which shall include at the minimum the following:

A. Development Statement: Which shall consist of a petition; a list of the parties of interest with respect to the PRD parcel and any parcel proposed to be used pursuant to the subsection 5a below. A list of the development team and a written statement meeting the requirements of a site evaluation statement under the Subdivision Rules and Regulations of the Planning Board; and setting forth the development concept and the specific requirements of the Zoning Bylaw within a table which includes the following information:

1. The number of units,
2. Type size (number of bedrooms),
3. Floor area,
4. Ground coverage,
5. Summary showing open space as percentages of the total area of the PRD tract,
6. Development schedule for all site improvements.

a. Copies of the proposed instruments to be recorded with the plans including the Usable Open Space perpetual restriction, which shall be deeded to a membership corporation, non-profit organization, trust, public agency, or the Town of North Andover.

b. Development plans bearing the seal of a Massachusetts Registered Architect, Registered Civil Engineer or similar professional as appropriate and consisting of:

1. Subdivisions - All plans shall be drawn at a scale of 1"=40' showing all site improvements and meeting, to the extent applicable, the requirements set forth for a Definitive Plan in the Subdivision Rules and Regulations of the Planning Board and; Site Plans - Plans submitted shall meet the requirements contained in Section 8.3 (Site Plan Review) to the extent applicable.

B. Review by Other Town Departments: The Planning Board shall within ten days of receipt of an application under this section, refer the application to the Conservation Commission, Public Works Department, Board of Health, Building Inspector, Police Department, and Fire Department for written reports and recommendations. No decision shall be made until such reports, are returned or thirty-five days have elapsed following such referral without receipt of such report.

C. Findings of the Planning Board: The Planning Board may issue a special permit under this section only if the Planning Board finds that the PRD is in harmony with the general purpose and intent of this section and Section 10.3 (Special Permit) and that the PRD contains residential development and open space in a variety to be sufficiently advantageous to the Town and meets the purpose and intent of this section, which renders it appropriate to depart from the requirements of this bylaw otherwise applicable to the Zoning District in which the PRD parcel is located.

If a special permit is granted, the Planning Board may impose a condition thereof that installation of municipal services and construction of roadways within the PRD shall comply with the requirements of the Subdivision Rules and Regulations of the Planning Board.

Further, the Regulations of the Planning Board may require sufficient security to ensure compliance with the Subdivision Rules and Regulations, planned recreation facilities and site amenities; and may impose additional safeguards pertaining to public safety, welfare and convenience.

6. Development Standards:

A. Allowable Parcel Size: For each application filed for a special permit under this section, the applicant must have a contiguous parcel of land, in single or consolidated ownership at the time of application, which is at least ten (10) acres in size.

B. Allowable Uses: The following principal uses are allowed in a Planned Residential Development:

1. Single family detached houses;
 2. Residential structures with up to five dwelling units per structure, utilizing common wall construction;
 3. Church or other religious purposes;
 4. Agriculture on parcels greater than five (5) acres;
 5. Public parks;
 6. Conservation area or land preserved as permanent open space;
- Membership clubs for the exclusive use of the residents of the development.

C. Dimensional Regulations: Site Plans

- Minimum Lot Size: Not Required
- Lot Frontage: Not Required
- All Yard Setbacks: Not Required
- Height Limitation: 30' or 2.5 stories
- Distance Between Structures: 50'
- Buffer Zone: 50' from the parcel boundary to any structure located within a PRD Development. Said buffer shall remain open without pavement or roadway(s) and left in its natural condition.

D. Dimensional Regulations: Subdivisions

- Minimum Lot Size: R-1 and R-2 21,780 square feet; R-3 12,500 square feet
- Lot Frontage: 100' all zoning districts
- All Yard Setbacks: 20' (1)
- Height Limitation: 30' and 2.5 stories
- Buffer Zone: (1993/33) A fifty-foot (50') border from the parcel boundary running the full length of the perimeter of the parcel. No structure shall be built within the Buffer Zone. The Buffer Zone shall remain in its natural state except;
 1. trees and/or shrubs may be added to improve the buffer characteristic of the Zone, and
 2. roadways perpendicular or nearly perpendicular to the Zone may be installed to access the Site, if approved as part of this PRD Special Permit granted by the Planning Board. Such roadways shall be minimized within the context of sound subdivision planning practices.
- 1. The structure may be placed upon a side lot line without a side yard setback, provided that the adjacent lot to which the zero setback is located has the required side yard setback.

E. Parking Requirements: For all Planned Residential Development off-street parking shall be provided as required by Section 8.1 (Off-Street Parking).

F. Usable Open Space: Usable Open Space shall be defined as the part or parts of land within the PRD which are reserved for permanent open space. This space shall exclude parking areas, but include required setbacks and walkways. The usable open space shall be open and unobstructed to the sky; however, trees, planting, arbors, flagpoles, sculptures, fountains, swimming pools, atriums, outdoor recreational facilities and similar objects shall not be considered obstructions.

1. For subdivision PRD's the minimum usable open space requirements shall be 35% of the total parcel area; and no more than 25% of the total amount of required usable open space shall be wetland.
2. For site planned PRD's, the minimum usable open space requirements shall be 50% of the total parcel area; and no more than 25% of the total required usable open space shall be wetland.

All resource area shall be determined by the requirements of M.G.L. Chapter 131, Section 40, and the Town's Wetland Bylaws under this subsection.

For all PRD's the Usable Open Space shall be owned in common by and readily accessible to the owners of all the units in the PRD by any of the following groups:

1. A non-profit organization or trust whose members are all the owners and occupants of the units,
2. Private organization including but not limited to the Trustees of Reservations or Essex County Greenbelt Association whose primary function is preservation of open space,
3. The Town of North Andover,
4. Any group as indicated by the Planning Board which exists or is created for the purpose of preserving open space for the owners of the units located in a PRD Project.

Further, a perpetual restriction of the type described in M.G.L. Chapter 184, Section 31, (including future amendments thereto and corresponding provisions to future laws) running to or enforceable by the Town shall be recorded in respect to such land. Such restriction shall provide that the Usable Open Space shall be retained in perpetuity for one or more of the following uses:

conservation, agriculture, or recreation.

Such restriction shall be in such form and substance as the Planning Board shall prescribe and may contain such additional restrictions on development and use of the Usable Open Space as the Planning Board may deem appropriate.

G. Calculation of Allowable Residential

Except as noted in Subsection H below, the maximum number of buildable lots in a PRD will be equal to the number of buildable lots which would result from an approved conventional subdivision plan. In order to determine the residential density of a PRD, the applicant must submit to the Planning Board a plan which:

1. meets the criteria of a Preliminary Subdivision Plan as defined in Section 3(b) of the "Rules and Regulations Governing the Subdivision of Land, North Andover, Massachusetts" in effect at the time of plan submittal,

2. is fully compliant with the "Zoning Bylaw" in effect at the time of plan submittal, and

3. requires no zoning variances.

The Planning Board will use this plan to determine the maximum number of buildable lots. (1994/40)

H. Density Bonuses 1. Affordable Housing Bonus For all PRD's the total number of allowable lots and/or dwelling units may be increased up to 20% if the developer designates at least 30% of the total number of units for use in conjunction with one or more state or federal housing assistance programs. However, in the instance where the use of federal or state programs are not available to the Housing Authority, the Planning Board, after consultation with the Housing Authority, may propose alternative methods of attaining the Affordable Housing Bonus. The developer shall certify, in writing to the Planning Board that the appropriate number of dwelling units have been set aside and conveyed to the North Andover Housing Authority (or other actions are required), before the Planning Board shall grant any special permit with density bonus provisions. Further, the developer shall be responsible to work with the North Andover Housing Authority to initiate and conclude occupancy of said units within one year of their completion. Failure to do so shall be deemed a violation of the special permit criteria. The granting of this bonus density shall not exempt the proposed development from any other criteria required by this section or regulation contained in the Town Bylaws.

2. Open Space Bonus For multi-family PRD's, the total number of allowable dwelling units maybe increased up to 10% if the proposed PRD provides sixty-five percent (65%) usable open space consistent with the definition of usable open space as provided in this section. The granting of this bonus density shall not exempt the proposed development from any other criteria required by this section. 3. Maximum Density Proposed PRD's may utilize both bonus provisions, i.e. affordable housing and open space; however, the granting of bonus densities shall not exempt the proposed development from any other criteria required by this section.

From definitions on ordinance.com:

2.76 PLANNED DEVELOPMENT DISTRICT

1. Planned Development District - A Planned Development District shall mean development of an area of land as a single entity, which lies in an Industrial-S (I-S) District, in which a mixture of residential, open space, commercial, and/or industrial uses, and a variety of building types and designs are determined to be sufficiently advantageous to render it appropriate to grant a Special Permit to depart from the normal requirements of the district in which the PDD is to be located, to the extent authorized by this Zoning Bylaw.

2. Usable Open Space - The part or parts of land or structure within the PDD which are reserved for active or passive recreation use. This space shall exclude parking areas, driveways, and walkways and open areas in commercial areas such as cafes and shall be open and unobstructed to the sky. Trees, plantings, arbors, fences, sculpture, fountains, swimming pools, open-air recreational facilities, laundry apparatus and similar objects shall not be considered obstructions.

SECTION 11 PLANNED DEVELOPMENT DISTRICT

11.1 Jurisdiction

The Planning Board may grant a Special Permit for construction of a PDD in the following district: I-S. The Special Permit shall conform to this Bylaw and to G.L. Chapter 40-A, Section 9, and to regulations which the Planning Board shall adopt for carrying out its duties hereunder. Except as set out hereunder, or in the Planning Board's regulations, or in a specific permit granted hereunder, the provisions of the Zoning Bylaw shall continue to govern.

11.2 Purpose

The purpose of the PDD District is to provide for a mixture of land usage at designated locations at greater density and intensity than would normally be allowed provided that said land usage:

1. Does not detract from the livability and aesthetic qualities of the environment.

2. Is consistent with the objectives of the Zoning Bylaw.

3. Promotes more efficient use of land while protecting natural resources, such as water resources, wetlands, floodplains, and wildlife.

4. Promotes diverse, energy-efficient, housing at a variety of costs.

11.3 Procedures

1. Pre-Application Conference

Prior to the submission of an application for a Special Permit, the applicant at his option may confer with the Planning Board to obtain information and guidance before entering into binding commitments or incurring substantial expense in the preparation of plans, surveys, and other data.

2. Submission of Preliminary Plans

The applicant shall file a preliminary plan accompanied by the form titled Submission of Preliminary Plan, Planned Development to the Planning Board at a regularly scheduled meeting. A copy of the preliminary plan and the above form shall also be filed in the Office of the Town Clerk.

The Planning Board, within sixty (60) days from receipt of the plan by the Town Clerk, shall review and determine whether the proposed project is consistent with the most suitable development of the town. The Planning Board may suggest modifications and changes to the preliminary plan in anticipation of the filing of the definitive plan. If the Planning Board fails to act within sixty (60) days, the applicant may proceed to file his definitive plan.

Contents of Preliminary Plan: Planned Development District:

- a. Planned Development Boundaries, north point, date, scale, legend, and title Preliminary Plan: Planned Development; the name or names of applicants, and engineer or designer.
- b. Names of all abutters, land uses, and approximate location and width of all adjacent streets.
- c. In a general manner, the existing and proposed lines of streets, ways, easements, and of any public areas within or next to the Planned Development.
- d. The approximate boundary lines of existing and proposed lots with approximate areas and dimensions.
- e. The proposed system of drainage, including adjacent existing natural waterways and the topography of the land in a general manner.
- f. Existing and proposed buildings, significant structures and proposed open space in a general manner.
- g. An analysis of the natural features of the site, including wetlands, floodplains, slopes over 12%, soil conditions, and other features requested by the Planning Board.
- h. A description of the neighborhood in which the tract lies, including utilities and other public facilities and the general impact of the proposed PDD upon them.
- i. A summary of environmental concerns relating to the PDD.

3. Submission of Definitive Plan:

The applicant shall submit an application for a Special Permit accompanied by the original of the definitive plan plus twelve (12) copies thereof.

Contents of Definitive Plan:

The application for a Special Permit and Site Plan Review shall be accompanied by the original copy of the definitive plan and other data required to be submitted in triplicate and shall contain the following data:

All items in Contents of the Preliminary Plan: Planned Development District (a through and including i) shall be incorporated.

- a. It shall be drawn at a scale of one inch equals forty feet unless another scale is requested and found suitable by the Planning Board.
- b. The Plan shall be prepared by a land surveyor, professional engineer, or architect.
- c. The scale, date, and north arrow shall be shown.
- d. The plan shall be certified by the land surveyor doing the boundary survey and the professional engineer or architect on the

location of the buildings, setbacks, and all other required dimensions, elevations, and measurements and shall be signed under the penalties of perjury.

- e. The corner points of the lot and change of direction of lines shall be marked by stone monuments, cut in stone, stake and nail, iron pin, or other marker and shall be so marked.
- f. Lot number, dimensions of lot in feet, size of lot in square feet, and width of abutting streets and ways.
- g. Easements within the lot and abutting thereon.
- h. The location of existing or proposed buildings on the lot.
- i. The location of existing wetlands, water bodies, wells, 100 year floodplain elevation and other natural features requested by the Planning Board.
- j. The dimensions of the existing and proposed buildings in feet.
- k. The distance of existing and proposed buildings from the lot lines and the distance between buildings on the same lot.
- l. Percent of the lot coverage.
- m. Average finished grade of each proposed building.
- n. The elevation above average finished grade of the floor and ceiling of the lowest floor of each proposed building.
- o. Existing and proposed topographical lines at two (2) foot intervals.
- p. The use designation of each building or part thereof, and of each section of open ground, plaza, or usable roof space.
- q. Numbering of parking spaces.
- r. Height of all proposed buildings, above average finished grade of abutting streets.
- s. Number of apartments, meeting rooms, and restaurant and theater.
- t. Total square feet of floor space of all landscape and recreation areas, and depiction of materials to be used (grass, 5-foot shrubs, etc.).
- u. Deed or other recorded instrument that shows the application to be the owner or owner under option of the land to be designated as a Planned Development.

11.4 Minimum Requirements

The Plan shall be subject to the following conditions and the Planning Board shall make a determination that the project meets all the following conditions:

1. The project is consistent with the purposes set out in Section 2.
2. If more than twenty-five percent (25%) of the PDD is located within a residential district, at least fifty-one percent (51%) of the building area and accessory facilities in the PDD shall be used for residential purposes.
3. Ingress and egress for traffic flow is designed properly so that there will be no serious hazard to vehicles or pedestrians.
4. Adequate parking facilities are provided for each use and structure in the development.
5. Major facilities or functions which require citing within scenic areas are designed to be visually compatible with the natural or historical characteristics.
6. The project does not adversely affect the natural environment to the detriment of community character and public health and safety.

11.5 Permitted Uses

In a Planned Development District, the following uses are permitted:

1. Residential
 - a. Detached 1, 2, or 3 family residential structures.
 - b. Apartment Houses

c. Town Houses

2. Business

a. Restaurant

b. Theater, Museums

c. General retail sales and service (except retail sales of automobile, mobile homes, house trailers and except automobile service station).

d. Banks and financial services.

e. Business and professional offices.

f. Personal services.

g. Recreation

3. Industrial Use

a. Any uses which the Planning Board determines are not injurious to the safety or general welfare of the area.

11.6 Area Regulations

PDD Site Area

No PDD shall be permitted on a site of less than 60,000 square feet.

Usable Open Space

In all PDD'S, at least twenty percent (20%) of the land shall be set aside as permanent usable open space, for the use of the PDD residents, or for all PDD users, or for the community. The required open space shall be conveyed to the Conservation Commission or to a non-profit conservation organization, or to a corporation to trust representing persons responsible for the PDD, and shall be protected by a conservation restriction as required by G.L. Chapter 40A, Section 9 for common open space in cluster developments. A covenant shall be placed on the land such that no part of the PDD can be built, sold or occupied until such time as a satisfactory written agreement has been executed for protection of the open space.

Setback Requirements

Insofar as the PDD abuts a residential district, all proposed structures and facilities within the PDD shall be set back not less than twenty-five (25) feet from adjacent property lines or adjacent street lines where the PDD shall be separated or shielded from adjacent property lines by means of a buffer, fencing, setbacks, or appropriate landscaping.

11.7 Relation to Subdivision Control Act

Approval of a Special Permit hereunder shall not substitute for compliance with the Subdivision Control Act, nor oblige the Planning Board to approve any related definitive plan for subdivision, nor reduce any time period for Board consideration under that law. However, in order to facilitate processing, the Planning Board may insofar as practical under existing law, adopt regulations establishing procedures for submission of a combined plan and application which shall satisfy this section and the Board's regulations under the Subdivision Control Act.

According to survey received from North Andover on 3/15/05 (completed by Town Planner Lincoln Daley), the first provision for flexible zoning was adopted in 1987. It was last amended in 2005.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board 3. Permit Authority: The Planning Board shall be designated as the Special Permit Granting Authority, and shall grant special permits for PRD's consistent with the procedures and conditions set forth in this section as well as in Sections 10.3 and 10.31 (Special Permits) of this Bylaw.

Has any housing been built under the cluster/flexible provisions?

Yes According to Julie Vondrak, Director of Planning, (7/21/04) said that a number of such developments have been built.

According to survey received from North Andover on 3/15/05 (completed by Town Planner Lincoln Daley), the first provision for flexible zoning was adopted in 1987. It was last amended in 2005.

Has any housing been built under the cluster/flexible provisions? (none, 1-8 projects, more than 8)

"More than 8"

North Attleborough

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes According to Section V (Use Regulations) Schedule B, cluster residential development is allowed only by special permit in the R-15, R-20 and R-40 districts.

Town of North Attleborough Zoning Bylaw (Adopted 1974, Amended 2001)

Section VI - Supplementary Regulations

I. Cluster Residential Development

1. General

Cluster Residential Development shall be allowed in the Town of North Attleborough by special permit in accordance with Chapter 40A, Section 9 of the General Laws, Section VIII.I.8 of this bylaw, (except that for this purpose the Planning Board will be the Special Permit Granting Authority), and this section, in R-15, R-20 and R-40 Districts.

2. Special Permit Granting Authority (SPGA)

For the purpose of this section, the Planning Board shall be the Special Permit Granting Authority, pursuant to Chapter 40A, Sections 1A and 9 of the General Laws.

3. Purpose

The purposes of cluster residential development shall be to protect the public interest in clean air and water, conserve and protect natural resources, encourage the preservation of open space, and encourage design flexibility, by authorizing density and use restrictions which vary from those otherwise permitted in the district, in accordance with this section.

4. Minimum Size of Development

A cluster residential development shall consist of a tract of land in single or consolidated ownership of at least 15 contiguous acres in size.

5. Permitted Primary Uses

Primary uses may include the following:

1. Dwelling, Single Family

2. Dwelling, Two Family

3. Dwelling, Multi Family

4. Accessory uses to the above as specified in Use Schedule B for the applicable zoning district.

The following restrictions shall apply to primary uses:

1. No home occupations or professional uses shall be permitted.

2. Motor vehicles shall be parked only in designated parking areas.

3. Permanent accessory structures shall be subject to approval on the site development plan.

6. Permitted Open Space Uses

Permitted open space uses may include the following:

1. Active open space recreational uses such as:

a. Playgrounds and tot lots

b. Ball fields and ball courts

c. Outdoor swimming pools or swimming areas

d. Hiking and walking trails

e. Golf course

2. Natural areas such as:

- a. Wildlife preserve
- b. Bird sanctuary
- c. Preservation area for endangered plant species
- 3. Agricultural and silvicultural uses, but excluding buildings or structures associated with such uses.
- 4. Preservation of areas subject to protection under Chapter 131, Section 40 of the General Laws, the Wetlands Protection Act.
- 5. Preservation of steep slopes, ledges, or other areas which may be deemed unsuitable for development due to topographic conditions.
- 6. Buffer areas as put forth in this section and as defined elsewhere in this by-law.
- 7. On-site water runoff and retention areas, erosion control measures, and related facilities.

To ensure the continued provision of open space, the location of all designated open spaces shall be shown on the site plan, and as a condition of the special permit, the several separate parcels shall be subject to deed restrictions for continued open space and depending on the development scheme of the approved development plan shall be owned in one or a combination of the following ways:

- 1. As the designated open space portion of a single family building area.
- 2. As the designated open space portion of a two family building area.
- 3. As the designated open space portion of a multi-family building area.
- 4. As a single parcel of land conveyed to the Town of North Attleborough and accepted by the town for park or open space use.
- 5. As a single parcel of land conveyed to a non-profit organization with the principal purpose the conservation of open space.
- 6. As a single parcel of land conveyed to a corporation or trust of the owners of building areas or residential units.
- 7. Permitted Density

The following density schedule shall apply to cluster residential developments:

The minimum square feet per dwelling unit are as follows:

R-40 District: 20,000 square feet per dwelling unit for Single-family and Two-family. 20,000 square feet per dwelling unit plus 2,000 per bedroom for Multi-family.

R-20 District: 10,000 square feet per dwelling unit for Single-family and Two-family. 10,000 square feet per dwelling unit plus 1,000 per bedroom for Multi-family.

R-15 District: 9,000 square feet per dwelling unit for Single-family and Two-family. 9,000 square feet per dwelling unit plus 900 per bedroom for Multi-family.

The total number of proposed dwelling units in the cluster residential development shall not exceed the number of dwelling units which could be developed under a normal application of the zoning for the district in which the development is located if the development were to be laid out as a conventional subdivision. For purposes of this paragraph, it shall be assumed that a maximum of 80 percent of the total tract area excluding area subject to protection under the Wetlands Protection Act could be utilized to meet lot area requirements under normal application of this by-law.

At least 30 percent of the total tract area (of which at least 50 percent shall not be area protected under the Wetlands Protection Act or slopes in excess of 25 percent) shall be set aside as open space in a natural state.

8. Dimensional Requirements

- a. Dimensional requirements within a cluster residential development shall comply with Intensity Schedule A of this bylaw for minimum yard setbacks of the cluster development from neighboring lot lines, and for maximum height and number of stories.
- b. Within the cluster residential development, the minimum distance between the walls of principal buildings which contain windows shall be twice the minimum yard or side setback required in the district under a normal application of this bylaw.
- c. Single-family detached dwellings may be situated on separate building areas which comply in area with the minimum clustered building area, provided that the distance between the buildings is not less than twice the minimum yard or side setback required within Intensity Schedule A.
- d. Two-family dwellings may be situated on separate building areas with a shared side property line and a common building wall between the units provided the distance between the buildings is not less than twice the minimum yard or side setback required within Intensity Schedule A.
- e. Multi-family dwellings may be situated on separate building areas for each unit, provided the distance between the buildings is not less than twice the minimum yard or side setback required within Intensity Schedule A.

9. Buffers and Screening

The Special Permit Granting Authority may, as a condition of the permit, require screening and buffers between the Cluster Residential Development and adjoining properties, if natural screening is not available.

The buffer strip shall be of a width deemed necessary to assure protection of neighboring properties, and it may consist of either natural plantings or fencing.

10. Application Process

a. Preapplication Review

Applicants may submit a preapplication together with drawings, plans, and other material for informal review by the SPGA and such other official boards deemed appropriate by the SPGA, as specified in the regulations of the Planning Board acting as the SPGA under this section. Such a preapplication shall not constitute an application under this section.

b. Application

Applications shall be in the form and contents as specified in the regulations of the Planning Board acting as the SPGA under this section and shall be submitted with the specified number of site development plans prepared by a registered professional engineer or land surveyor.

The site plan shall indicate the location and extent of natural features as the SPGA may require, including soil conditions, topography, slopes, wetland, historic features, and land areas which are subject to legal restrictions or otherwise unsuitable or inappropriate for development. Areas to be retained as open land, to be the location of dwelling units, location of proposed dwelling units, roads, pathways, parking and service areas, and locations for water, sewer and other utilities shall be identified.

The Cluster Residential Development Plan shall be generally consistent with the current rules and regulations of the Planning Board for a subdivision plan under the North Attleborough Planning Board's Rules and Regulations Governing Subdivision of Land.

c. Bonding or Other Security

In order to assure that improvements to the cluster residential development are fulfilled, the Planning Board shall require that all improvements as specified on the Cluster Residential Development plan are properly fulfilled by securing a bond or other negotiable security in an amount satisfactory to the Board or by covenant. The Board shall release all or portions of such security as construction of improvements is approved in accordance with the Town's specifications.

If a covenant is employed as a performance guarantee, such covenant shall be in conformance with a Master Deed for the Cluster Residential Development, and shall state that no building areas with the Cluster Residential Development shall be sold and no buildings shall be erected thereon until improvements specified as a condition of the Special Permit are constructed to serve the building areas and/or buildings adequately.

11. Special Regulations

a. Cluster Residential Developments shall be served by both public water and sewerage systems, except that a cluster development in the R-40 district for single family dwellings only need not be served by the public sewerage system as long as the clustered building area per dwelling is 20,000 square feet or greater.

b. Cluster Residential Development Plans shall be submitted to other Town boards with the appropriate jurisdictions, including wetlands and public health, for approvals as required by state and local laws.

c. No portion of an approved cluster residential development shall be further subdivided or rezoned, and no portion of a cluster residential development may be further subdivided or rezoned after the SPGA has approved the plan and recorded its decision with the Town Clerk.

d. If and when a Homeowners Association (HOA) is established for the control of the property in a cluster residential development, the HOA documentation shall be reviewed by the Planning Board prior to recording at the Registry of Deeds. The Town of North Attleborough shall have no responsibilities pertaining to the internal affairs of any HOA which may be established.

e. A special permit granted under this section shall lapse within a two year period if construction has not commenced within this time period.

f. Access to all building areas within a Cluster Residential Development shall be provided by a common road(s) or way(s) within the Cluster Residential Development serving only the said building areas; and no building area(s) shall have access to an existing public way other than by the common road(s) or way(s) within the Cluster Residential Development. This restriction on access to building areas within a Cluster Residential Development shall not apply to open space areas within said Cluster Residential Development.

J. Planned Unit Development

(Section VI.J removed in its entirety by Town Meeting vote dated October 16, 1989).

The minimum square feet per dwelling unit under cluster development are as follows:

R-40 District: 20,000 square feet per dwelling unit for Single-family and Two-family. 20,000 square feet per dwelling unit plus 2,000 per bedroom for Multi-family.

R-20 District: 10,000 square feet per dwelling unit for Single-family and Two-family. 10,000 square feet per dwelling unit plus 1,000 per bedroom for Multi-family.

R-15 District: 9,000 square feet per dwelling unit for Single-family and Two-family. 9,000 square feet per dwelling unit plus 900 per bedroom for Multi-family.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board 2. Special Permit Granting Authority (SPGA)

For the purpose of this section, the Planning Board shall be the Special Permit Granting Authority, pursuant to Chapter 40A,

Sections 1A and 9 of the General Laws.

Has any housing been built under the cluster/flexible provisions?

Yes According to Linda Frizzell, Office Clerk in Planning Board Office, 6/3/05, there are approximately five existing cluster developments, plus Harris Farms is currently under construction.

North Reading

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes According to the table of principal use regulations (Section 8.4 of the North Reading Zoning Bylaw), Cluster Residential is allowed by special permit in all of the residential districts except for the multifamily residential district. Planned Unit Developments are allowed by special permit in the two business districts (LB, GB).

Zoning Bylaw Town of North Reading, Sections 10 and 11(from ordinance.com as of August, 2004)

CHAPTER TEN - CLUSTER RESIDENTIAL DEVELOPMENT

Section 10.1 - Special Permit Required

The Community Planning Commission may grant a Special Permit for the utilization of a tract of land in any residential district as a cluster residential development subject to all requirements and conditions contained in this Chapter.

Section 10.2 - Definition of a Cluster Development

A cluster development is a subdivision in which the houses on a given tract of land are erected on lots with reduced area and frontage in order that the balance of the tract of land may remain as permanent open space under the conditions contained in this Chapter. Housing density may not exceed the density that would have resulted if the tract were developed under the conventional full-size lot pattern as described in "Table of Dimensional and Density Regulations", Section 12.7.

Section 10.3 - Purpose of Cluster Development

To provide a voluntary single-family subdivision alternative for specified residential districts in order to encourage development patterns that maximize the saving of open space without increasing average density specified for the residential district, in recognition that such a clustered development pattern can: increase residential amenity, recreational opportunities, municipal economy and environmental protection, by conserving open space, scenic areas, views, streams and other community assets; promoting efficiency and economy of street and utility layout; lessening storm run-off, erosion and sedimentation normally associated with more conventional patterns of residential development; retaining natural drainage courses and wetlands; and in general promoting the health, safety, convenience and welfare of residential areas and of the Town as a whole. In pursuit of these purposes, cluster development may be permitted subject to the conditions contained in this Chapter.

Section 10.4 - Density and Dimensional Requirements for Cluster Development

A. Any developer who wishes to subdivide his land into a cluster format shall submit a cluster subdivision plan which complies with the following zoning requirements, and which is consistent with the foregoing statements of purpose and definition of cluster.

B. Dimensional Requirements:

1. The maximum number of lots which can be developed on a tract under the cluster option shall be determined according to the following procedure:

(a) $\text{DEVELOPABLE ACREAGE} = [(\text{Total Acreage of Tract}) - (\text{Unuseable Land})] \times .70$,

(b) Unuseable land shall be wetlands as shown on the U.S. Soil Conservation Service Map of North Reading of October 1970, as Slope Class E; and land within utility easements; and

(c) Once developable acreage is determined, the maximum number of lots that may be developed on the tract is obtained by dividing developable acreage by the minimum lot size for the zone in which the tract is located, as specified in the "Table of Dimensional and Density Regulations", Section 12.7.

2. The area of the tract shown on a cluster plan shall be at least thirty (30) acres, all contained in Residential District RA, RR, RB or RD and all being held in single ownership.

3. Every lot shall contain no less than the following:

In Residence A District - 20,000 square feet In Residence B District - 20,000 square feet In Residence R District - 20,000 square feet In Residence D District - 60,000 square feet

4. Every lot shall have a minimum frontage of fifty (50) feet on a public or private way.

5. Provision shall be made so that each dwelling shall be set back from the public or private way on which its lot is located at least to a point on its lot where the lot width is a minimum of one-hundred (100) feet in Residence A, R, B or D Districts, but in no event less than the minimum required front, back or side yard setback.

C. Common Land Requirements:

1. At least 40% of the total tract area shall be set aside as Common Land.
2. At least 75% of the Common Land shall not be wetlands as defined in Section 9.4.A.
3. At least 25% of the Common Land shall not have slopes greater than 5%.

Section 10.5 - Provisions Relating to Common Land

A. The Common Land shall be useable open space left in its natural open state except for changes strictly consistent with scenic, landscaping or recreational purposes within the development.

B. Useable open space shall include the following:

1. Land area of the site not covered by buildings, parking facilities or accessory structures, except recreational structures; and
2. Land which is readily accessible from within the subdivision, and available to all occupants of the dwelling units for whose use the space is intended.

C. Useable open space shall include the following:

1. Proposed street right-of-ways;
2. Open parking areas and driveways for the dwellings;
3. Commercial areas and buildings, accessory buildings, parking and loading facilities;
4. Surface area of any pond or lake;
5. Required yards or setbacks or other such dimensional requirements of this Chapter; and
6. Easements for above ground utilities.

Section 10.6 - Mandatory Provisions of Special Permits for Cluster Residential Development

A. This Special Permit shall provide safeguards to insure that all Common Land shall be:

1. Restricted to recreational, agricultural, conservation and/or park uses;
2. Open to such uses by at least the owners and occupants of the lots whom the Common Land is designed to serve; and
3. Restricted so that no structure shall be erected thereon except as an incident to the above uses.

B. In order to insure the permanence and maintenance of the Common Land, such open land shall either be conveyed to the Town and accepted by it for park or open space use, or be conveyed to a non-profit organization the principal purpose of which is the conservation of open space or be conveyed to a corporation or trust owned or to be owned by the owners of lots or residential units within the plot. If such a corporation or trust is utilized, ownership thereof shall pass with conveyance of the lots or residential units.

C. All plans submitted in connection with a cluster residential development shall bear a legend that the open space indicated on the plan shall be kept in an open or natural state and not be built for residential use or developed for accessory uses.

CHAPTER ELEVEN- PLANNED UNIT DEVELOPMENT

Section 11.1 - Special Permit Required

The Community Planning Commission may grant a Special Permit for the utilization of a tract of land in a Residential "E" (RE) District as a Planned Unit Development subject to all requirements and conditions contained in this Chapter.

Section 11.2 - Definition of a Planned Unit Development

A Planned Unit Development is development of a tract of land for mixed use which land is developed as an entity by the landowner and which land is not subject to the Table of Dimensional and Density Regulations of Section 12.7 but which is governed instead by the requirements of this Chapter.

Section 11.3 - Purpose of Planned Unit Development

The particular intent of this Chapter is to provide for a mixture of housing types at certain locations and in certain districts in the Town at somewhat greater densities than would normally be allowed in the district without detracting from the livability and aesthetic qualities of the environment but, rather, encouraging;

1. The general purpose of this Zoning Bylaw as contained in Section 1.2;
2. The preservation of open space and the promotion of more efficient use of the land in harmony with its natural features;
3. A more creative approach to land development;
4. Land use which is harmonious with the environment and which conserves natural resources and scenic qualities;
5. The provision of more desirable, esthetic and functional open space, both public and private and its efficient allocation, distribution, use and maintenance;
6. Diversity and variety in the development pattern of the community;
7. Better design and land planning resulting in economical and efficient street utility and public facility installation, construction and maintenance; and
8. The development of real property values for the long-range future.

Section 11.4 - Permitted Uses

A. The following uses shall be permitted:

1. Residential (one-family and multi-family dwellings);
2. Community facilities (religious or education institutions, charitable or philanthropic institutions, public utilities and service uses, public recreation or open space, hiking and riding trails);
3. Commercial (retail or service establishment not exceeding five-thousand (5,000) square feet in gross floor area); and
4. Appropriate accessory uses as allowed and regulated in Section 8.5.

Section 11.5 - Dimensional and Density Requirements for Planned Unit Development

A. For a proposed Planned Unit Development not to be subject to the Table of Dimensional and Density Regulations of Chapter 12, of this Zoning Bylaw, the following criteria must be met:

1. Minimum

The tract of land shall be at least one-hundred (100) contiguous acres in single ownership.

1. Provision of Useable Open Space

At least twenty (20) percent of the total tract area shall be set aside as Common Land and shall consist of useable open space. At least seventy-five percent of the useable open space shall be neither wetlands nor over five (5) percent slope land.

(a) For purposes of this Chapter, the term "useable open space" shall mean the land area in a Planned Unit Development to be used for scenic, landscaping or recreational purposes within the development and includes the following:

- (1) Land area of the site not covered by buildings, parking facilities or accessory structures, except recreational structures; and

(2) Land which is accessible and available to all occupants of dwelling units for whose use the space is intended.

(b) Useable open space shall include:

(1) Proposed street right-of-ways;

(2) Open parking areas and driveways for the dwellings;

(3) Commercial areas and buildings, accessory buildings and parking and loading facilities therefor;

(4) Surface area of any pond or lake;

(5) Required yards, setbacks, or other such dimensional requirements of this section; and

(6) Easements for above-ground utilities.

3. Maximum Residential Density

The maximum residential net density for the Planned Unit Development shall be one (1) dwelling unit per gross acre.

4. Maximum Land Cover=

Not more than twenty (20) percent of the gross land area shall be covered by dwellings.

5. Percentage of Dwellings of One T=

Not more than seventy (70) percent of the total number of dwelling units shall be of either single-family detached dwellings or multi-family dwellings.

6. Dimensional Requirements:

(a) Buildings shall be at least fifty (50) feet from any property line not coincident with a street line, at least twenty-five (25) feet from any street line or parking area, and at least twenty-four (24) feet apart, or apart by a distance at least equal to the sum of their heights, whichever is greater;

(b) The maximum allowable height shall be thirty-five (35) feet for all permitted uses;

(c) No building of more than thirty-five (35) feet shall be erected within one-hundred and twenty-five (125) feet of any zoning boundary line of a Planned Unit Development; and

(d) No commercial establishment shall exceed five-thousand (5,000) square feet in gross floor area.

7. Maximum Percentage of Commercial Development

A maximum of five (5) percent of the total residential gross floor area at one time may be devoted to commercial gross floor area.

Section 11.6 - Mandatory Provisions of Special Permits for Planned Unit Development

A. This Special Permit shall contain the following mandatory conditions with respect to Common Land:

1. Insuring the Continued Existence of Common Land Provisions shall be made so that all Common Land shall be:

(a) Restricted to recreational, agricultural, conservation and/or park uses;

(b) Open to such uses by at least the owners and occupants of the lots whom the Common Land is designed to serve; and

(c) Restricted so that no structure shall be erected thereon except as an incident to the above uses.

2. Insuring the Maintenance of Common Land

The continued maintenance of Common Land shall be insured by one or more of the Following methods:

(a) The sale of individual lots or parts of the Planned Unit Development shall include in the deed a requirement obligating purchasers to participate in a home-owners' association and to support maintenance of the Common Land, accessible to the purchasers or their guests only, by paying assessments to the association. The organization of such homeowners' association shall be on file with the Town Clerk along with an annual report including the names and addresses of officers, to be submitted to the Town Clerk by February 15 of each year.

(b) Public maintenance only after dedication in fee to the Town of North Reading of open space such as, but not limited to, parks,

playgrounds, trails or public building sites. This shall not preclude the Town from refusing to accept such land subsequent to a report from the Community Planning Commission.

(c) In cases of cooperative ownership, management by a membership association. The organization of such membership club shall be on file with the Town Clerk along with an annual report including the names and addresses of officers, to be submitted to the Town Clerk by February 15 of each year.

(d) In cases of rented property, the owner shall retain Common Land maintenance responsibilities.

(e) Leaseholds on lands under a single ownership, with Common Land maintenance provided for in the long-term lease.

3. Insuring the Availability of Common Land

Common Land shall have street access suitable for all occupants of dwelling units for whose use the space is intended.

4. Plan for Insuring Useable Open Space

Approval of the Site Plan shall also be conditioned on a provision for insuring the continued existence of Common Land in accordance with Section II.6.A.1., and for the maintenance of such land, the buildings thereon, and all other improvements pursuant to Section II.6.A.2. Such provision shall be the posting of an annual maintenance in the case of a single owner or the formation of an automatic homeowners' association with the obligation of maintenance, in the case of individual owners. The requirements regarding assessments and the filing of an annual report shall be the same as in Section II. 6. A. 2.

B. The Special Permit shall also include the following mandatory conditions:

1. Street Acceptance

The principal streets shall be offered for acceptance as public ways. Where retained as private ways, they shall be posted as such by standard street signs.

2. Construction in Phases

If the Planned Unit Development is to be constructed in phases, each phase after the first must be constructed contiguous and adjacent to a preceding phase or phases. Phases separated by streets or ways shall be considered contiguous. A deviation of thirty-three (33) percent from the required amount of open space in any phase may be permitted if that deviation is fully restored in the next constructed phase.

3. Circulation

Within the Planned Unit Development, vehicular and pedestrian circulation shall be provided in accordance with the Rules and Regulations of the Community Planning Commission.

4. Environmental Compatibility

The plan for a Planned Unit Development shall preserve a unified and organized arrangement of buildings and service facilities and improvements, such as landscaping, fencing, screening and buffering, to insure compatibility with adjacent development, and to insure conformance with the regulations in Section 15.1.

5. Boundary Fencing

No perimeter security fencing, walls or similar barriers to prevent access to and egress from the Planned Unit Development shall be erected.

Section 11.7 - Site Plan Requirements

A. Any application for a Special Permit for a Planned Unit Development shall be accompanied by a Site Plan depicting the land to be affected. In addition to complying with the Minimum Site Plan Requirements of Section 6.6.D., the Site Plan shall conform to the following specifications:

1. The plan shall indicate reasonable periods for the phasing of the Development and the reasonable time of completion of each phase and include hydrological, soil and subsurface studies evaluating the site for development;

2. Accompanying each copy of the plan shall be a typical architectural plan showing the types of buildings, preliminary architectural plans and elevations of typical buildings and structures, indicating the general height, bulk, general appearance and number of dwelling units. Perspective drawings of the development may be required. The architectural plan hereby required may be varied during construction provided that the Community Planning Commission finds the new architectural plan to be compatible with previous construction.

3. The applicant shall submit a general circulation plan indicating the proposed movement and relative volumes of vehicles,

goods and pedestrians within the area and to and from public thoroughfares;

4. The applicant shall also submit a plan drawn to scale and showing any areas proposed to be dedicated or reserved for interior circulation, public parks, school sites, public buildings or otherwise dedicated or reserved and useable open spaces to which development rights area proposed to be dedicated to private groups or to the public and

5. Accompanying each copy of the site plan shall be:

(a) Tables showing the total number of acres and their distribution by use, the percentage designated for each dwelling type and for non-residential uses, including off-street parking, streets, parks, playgrounds, schools and useable open space;

(b) Tables showing the over-all density of proposed residential development and showing density by dwelling types; and

(c) Tables showing the total commercial gross floor area and showing how such total commercial gross floor area relates, as a percentage, to the total residential gross floor area.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board CHAPTER TEN - CLUSTER RESIDENTIAL DEVELOPMENT
Section 10.1 - Special Permit Required

The Community Planning Commission may grant a Special Permit for the utilization of a tract of land in any residential district as a cluster residential development subject to all requirements and conditions contained in this Chapter.

B. Community Planning Commission Permit Granting Authority

The Community Planning Commission shall have the power, upon written application, to grant Special Permits for the following uses:

1. Cluster Residential Developments pursuant to Chapter 10 of this Zoning Bylaw; and 2. Planned Unit Developments pursuant to Chapter 11 of this Zoning Bylaw; and 3. Multi-Family Residential Developments pursuant to Section 15.4 of this Zoning Bylaw. 4. Special Permits relating to signs issued pursuant to Section 14.9. 5. Special permits relating to activity in the floodplain district pursuant to Section 9.4.

Has any housing been built under the cluster/flexible provisions?

Yes Robert Rogers, Planning Director, (6/3/05) said that three developments have been built under the cluster bylaw and one development under PUD.

Northborough

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Town of Northborough Zoning Bylaw

7-20-070 Cluster Subdivisions

A. It is the intention of this section of the Zoning Bylaw to permit variations in the land use density required in the minimum lot area requirements specified for residential districts. Therefore a special permit by the Planning Board may be issued for such variance in density, subject to the provisions of this section.

B. The purpose of this section is to provide for more efficient use of land and to create more effective open land areas. Therefore, if it is determined that it would not be detrimental to the public interest to do so, the lot area requirements in any district having a minimum lot area requirement of twenty thousand (20,000) square feet or larger may be reduced as much as fifty percent (50%) of the area required in the district in which a proposed subdivision is located, and the related required width at the front building line may be reduced by as much as twenty percent (20%), provided that the following terms and conditions are met:

(1) The area of the tract of land to be subdivided would be sufficient to have at least twenty (20) lots in it if subdivided according to the Schedule of Dimensional Requirements for the district in which it is located.

(2) The total number of reduced-area lots in the proposed subdivision shall not exceed the number of lots that would be permitted

by applying the Schedule of Dimensional Requirements.

(3) The land in the proposed subdivision that will not be included in the reduced-area lots shall be of an area, shape and character that will make desirable open land, and legal restrictions shall be put on this open land that will effectively prevent it from being further subdivided into lots to be built upon.

(4) The Town Counsel and the Board of Selectmen shall approve the legal provisions for the preservation of the open land.

7-20-080 Affordable Housing/Conditional Density Bonus [Amended 5-16-1988 ATM, Art. 39]

A. Purpose and authority. The purpose of this section is to further the goal of encouraging various housing types for persons of various income levels, specifically those households and families with low and moderate incomes. It is intended to help people who, because of rising land prices, have been unable to obtain suitable housing at an affordable price and to assist in maintaining a stable economy by preventing the outmigration of lower-income groups who provide essential services within the town. This type of bylaw is specifically authorized within MGL C. 40A, § 9.

B. Applicability. Any parcel of land in the RA, RB or RC Zone that is greater than ten (10) acres in size may be eligible for a density bonus. Within Zone 1 of the Groundwater Protection Overlay District only, no density bonuses shall be granted which will increase the number of units above that allowed by existing zoning.

C. Procedures. No development shall be granted a density bonus unless it is proposed within a cluster-style subdivision. The application and review process will be as required for all subdivisions by the Northborough Subdivision Rules and Regulations* and as required for all special permits, as required by this chapter. The Planning Board will be the special permit granting authority. Applicants are required to submit preliminary proposals.

D. Requirements.

(1) Design. Developments receiving density bonuses must be of a cluster-style design, but need not comply with all the requirements of § 7-20-070 of this chapter, unless stated specifically within this section. The purpose of requiring a cluster-style design is to use land efficiently, to create more effective open areas and to allow for adequate screening of new development from public roads and neighboring land uses. Dimensional requirements of the project design shall be as follows:

(a) Unlike clusters allowed in § 7-20-070, projects receiving density bonuses may include detached single-family or attached multifamily structures up to six (6) units per structure per acre.

(b) Lots for single-family structures shall be a minimum of ten thousand (10,000) square feet per unit. Lots for multifamily structures shall be a minimum of twenty thousand (20,000) square feet regardless of the total number of units.

(c) Minimum lot frontage shall be no less than fifty (50) feet. There shall be no minimum width or depth requirements.

(d) Yard setback and lot coverage requirements as set forth in the Schedule of Dimensional Requirements** shall apply.

(e) At least thirty-five percent (35%) of the total tract must be permanently restricted for open space. No more than one-fourth (1/4) of the required thirty-five percent (35%) of open space shall be wetland.

(2) Number of allowed units. The number of units allowed above as-of-right density will be no more than thirty-five percent (35%) above the number allowed within a grid-type subdivision of the property. The number of units allowed within a grid-type subdivision shall be determined by multiplying eighty-hundredths (0.80) by the total upland area of the tract and dividing by the minimum lot size required in the applicable zoning district. The Planning Board may allow a smaller number of bonus units if necessary to better meet the design requirements and to better suit the public interest.

(3) Number of affordable units. A minimum of thirty percent (30%) of the total units of the project shall be made available to low-and moderate-income households at affordable prices, as described in Subsection D(4) below.

(4) Affordable housing occupants. Units may be purchased or rented by those who meet the guidelines for maximum annual income for a low-income or moderate-income family. For the purposes of Subsection D, low-income and moderate-income families shall be defined by the applicable subsidy program which the project proponent will utilize. "Affordability" means that housing costs for a family shall not exceed thirty percent (30%) of their gross annual income in the previous calendar year. Housing costs include for homeowners, payments for principal or interest on a mortgage, real estate taxes, homeowners' insurance and condominium fees, if any; or for renters, rent, including heat, but not other utilities. In determining median income, the most recent date available from a source to be approved by the Planning Board shall be used.

(5) Sale price. The sale price of the affordable units will be determined by reference to the most recent Massachusetts Housing Partnership (MHP) figures depicting the ability to purchase of target groups whose income is approximately eighty percent (80%) of the Northborough median income figures.

(6) Construction requirements. Specific construction standards shall be made part of the special permit and will be used to ensure structural conformity between market and affordable units.

(7) Architectural standards. The proposed architectural style of affordable units shall be similar. Market and affordable units should not be substantially distinguishable from the exterior.

E. Project approval standards. The Planning Board will review all projects and shall approve the special permit if, in the Board's sole discretion:

(1) The Board is satisfied that the applicant has conformed to the requirements of this chapter and will deliver the needed affordable units.

(2) The proposed development site plan is designed in its site allocation, proportions, orientation, materials, landscaping and other features as to provide a stable and desirable character, complementary and integral with the site's natural features.

(3) The Board makes a finding that such development, density increase or relaxation of zoning standards does not have a detrimental effect on the character of the neighborhood or town and is consistent with the purposes of this chapter.

(3) The proposed development is consistent with the goals and objectives of the Northborough Master Plan.

F. Long-term affordability.

(1) In order to maintain long-term affordability for low- and moderate-income home buyers, there shall be certain equity restrictions upon the unit's resale value. This resale price restriction will be incorporated into the deed conveying the property to the initial purchaser and will bind all subsequent purchasers for a period of forty (40) years after the initial conveyance.

(2) The resale of the affordable housing units, as described in Subsection D, will be limited to a percentage of the unit's market value at the time of resale. This limitation will be determined by the percent below market value for which the home originally sold. This percentage shall be recorded as part of the deed restriction. All subsequent resales for a period of forty (40) years after the initial conveyance shall be recorded as part of the deed restriction. All subsequent resales for a period of forty (40) years after the initial conveyance shall be discounted by this same percentage from the market value of the house at the time of the resale.

Through agreement between the Planning Board and the developer, these parties may choose, at the time of the recording of the deed, to modify the differential by plus or minus five percent (5%) in order to assure that the target income groups' ability to purchase be kept in line with the unit's market appreciation and to provide a proper return on equity to the seller.

(3) All deed restrictions will require that the homeowner give a ninety-day right-of-first-refusal to the Northborough Housing Authority. If the Housing Authority or other appropriate housing organization fails to respond to the homeowner within thirty (30) days to the effect that it is proceeding to find an eligible buyer, the homeowner may thereafter sell the home to anyone meeting income guidelines. (Prior code § 174-20.1)

7-20-090 Planned Unit Business Development [Amended 5-16-1988 ATM, Art. 49]

A. Purpose and intent.

(1) It is the purpose of the planned unit business development (PUBD) to encourage the efficient and creative use of the remaining parcels of land in Northborough that are suited for primarily nonresidential use. Although development under this provision must comply with the design and site planning standards given below, the strategy for the use of the land is intentionally undefined. The Town of Northborough desires to encourage projects that will meet the demands of the market, improve the economic base of the community and protect the town's character. Any development within this district must recognize that protection of Northborough's rural character will be a prime consideration for approval or denial.

(2) PUBD applications shall be limited to any parcel of land or aggregation of parcels of fifty (50) acres or more of upland located in the Industrial A District. (See the Northborough Zoning Map. *) A PUBD may be comprised of a mixture of residential uses, including affordable housing units, open space, commercial, industrial or other uses, and a variety of building types if the proposed uses and buildings are determined by the Planning Board to be sufficiently advantageous to grant special permission to depart from the normal requirements of the underlying zoning. In all cases, the majority of the total square footage of the project must be devoted to nonresidential uses [seventy-five percent (75%)]. Lots containing less than otherwise minimum areas, setbacks, widths, lot coverage's and frontage may also be allowed.

B. Application process.

(1) The designation of a PUBD shall require a special permit. The special permit granting authority shall be the Planning Board. Procedures for the consideration of the special permit application shall be in compliance with those specified in MGL C. 40A, §§ 9 and 11.

(2) Requirements.

(a) Preliminary plan applications for proposed PUBD's must be made to the Planning Board according to the Northborough Subdivision Rules and Regulations, Chapter 10-16.

(b) Application for a PUBD must also include a detailed statement of how the proposal conforms to the purposes of § 7-04-020 and this section of the Northborough Zoning Bylaw and any additional information requested by the Planning Board to support compliance with the purposes of this chapter and its requirements for approval.

(c) Applications for issuance of a special permit and approval of development plans may be submitted after completion of a preapplication review by the Planning Board and/or its planning staff of the preliminary plan as required in Subsection B (2)(a). Definitive plan and special permit applications shall not be complete without the submission of all materials required by Subsection B (2)(b) and § 7-20-040, Site plan approval, of this chapter and Chapter 10-20, Definitive Plan, of the Northborough Subdivision Rules and Regulations. The plan specifications of Chapter 10-20 of the Subdivision Regulations should govern the submittal of the plan. The impact study requirements of the site plan approval process, § 7-20-040 of the Zoning Bylaw, should govern the submittal of impact information. In cases where submittal requirements overlap or require varying levels of complexity, the more stringent requirements shall apply.

C. Use standards.

(1) Listing. General categories of allowed uses within the PUBD are as follows:

(a) Executive offices.

(b) Laboratories for research and development.

(c) Professional offices.

(d) Light industrial operations.

(e) Public recreation facilities.

(f) Transportation facilities.

(g) Public utility facilities.

(h) Day-care operations.

(i) Limited residential uses that are appropriate in relation to the proposed nonresidential uses in terms of the public health, safety and welfare and Northborough's housing needs.

(2) This listing of allowed uses does not imply that the Town of Northborough would approve any mixture of these uses, unless it is clearly proven that said mixture is compatible and that there will be no negative impacts on the environment, workers, residents, abutters or the community.

(3) Allowed accessory uses. Accessory uses and buildings are permitted when provided as an integral part of the overall development to serve the occupants, patrons and guests thereof, including but not necessarily limited to the following:

(a) Restaurants.

(b) Tennis courts.

(c) Swimming pools.

(d) Recreational facilities.

(e) Walking trails.

(f) Bicycle paths.

(g) Jogging tracks.

(h) Garages and maintenance buildings.

(i) Health clubs.

(j) Parking areas and garages.

D. Development standards.

(1) Minimum lot dimensions. The minimum lot size for a PUBD project shall be fifty (50) acres. Minimum frontage along a public way shall be a total of two hundred fifty (250) feet located in either one (1) contiguous area or in two (2) areas of the property, with the condition that each frontage area must have a minimum of seventy-five (75) continuous feet. The minimum lot width shall be one hundred fifty (150) feet, and the minimum lot depth shall be three hundred (300) feet.

(2) Density and intensity.

(a) Detached single-family dwellings shall be allowed at a maximum density of ten thousand (10,000) square feet of upland for each housing unit. Attached housing units (two-, three-, four-, five- and six-family structures) shall be allowed at a maximum density of six (6) housing units per acre of upland. Allowance of densities exceeding two (2) units per acre shall be conditional to approval by the Board of Health pertaining to the adequacy of the waste disposal system.

(b) Structures for commercial use shall be located on lots of at least ten thousand (10,000) square feet and shall have a maximum of fifty percent (50%) lot coverage, including structures and other impervious surfaces. Commercial structures may contain residential units above the first floor.

(c) Buildings shall be so arranged that the minimum distance between principal and/or accessory buildings shall be equal to or greater than one-half (1/2) the sum of the heights of the affected buildings, exclusive of accessory parking structures which are designed to function in conjunction with the principal building.

(d) Setbacks. No building shall be constructed within one hundred (100) feet of any public street or within one hundred (100) feet of any property line.

(e) Maximum coverage. Building coverage, whether by a single building or multiple buildings, shall not exceed twenty-five percent (25%) of the total lot size. This shall include all accessory buildings. Total impermeable surface coverage (buildings plus roads and parking areas) shall not exceed fifty percent (50%) of the total lot size.

(3) Building dimensions. No building or any other structure, not including antennas, shall exceed three (3) stories or sixty (60) feet in height. The exterior facades of all buildings shall be of a finished quality on every side, such as brick, stone, wood or glass, and architecturally harmonious in design as evidenced by plans prepared by a professional architect or designer. Loading ramps and utility features, if permitted, shall be placed at the side or at the rear and completely shielded from view.

(4) Residential compatibility. No more than twenty-five percent (25%) of the total floor area shall be devoted to residential use. All proposed residential use must be compatible with the nonresidential uses. Consideration by the Planning Board concerning this issue shall include the following: hazards of traffic, pollution and equipment and impacts, including noise, smoke, light and visual

effects, and social impacts, such as available open space, future property values, access to town services and transportation and degree to which said housing will become an accepted and integral part of Northborough's overall housing stock.

(5) Open space. A minimum of fifty percent (50%) of the total tract shall be permanently left as open space. No more than twenty-five percent (25%) of the required open space may be wetlands. The open space shall be located primarily in large open areas or in necessary buffer and linkage areas. There shall be a functional relationship between the open space and the proposed developments. The test for such a relationship shall be that all open space must serve a specific purpose that is consistent with the overall plan of the project and the placement of buildings and other man-made features. A minimum of fifty percent (50%) of such common land shall be restricted to open space recreational uses such as tot lot, park, playground, playfield, golf course, conservation area or leased agricultural land. This specific common land shall have suitable access to a street and shall conform to the requirements of the Northborough Subdivision Regulations.

(6) Parking.

(a) The amount of parking space shall be in accordance with the requirements of § 7-20-010, Off-street parking. However, the off-street parking requirements may be reduced where a common parking area(s) serves clusters of business development and where, in the opinion of the Planning Board and the Town Engineer, there will be ample parking. A reserve parking area of one (1) parking space for each one thousand (1,000) square feet of gross floor area shall be retained in suitably located open space areas so as to be utilized for required parking at such time as the Planning Board shall require.

(b) No outdoor parking areas shall be located within fifty (50) feet of any buildings, with the exception of handicapped spaces and passenger drop-off areas.

(c) All surface parking lots and any exposed sides of partially aboveground parking structures shall be screened for a depth of at least fifty (50) feet from any residential zone boundary by screening consisting of closely planted evergreen trees or by hedges, shrubbery or fences. All other surface parking areas shall be screened by evergreens, trees and shrubbery. Within each surface parking lot there shall be evenly distributed landscaped areas with at least one (1) shade tree and other low plantings for every ten (10) parking spaces.

(7) Roadways. Roadways shall be private and privately maintained. No parking shall be permitted thereon. All roadways shall comply with the standards of the Northborough Subdivision Regulations. Width of roadways serving residential areas may be decreased with approval by the Planning Board.

(8) Utilities. The proposed development shall connect with public water and shall provide its own facilities for wastewater disposal satisfactory to both the Town of Northborough and the Department of Environmental Quality Engineering, when mandated by state law. All utilities shall be located underground.

(9) Common areas. All interior streets, sidewalks, utilities and open space (retention ponds) shall be owned and maintained by the owner or owners.

(10) Lighting. Exterior illumination shall be only as necessary for safety, lighting of buildings, walks and roads and shall be subject to approval and limitation by the Commission. All lights permitted shall be so located and of such a design that no light source is visible beyond any point on the boundaries of the same property.

E. Performance standards. The following standards apply to the construction and operation of the use and are intended to identify impact factors that would be grounds for either serious conditions or denial of the application:

(1) Wastes. No objectionable or injurious waters or other materials shall be discharged from a PUBD project.

(2) Other than time and emergency signals and noise necessary for construction or demolition of buildings on the lot, no unreasonable or objectionable noise shall be transmitted beyond the lot from which it originates, nor shall any offensive odors, noxious, toxic or corrosive fumes or gases, dust, dirt or smoke be emitted into the air so as to endanger public health or safety.

(3) Dangerous material. No material which is dangerous due to the possibility of explosion, fire hazard or radioactivity shall be used, stored or manufactured except in accordance with applicable law.

(4) Landscaping shall be such that the site is buffered for both sight and sound from abutting land uses. A minimum of fifty (50) feet of landscaped buffer shall be provided between the project and all abutting uses.

(5) Traffic impact. If required by the Board, the applicant shall produce a traffic impact report. The report shall be produced by an outside consultant, mutually agreed upon by the Planning Board and the applicant. The cost for the study shall be borne by the applicant.

(6) Access to major routes. Any proposed PUBD shall have either direct access to either Route 20 or Route 9 or access that does not disturb either the residential or rural character of Northborough. In no case shall access be approved if it shall prove to be hazardous or deleterious to a Northborough residential area.

F. Approval. In order to grant approval of a PUBD, the Planning Board must make the following findings:

- (1) That the proposed plan meets the purposes of this section and the purposes of this Northborough Zoning Bylaw as set forth in § 7-04-020.
- (2) That any uses proposed in the plan conform to the performance standards set forth in Subsection E.
- (3) That the site is adequate in size to support the proposed quantity of development.
- (4) That the site is suitable in terms of topography, soils and other physical attributes and location for the proposed uses.
- (5) That the project's impact on traffic flow on surrounding roads and intersections does not reduce levels of service below the current standards service level.
- (6) That the project's impact on neighborhood visual character is acceptable compared to benefits of the project.
- (7) That the proposed method of sewage disposal, provision of water and provision of surface water drainage are adequate and in accordance with the Board of Health and the Water and Sewer Commission standards.
- (8) That the utilities and public services are adequate to serve the needs of the proposed uses.
- (9) That the impacts on the groundwater supply level and other natural resources are within acceptable levels as defined in the Northborough groundwater protection regulations.
- (10) That the proposed mix of uses within the PUBD are compatible with one another.
- (11) That the proposed plan will not have adverse effects which overbalance its beneficial effects on either the neighborhood or the town.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board Town of Northborough Zoning Bylaw

7-20-070 Cluster Subdivisions

A. It is the intention of this section of the Zoning Bylaw to permit variations in the land use density required in the minimum lot area requirements specified for residential districts. Therefore a special permit by the Planning Board may be issued for such variance in density, subject to the provisions of this section.

Has any housing been built under the cluster/flexible provisions?

Northbridge

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Town of Northbridge Zoning Bylaw Chapter 173 (Amended 2002)

§ 173-17. Planned townhouse development. A. General. In a Residential Six (R-6) District, the Board of Appeals may grant a special permit in accordance with Subsection G, Site plan review, hereafter, for the construction of a planned townhouse development subject to the provisions of this and other sections intended to encourage: (1) Optimum utilization of natural land features and characteristics through a greater design flexibility; (2) The preservation of open space for conservation, outdoor recreation or park purposes; and (3) Efficient provision of municipal services.

B. Definitions. For the purposes of this section, the following terms shall have the meanings indicated: PLANNED TOWNHOUSE DEVELOPMENT -- A subdivision to be developed as an entity by a landowner with residential buildings comprising three or more dwelling units and having an exterior entrance serving no more than two dwelling units unless otherwise permitted by the Board of

Appeals by special permit. Each unit shall have a screened yard or balcony.

C. Basic requirements. A proposed planned townhouse development shall meet the following basic requirements: (1) The minimum tract size shall be 10 acres. (2) All dwelling units shall be served by municipal water and sewerage.

D. Number of dwelling units permitted. The number of dwelling units permitted in a planned townhouse development for which a special permit is issued shall not exceed an average of eight dwelling units per net buildable acre.

E. Design requirements. (1) A minimum distance of 35 feet shall be maintained between any two structures unless it can be shown that a reduction in that distance will better serve the design. (2) A minimum of 30% of the total tract area or 2,000 square feet per dwelling unit, whichever is greater, shall be set aside and not built upon or paved, but shall be landscaped and/or left in its natural state with an acceptable balance of trees, shrubs and grass.

(3) A landscaped side or rear yard buffer area of at least 50 feet...

(4) Each tract shall include organized recreational areas, such as for tennis, play and swimming, easily accessible to building complexes, of a size equal to 300 square feet per dwelling unit. Such areas shall not be included in the buffer area.

(5) All utilities...

(6) Open spaces provided in Subsection E(2) above shall be used for conservation, outdoor recreation or park purposes and shall be of a size and shape appropriate for its intended use as determined by the Board of Appeals. Such open space land shall be conveyed to and accepted by the Town of Northbridge or to all homeowners within such tract jointly or to a trust, the beneficiaries of which shall be the homeowners within such tract. Such trust shall have as one of its purposes the maintenance of such land for conservation, recreation or park purposes. The future ownership of such unsubdivided land, which may differ from parcel to parcel, shall be specified by the Board of Appeals as a condition of the special permit.

F. Parking requirements.

G. Site plan review. ...

ARTICLE XIV Flexible Development [Added 10-22-1996 ATM, Art. 24] § 173-80. Special permit required. The Planning Board may, upon the grant of a special permit in accordance with the provisions in this article, modify dimensional requirements otherwise required in this chapter for lots within a flexible development.

§ 173-81. Purpose. The purpose of this Article XIV, Flexible Development, is to encourage the presentation of open land for its scenic beauty and to enhance agricultural, open space, forestry and recreational use; to preserve historical and archaeological resources; to protect the natural environment; to protect the value of real property; to promote more sensitive siting of buildings and better overall site planning; to perpetuate the appearance of Northbridge's traditional New England landscape; to allow landowners a reasonable return on their investment; to facilitate the construction and maintenance of streets, utilities and public services in a more economical and efficient manner; and to promote the development of housing affordable to low- and moderate-income families.

§ 173-82. Applicability. Any creation of five or more lots, whether a subdivision or not, from a parcel or set of continuous parcels held in common ownership and located entirely within the R-1 or R-2 Districts, may proceed under this Article XIV, Flexible Development, pursuant to issuance of a special permit by the Planning Board, as indicated in § 173-12, Table of Use Regulations. Such special permits shall be acted upon in accordance with the following provisions.

§ 173-83. Procedures. Applicants for flexible development shall file with the Planning Board six copies of the following: A. A development plan conforming to the requirements for a preliminary subdivision plan under the Subdivision Regulations of the Planning Board (Editor's Note: See Ch. 222, Subdivision of Land). Such plan shall indicate proposed topography, wetlands and, unless the development is to be sewerage, the results of deep soil test pits and percolation tests at the rate of one per acre, but in no case fewer than four per flexible development. Where wetland delineation is in doubt or dispute, the Planning Board shall require the applicant to submit to the Conservation Commission a request for determination of applicability pursuant to MGL C. 131, § 40, and 310 CMR 10.05(3). The Planning Board shall refer data on proposed wastewater disposal to the Board of Health for its review and recommendation. B. Any additional information required by the Planning Board to make the determination and assessments cited herein.

§ 173-84. Determination of density. Based on the information submitted pursuant to § 173-83 above, the Planning Board shall determine the maximum number of dwelling units allowed on the premises. The maximum number of units shall be limited to the number of single-family dwelling units that could be constructed in an orthodox subdivision on the site in full conformance with all zoning, subdivision and other applicable state and local regulations and without the proposal of extraordinary engineering measures. Where the maximum number of units is in doubt or dispute, the determination of the Planning Board (and its consulting engineer) shall be conclusive for all purposes.

§ 173-85. Modification of lot requirements. The Planning Board may authorize modification of lot size, shape and other bulk requirements for lots within a flexible development, subject to the following limitations: A. Lots having reduced area or frontage shall not have frontage on a street other than a street created by a subdivision involved. B. Each lot shall contain not less than 1/2 of the area required in the district in which the lot is located and have frontage of not less than 50 feet. C. Each lot shall have at least 50% of the required yards and 25% of the lot width in the district in which it is located.

§ 173-86. Open space requirements. A minimum of 30% of the parcel shown on the development plan shall be contiguous open space, excluding required yards and buffer areas. Such open space may be separated by the road(s) constructed within the flexible development. Not more than 25% of such open space shall be wetlands, as defined pursuant to MGL C. 131, § 40. A. The required open space shall be used for conservation, historic preservation and education, outdoor education, recreation, park purposes, agriculture, horticulture, forestry or for a combination of these uses and shall be served by suitable access for such purposes. B. The required open space shall remain unbuilt upon, provided that 10% of such open space may be paved or built upon for structures accessory to the dedicated use or uses of such open space, pedestrian walks and bikepaths.

C. Underground utilities to serve the flexible development site may be located within the required open space. D. The required open space shall, at the owner's election, be conveyed to: (1) The Town of Northbridge or its Conservation Commission; (2) A nonprofit organization, the principal purpose of which is the conservation of open space and any of the purposes for such open space set forth above; (3) A corporation or trust owned jointly or in common by the owners of lots within the flexible development. If such corporation or trust is utilized, ownership thereof shall pass with conveyance of the lots is perpetuity. Maintenance of the open space and facilities shall be permanently guaranteed by such corporation or trust which shall provide for mandatory assessments for maintenance expenses to each lot. Each such trust or corporation shall be deemed to have assented to allow the Town of

Northbridge to perform maintenance of the open space and facilities, if the trust or corporation fails to provide adequate maintenance and shall grant the town an easement for this purpose. In such event, the town shall first provide 14 days' written notice to the trust or corporation as to the inadequate maintenance and, if the trust or corporation fails to complete such maintenance, the town may perform it. The owner of each lot shall be deemed to have assented to the town filing a lien against each lot in the development for the full cost of such maintenance, which liens shall be released upon payment to the town of same. Each individual deed and the deed or trust or articles of incorporation shall include provisions designed to effect these provisions. Documents creating such trust or corporation shall be submitted to the Planning Board for approval, and shall thereafter be recorded in the Registry of Deeds. E. Any proposed open space, unless conveyed to the town or its Conservation Commission shall be subject to a recorded restriction enforceable by the town providing that such land shall be perpetually kept in an open state, that it shall be preserved for exclusively agricultural, horticultural, educational or recreational purposes and that it shall be maintained in a manner which will ensure its suitability for its intended purposes.

§ 173-87. Buffer areas. All dwellings and structures shall be located a minimum of 50 feet from adjacent properties. Buffer areas shall be retained in their natural vegetative state to the maximum extent feasible, except where adjacent to agriculturally used property.

§ 173-88. Decision. The Planning Board may approve, approve with conditions or deny an application for a flexible development in accordance with § 173-47 of the Zoning Chapter and after assessing whether the flexible development better promotes the objectives of Article XIV, herein, than would orthodox development.

§ 173-89. Relation to other requirements. The submittals and permits of this section shall be in addition to any other requirements of the Subdivision Control Law (Editor's Note: See MGL C. 41, § 81-K et seq.) or any other provisions of this Zoning Chapter.

ARTICLE XV Open Space Development Overlay District [Added 11-14-2000 ATM, Art. 22] § 173-90. Purpose and intent. The purpose and intent of the Open Space Development Overlay District is to: A. Provide greater choice in the type of housing to correspond to the varying needs of town residents in different stages of their lives. B. Ensure that the development of additional housing units does not detract from the livability, scale, character or economic value of existing residential neighborhoods. C. Encourage the preservation of open space for conservation, outdoor recreation and park purposes.

§ 173-91. Permitted uses. A. In areas of the town designated as Open Space Development Overlay District(s), the existing, underlying zoning designation shall remain applicable and any use permitted in the underlying zone shall continue to be permitted on the terms and conditions provided for such uses in such underlying district, except as provided in Subsection C. B. In the Open Space Development Overlay District(s), the Planning Board may, upon the grant of a special permit in accordance with the provisions of this article, also authorize the following uses: Single-family dwellings, townhouses, hotels, motels, conference and function facilities, related food service facilities, golf courses, tennis courts, bike trails and related active and passive recreational uses including field sports and club houses. C. If the Planning Board issues a special permit for any of the uses authorized in Subsection B, the uses otherwise permitted in the underlying zoning district shall no longer be permitted on the land subject to the special permit and the land shall only be used for uses authorized by such special permit.

§ 173-92. Development standards. An Open Space Development must conform to the following development standards, provided that in appropriate circumstances the Planning Board may waive minor non-conformities. A. Tract size. Any tract of land proposed for an open space development shall have an area of at least 175 acres. B. Open space. At least 51% of the entire tract of an open space development shall be maintained as open space. C. Density. The total number of residential units in an open space development shall not exceed 1.0 units per buildable acre of land. D. Nonbuildable land. For the purposes of this section, nonbuildable land includes all of the following: (1) Wetlands resource areas as defined in M.G.L. C. 131, § 40 and the regulations adopted thereunder;

(2) Slopes in excess of fifteen percent (15%); and (3) Land prohibited from development by easement or covenant.

E. Access and interior ways. There must be a least two points of access to and exit from an open space development from public streets. At least one point of access must be from a public way within the Town of Northbridge. Access within the tract between required points of access shall include at least one street constructed in accordance with the requirements for a secondary street under the Rules and Regulations Governing the Subdivision of Land. (Editor's Note: See Ch. 222, Subdivision Rules and Regulations)

F. Townhouse design and layout. No townhouse structure shall contain more than six residential units. Townhouse structures shall be no closer than 35 feet to an adjacent residential structure.

G. Single-family lots. Single family lots within the open space development shall comply with the minimum lot size, width and yard requirements provided in § 173-85. (Flexible Development bylaw)

H. Perimeter buffer. There shall be a perimeter buffer of at least 50 feet from structures along the boundaries of the open space development tract. The perimeter buffer may be considered part of the common open space, and active and passive recreational uses may be located therein.

I. Utilities. All utilities, including but not limited to electric, water and sewerage, shall be placed underground.

J. Residential mixture. No more than 70% of the residential units in an open space development shall be townhouse units, and no more than 70% of the residential units shall be detached single family units.

K. Height. No residential building shall exceed two and one half stories and 35 feet in height unless the special permit granting authority determines that a higher structure will not be detrimental to the character or aesthetic quality of the development or surrounding community.

L. Water and sewerage. Each residential unit must be served with public water service and be connected to the public sewerage system or to a private on site waste treatment facility (package treatment plant) approved by the Department of Environmental Protection.

§ 173-93. Open space use and design. The open space shall be designed and maintained in accordance with the following standards: (1) Open space shall be planned as large, contiguous parcels whenever possible. Strips or narrow parcels of open space shall be permitted only when necessary for access or as vegetated buffers along the site perimeter. (2) Open space may be located in more than one parcel, provided that the size, shape and location of such parcels are suitable for the designated uses. (3) No more than 15% of the open space shall be covered by impervious surfaces. (4) The open space must include an 18 hole golf course and may also be used for other passive and permitted active recreational uses, conservation, preservation, forestry, agriculture, natural buffers, structures necessary for approved uses and utilities. (5) Uses of the open space shall in all instances require

approval by the Planning Board.

§ 173-94. Special permit procedures. A. Submission of site plan. The applicant shall submit an application for an open space development special permit, together with a site plan, to the Planning Board at a regularly scheduled meeting. A copy of the application and site plan shall also be filed with the Town Clerk. The Planning Board will notify the Conservation Commission, Zoning Board of Appeals, Board of Selectmen, DPW, and Safety Committee of the time and location of the hearing scheduled to consider the application and site plan. The contents of a site plan shall be consistent with, to the extent applicable, the requirements of § 173-49.1 (Site Plan Review), and the preliminary plan requirements of the Rules and Regulations Governing the Subdivision of Land, (Editor's Note: See Ch. 222, Subdivision Rules and Regulations) provided that single family residences need not be shown, and provided further that the Planning Board may waive or modify any requirements that it determines to be unnecessary or burdensome in particular cases. B. Submission of definitive subdivision plan. (1) Applicants for an open space development containing a subdivision shall submit a definitive plan complying with the definitive plan requirements of the Rules and Regulations Governing the Subdivision of Land. (Editor's Note: See Ch. 222, Subdivision Rules and Regulations) The definitive subdivision plan may be submitted after the approval of an open space development special permit, in which case the approved site plan will be treated as an approved preliminary plan.

§ 173-95. Deed restrictions. A. The applicant shall ensure through deed restrictions that the open space is kept in an open state in perpetuity and will not be built upon for uses not permitted in the previous sections of this Article, provided however, that such restrictions shall not prohibit additional development of the site which complies with this by-law and is approved pursuant to the special permit procedures provided herein.

§ 173-96. Criteria for granting a special permit. A. The Planning Board may approve an open space development special permit if the Board finds that all of the following conditions are met: (1) The application, site plan and supporting materials substantially conform to the requirements of this section. (2) The application has provided satisfactory methods of ensuring the performance of any special conditions included in the application and site plan including specifically the provisions concerning open space. (3) The applicant successfully demonstrates to the Planning Board that the development meets the criteria provided in § 173-47 (Special permits), and will be more beneficial to the community than the uses of the site allowed by the underlying zoning. B. The Planning Board, in granting an open space development special permit, may impose such additional conditions as the Planning Board finds will serve the public interest, safety and the purposes of the open space development by-law.

C. No construction, reconstruction, or subdivision except as shown on the site plan, shall occur without further submission of plans to the special permit granting authority, and a notation to this effect shall appear upon the approved plan.

§ 173-97. Fees and security. A. In addition to the required fee for a special permit, the provisions of § 173-49.1D(2) relating to additional expenses, shall apply to applications for an open space special permit. B. Prior to the issuance of building permits pursuant to any special permit granted under this Article, the applicant shall provide performance security in a form acceptable to the Planning Board and in an amount sufficient to assure the completion of interior ways and required site improvements. Such security shall be coordinated with any security required under the subdivision control law, if applicable, and may be provided in phases under appropriate circumstances with the approval of the Planning Board. ...

Which entity is the special permit granting authority for cluster/flexible zoning?

Combination Town of Northbridge Zoning Bylaw Chapter 173 (Amended 2002)

§ 173-17. Planned townhouse development. A. General. In a Residential Six (R-6) District, the Board of Appeals may grant a special permit in accordance with Subsection G, Site plan review, hereafter, for the construction of a planned townhouse development subject to the provisions of this and other sections intended to encourage: (1) Optimum utilization of natural land features and characteristics through a greater design flexibility; (2) The preservation of open space for conservation, outdoor recreation or park purposes; and (3) Efficient provision of municipal services.

ARTICLE XIV Flexible Development [Added 10-22-1996 ATM, Art. 24] § 173-80. Special permit required. The Planning Board may, upon the grant of a special permit in accordance with the provisions in this article, modify dimensional requirements otherwise required in this chapter for lots within a flexible development.

In the Open Space Development Overlay District(s), the Planning Board may, upon the grant of a special permit in accordance with the provisions of this article, also authorize the following uses:

Has any housing been built under the cluster/flexible provisions?

Norton

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes According to the use regulations table, Cluster Development is allowed by special permit in districts R-80, R-60, and R-40.

Town of Norton Zoning Bylaw, 2004

6.8 RESIDENTIAL CLUSTER DEVELOPMENT REGULATIONS

a. Single-family, duplex, and multi-family Cluster Development may be allowed by a special permit in Zoning District specified in Table 4.2.

b. In order to encourage better site planning in the placement of buildings and improvements, the Planning Board may allow more than one building to be located on a single lot.

DIMENSIONAL REQUIREMENTS

1. The site proposed for Cluster Development shall be not less than ten acres for Single-family, fifteen acres for duplex and twenty acres for Multi-family in area and shall be under a single owner or a group of owners acting jointly.

2. No site shall be developed in a manner which would result in a greater number of dwelling units being constructed in a Cluster Development than would be permitted in a conventional single family development on the same site.

3. In Cluster Development made up of individual lots, each lot may be reduced in size up to 50% from the minimum size allowed in the zoning district in which the site is located. Where on-site sewage disposal is required, a minimum lot area of 40,000 square feet shall be required.

4. The Townhouse or Rowhouse Development without individual lots, the area allocated to buildings, streets, parking and storage areas shall not exceed 50% of the building site area if the maximum number of allowable units are proposed. The area allocated to buildings, streets, parking and storage area may be reduced from 50% of total building site area in a ratio equivalent to the proportion of units proposed to the maximum number of units possible.

5. Within Cluster Development, which have individual lots, the Planning Board shall establish reasonable setbacks for buildings and accessory units.

6. For the purposes of conventional development plans showing multi-family or duplex lots, the required frontage shall be 200 feet.

7. Within Townhouse or Rowhouse Developments without individual lots, the minimum distance between buildings shall be 50 feet. Minimum setbacks of all buildings from the street shall be 30 feet.

8. All lots fronting on an existing Town way shall maintain the frontage required in conventional zones.

9. Not more than 100 linear feet of any right-of-way strip associated with a drive may be used in computing the minimum square footage of any lot.

10. There shall be a maintained minimum of 100 foot buffer between the cluster building lot and any adjoining lot and any existing street, unless the applicant can prove to the Planning Board that existing vegetation and topography provides sufficient buffering and screening. The buffer space shall be figured in the below open space area calculations. Where vegetation is sparse, the Planning board will order screen plantings at their discretion per individual application. This buffer space may only be used for roads or utilities when insuring continuity with adjoining lots, subject to Planning Board recommendations.

OPEN SPACE AREAS

1. In any Cluster Development, at least 35% of the buildable area used in calculating the permitted density shall be set aside as open space. This area shall not include wetlands, ponds, marshes or other protected natural area. Although this shall not prevent these areas from being added to the 35% minimum open space.

TOWNHOUSE OR ROWHOUSE STRUCTURES

1. Not more than four (4) attached townhouse units shall be built in a row with the same or approximately the same, front building line. No row of attached units shall contain more than (six) 6 units.

MULTI-FAMILY DWELLINGS

1. Except as modified by this article, all multi-family dwellings in a Cluster Development shall conform to the standards and restrictions set forth in the Zoning By-law.

ADMINISTRATION AND ENFORCEMENT

1. Cluster Development is allowed in certain zoning districts by special permit only. Guidelines for submission and approval of special permit applications shall be followed by the Planning Board in reviewing Cluster Development proposals.

2. In addition to the information required on all special permit applications, Cluster Development proposals shall contain documentation relevant to the specific requirements of this Article. Additional information which the Planning Board may require for the consideration of the above cluster regulations shall be provided at the applicant's expense.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board Town of Norton Zoning Bylaw, 2004

6.8 RESIDENTIAL CLUSTER DEVELOPMENT REGULATIONS

a. Single-family, duplex, and multi-family Cluster Development may be allowed by a special permit in Zoning District specified in Table 4.2.

b. In order to encourage better site planning in the placement of buildings and improvements, the Planning Board may allow more than one building to be located on a single lot.

Has any housing been built under the cluster/flexible provisions?

Researcher asked Sue Salley, Secretary of the Planning Board and Zoning Board, (6/3/05) and she said that she did not know if there have been any cluster developments in the last five years.

Norwell

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes There is flexible zoning in the form of a Village Overlay District in which a developer may create a Village Residence Development. The Village Residence District is defined as follows (Town of Norwell Zoning Bylaws, Article IV, Section 4600): "A combination of single-family dwellings and permissible accessory uses authorized by Special Permit from the Planning Board as set forth herein." The use is restricted as follows (from the same section): "Attached or detached dwelling units owned and occupied by persons aged fifty-five (55) and over, provided, however, that one spouse may be under age fifty-five (55)."

Additionally, the following standards must be met (from the same section): "Qualifying Area. The VRD site shall be located within the VOD and shall contain at least 40 contiguous upland acres, including at least one acre of upland for each dwelling unit proposed.

Open Space Requirement. At least fifty percent (50%) of all upland contained within the VRD site shall be open space, which shall be left in its natural vegetated state."

From ordinance.com:

4700. VILLAGE OVERLAY DISTRICT.

(Voted ATM 5/25/1999)

4710. PURPOSE:

The purpose of the Village Overlay District (VOD) is to:

- a. Provide dwelling units for occupancy by individuals fifty-five (55) years of age or older; and
- b. Provide for mixed and diverse varieties of housing, including affordable housing; and
- c. Provide for residential development in a manner that conserves environmental features, woodlands, wet areas, open space, areas of scenic beauty, views and vistas.

4720. APPLICABILITY.

The VOD shall be construed as an overlay district. All requirements of the underlying zoning district(s) shall remain in full force and effect, except where the requirements of the VOD are more restrictive or provide for uses or structures not otherwise available in the underlying district; in such cases, the requirements of the VOD may supersede the underlying zoning regulations upon the issuance of a Special Permit from the Planning Board.

4730. The VOD shall include all land designated by a two-thirds (2/3) vote of Town Meeting as within the district, all pursuant to M. G. L. c 40A, s.5.

4740. DEFINITIONS.

(a) APPLICANT - The person or persons, including a corporation or other legal entity, who applies for issuance of a Special Permit for construction of a Village Residential Development (VRD) hereunder. The Applicant must own, or be the beneficial owner of, all the land included in the proposed VRD, or have authority from the owner(s) to act for him or hold an option or contract duly executed by the owners(s) and the Applicant giving the latter the right to acquire the land to be included in the site.

(b) BEDROOM - A separate room in a dwelling unit intended for, or which customarily could be used for, sleeping.

(c) BUFFER - An area within a VRD adjacent to its boundaries, streams and ponds, which may not be cleared, cut, developed or otherwise disturbed except as provided herein.

(d) DEVELOPMENT SCHEDULE - A schedule showing the order and timing of construction and the sequence of the improvements to be built or furnished in the VRD site, separated into stages where applicable.

(e) REGULATIONS - The rules and regulations of the Planning Board.

(f) UPLAND - All land not defined as wet areas.

(g) VILLAGE RESIDENCE DEVELOPMENT (VRD) -- A combination of single-family dwellings and permissible accessory uses authorized by Special Permit from the Planning Board as set forth herein.

(h) WET AREAS - All land, other than wetland buffer zones, subject to the provisions of Massachusetts Wetland Protection Act, M.G.L. c. 131, s. 40 and 40A and the Town of Norwell Wetlands Bylaw, Article XVI-a.

4750. USE RESTRICTIONS.

A VRD, consisting of the uses set forth below, individually or in combination, may be authorized by a Special Permit issued by the Planning Board pursuant to this Section and in compliance with the standards set forth herein.

(a) Attached or detached dwelling units owned and occupied by persons aged fifty-five (55) and over, provided, however, that one spouse may be under age fifty-five (55).

(b) Structures and uses accessory to the use set forth above, including: community buildings serving the residents of the VRD; recreational facilities; underground utilities located on a lot not serving the dwelling units; roadways.

4760. APPLICATION.

An application for a Special Permit for construction of a VRD within the VOD shall be submitted to the Planning Board on forms furnished by the Planning Board, accompanied by: (a) the filing fee determined in accordance with the Planning Board's Rules and Regulations; (b) the following information and data; and (c) a development plan as described below:

a) All of the information required for site plan approval pursuant to Section 1520 herein:

b) The name(s) and address(es) of the Applicant and all legal and beneficial owners of the site; copies of all instruments, options, contracts or encumbrances affecting ownership of the development site; and an instrument executed by all persons owning property within the site consenting to the development of the subject property, as applied for.

c) A proposed development schedule showing the beginning of construction, the rate of construction and development, including stages, if applicable and the estimated date of completion.

d) A narrative report prepared by qualified professionals, detailing the impact of the development on the Town's capacity to furnish services including, but not limited to, roads, water and sanitation.

e) Information regarding the number and kind of dwelling units and other structures proposed, their design, their location, the number of bedrooms planned, the sale prices and fees anticipated and population projections pertaining thereto.

f) Areas to be set aside for building structures, parking areas and conservation and recreation easements.

g) Information regarding the number and kind of dwelling units and other structures proposed, their design, their location, the number of bedrooms planned, the sale price and fees anticipated and population projections pertaining thereto.

h) Copies of all proposed deed restrictions to assure resale at affordable prices and the right of first refusal in favor of the Town for dwelling units to be sold at affordable prices, if applicable.

i) Any and all other information that the Planning Board may reasonably require in a form acceptable to it to assist in determining whether the applicant's, proposed development plan meets the objectives of this Section.

4770. STANDARDS.

In order to be eligible for consideration for a Special Permit to construct a VRD pursuant to Section 4700, a proposed VRD shall meet all of the following standards:

a) Qualifying Area. The VRD site shall be located within the VOD and shall contain at least 40 contiguous upland acres, including at least one acre of upland for each dwelling unit proposed.

b) Open Space Requirement. At least fifty percent (50%) of all upland contained within the VRD site shall be open space, which shall be left in its natural vegetated state.

c) Buffer. A buffer area of one hundred seventy-five (175) feet shall be provided at the perimeter of the VRD site where it abuts residentially zoned or occupied properties sufficient to substantially limit the visibility of the VRD from outside its perimeter; provided, however, the buffer may be reduced to not less than fifty (50) feet upon a finding by the Planning Board that suitable screening can be provided. No vegetation in this buffer area will be disturbed, destroyed or removed, except for normal maintenance and provided, however, that structures or buildings may be located within the buffer area upon approval of the Planning Board with the issuance of a Special Permit. Undergrowth planting may be added.

d) Roadways and Paths. Where intended for dedication and acceptance by the Town of Norwell, the principal roadway(s) serving the site shall be designed to conform with the standards of the Planning Board's Subdivision Regulations and any other standards of the Town of Norwell. Private ways shall be adequate for intended vehicular and pedestrian traffic and shall be maintained by an association of unit owners or by the applicant. Paths for the use of residents shall be attractively designed with proper regard for convenience, separation of vehicular, bicycle and pedestrian traffic, and access to the amenities and facilities on the site and to paths on adjacent sites.

e) Parking. The applicant shall provide adequate parking to serve all anticipated uses on the property, with information detailing the method of computation of parking spaces.

f) Surface Drainage. The surface drainage system shall be designed in accordance with the subdivision Regulations of the Planning Board, the Rules and Regulations of the Permanent Drainage Study Committee and the DEP's Stormwater Management Policy and Design Guidelines as amended.

g) Utilities. All electric, gas, telephone, and water distribution lines shall be placed underground.

h) Dwelling Unit. The development of one or more dwelling units on a lot or lots shall be permitted in an application to construct a VRD. Dwelling Units may be situated on any common or individual lot consistent with the overall design objectives of the VOD; provided, however, that such dwelling units shall comply with the provisions of the State Sanitary Code, 310 CMR 15.00, any other applicable State Regulations, and with the rules of the Norwell Board of Health.

4780. REVIEW FEES.

The Planning Board may engage, at the expense of the applicant, professional, technical and/or legal consultants to review an application for a Special Permit within the VOD and to evaluate compliance with the Special Permit.

4790. AFFORDABLE UNITS.

The applicant is encouraged to provide dwelling units at prices affordable to persons or families of low or moderate income. Such affordable dwelling units shall be integrated into the overall development so as to prevent the physical segregation of such units and shall otherwise be indistinguishable in all respects, including but not limited to materials, size and design, from comparable market price units.

4800.DECISION.

The planning Board by affirmative vote of 4/5 of its members present and voting, may grant a Special Permit for a VRD upon finding that the proposed VRD complies with the requirements of this section. The Planning Board shall not grant a Special Permit unless it determines that all criteria set forth in Section 1420 herein are satisfied. The Special Permit may be granted with such reasonable conditions, regulations, or limitations as the Planning Board may deem necessary to serve the purposes of the Bylaw.

4810. EXPIRATION.

Special Permits shall lapse in accordance with Section 1450 herein.

4820. PUBLIC HEARING.

Special Permits shall only be issued following Public Hearings held in accordance with Section 1430 herein.

4830. MODIFICATIONS.

No structure created within the VRD shall be externally enlarged by more than two hundred (200) square feet and no use changed

or expended in the ground except upon approval of the Planning Board and subject to the provisions of Section 4740 through Section 4820.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board 4750. USE RESTRICTIONS.

A VRD, consisting of the uses set forth below, individually or in combination, may be authorized by a Special Permit issued by the Planning Board pursuant to this Section and in compliance with the standards set forth herein.

Has any housing been built under the cluster/flexible provisions?

Yes Email from Ilana Quirk, Norwell Town Planner, (6/2/05):

"2) Yes. At least one project has been built using the Village Overlay District. It is known as Donovan Farm and consists of 40 town houses and one clubhouse, all for residents over age 55.

3) The Village Overlay District was adopted at Town Meeting on May 25, 1999.

5) To my knowledge, the only Village Overlay District project permitted by the Town, so far, is Donovan Farm. It does not have an affordable component."

Norwood

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes SECTION 4000 Dimensional Regulations
4100 REQUIREMENTS

4130. Flexible Residential Development

Two or more dwellings, if allowable at that location, may be erected on a single lot without division into separate lots, provided that such use is authorized on special permit by the board of appeals, upon its determination that:

a. the number of dwelling units being erected does not exceed the number which could reasonably be expected through development on separate lots meeting lot area and frontage requirements;

b. access, drainage, and utility service to each dwelling is functionally equivalent to that required for separate lots under the planning board's subdivision regulations; and

c. both side and rear yards of the parcel shall meet rear yard requirements, and dwellings on the same lot shall be separated by no less than twice the side yard requirement.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board

Has any housing been built under the cluster/flexible provisions?

Paxton

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes There is no mention in Paxton's bylaws of "planned units" or "cluster" and the only mention of any "flexible" housing is the following section on senior housing.

Town Services Coordinator Nancy Wilby said that the town has no flexible zoning and there is no movement to create cluster zoning. (11/19/04)

SECTION 9. SENIOR RESIDENTIAL DEVELOPMENT

9.1 Purpose

The purposes of Senior Residential Development (SRD) are:

...

4. To promote the general intent of the Zoning Bylaw and establish flexible residential development standards and procedures that will support these objectives.

Paxton Zoning Bylaw (Amended 2003)

SECTION 9. SENIOR RESIDENTIAL DEVELOPMENT

9.1 Purpose

The purposes of Senior Residential Development (SRD) are:

1. To provide housing for a maturing population that reduces maintenance costs and is more affordable than traditional single family dwellings.
2. To provide a type of housing development that has a reduced demand on municipal and educational services.
3. To promote development in harmony with the Town's public water supplies, natural resources, and traditional landscapes and the existing and probable future use of adjacent land.
4. To promote the general intent of the Zoning Bylaw and establish flexible residential development standards and procedures that will support these objectives.

9.2 Establishment of Overlay District

The Senior Residential Development Overlay District is herein established as an overlay district and shall be superimposed on other districts established by this Bylaw. All regulations applicable to such underlying districts shall remain in effect. A Senior Residential Development is permitted only in a Senior Residential Development Overlay District upon the grant of a special permit by the Planning Board. The Senior Residential Development Overlay District is shown on a map entitled "Paxton Overlay Districts", which is on file with the Town Clerk.

9.3 SRD Standards

9.3.1 Restrictions: Each SRD applicant shall submit to the Planning Board private deed restrictions that will ensure each dwelling unit is used as a residence only for a person or persons one of whom shall be 62 years of age or older. All additional residents shall be 55 years of age or older. The Building Commissioner may grant an exemption from such age restrictions for a live-in caregiver upon demonstration of a disability by one of the qualified residents that requires the assistance of an individual to provide live-in care.

9.3.2 Density Standards

1. The SRD shall be located on a parcel having at least ten (10) acres and two hundred (200) feet of frontage.
2. There shall be a minimum of twenty thousand (20,000) square feet per dwelling unit, and dwelling units shall be at least fifty (50) feet from a lot in residential use. The Planning Board may require a greater land area per dwelling unit if difficult soil conditions or other development constraints warrant a lower overall density.
3. Buildings shall be located in a close proximity to facilitate pedestrian access and to preserve open space. No more than fifty (50) percent of the tract shall consist of buildings, parking areas or other impervious surfaces.
4. Roads and driveways shall remain private ways and shall comply with the Planning Board's Rules and Regulations Governing the Subdivision of Land.
5. SRD communities may have accessory uses for the use and convenience of residents and staff, such as snack bars, gift shops, laundry services and banking facilities. No accessory use other than a restaurant shall occupy more than one thousand (1,000) square feet of floor area. Structures for the use of residents and their guests may be permitted, including clubhouses, swimming pools, tennis courts, cabanas and storage and maintenance structures.

9.3.3 Requirements for Affordable Units

1. A minimum of twenty percent (20%) of the total units shall be affordable. A deed restriction in favor of the Town will be imposed on the affordable units which restriction shall be in perpetuity pursuant to Massachusetts General Laws Chapter 184, Sections 31-33. Affordable units shall be dispersed throughout the SRD and shall be indistinguishable from market rate units. Ownership units shall have use restrictions in favor of the Town recorded at the Worcester Registry of Deeds at the time of initial sale that limit the future sale of the units to households earning no more than eighty percent (80%) of the area median income (AMI).
2. Affordable units are those units affordable to households whose incomes do not exceed eighty percent (80%) of the AMI for the Worcester Metropolitan Statistical Area based on household size as determined by the U.S. Department of Housing and Urban

Development (HUD). For rental units, monthly rents payable by a household exclusive of utilities shall not exceed 30% of the monthly income based on household size. For ownership units, initial purchase prices and resale prices shall be established so that households are not required to spend more than 30% of the income for annual debt service on a mortgage (at 30-year fixed-interest rates at the time of initial sale), taxes, insurance, and condominium or homeowners fees with no more than a five percent (5%) down payment, including any required entrance deposit.

9.3.4 Building and Dwelling Unit Requirements:

1. Dwelling units in an SRD may be attached or detached, or a combination of these types.
2. No building shall contain more than four (4) dwelling units.
3. No dwelling unit shall contain more than two (2) bedrooms.

9.3.5 Common Land: In an SRD, at least thirty (30%) percent of the total tract area shall be set aside as Common Land for the use of the SRD residents or the general public. The following additional requirements shall apply:

1. At least fifty percent (50%) of the Common Land shall not contain wetlands, as defined in M.G.L. c. 131 §40, or 100-year floodplains.
2. Common Land shall be planned as large, contiguous parcels whenever possible. Strips or narrow parcels of Common Land shall be permitted only when necessary for access, or if the Planning Board finds that a vegetated buffer strip along the site's perimeter is appropriate and consistent with the purpose of the SRD.
3. The Common Land shall include adequate access from a way or street at least forty (40) feet wide.
4. The Common Land shall be dedicated and used for conservation, recreation, park purposes, outdoor education, agriculture, horticulture or forestry, or any combination of such uses. No other uses shall be allowed in the Common Land except as follows:
 - a.) A portion of the Common Land may be used for construction of leaching areas associated with septic disposal systems serving the SRD.
 - b.) A portion of the Common Land may be used for walkways, bicycle paths and emergency access or egress to the SRD, if the Planning Board determines that such use will enhance the specific purpose of the SRD and promote better overall site planning, and if the Planning Board finds that adequate assurances and covenants exist to ensure proper maintenance of such facilities by the owner of the Common Land.
 - c.) A portion of the Common Land may be used for utility and drainage facilities serving the SRD, and may be subject to easements for the maintenance and repair of such facilities.
5. The Common Land shall remain unbuilt upon, provided that a maximum of five (5%) percent of such land may be subject to pavement and structures accessory to the dedicated use or uses of the Common Land.
6. The proposed use of the Common Land shall be specified on a land use plan and. . appropriate dedications and restrictions shall be a part of the deed of the Common Land.
7. The Planning Board shall have authority to approve or disapprove particular uses proposed for the Common Land in order to enhance the specific purposes of the SRD.

9.3.6 Maintenance: In every SRD there shall be a management organization or association of all owners of the dwelling units that shall be responsible for the maintenance and repair of common elements and facilities owned by and serving the residents, and the Town of Paxton shall not be responsible therefore.

9.3.7 Handicapped Accessibility: The Planning Board may require that not less than five (5%) percent of the units, but at least one unit, and the common facilities of the SRD, be handicapped accessible. Such units and facilities shall be in full compliance with standards established by the Massachusetts Architectural Access Board. In addition, all other units shall be constructed in a manner that will allow such units to be made handicapped accessible in the future if the need arises.

9.4 Special Permit Application And Procedure

9.4.1 General: Each application for an SRD shall comply with the requirements for definitive plans in the Planning Board's Subdivision Rules and Regulations. The following additional information shall be submitted:

1. Existing and proposed topography, proposed structures, drives, parking, landscaping and screening, utilities, drainage, and location of common land.
2. Architectural plans and renderings, including elevations and perspective views of typical buildings.
3. Documents listing or indicating the proposed number of dwelling units, distinguishing units by number of bedrooms and any special occupancies (affordable, handicapped, etc.), form of tenure and any subsidies anticipated, methods of water supply and sewage disposal, time schedule for construction of units and improvements, and other improvements proposed at the developer's expense.
4. Documents indicating how the management organization or homeowners association will control the aesthetics and operation of the project. Draft documents shall be provided for:
 - a) The conveyance of the Common Land if it is to be given to the Town, or permanent restriction if it is not to be conveyed to the Town;
 - b) A Management Organization or Homeowners Association Maintenance Agreement;
 - c) A Common Facilities Maintenance and Improvement Agreement detailing the ownership and maintenance of the common land and facilities; and
 - d) Manner in which the Management Organization or Homeowners Association shall certify to the Town when any unit is sold or rented that the provisions of §9.3.1 and 9.3.3.2 will be met.

5. Filing and review fees as required by the Planning Board.

6. A community impact assessment that identifies impacts of the project on: the public water system; fire, police, and ambulance services; neighborhood drainage and the public stormwater system; and traffic generation and vehicle access onto adjacent streets. The Planning Board may require the applicant to mitigate potential impacts of the SRD on Town services and facilities.

a) Method of solid waste disposal, road maintenance, street lighting, and postal service.

9.4.2 Procedures: Special permit procedures shall be in accordance with MGL Chapter 40A, §9.

9.4.3 Security. Before the start of construction, the developer shall submit a bond, deposit of money, or negotiable securities, in an amount determined by the Planning Board, to secure performance of the construction of ways and streets, utilities, drainage and landscape improvements shown on the plan. The choice regarding the type of security shall be the Planning Board's. The security shall be in accordance with the provisions of the Planning Board's Rules and Regulations Governing the Subdivision of Land.

****Webmasters Note:** The previous section, Section 9, has been amended as per an update approved at a town meeting held on

6/24/03.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board Paxton Zoning Bylaw (Amended 2003)

Paxton Zoning Bylaw (Amended 2003)

SECTION 9. SENIOR RESIDENTIAL DEVELOPMENT

9.2 Establishment of Overlay District

The Senior Residential Development Overlay District is herein established as an overlay district and shall be superimposed on other districts established by this Bylaw. All regulations applicable to such underlying districts shall remain in effect. A Senior Residential Development is permitted only in a Senior Residential Development Overlay District upon the grant of a special permit by the Planning Board.

Has any housing been built under the cluster/flexible provisions?

Peabody

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes City of Peabody Zoning Ordinance, Section 2 DEFINITIONS (Adopted 1978, Amended 2004)

Designated development district (DDD): A special industrial zoning district which facilitates creative and integrated physical designs which are compatible with the natural environment and which promotes the overall improvement of the urban environment for the welfare of the city. (Ord. of 4-28-88, § 2)

Municipal properties reuse development (MPRD): A municipal properties reuse development shall mean the development of municipal properties no longer serving a municipal purpose, as a single entity, in which a mixture of residential, open space, commercial, and light industrial uses, and a variety of building types and designs, are determined to be sufficiently advantageous to render it appropriate to grant a special permit to the extent authorized by this zoning ordinance. (Ord. of 9-16-82, § 1)

Planned residential development district: A zoning district applicable to specific parcels of at least five acres which allows a mixture of housing types and densities to be developed. (Ord. of 10-11-84, § 5)

City of Peabody Zoning Ordinance, Section 4.4.4 (Adopted 1978, Amended 2004)

4.4.4 Cluster development requirements.

(a) Definition: Single detached one-family dwellings may be constructed on certain lots in a cluster development in the following zones: R-1, R-1A, R-1B, R-2, R-3, and R-4 as hereinafter defined and limited, although such lots have less area or frontage, or both, than normally required. For this purpose, a cluster development is a division of not less than five (5) acres of land into lots used, or available for use as building sites, where said lots are clustered together and where there is provision of open space in common or public ownership. The planning board shall be the special permit granting authority for the cluster permit.

(b) Purpose: The purposes of this provision of the ordinance allowing cluster developments are as follows:

(1) To promote efficient subdivision of land, in harmony with its natural features and with minimal excavation and earth removal activities.

(2) To preserve in their unaltered state unique or unusual natural features of the land to be developed especially where such features are not afforded protection under some other local, state or federal regulation or private deed restriction. Such natural features include but are

not limited to: Science vistas and scenic road views; woodlands and site vegetation, especially where such natural vegetative cover serves to buffer new developments from established neighborhoods; slopes over fifteen (15) percent and rock outcroppings; natural drainageways, stream banks, wetlands, and floodplains; aquifer recharge areas for public or private water supplies; wildlife habitat and vegetation, especially of rare or endangered species.

(3) To provide suitable open space and facilities for active or passive recreation.

(4) To provide open space as a buffer, where desirable and appropriate, between new developments and established neighboring uses.

(5) To promote affordable housing in the city.

(c) Minimum requirements: Such a cluster development containing lots with less than the minimum area or frontage or both may be permitted provided that:

(1) Maximum number of lots in a cluster development shall be determined by taking total land area of the subdivision, exclusive of existing and proposed roads and other land areas not available to the developer for building because of local, state, or federal regulations or private deed restrictions, and dividing by the minimum lot size of the underlying zoning district.

(2) Every individual lot shall have frontage of at least one-half of the frontage required in the district or fifty (50) feet, whichever is greater, measured as hereinafter provided, except that any lot abutting an existing or proposed major or through secondary street (as defined in the planning board's subdivision regulations or indicated on said board's future street system plan) shall have frontage on such street no less than the amount normally required in the district.

(3) Except as provided in subsection 4.4.4 (c)(4) and subsection 4.4.4 (c)(5) of this ordinance, the special permit granting authority shall have the right to waive up to fifty (50) percent of the minimum requirements in the district for setbacks, side yards and rear yards upon review of the locations of each dwelling and accessory building on a cluster lot.

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(4) Special provisions for cluster lots abutting other property:

a. Purpose. The intent of the provision, below, is to provide for a minimum width of vegetated, unoccupied area, left in its natural state, between the periphery of a residential cluster and adjacent land uses. The purpose of this provision is to benefit both the cluster and noncluster landowners and land uses.

b. Provision. Individual lots in the cluster development which abut property that is not part of the cluster shall have as their setback dimension of their abutting yard(s) the same as that required in the district underlying the cluster development. If there is undeveloped intervening common land or public open space between said yard and the abutting property this area may be included in the required dimensional setback for the subject cluster. However, in no case can the sum of the lot setback and the width of the buffer, be less than that required for the district underlying the cluster, or thirty-five (35) feet, whichever is more.

(5) Every individual lot in the cluster development shall have an area of at least two-thirds of the minimum area per dwelling unit required in the district, or six thousand six hundred (6,600) square feet (whichever is larger), the balance, if any remaining in common land. The special permit granting authority shall have the right to further waive minimum lot area requirements up to one-half (50%) of the minimum required in the district provided that all the following apply:

a. Such waivers result in a more efficient lot layout which affords protection of more natural features of the site or otherwise directly furthers the achievement of the purposes (section 4.4.4 (b)) of this ordinance. When such a waiver is granted, a specific finding has to be made in the written decision of the special permit granting authority describing how such waiver complies with this provision of the ordinance; and

b. Such a waiver shall not increase the number of lots allowed in the cluster beyond the number allowed under 4.4.4 (c)(1) of this ordinance; and

c. No lots smaller than six thousand (6,000) square feet are created by means of such a waiver.

(6) The total area of common land within the development equals or exceeds the sum of the areas by which any individual lots are reduced below the minimum lot area normally required in the district. The total area of common land may usually range from twenty (20) to fifty (50) percent of total land area within the development, exclusive of areas not available for development per 4.4.4 (c)(1).

(7) All common land hereunder shall be held in common ownership by the owners of lots within the development. In the case of ownership by a separate legal entity, the developer shall include in the deed to the owners beneficial rights in said common land. Maintenance shall be the responsibility of the owners. A permanent conservation easement shall be conveyed to the City of Peabody prohibiting development of said common land and the erection thereof any structures other than for the noncommercial, recreational use of the residents of the cluster development. All common or public open space land shall have adequate access to a public way.

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(d) Review criteria: In reviewing the application for a special permit for a cluster development, the special permit granting authority shall consider the following in its decision.

(1) The extent to which the plan for the cluster development is consistent with the purposes of this section of the ordinance.

(2) The extent to which unique or environmentally important features of the development site, especially those not afforded protection under some other local, state or federal regulation as set forth in subsection 4.4.4 (b)(2) of this ordinance, have been adequately described in the site plan submitted with the special permit application and have been incorporated, to the maximum extent feasible, as permanent open space of the cluster.

(3) Individual lots, buildings, and streets are designed and situated to minimize alteration of the natural site features and the need for excavation, cut and fill, or other types of earth moving operations.

(4) That the location and quantity of any portion of the common land intended for active or passive recreational uses, as those uses may be set forth by the special permit granting authority, is adequate in terms of size, topography, drainage, public access, quality and other pertinent site characteristics.

(5) The need for preservation of open space for scenic value shall be determined by the special permit granting authority based on its knowledge of the site of the proposed cluster development and comments received by the authority during the plan review and public hearing process. The suitability of common land intended for scenic value shall be determined by the following criteria:

a. Its visibility from a significant number of buildings or length of private or public streets; or

b. The vistas such common land affords of significant or unusual:

1. Landforms,
2. City scapes,
3. Historical sites, or
4. Buildings.

The special permit granting authority may impose restrictive covenants protecting such scenic areas or allowing access to such areas.

(6) The need for provisions of common land to act as an open space buffer, insulating existing developments from the cluster development, shall be determined by the special permit granting authority based on the purposes of this ordinance and upon its knowledge of the site and comments received during the plan review and public hearing process.

The suitability of common land intended for such buffers shall be determined by the special permit granting authority based on its consideration of a variety of factors, including:

a. The viewing distance and slope between the new buildings of the proposed cluster and the existing buildings of abutting properties; and

b. The width and quality of intervening buffer land; and

c. The height of post development trees, shrubs, fences or other man-made screens all as proposed by the developer or as may be required by the special permit granting authority.

(e) Application requirements: Applications for special permits for clusters shall include, in addition to all the data listed as (a) through (1) and information required under section 4.4.2, the following:

(1) Wetland areas;

(2) Lands included in the wetlands/floodplain conservancy district as defined in 4.4.3 of this ordinance;

(3) Wooded areas;

(4) Slopes over fifteen (15) percent, shaded;

(5) Rock outcroppings of a size that would require blasting;

(6) A brief description of wildlife habitat and vegetative cover on the site;

(7) Presence of any historical or archeological sites, endangered flora or fauna;

(8) Standard subdivision layout of lots, roadways, and utility easements of the proposed development site at a level of detail comparable to that required for a preliminary plan filing under Section III B of the Rules and Regulations of the Peabody Planning Board. In addition, proposed grading plans, including "cuts and fills" shall be provided.

a. Open space calculations. Detailed calculations of the area by which each individual lot has been reduced and the sum total of these areas as well as the sum total of all common land or public open space areas provided shall be submitted as a part of a plan.

b. Purpose. The purpose of the submittal of the standard subdivision layout is to allow the special permit granting authority the opportunity to compare and contrast the advantages of the design of the two (2) plans.

(9) The plans and information that are submitted by the applicant under Section III B of the Rules and Regulations of the Peabody Planning Board may also serve to satisfy the plan requirements of sections 4.4.2 and 4.4.4 (e) of this zoning ordinance provided all data and information required under said subsections of the zoning ordinance are also submitted as part of said definitive plan submission.

(10) Both a definitive subdivision plan and a special permit must be approved before a cluster development can be built.

(f) [Permit, authorization.] A special permit for a cluster development issued hereunder by the special permit granting authority is an authorization for the use of lots which have less than the normal minimum area or frontage or both.
(Ord. of 5-10-84, § 24; Ord. of 8-25-88, § 1)

Zoning Ordinance City of Peabody, Section 4.4.9 (Adopted 1978, Amended 2004)

4.4.9 Planned residential development requirements.

(a) General requirements.

- (1) Any PRD parcel which is not at least five (5) acres would be required to meet all dimensional standards and other requirements of an R-1 zone.
- (2) Two (2) off-street parking spaces must be provided for each dwelling unit, having dimension of each space not less than ten (10) feet in width and twenty (20) feet in length. One (1) offstreet visitor's parking space of the aforesaid dimension, shall be provided for every five (5) dwelling units. Said space(s) shall be clearly designated as visitor's parking space. Detached parking garages will be permitted if located and designed so as to compliment the building design and site layout, but shall not be constructed within the setback areas. (Ord. of 8-25-88, § 2)
- (3) The site plan of a PRD shall provide an effective and unified treatment of the development possibilities of the land, making appropriate provision for the preservation of streams, stream bank, wooded cover, rough terrain and other significant natural features.
- (4) Dwelling units constructed in the PRD zone must meet any special design guidelines specified by the permit granting authority.
- (5) Television, radio and communication services shall be supplied by a central system with underground connection.
- (6) All utilities shall be installed underground using standards promulgated by the planning, health, building and public service departments of the City of Peabody, and sewerage shall be disposed of by means of adequate connections to the municipal sewerage system.
- (7) The owner or owners shall be responsible for the maintenance of common areas including but not limited to, snow plowing within the site limits and rubbish disposal. No outside burning of rubbish or inside incineration shall be permitted.
- (8) Suitable recreation space with a cost of seven hundred fifty dollars (\$750.00) or one (1) percent of the cost of the dwelling unit, whichever is greater, shall be provided. Not less than thirty-three (33) percent of the total land area of the site shall remain free from structures, parking and drives, and such area shall be left either in its natural state, attractively

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landscaped, or developed for uncovered recreational facilities.

(b) Multistory/multifamily development requirements.

- (1) Multistory developments can include multiple-family dwellings, multistory single family cluster developments, or public housing.
- (2) The site shall have not more than eight (8) dwelling units/acre. A bonus density of not more than two (2) dwelling units/acre for a total maximum of ten (10) dwelling units/acre may be granted as a condition of the special permit provided that a minimum of ten (10) percent of the dwelling units provided at the site are assured to be sold or leased on terms affordable to individuals or households with incomes not exceeding those defined as "moderate income" by the Massachusetts Executive Office of Communities and Development or comparable governmental agency acceptable to the special permit granting authority. The assurances, referred to in the previous sentence shall be in the form of a covenant or other means acceptable to the special permit granting authority and shall be in full force and effect for a period of not less than ten (10) years from the date of the first sale, lease or transfer of said units. (Ord. of 8-25-88, § 3)
- (3) The facade of multistoried buildings shall be broken up by architectural detailing such as window protrusions, balconies, overhangs.
- (4) Buildings shall be sited to allow maximum amount of light to reach individual units.
- (c) Single-story/single-family development requirements.
- (1) Single-story developments may include detached site built houses, detached one unit modular homes assembled on site, or one story single-family cluster developments. All must have foundations and be permanently affixed.
- (2) The site shall have not more than a maximum of four (4) single-story detached dwelling units/acre. A bonus density of not more than one (1) unit per acre for a total maximum of five (5) dwelling units/acre may be granted by the special permit granting authority under the same terms and conditions as specified in 4.4.9(b)(2) of this ordinance. (Ord. of 8-25-88, § 4)
- (3) Each unit must have a minimum lot size of not less than ten thousand (10,000) square feet in addition to common areas and roads except in the case of bonus densities granted under 4.4.9(c)(2) in which case minimum lot size will be not less than eight thousand (8,000) square feet in addition to common area and roads. (Ord. of 8-25-88, § 5)
- (4) Single-story houses shall not be entirely rectangular, but present a street facade varied by setbacks, porches, breezeways, garages, etc.
- (5) Roofs shall be pitched and shingled in a manner compatible with one family dwellings.
- (6) The narrow end of a rectangular house may not face the street unless a garage and/or

breezeway creates a larger facade.

(d) Procedures.

(1) Pre-application Conference: A developer desiring to obtain a special permit to construct a planned residential development shall request a pre-application conference with the planning board prior to submitting an application for the special permit. At the pre-application conference, the planning board shall familiarize the developer with the process for obtaining a special permit for a PRD and explain to him issues that shall be considered in planning the project.

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board prior to submitting an application for the special permit. At the pre-application conference, the planning board shall familiarize the developer with the process for obtaining a special permit for a PRD and explain to him issues that shall be considered in planning the project.

(2) Submission of Definitive Plan:

a. The applicant shall submit to the special permit granting authority an application for a special permit hereunder accompanied by the original of the definitive plan.

Seventeen (17) copies of the application and definitive plan shall also be filed in the city clerk's office. A fee of one hundred dollars (\$100.00) by bank or certified check payable to the City of Peabody shall accompany the submission of the application and plan. In addition, the applicant shall pay the cost of advertisement and notification of all "parties in interest" as defined in G.L., c. 40A, §11.

b. The city clerk shall transmit a copy of the definitive plan to the planning board, conservation commission, community development authority, board of health, department of public services, police department, fire department, and city council.

c. The agencies receiving copies of the definitive plan shall submit to the planning board written recommendations on the proposed project within fifteen (15) days of filing. Failure to comment shall be deemed lack of objection.

d. Within thirty-five (35) days of the filing of the definitive plan, the planning board shall submit to the city council accompanied by the reports noted in subsection (c) a report discussing the feasibility of the project and its consistency with the purposes in section 4.4.9.

e. The special permit granting authority upon receipt of the report of the planning board but in any case within sixty-five (65) days of the filing of the definitive plan, shall hold a public hearing, notice of which shall be published in a local newspaper once in each of two (2) successive weeks with the first publication to be not less than fourteen (14) days before the date of the hearing and shall be mailed to all "parties in interest" as defined in G.L., c. 40A, §11, and to any other property owners deemed by the city council to be affected thereby. Notice shall be given by certified mail by the city clerk. The list of persons to be notified shall be prepared by the petitioner, certified by the office of assessors. The report of the planning board shall be read into the record at the public hearing.

f. The special permit granting authority shall within ninety (90) days following the public hearing certify in writing that the application is approved as submitted, approved subject to modification, or denied. Failure to take action within the said ninety (90) day period shall be deemed to be a grant of the special permit applied for subject to the requirements in subsection 7.6.3(a), (b) and (c).

g. Approval of a special permit for a planned residential development shall require a two-thirds (2/3) vote of the city council.

h. If the project is denied, the developer shall not submit substantially the same proposal for two (2) years unless (a) all but one of the members of the planning board consent to a reapplication after notice is given to parties in interest of the time and place of the proceedings to consider its consent and (b) the city council finds

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specific and material changes in the conditions upon which the previous unfavorable action was based, describes such changes in its records and similarly consents.

i. Special permits granted under this section shall lapse within one year, excluding time required to pursue or await the determination of an appeal, from the grant thereof, if a substantial use has not sooner commenced or if construction has not been begun. The city council may grant an extension for good cause, and shall grant an extension if the delay has been caused on account of the need to seek other permits.

j. No construction or reconstruction except as shown on the approved plan shall occur without a further submission of plans to the city council and the planning board and a notation to this effect shall appear upon the approved plan and upon deeds to any property within the PRD.

k. Contents of definitive plan: The application for a special permit shall be accompanied by the original copy of the definitive plan and other data required to be submitted and shall contain the following data:

i. It shall be drawn at a scale of one inch equals forty feet unless another scale is requested and found suitable by the planning or engineering department.

ii. The plan shall be prepared by a registered land surveyor, registered professional engineer, or registered architect.

iii. The scale, date, and north arrow shall be shown.

iv. The plan shall be certified by the registered land surveyor doing the boundary survey and the registered professional engineer or architect on the location of

the buildings, setbacks and all other required dimensions, elevations, and measurements and shall be signed under the penalties of perjury.

- v. The corner points of the lot and change of direction of lines shall be marked by stone monuments, cut in stone, stake and nail, iron pin, or other marker and shall be so marked.
- vi. Lot number, metes and bounds of lots, size of lot in square feet, and width of abutting streets and ways, and names of all abutters.
- vii. Easements within the lot and abutting thereon and their uses.
- viii. The location of existing or proposed buildings on lot.
- ix. The proposed system of drainage, including adjacent existing natural waterways.
- x. A description of the abutting neighborhoods in which the parcel for the development lies, including utilities and other public facilities and the general impact of the proposed PRD upon them.
- xi. A summary of environmental concerns relating to the PRD.
- xii. The location of existing wetlands, water bodies, wells, 100-year floodplain elevation and other natural features.
- xiii. The dimensions of the existing and proposed buildings in feet and the gross floor area.
- xiv. The distance of existing and proposed buildings from the lot lines and the distance between buildings on the same lot.
- xv. Per cent of the lot coverage.
- xvi. Average finished grade of each building.
- xvii. The elevation above average finished grade of the floor and ceiling of the lowest floor of each building.
- xviii. Existing and proposed topographical lines at two-foot intervals.
- xix. The use designation of each building or part thereof, and of each section of open ground, plaza or usable roof space.
- xx. Number and location of parking spaces, including driveways and all areas of circulation.
- xxi. Height of all buildings, above average finished grade of abutting streets.
- xxii. Total square feet of all landscape and recreation areas, and depiction of materials to be used (grass, five-foot shrubs, etc.).
- xxiii. Floor plans of proposed building(s).
- xxiv. Exterior elevations of proposed building(s) indicating applicable materials.

(Ord. of 10-11-84, § 12)

The Designated Development District does not appear to allow residential development, but it appears to be a form of flexible zoning in Peabody.

Zoning Ordinance City of Peabody, Section 4.6 (Adopted 1978, Amended 2004)

4.6 DESIGNATED DEVELOPMENT DISTRICT (DDD)

4.6.1 Purposes.

The designated development district and uses created herein are intended to:

- (a) Encourage a regional node and cohesive community of compatible mixed uses including office, research and development and light manufacturing supported by hotels, restaurants, retail shopping, and recreational facilities within the designated development district.
- (b) Establish incentives to encourage desirable land uses and coordinated land assembly for development.
- (c) Reduce the number of regulations to a small set of essential standards for density, dimensions, and parking.
- (d) Establish design and development guidelines to clarify city goals, assist developers, and result in coordinated signage and lighting, compatible architecture, and site work throughout the district.
- (e) Establish development plan review to ensure quality and intent of proposed projects.
- (f) Establish site specific performance standards to regulate impacts to the carrying capacity of the land and municipal facilities.

Notes on density:

Cluster development: 5 acre minimum; maximum number of lots in a cluster development determined by total land area (minus roads and deed restricted land) divided by the minimum lot area of the underlying zone; every individual lot shall have an area of at least two-thirds of the minimum area per dwelling unit required in the district; SPGA can allow greater density, up to 50% of the minimum required in the underlying district.

Cluster is allowed in R-1, R-1A, R-1B, R-2, R-3, and R-4. In R-1, minimum lot area is 20,000 square feet; in R-1A, 15,000 sf; in R-1B, 10,000 sf; in R-2, 5,000 sf for single family and 7,500 sf for two-family; in R-3, 10,000 sf for multifamily residence; in R-4, 30,000 sf for multifamily.

Planned residential development:

5 acres required.

For multistory/multifamily development - no more than 8 dwelling units per acre. If affordable units also built, then 10 units per acre.

Single story/single family development requirements -

4 units per acre. Density bonus of 1 unit per acre added for including affordable units. Each unit with a minimum lot size of 10,000 sf, or 8,000 sf if there is a density bonus.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board Joe Viola, Senior Planner, said that the City Council is usually the SPGA. However, cluster developments and municipal property reuse require special permits from the planning board.

Has any housing been built under the cluster/flexible provisions?

Yes Joe Viola, Senior Planner, said (8/17/04) that nobody has taken advantage of it in quite a while. It has been used on a few occasions. He commented that most of the single family districts are built out, so it is hard to make use of the cluster zoning.

Survey received from City of Peabody (Joseph Viola, City Planner) on 4/11/05:

Has any housing been built under the cluster/flexible provisions? (none, 1-8 projects, more than 8)

"1-8 projects"

Pembroke

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

No

Which entity is the special permit granting authority for cluster/flexible zoning?

Has any housing been built under the cluster/flexible provisions?

Pepperell

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by

special permit?

Yes Open Space Residential Development - OSRD
Planned Unit Development - PUD
Multifamily Residential Development - MFRD

Open Space Residential Development - OSRD: Dates back to 1973, when it was called cluster development.
Planned Unit Development - PUD: Town Planning Administrator Inez Gove found references dating back to 1983.
Multifamily Residential Development - MFRD: "Was addressed as far back as 1968" according to Inez Gove.

"7100. OPEN SPACE RESIDENTIAL DEVELOPMENT

7110. Purpose. The purpose of this section is to allow for greater flexibility and creativity in the design of residential developments in a manner which is more harmonious with natural features, provided that the overall density remains compatible with development otherwise presumed to occur in accordance herewith; to preserve in perpetuity and to promote the maximum possible protection of open space, agricultural lands and other natural resources; and to encourage efficient provisions for streets, utilities and public services. In an Open Space Residential Development (OSRD), the Planning Board may vary dimensional controls, with the exception of height in single family residential districts, by special permit granted hereunder, provided that the proposal complies with the following additional requirements and the Planning Board makes the additional findings as specified herein.

7120. General Requirements. Any parcel of land or group of contiguous lots, minimum area of ten (10) acres, located within a residential zoning district may be considered for OSRD, provided that:

7121. The land is not within any Water Resource Protection Overlay District.

7122. The land area of the site consists of a minimum of seventy-five percent (75%) of contiguous upland, exclusive of wetlands, surface waters or flood hazard areas.

7123. The site shall be served by town water.

7124. Each lot shall have adequate access on a public way.

7130. Number of Lots. The total number of lots shall be no greater than the number of lots that would be permitted in the zoning district in which the site is located and which may be developed under the provisions of any applicable federal, state or local statutes, by-laws or regulations. The burden of proof shall be upon the applicant to submit a preliminary plan showing the total number of lots, which could be obtained utilizing the following criteria:

7131. Land use regulations in this Zoning By-Law.

7132. Deephole and percolation testing results demonstrating that each conventional lot would meet 310 CMR 15.00 minimum requirements for the subsurface disposal of sanitary sewage, State Environmental Code, Title 5, and local Board of Health standards when individual septic systems are necessary.

7133. Surface water, bordering vegetated wetlands and flood hazard area data using the FIRM or Raytheon information, as applicable, demonstrating that each such conventional lot has viable frontage access on a public way without reliance on a common drive.

7140. Design Standards. [...]

7150. Permitted Uses.

7151. Each lot exclusive of the open land shall be used for residential dwellings of the type permitted or allowed by special permit in the applicable zoning district. These lots shall be grouped in clusters, and within each cluster the lots shall be contiguous.

7152. Accessory uses shall be allowed appurtenant thereto as provided in the residential district in which the land is located, with the exception of the keeping of nondomestic animals; and the use as a customary home occupation, as defined in this chapter, shall be further limited, prohibiting any employees who do not reside within the dwelling unit, any retail sales and any business signs.

7153. Common open spaces may be used for noncommercial active and passive recreation, conservation, forestry, agriculture and natural buffers and may contain structures necessary to approved uses, utilities and other facilities necessary for the convenience and enjoyment of the residents, subject to approval by the Planning Board as part of the decision on the special permit or as amendment to the special permit after it has been issued.

7160. Common Open Space. All land not devoted to residential lots, roads or other development shall be set aside as common land, and the land shall be preserved in essentially its natural condition. The common land shall be, to the extent practical, adequately distributed throughout the parcel so that it is accessible to residential lots without crossing through private property and separates residential lots from abutting properties.

7161. The following lands shall not constitute more than fifty percent (50%) of the common open space:

a. Lands identified as wetlands in accordance with G.L. c. 131, s. 40;

b. Lands with slopes greater than twenty-five percent (25%)

7162. Further subdivision of common open land or its use for other than recreation, conservation or agriculture, except for easements for underground utilities, shall be prohibited. Structures or buildings accessory to recreation, conservation or agricultural uses may be erected, provided that there shall be a minimum setback of one hundred (100) feet between any common open space structures and all property lines on the site, and provided that the total of impervious surfaces shall not exceed ten percent coverage of the total area of the common open land.

7163. The design of the common land shall provide for linkage with existing or future planned open space lands in abutting developments or in publicly owned or controlled open space lands, shall be planned as large contiguous units whenever possible, with strips or narrow parcels (fifteen foot minimum width) only permitted when necessary for access or as vegetated buffers along the site's perimeter, and may be in more than one (1) parcel, provided that the size, shape and location of such parcels are suitable for the designated uses.

7164. Ownership and Management of the Open Space. The land set aside as common open land shall be owned and/or managed by one (1) of the following arrangements, as may be determined by the Planning Board:

a. Conveyed to an association, corporation or trust owned or to be owned by the owners of lots within the

development. If such association is utilized, ownership thereof shall pass with conveyances of the lots in perpetuity.

b. Conveyed to the town, at no cost, and accepted by it for park or open space. Such conveyance shall be at the option of the town and shall require the acceptance of the land by the Conservation Commission and the approval of the Board of Selectmen.

c. Conveyed to a nonprofit organization, the principal purpose of which is the conservation or preservation of open space.

d. In any case where such land is not conveyed to the town, a restriction, enforceable by the town, shall be required ensuring that such land shall be kept in an open or natural state and not be built upon for residential use or developed for uses such as parking or roadways. Such restrictions shall further provide for maintenance for the common land in a manner which will ensure its suitability for its function, the appearance, cleanliness, proper maintenance of drainage utilities and the like, and empower the town to perform maintenance in the event of failure to comply with the program, and including a provision that the owners of lots or units within the cluster development shall pay the cost thereof and that the cost shall constitute a lien upon their properties until said cost has been paid. This restriction shall be recorded within sixty (60) days of the granting of the special permit, unless the sixty day time limit is waived and extended to a date certain by the Planning Board, or the special permit shall be null and void." [... submission requirements, decision, etc. ...]

"7200. PLANNED UNIT DEVELOPMENT

7210. General. On parcels of at least one hundred twenty thousand (120,000) square feet, the Planning Board may authorize a special permit for a planned unit development wherein the Planning Board may allow a mixture of uses and a variety of building types which are indicated as permitted or allowable by special permit in that district in the Table of Use Regulations.

7220. Number of Dwelling Units. The total dwelling units allowed on said parcel shall not exceed that otherwise allowable in the district.

7230. Open Space Required. The designation of a portion of the parcel as common or open land shall be required, and shall be governed by the provisions of Section 7170.

7240. Decision. In addition to the finding required by Section 9300, the Planning Board shall find that the PUD promotes a significant advantage from the normal requirements of the district."
(entire provision)

"7300. MULTIFAMILY RESIDENTIAL DEVELOPMENT

7310. General. Multifamily residential development shall be allowed only by special permit by the Planning Board in the Urban Residence District and in the Commercial District.

7320. Design Requirements.

7321. At least ten thousand (10,000) square feet of land area shall be allocated for each dwelling unit in each multifamily dwelling. Not more than four (4) dwelling units may be placed in any multifamily dwelling.

7322. Multifamily development shall be served by the public water system or a private communal water system, which conforms to all applicable regulations of the Commonwealth of Massachusetts and the Town of Pepperell. Water supply shall be sufficient at all times to meet public water supply and fire protection requirements, and in this regard, the recommendations of the Town Water and Fire Departments shall be considered.

7323. The distance between buildings shall be a minimum of fifty (50) feet unless, after consideration of architectural, aesthetic, land planning, topographical, ground factors and emergency access, the Board determines that less distance is desirable. In no case shall such distance be less than twenty (20) feet.

7324. On-site drained parking areas shall comply with Section 5100, and adequate provision for aisles and drives shall be provided. Separate buildings for parking garages, if any, shall be located and designed so as to complement the apartment building design and site layout. Parking spaces located at the front of the site shall be suitably screened so as to not be viewed from the road.

7325. All dwelling units within apartment buildings shall have a minimum floor space area of four hundred-eighty (480) square feet.

7326. No multifamily development containing eight (8) or more units shall have more than twenty percent (20%) of the total number of apartments with three (3) or more bedrooms.

7327. Easements and deeds shall be granted to the town to secure access to town facilities, utilities and land.

7328. Excepting master antennas serving one (1) or more buildings, exterior antennas for reception or transmission of electronic signals shall not be permitted.

7330. Open Space. Open space and common land, if any, shall be laid out in such manner as to tend to assure compliance with the foregoing standards, to provide for pedestrian safety within the site and to provide an aesthetically pleasant setting for the multifamily residential development within its neighborhood. Such open space land shall meet the ownership, maintenance and conservation easement requirements as provided for an open space residential development under this chapter." [... Planning board action and conditions ...]

Zoning By-Law, Town of Pepperell, Massachusetts (as amended 12/16/03).

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board 7100. OPEN SPACE RESIDENTIAL DEVELOPMENT

7110. Purpose. The purpose of this section is to allow for greater flexibility and creativity in the design of residential developments in a manner which is more harmonious with natural features, provided that the overall density remains compatible with development otherwise presumed to occur in accordance herewith; to preserve in perpetuity and to promote the maximum possible protection of open space, agricultural lands and other natural resources; and to encourage efficient provisions for streets, utilities and public services. In an Open Space Residential Development (OSRD), the Planning Board may vary dimensional controls, with the exception of height in single family residential districts, by special permit granted hereunder, provided that the proposal complies with the following additional requirements and the Planning Board makes the additional findings as specified herein.

7200. PLANNED UNIT DEVELOPMENT

7210. General. On parcels of at least one hundred twenty thousand (120,000) square feet, the Planning Board may authorize a special permit for a planned unit development wherein the Planning Board may allow a mixture of uses and a variety of building types which are indicated as permitted or allowable by special permit in that district in the Table of Use Regulations.

7310. General. Multifamily residential development shall be allowed only by special permit by the Planning Board in the Urban Residence District and in the Commercial District.

Has any housing been built under the cluster/flexible provisions?

Yes Email from Planning Administrator Inez Gove (6/2/05):

"Has any housing been built using the following provisions (none, 1-8 developments, more than 8):

Open Space Residential Development – OSRD

1 in 2001

Planned Unit Development – PUD

None

Multifamily Residential Development – MFRD

1 in 2003 for 32 units

Has any age restricted housing been built in Pepperell?

The 2003 multi-family residential development we approved in 2003 for 32 until chose to do an over-55 development. It was not a 40B project, but is completely age restricted."

Plainville

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Residential Cluster (attached/detached) is allowed in RA, RB, RC, RD by special permit (by the Planning Board).

Town of Plainville Zoning Bylaw

2.13.0 Residential Cluster Development

A. Statement of Purposes: A residential cluster development may be authorized by special permit in the Town of Plainville in order to achieve the following objectives:

1. Flexible and sensitive site design;
2. Promotion of measures to ensure compatibility of growth and sensitivity to the natural environment;
3. Enhancement of residential and community amenities by provision of open space;
4. Promotion of economical and efficient use of roads, water and sewer lines and other related infrastructure;
5. Promotion of diverse and energy-efficient housing at a variety of costs; and
6. Protection of water bodies and supplies, wetlands, floodplains, agricultural lands, wildlife, and other natural resources.

B. Definition and Applicability: Residential cluster development means a residential development in which the buildings and accessory uses are clustered together into one or more groups separated from adjacent property and other groups within the development by intervening open land, unless deemed otherwise by the special permit granting authority.

A residential cluster development shall conform to the following conditions:

1. Contain a minimum tract size of ten (10) acres in the RA, RD and RC Districts, and five (5) acres in the RD District.
2. The number of dwelling units shall conform to the existing density allowed in the corresponding zoning district after subtracting the area which contains wetlands as delineated by Conservation Commission.
3. A minimum of 40% of the total land area of the development shall be dedicated as common open space; no more than 25% of the land required as common open may be wetlands as defined in MGL Ch. 131, Section 40, or waterbodies.
4. There shall be a minimum width of 50 feet of buffer area between attached cluster buildings, and a minimum width of 50 feet of buffer area between attached clusters and the abutting property lines or street. These buffer areas shall provide suitable landscaping to screen and cluster buildings from each other, abutters, and streets year round.

C. Required open Land

1. At least 40% of the tract (exclusive of land set aside for roads and parking) shall be open land. At least 75% of the open land shall be suitable for passive or active recreations use, and shall not be wetlands or land subject to seasonal flooding.
2. The open land, and such other facilities as may be held in common, shall be conveyed to one of the following, as determined by the Planning Board, subject to the following guidelines.

In general, valuable natural resource land, such as wetlands not suitable for any public use or suitable for extensive public recreational use, should be conveyed to the Town or to a trust: whereas land which will be principally used by the residents of the cluster should be conveyed to any of the following:

a. To a corporation or trust comprising a home association whose membership includes the owners of all lots or units contained in the tract. The developer shall include in the deed to owners of individual lots beneficial rights in said open land, and shall grant a conservation restriction to the Town of Plainville over such land pursuant to General Laws, Chapter 184, Section 31-33, to ensure that such land be kept in an open or natural state and not be built upon the residential use or developed for accessory uses such as parking or roadways. This restriction shall be enforceable by the Town through its Conservation Commission in any proceeding authorized by Section 33 or Chapter 184, and for perpetuity. In addition, the developer shall be responsible for the maintenance of the common land and any other facilities to be held in common until such items as the homes association is capable of assuming said responsibility. In order to ensure that the association will properly maintain the land deeded to it under this section, the developer shall cause to be recorded at the Norfolk County Registry of Deeds a Declaration of Covenants and Restriction which shall, at a minimum, provide for the following:

1. Mandatory membership in an established homes association is a requirement of ownership of any lot in the tract.
2. Provisions for maintenance assessments to all lots in order to ensure that the restrictions placed on the use of the open land will not terminate by operation of law.
3. Provisions which, so far as possible under the existing law, will ensure that the restrictions placed on the use of the open land will not terminate by operation of law.

b. Any non-profit organization, the principal purpose of which is the conservation of open space. The developer or charity shall grant a conservation restriction as set out in (a.) above.

c. To the Town for park or open space use, subject to the approval of the Selectmen and Town Meeting, with a trust clause ensuring that it be maintained as open space.

3. Open space shall be restricted to recreational uses such as parks, playgrounds and conservation areas and shall not be built upon except as approved by the Planning Board. Only structures incidental for recreation, conservation or parks shall be allowed subject to approval by the Planning Board. These restrictions shall run with the deed in perpetuity.

4. All open space areas shall have dry access to the street suitable for use by maintenance and emergency vehicles.

5. The applicant shall submit a plan for maintenance of the open space area.

6. The applicant shall give evidence that a functional relationship exists between the open land and the proposed clusters. Such land shall be of such size, shape, dimension, character, and location as to assure its utility for park conservation or recreation purposes.

D. Annual Limitation

Under the provisions of this section, the Planning Board shall not approve more than one residential cluster development in each residential district during each calendar year.

E. Lot and Yard Requirements

1. Attached cluster units shall not exceed a total of four (4) units per building in the RA and RE districts and six (6) units per building in RC and RD districts.

2. These attached units, if designed as part of an association under single joint ownership, shall only meet the lot and yard requirements within this section. Density shall follow guidelines set forth in Section B.3 of this bylaw.

3. Detached cluster units shall conform to 2.6 except for the lot and yard requirements provided below:

In the RA, RE, and RD districts, the minimum lot area is 20,000 square feet.

4. No building shall exceed two (2) stories.

F. Administrative Procedures

The Planning Board, as the Special Permit Granting Authority (SPGA), shall adopt rules relative to the issuance of special permits and file a copy with the Town Clerk.

The Planning Board shall not grant a special permit for a cluster development, if it appears that because of soil, drainage, traffic or other conditions affecting the site the granting of such permit would be detrimental to the neighborhood or to the Town or inconsistent with the purposes of cluster development. In granting a special permit for cluster development, the Planning Board shall

impose such conditions and safeguards as public safety, welfare, and convenience may require.

G. Copy to Board of Health

A copy of the plans shall be submitted to the Board of Health. Binding review of cluster plans by the Board of Health shall be according to the provisions of the MGL, Chapter 151, Section 81U.

H. Review Procedures

The SPGA shall review all applications for a residential cluster development to determine the sensitivity of the site to the following criteria:

1. Compatibility with existing developments;
2. Acceptance design and layout of ways, streets, and paving;
3. That the projected traffic increase to the local road(s) is within the capacity of the existing network;
4. Compliance with environmental standards; and
5. Appropriateness of building and site design.

(Amended at Annual Town Meeting, 1987 and 1989)

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board Town of Plainville Zoning Bylaw

According to 2.10 (Special Conditions Applicable to Special Permits), Residential Cluster (attached/detached) is allowed in RA, RB, RC, RD by special permit (by the Planning Board).

Has any housing been built under the cluster/flexible provisions?

Yes According to Interim Town Planner Tom Watkins, (7/8/05) cluster developments have been built in Plainville. In response to the question "more or fewer than 8?" he answered "fewer than 8."

Plymouth

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Town of Plymouth Zoning Bylaw 2004

§ 205-28. Planned unit development.

A. Definitions

"PLANNED UNIT DEVELOPMENT" (PUD) is an area of land, designed and developed as a unit, with common open space as an integral characteristic and Which departs from the. Zoning regulations conventionally required in the district concerning use of land or buildings, lot size, density, bulk or type of structure, lot coverage or other requirements. Unless specifically prescribed, any combination of authorized uses may be allowed as long as the required density is not exceeded. The term Planned Unit Development (PUD) includes the following types of developments:

"HIGH TECHNOLOGY PLANNED UNIT DEVELOPMENT " (High Technology P.U.D.) is a high technology planned unit development in the Rural Residential District established under the Zoning Bylaw.

"RETIREMENT MOBILE HOME PLANNED UNIT DEVELOPMENT " (R.M.H.P.U.D.) is a mobile home park whose occupancy is limited to elderly households.

R.M.H.P.U.D.'S provide attractive and healthy residential environments meeting the unique needs of the elderly in accordance with the Town's Housing Assistance Plan.

"COMMON OPEN SPACE ", or "Land", or "Facilities" is (are) a parcel or parcels of land or an area of water, or a combination of land and water within the site designated for a Planned Unit Development, maintained and preserved for open uses, and designed and

intended for the use or enjoyment of occupants of the planned unit development. Common open space may contain such elements as defined and complementary structures and improvements as are necessary and appropriate for the benefit and enjoyment of residents of the Planned Unit Development, but shall not include streets or parking areas except those incidental to open space uses, and except those in a R.M.H.P.U.D. or High Technology P.U.D.

B. Objectives of Planned Unit Development

- 1) To free the development process from the constraints of conventional lot lines and inflexible zoning standards based upon lot by lot development.
- 2) To encourage flexibility and creativity in the design of developments through a carefully controlled process of negotiation of particular plans rather than the strict pre-regulation of all plans within a zone.
- 3) To encourage innovations in development in keeping with the general scale and character of Plymouth.
- 4) To encourage a less sprawling form of community development which makes more efficient use of land, requires shorter networks of streets and utilities and which fosters more economical development and less consumption of rural land.
- 5) To permanently preserve natural topography and wooded areas within developed areas and to provide useable open space and recreation facilities in close proximity to all homes.
- 6) To provide an efficient procedure which can insure appropriate, high quality design and site planning and a high level of environmental amenity.

The Objectives set forth in this Subsection shall be considered as guidelines by the Board of Appeals in its grant of special permits under this Section 205-28 but are not intended to establish any specific requirements beyond those set forth in other Subsections of this Section 205.

C. Location and Density of Planned Unit Developments

Various types of Planned Unit Developments may be established in specified zones by special permit, provided that all proposed PUD'S shall comply with all requirements prescribed herein and with the standards of environmental design review. Table 3 prescribes type of PUD, minimum size, maximum overall density, and minimum lot size allowed in each zone. Table 4 prescribes intensity of use and dimensional requirements

Within the maximum density or intensity of use requirements, any combination of authorized uses may be permitted in accordance with other planning and design principles prescribed hereinafter. Where land falls in two or more zoning districts, overall density shall not exceed the total of densities allowed in each district, provided that portions of the development in different districts shall generally follow the respective intensity regulations intended for each district.

In calculating intensity of use and allocation of open space, the following procedures shall be used:

- 1) Non-residential land uses shall be subtracted from the total land area before calculating residential densities.
- 2) Water areas or inaccessible wetland areas which are greater than one (1) acre in area or seventy-five (75) feet in least dimension shall be subtracted from the total land area before calculating densities, except that twenty-five (25) percent of such areas greater than one (1) acre but smaller than (10) acres may be counted as part of the common open space under "D".
- 3) Roads shall be subtracted from total area in determining net densities. For preliminary and general planning purposes, roads may be estimated as fifteen (15) percent of total area. For definitive plans of areas, all lot sizes and densities of clusters as specified in Table 4 shall be net figures with rights-of-way for streets figured exactly.
- 4) Areas which are considered by the Board of Appeals as marginal or unsuitable for building such as floodplains, inaccessible wetlands and water areas under one (1) acre, seventy-five (75) feet in breadth, steep slopes, highly erodible or poorly drained arm, areas of very shallow bedrock, or of very high water table shall be included in the permanent open space; but no more than sixty (60) percent of the required open space prescribed in Table #4 shall consist of such marginal or unbuildable areas.

Retirement mobile home PUD = 5 d.u./acre 20-acre min.
tract

205-63 Open Space Mixed Use Development (OSMUD)

A) INTENT

The intent of this section is to provide a mixture of open space and various land uses on large, well-buffered sites, to allow more effective and efficient use of land in rural areas, to focus vehicular traffic to the highest capacity adjacent transportation corridors of Plymouth, to minimize service responsibilities, to reduce housing where it could be allowed, and to increase the net tax base of the Town. All non-residential structures and related facilities shall be constructed in a campus style development utilizing attractive landscaping and a village market place design and must be in harmony with the topographical, vegetative, archeological, and historic character of the land.

B) DEFINITIONS

Except as noted hereinafter, all definitions are as provided in the Zoning Bylaw. As used in this Section, the following terms shall

have the meanings set forth below:

" CAMPUS STYLE DEVELOPMENT " shall encourage a mixture of retailers of varying sizes.

" OPEN SPACE MIXED USE DEVELOPMENT " (OSMUD) is an area of land designed and developed, as a unit, with open space as an integral characteristic and which departs from the zoning, regulations conventionally required in the Rural Residential (RR) District concerning uses of land or buildings, lot size, bulk or type of structure, or other requirements. Not less than 200: acres of an Open Space Mixed Use Development shall be "Reserved Land" as defined herein.

An Open Space Mixed Use Development may include a mixture of Common Open Space or Facilities, single and multi-family residential in limited occupancy communities and planned retirement communities, commercial (High Technology Planned Unit Development Uses), general commercial, retail, agricultural and recreational uses, and a variety of building types and designs, on well buffered sites of at least 3,000 acres where access to the Open Space Mixed Use Development from a Limited Access Highway such as Route 3 is by a Major Street. For the purposes of this Section, the 3,000 acres in the Open Space Mixed Use Development may consist of adjacent parcels in compact, non-linear shape, zoned Rural Residential; and divided only by highways, public and private roadways, and easements, and may include land subject to special permits for other overlay districts such as High Technology, P.U.D. or Recreational Development. For purposes of this Section, parcels on opposite sides of a roadway shall be deemed to be adjacent parcels in compact, non-linear shape, if said parcels have at least 200 feet of frontage directly opposite each other on a highway, public or private roadway.

Notwithstanding other sections of this Bylaw, "Common Open Space or Facilities" in the Open Space Mixed Use Development may include: dedicated open space; open space within any component of the OSMUD; Reserved Land; Recreational Uses including passive recreation facilities such as nature trails, and active recreation facilities such as golf courses, tennis clubs, and sports fields; agricultural uses; buffers from roadways; common areas in residential developments; public and quasi-public uses as described in Section I.2. below, including municipal uses; roadways; water supply and wastewater treatment facilities to service the OSMUD and other districts (provided that water supply will not service land outside of Plymouth); and uses accessory to the foregoing.

" RECREATIONAL USES " consist of indoor or outdoor recreational facilities, passive recreational facilities such as nature trails, and active recreational facilities such as ball fields (baseball, football, and soccer) or other play and sporting areas, tennis courts, golf courses, swimming pools and the like, and other such customary accessory uses, structures, and facilities.

" RESERVED LAND " is land designated to be left undeveloped in a substantially natural state. It is intended that Reserved Land be dedicated to the control of the Town of Plymouth. Reserved Land shall not be used for any use other than passive recreation, subject to the reservation of appropriate easements for underground utilities, roadways and passages to service adjacent properties, and signage. The Town of Plymouth shall be offered all such Reserved Land in accordance with the provisions of paragraph H.2 of this Section 401.25 of the Zoning Bylaw. If the Town declines to accept all or part of such Reserved Land, the part not accepted shall be offered to State or Federal government or a nonprofit organization existing prior to January 1, 1995, whose purpose is to own, maintain and preserve land as open space and to conserve and protect the natural environment, provided that the state or federal government or such nonprofit organization shall agree that such land shall be left undeveloped in a substantially natural state and not be used as a water supply for any area outside Plymouth.

Lots included in the Open Space Mixed Use Development that are contiguous to existing property used for public schools shall only be used for Reserved Lands. Water supply and wastewater treatment facilities to service the OSMUD shall not be placed upon existing lots that are contiguous to existing property used for public schools.

C) OBJECTIVES

1. To preserve unique natural topography and provide meaningful open space.
2. To ensure appropriate high quality design and site planning and a high level of environmental amenity.
3. To minimize all Town service responsibilities, including Town services for streets, utilities, fire protection and police.
4. To allow flexibility and creativity in the design of development through a carefully controlled special permit process of negotiation of particular plans.
5. To establish significant buffers between the higher intensity commercial and retail uses and abutting residential areas by the planning of Reserved Land and Common Open Space or Facilities.
6. To reduce the number of conventional single family residential units which would otherwise be allowed in the RR District and to substitute therefor Limited Occupancy Communities and Planned Retirement Uses, and thereby encourage alternative forms of single and multi-family housing development which will meet the changing needs of a maturing population.

The Objectives set forth in this Subsection C shall be considered as guidelines by the Planning Board in its grant of special permits under this Section 205-63, but are not intended to establish any specific requirements beyond those set forth in other Subsections of this Section 205-63.

D) USES

Under the special permit described in this Section, the following uses or any combination thereof, meeting the Dimensional and Intensity Regulations of the Open Space Mixed Use Development, may be allowed:

1. All allowed uses, special permit uses, and special permit uses subject to Environmental Design Conditions permitted in the RR District (Section 205-40).
2. All allowed uses, special permit uses, and special permit uses subject to Environmental Design Conditions permitted in the Recreational Development (RD) District.(Section 205-59).
3. High Technology Planned Unit Development as permitted in the RR District (Section 205-28.D).
4. Non-Residential uses (hereinafter referred to as "NR Uses"), in keeping with the nature and intent of this Section and the character of the Open Space Mixed Use Development, such as: agricultural uses; open space; Recreational Uses, including passive recreation such as nature trails and active recreation facilities such as golf courses, tennis clubs, and sports fields; planned shopping centers; utilities including, but not limited to, roadways and water supply and wastewater treatment facilities serving the OSMUD and other districts, including utility company facilities; and all commercial and residential allowed uses, special permit uses, and special permit uses subject to Environmental Design Conditions under the General Commercial (GC) District, except as expressly prohibited in this Section 205-63, but without limit as to ground floor area coverage or total floor area or date of construction of a building except as provided in this Section 205-63 of the Zoning Bylaw.
5. Planned retirement communities for households in which at least one permanent occupant is fifty five (55) years of age or older, but not limited to, congregate care facilities, rest homes, convalescent homes, homes for the elderly, nursing homes, elderly housing, and independent living units, provided that they are planned as a community. A social recreation center is required to serve as a focal point for the community. Appropriate medical and transportation facilities are also required.
6. Limited Occupancy Communities (LOCs) designed for households of a limited number of members in which the following requirements apply: (1) No dwelling unit shall contain more than three bedrooms; (2) The master bedroom in each detached or townhouse dwelling unit shall be on the first floor and no more than one additional bedroom shall be on the first floor; (3) Recreational amenities provided for an LOC as part of the Common Open Space or Facilities shall be oriented toward an adult population, and shall not include playgrounds.

All of the above uses shall be subject to the general requirements of this Open Space Mixed Use Development Section D that the property owners, individually and/or through a viable association, be obligated for the development, operation, and maintenance of common water supply, wastewater disposal, and internal vehicular and pedestrian circulation systems, and other utilities (e.g. telecommunications/cable services).

E) LOCATION AND DENSITY

The minimum area of a tract eligible for a Open Space Mixed Use Development is three thousand (3,000) acres in a single or consolidated ownership or control at the time of the original application, and the tract must have two thousand (2,000) feet of direct frontage on a Major Street, as designated by the Zoning Bylaw. Subsequent to the original application, applications for amendments to the boundaries of the OSMUD shall not require that the land be in a single or consolidated ownership or control. The Open Space Mixed Use Development may provide for a centralized area (the "Neighborhood Green") in which a full range of mixed uses including, but not limited to, retail, service, office, hotel, lodging house, conference centers with overnight accommodations, recreation, and single and multi-family residential in planned retirement communities and limited occupancy communities can function in efficient fashion to their mutual advantage and that of the community. Tables 11, 12 and 13 prescribed the type of development, minimum size, maximum overall density, minimum lot size allowed, intensity of use, and dimensional requirements.

Retail uses, because of their front yard buffer distances from Major Streets and Limited Access Highways, must have access from a Major Street and be located within 3,000 feet of a Limited Access Highway, provided, however, that no more than four (4) penetrations of the buffers on any Major Street shall be permitted for access to a contiguous area (not separated by Major Streets, Scenic Streets, or Limited Access Highways) of a Neighborhood Green, any portion of which contains retail uses. Retail uses shall be contiguous (not separated by Major Streets, Scenic Streets, or Limited Access Highways) and shall not be dispersed within the Open Space Mixed Use Development and shall be well buffered from existing residential uses. All buffers shall be designated in the Master Plan.

Table 11
Location and Density Requirements of OSMUD
Requirement

Zone = Rural Residential (RR)

Minimum area = 3,000 acres

Maximum floor area ratio = 0.2

Maximum building coverage = 10%

Area to be in common open space or facilities = 70% of total open space mixed-use development

Minimum lot width = 2,000 feet on major streets

[Town of Plymouth, Zoning Bylaws ~ last revised 2004] bylaws obtained from <http://www.plymouth-ma.gov/pdf/zoningBylaw.pdf>
HS 11/30

VILLAGE DENSITY DEVELOPMENT — The erection or construction of a dwelling unit or units at a density of greater than one unit per 60,000 square feet in the R-40, R-25, R-20SL, and R-20MD Zoning Districts. It shall not include the alteration, reconstruction, repair, demolition or maintenance of existing dwelling units nor the construction or erection of structures accessory to existing dwelling units. It shall include any other residential development, including the erection or construction of dwelling

units on lots on a subdivision plan submitted and approved after the effective date of this section at or greater than the density herein designated. [Added 4-7-1987 ATM by Art. 69]

§ 205-59. Recreational development (RD). [Added 4-4-1988 ATM by Art. 53; amended 4-16-1997 ATM by Art. 26; 4-1-1998 STM by Art. 7]

A. Intent. The intent of this section is to provide recreational opportunities for the residents of Plymouth, to allow more effective and efficient use of large tracts of land in Plymouth, and to minimize Town service responsibilities.

B. Definitions.

RECREATIONAL AREA — A parcel(s) of land or an area(s) of water, or a combination of land and water, within the site designated for a recreational development, maintained and preserved for active or passive recreational uses (such as a park, tennis courts, ball fields, swimming pools, golf courses, etc.) or for buffer areas, and designed

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and intended for the use or enjoyment of occupants of the recreational development and, in certain circumstances, the general public. Recreational areas may contain such structures and improvements as are appropriate under the provisions of this section.

RECREATIONAL DEVELOPMENT (RD) — An area of land designed and developed as a unit, with recreational areas as integral characteristics, and which departs from the zoning regulations conventionally required in the Rural Residential (RR), Large Lot Residential (R-40), and Medium Lot Residential (R-25) Districts concerning uses of land or buildings, lot size, bulk or type of structures, or other requirements. Unless specifically prescribed, any combination of residential and compatible uses may be allowed.

C. Objectives.

(1) To preserve natural topography and provide usable space for recreation facilities.

(2) To ensure appropriate high-quality design and site planning and a high level of environmental amenity.

(3) To minimize Town service responsibilities for streets and utilities.

(4) To allow flexibility and creativity in the design of developments through a carefully controlled special permit process of negotiation of particular plans. To utilize the provisions of transfer of development rights contained herein.

[Amended 4-10-2002 ATM by Art. 23]

(5) The objectives set forth in this Subsection C shall be considered as guidelines by the Planning Board in its grant of special permits under this section but are not intended to establish any specific requirements beyond those set forth in other subsections of this section.

D. Uses. Under the special permit described in this section, the following uses may be allowed:

(1) Recreational areas.

(2) All allowed uses, special permit uses, and special permit uses subject to environmental design criteria under the RR District (§ 205-40).

(3) All allowed uses, special permit uses, and special permit uses subject to environmental design conditions under the R-20MF Multifamily District (§ 205-45).

(4) Nonresidential uses (hereinafter referred to as "NR uses") which would consist of a pro shop, clubhouse or other recreational-type facilities or establishments in keeping with the nature and intent of this section and the residential character of the RD and utilities, including water supply facilities and wastewater treatment facilities and roadways, serving the RD District and other districts (provided that water supply will not service land outside of Plymouth), and uses accessory to the foregoing.

E. Location and density.

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§ 205-59

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(1) An RD may be established only in the RR, R-40, and R-25 Districts by special permit issued by the Planning Board (which for purposes of this section is designated as the special permit granting authority), provided that all proposed RD's shall comply with the standards of environmental design review. The density shall be 85% of the following except as provided in Subsection E(5) below.

(a) If a definitive plan, or a preliminary plan followed within seven months by a definitive plan, was submitted to the Planning Board for approval under the Subdivision Control Law and written notice of such submission has been given to the Town Clerk before November 14, 1995, the land shown on said

plan shall be governed by the following density provisions:

District

Density

(unit/square feet)

RR 1/60,000

(b) For all other land the following density provisions shall apply:

District

Density

(unit/square feet)

RR 1/120,000

R-40 1/60,000

R-25 1/60,000

(2) In a Rural Residential (RR) District, the provisions pertaining to an increase in overall density as a result of utilizing transfer of developments as specified herein may apply subject to the granting of a special permit. [Added 4-10-2002 ATM by Art. 23]

(3) The minimum area of a tract eligible for an RD in single or consolidated ownership or control at the time of original application, and the minimum direct frontage on a major street, as designated by the Zoning Bylaw, are as follows:

District Minimum Area Minimum Frontage

RR 250 acres 200 feet

R-40 100 acres 150 feet

R-25 40 acres 110 feet

(4) Subsequent to the original application, applications for amendments to the boundaries of the RD shall not require that the land be in single or consolidated ownership or control.

(5) Other dimensional requirements for a single-family dwelling or an NR use within an RD are as follows:

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Minimum

Lot Size¹

Minimum

Lot Width

Minimum

Front Yard

Minimum

Side Yard

Minimum

Rear Yard

6,000 60 feet 20 feet 10 feet 10 feet

¹Including easements within the definition of lot size.

(6) Other dimensional requirements for multifamily structures shall be governed by the provisions of § 205-45, except that no more than 25% of the units within an RD may be multifamily, and all such units must be of a townhouse type with separate entrances and with a maximum of eight attached units per building.

(7) In calculating intensity of use and allocation of recreational areas, the following standards shall be used:

(a) NR uses shall be subtracted from the total land area before calculating residential densities.

(b) Land or water areas contained in flood hazard areas designated as Zones A, A1-30, and B as defined in § 205-58C shall be subtracted from the total land area before calculating densities.

(c) Areas which are considered by the Planning Board as marginal or unsuitable for building, such as floodplains, inaccessible wetlands and water areas, steep slopes (25% or greater), highly erodible or poorly drained areas, and areas of very shallow bedrock or of very high water table, shall, as a general rule, be included in the recreational area.

(d) Roads should be subtracted from total area in determining net densities. For preliminary and general planning purposes, roads may be established as 15% percent of total area. For definitive plans, all lot sizes and densities as specified herein shall be net figures with rights-of-way for streets figured exactly.

(e) Except when the provisions of transfer of development rights are utilized, the total number of dwelling units in an RD shall be no greater than 85% of the total number of units that would otherwise be allowed in the RD based on the densities provided above in this Subsection E. The Planning Board, however, may authorize additional units upon a finding that the proposed development

includes proportional on-site and/or off-site improvements, including but not limited to recreational areas, roadways, sidewalks and other such amenities, and based on the ownership and maintenance of such facilities. [Amended 4-10-2002 ATM by Art. 23]

(f) In making the determination as to the number of allowable units, the Planning Board may require that the applicant provide satisfactory evidence that the number of units shown on the RD plan is no greater than the number that could otherwise be developed, including soil and other such tests.

(g) The Planning Board shall not grant a special permit for an RD unless it is adequately demonstrated that the RD is superior in design and land use to a § 205-59

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conventional development and that the proposed RD is consistent with the objectives of this section.

(h) The Planning Board may require as a condition for approval of an RD that occupancy be restricted to elderly households.

F. Planning principles and requirements.

(1) Land uses and recreational areas. The recreational areas shall serve to unify the entire development visually and functionally, to buffer different types of uses within the development, to appropriately buffer the development from surrounding land uses, and to visually separate buildings or groups of buildings, whether on or off site. It is intended that the different types of uses within an RD shall be related to each other in a logical manner such that all uses function compatibly.

(2) Relationship to land use. Uses shall be located and designed to serve the intended population efficiently.

(3) Vehicular circulation. Streets in the RD shall serve the functions and be designed to the standards prescribed in §§ 205-22 and 205-45. Collector and major streets as designated by the Zoning Bylaw shall normally be fronted on both sides by open space and shall have no direct frontage by single-family lots. Streets shall be designed to the standards of the then current Planning Board rules and regulations, provided that the Planning Board may waive any part thereof which it deems inappropriate in specific instances.

(4) Pedestrian circulation. The presence of recreational areas throughout the development creates the opportunity for a pedestrian circulation system separate from the street system. Pedestrian paths through the recreational areas can be safer, more pleasant and often more direct than conventional sidewalks which must follow vehicular rights-of-way. Wherever possible and appropriate, pedestrian circulation shall be provided within the recreational systems, minimizing street crossings and reducing the need for streetside walkways. Where paths in the recreational areas can appropriately take the place of sidewalks, the Planning Board may waive the conventional sidewalk requirements specified in the Subdivision Regulations.

(5) Parking and loading.

(a) Notwithstanding any provisions of § 205-23A, parking requirements may be met by a combination of parking interior to lots and on street and may be located greater than 400 feet from the principal building served.

(b) Notwithstanding any provisions of § 205-23D, more than two driveways may be allowed on any street frontage, and driveways may be less than 30 feet apart or shared. For multifamily use, driveways should have a minimum width of eight feet.

(c) Notwithstanding any provisions of § 205-23E, G and H, off-street parking spaces may be perpendicular, head-in or angled on streets or on lots to the street.

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(d) Notwithstanding any provisions of § 205-23F, the Planning Board may permit secondary parking areas used as overflow parking areas to consist of turf, gravel or stone dust surfaces, which shall be included in common open space or facilities.

(e) Notwithstanding any provisions of § 205-23G, parking lanes may be separated by spaced landscaped islands, with or without curbs. Parking spaces shall not be less than eight feet by 17 feet in size, and driveways within the parking areas shall not be less than 18 feet in width.

(f) Notwithstanding any provisions of § 205-23K, the Planning Board may determine the number of parking spaces sufficient to provide adequate parking, by taking into account multiple complementary uses and actual

experience in order to reduce excessive pavement.

(6) Land located within the Aquifer Protection District is subject to the provisions and restrictions outlined in § 205-57 of the Zoning Bylaw, subject to the following:

(a) The term "underlying zoning districts" as used in § 205-57 shall include both zoning districts and overlay zoning districts;

(b) For the purposes of § 205-57D(4), any dwelling permitted in this district may be connected to a municipal or privately owned sewer treatment facility;

(c) For the purposes of § 205-57D(5), any dwelling unit, inn or lodging house permitted in this district shall be allowed at a gross density of one dwelling unit (or four bedrooms in the case of an inn or lodging house) not connected to a sewer treatment facility per 40,000 square feet of land; gross density in this case shall be calculated upon the total land area in the Aquifer Protection District, including land connected to a municipal or privately owned sewer treatment facility; and

(d) For the purposes of § 205-57F(1)(o), the term "treatment works" shall not include subsurface sewage disposal systems permitted under § 205-57D(5), as modified hereunder, or wastewater collection and treatment systems that transport wastewater to and/or treated water from outside the Aquifer Protection District.

(7) Transfer of development rights. [Added 4-10-2002 ATM by Art. 23]

(a) Residential density permitted in an RR District may be increased with the transfer of development rights from other parcels of land, whether contiguous or noncontiguous, within any Rural Residential Zoning District.

[1] The property sending the transferred developable lots is called the "sending property" and the property receiving the transferred developable lots is called the "receiving property." A sender property may transfer some or all of the developable lots to one or more receiving properties. A receiving property may receive transferred developable lots from one or more sending properties.

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[2] The property receiving the increased density is called the "receiver property"; the property transferring development rights is called the "sender property."

(b) The density increase in the receiver property shall be no greater than the number of legally developable lots in the sender property or properties and no greater than a fifty-percent increase in the density in the pre-transfer number of legally developable lots in the receiver property, whichever number is smaller.

[1] The sender property must contain land of significant environmental character, as determined by the Planning Board, by utilizing the following criteria: wellhead protection areas; aquifer recharge areas; potential public water supply areas; land designated under MGL c. 61, 61A and/or 61B; locations of historic and/or cultural significance; land areas adjacent to permanently protected open space; land areas providing public access to an ocean, great pond, forest, or other natural resource; land containing significant natural resources such as rare species habitat, unfragmented forest areas, and similar natural areas determined by the Planning Board to be significant; and specific municipal use(s) appropriate to the specific property.

[2] Upon transfer of development rights, permanent use restrictions shall be placed on the sender property by the Planning Board as a condition of the special permit, and such permanent use restrictions shall provide that said land shall be left undeveloped in a substantially natural state and shall not be used for any purpose other than recreation and such specific municipal use(s) as deemed appropriate by the Planning Board and further specified in the conditions of the special permit.

G. Natural features protection. Because recreational areas are critical features of the RD, all RD's shall have primary importance attached to the natural features conservation requirements prescribed in § 205-18. Additional standards concerning the character and quality of the recreational areas are prescribed herein. Failure to comply strictly with the intent of these standards and guidelines shall constitute grounds for disapproval of the RD.

H. Recreational areas.

(1) Design and location. The recreational systems shall be designed to accomplish the following objectives:

(a) To maintain as much land as possible in its natural state, or for specific

active or passive recreational purposes, and in large parcels that would not be possible in lot by lot ownership, with access guaranteed to all users of the development.

(b) To create buffers between residential and nonresidential uses.

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(c) To distribute the recreational areas such that the entire development is unified functionally and visually by such space.

(d) To provide recreational areas within easy access of all users. All parts of the system shall be appropriate to their functions as buffers, large natural areas, open fields, developed recreational areas or yards for buildings. Such characteristics as area, breadth and nature of foliage shall be considered by the Planning Board in determining whether the recreational areas satisfy the standards and intent of the RD.

(2) Ownership and maintenance. The plans and documentation submitted to the Planning Board shall include a description of all recreational areas as follows:

(a) Plans. The plans and/or any supporting documents shall show the exact location, size, specific character and general use of all recreational areas.

(b) Dedication to Town. The Town may at any time accept the dedication of any said land, facilities or any interest therein for public use, benefit or maintenance, but the dedication for public use shall not be required as a condition for approval of the RD. If the Town Meeting fails to accept the offered land within two years of the receipt of the offer, then the offeror shall use another method identified herein for guaranteeing the recreational areas as approved by the Planning Board.

(c) Covenant. Any land or facilities designed as part of the recreational system which are not dedicated to the Town shall be made subject to a covenant acceptable to the Planning Board, which covenant shall be recorded in the Plymouth County Registry of Deeds, or the Plymouth County Registry District of the Land Court, whichever is applicable, and shall run with said land in perpetuity. Such land or facilities may consist of entire lots or portions of lots, provided that said instrument shall prohibit change of use of such space to any use not in keeping with the RD as approved without the approval of the Planning Board. Said instrument shall also prohibit denial of access to any part of said space by any occupant of the RD (although use may be conditioned on payment of a fee) except with respect to land or facilities, such as golf courses or private clubs, which have a limited membership or ownership. The covenant may provide that land may be released from the restrictions of the covenant by an instrument executed by the owner and recorded, provided that not less than an equivalent area of land is made subject to the covenant and substituted therefor.

(d) Organization owning recreational areas. Ownership of all or any portion of the recreational areas not dedicated to the Town shall be retained by a corporation or trust owned or to be owned by the owners of lots or units in the RD or may be included within lots owned by individual owners subject to the terms of the required covenant, as provided under Subsection H(2)(c) above, subject to the following standards:

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[1] The Town may enter upon said property at reasonable times for the purpose of inspection in order to ensure compliance with the special permit.

[2] Membership in said corporation or trust shall be automatic and shall pass with conveyance of the lots or units and be inseparable therefrom.

The RD presentation shall include a complete description of said organization and the method by which it shall be established and maintained, and the method by which fees and property taxes shall be collected and enforced. The presentation may provide that the property owners' association may lease back such land to the developer, his assigns, or to any other person or corporation for operation and maintenance of the same.

[3] Prior to the release of lots or units for sale or construction, the following documents are to be submitted to the Planning Board for approval:

[a] A sample purchase and sale agreement which shall be used for the purchase of the individual lots and/or units. Said agreement shall

include in conspicuous type the following: that the property is part of a recreational development subject to § 205-59 of the Zoning Bylaw of the Town of Plymouth; that the purchaser and subsequent owners of the units are subject to the requirements therein contained; and that the purchaser shall be required to be a member of a homeowners' association, shall be subject to rules and regulations of said association and shall be liable for any applicable assessment made by or against said association. The purchase and sale agreement shall further contain a statement by the seller that the purchaser has been provided with a copy of the rules and regulations of the homeowners' association, copies of any proposed management policies, copies of restrictions or covenants running with the land in the development, and a prospectus which shall be a summarization in layman's language of the information contained in other documents.

[b] Copies of any documents or proposed documents creating the homeowners' association, the bylaws and rules and regulations of the homeowners' association, any management policies or proposed management policies, copies of any restrictions or covenants running with the land in the development, and the prospectus which shall be a summarization in layman's language of the information contained in the filed documents. Said homeowners' association documents shall include a provision stating that, in the event of failure of a lot or unit owner to render to the association an established fee amount proportionate for its share of the reasonable and appropriate maintenance and property tax for the recreational areas, the association or the Town of

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Plymouth may place a lien upon the lot or unit in order to assure payment, with said lien to include related legal expenses.

I. Nonresidential uses.

(1) General conditions. NR uses may be specifically authorized under the special permit as auxiliary supporting uses in the RD. Inadequate relation of such uses to the overall plan of the development, incompatibility with adjacent uses, insufficient buffer areas or undue traffic generation shall be sufficient ground to deny any such use. No NR use may be allowed which will be inconsistent with the residential character of the RD and adjacent properties. The Planning Board may request the applicant to give special notice to owners of land located more than 300 feet from the property line of the RD. Plans and other documents for NR uses should be submitted as an integral part of those submitted for the RD.

(2) Public and quasi-public. Day-care centers, public parks and community recreation centers, Town buildings and uses and utilities as allowed by special permit under Articles IV, V and VI or § 205-27 may be permitted uses in RD's, subject to the prescribed standards and any conditions required by the Planning Board under the procedures for the RD.

J. Administration.

(1) In reviewing an RD proposal, the Planning Board shall be governed by the special permit and environmental design conditions and procedures as specified in § 205-9. Any owner of an approved subdivision exempted from §§ 205-67 and 205-68 as provided for in MGL c. 40A, § 6 may apply to the Planning Board for a modification of said plan and a special permit for an RD. Should the modification and special permit be granted, the exemption shall be retained.

(2) In an RD, the following modifications to environmental design conditions shall apply:

(a) Notwithstanding the provisions of § 205-9C(3)(a) and (c), plans may be drawn to the scale of no greater than one inch equals 400 feet where practical and appropriate to the size of the proposal, and locus maps may be drawn to the scale of no greater than one inch equals 100,000 feet.

(b) Notwithstanding the provisions of § 205-9C(3)(b), topography may be shown at no greater than five-foot contour intervals, and tree depiction and photograph sizes shall be as practical and appropriate to the size of the proposal.

(c) Notwithstanding the provisions of § 205-9C(3)(d), plans submitted in connection with the master plan special permit shall contain a level of detail consistent with a master plan perspective and shall not be required to indicate the precise location or contain all the elements otherwise required under § 205-9C(3)(d). The requirements of § 205-9C(3)(d) shall be met as a

condition of issuance of a special permit for each phase of an approved RD master plan, with the following exceptions applicable to residential uses:

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[1] Prototypes of single-family, two-family and three-family structures will be provided but their exact locations, or customer changes to such prototypes or customer-designed homes, will not be required to be submitted;

[2] Natural trees and foliage to be maintained and specific new plantings will not be required to be depicted, except that areas to be left in their natural state will be delineated;

[3] Finish topography will not be required to be shown; and

[4] Not all significant site appurtenances will be required to be shown.

(3) Waivers with respect to dimensional and similar requirements, including but not limited to parking and loading requirements, in an RD, or any other section of the Zoning Bylaw which may be incorporated by reference into this section, may be authorized by the Planning Board upon a demonstration that the proposed waiver or modification is of high standards and that any departure from the general criteria will not violate the intent of the Zoning Bylaw.

(4) A special permit for an RD issued hereunder may be amended by the Planning Board under this section as in effect as of the date of such amendment, provided that the requirements of this section are met by such special permit, as amended.

§ 205-62. Rural density development (RDD). [Added 11-14-1995 STM by Art. 8]

A. Intent. The intent of this section is to permit residential development that is consistent with the Town's Village Centers Plan, provide for meaningful open space, and to minimize Town service responsibilities in rural areas. Varying lot widths with alternating building setbacks are encouraged. It is also the intent of the RDD to promote development that is in harmony with the topographical, vegetative, archaeological, and historic character of the land.

B. Definitions.

OPEN SPACE — May include conservation land, land donated to the Town of Plymouth, recreational land, or land left substantially in its natural state, maintained and preserved for each use, and designed and intended for the use or enjoyment of the occupants of the RDD. In limited situations, the open space may be privately held provided it meets the overall intent of the RDD and appropriate restrictions are applied.

Open space may contain such complementary structures and improvements as are necessary and appropriate for the benefit and enjoyment of the residents of the RDD.

RURAL DENSITY DEVELOPMENT (RDD) — A parcel(s) designed and developed as a unit, with common open space as an integral characteristic, and which departs from the zoning requirements conventionally required in the Rural Residential District concerning use of land, lot size, density, or other requirements.

C. Objectives.

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(1) To minimize Town service responsibilities for streets and utilities.

(2) To encourage flexibility in the design of developments through a carefully controlled process of negotiation of particular plans. To utilize the provisions of transfer of development rights contained herein. [Amended 4-10-2002 ATM by Art. 23]

(3) To permanently preserve natural areas and to provide useable open space and recreation facilities for the community.

D. Uses. All allowed uses and all special permit uses in the Rural Residential (RR) District, § 205-40B and C.

E. Location and density. [Amended 10-25-2001 STM by Art. 20]

(1) An RDD may be established only in the Rural Residential (RR) District by special permit issued by the Planning Board (which for the purposes of this section is designated as the special permit granting authority), provided that all RDD's shall comply with the standards of environmental design review (§ 205-9C). The density of an RDD cannot exceed one dwelling unit per 120,000 square feet. The minimum dimensional requirements for single-family dwellings within an RDD are as follows:

Single-Family Dwelling Dimensional Requirements

Minimum

Lot Size

Minimum

Lot Width
Minimum
Front Yard
Minimum
Side
Yard
Minimum
Rear Yard
20,000 square
feet
50 20 10 25

(2) The Planning Board may waive RDD dimensional requirements when deemed appropriate based upon siting and design considerations unique to the specific site development. A minimum of 60,000 square feet of open space is required for every proposed residential unit.

(3) In calculating the intensity of residential development the standards included in § 205-59, Subsection E(7)(b) through (d) and (g) shall apply except for the provisions of transfer of development rights which permits a density increase. These specified standards for Recreational Developments (RD) shall also apply to RDD's. [Amended 4-10-2002 ATM by Art. 23]

(4) Dimensional and intensity requirements for all other uses are as noted in the Zoning Bylaw.

F. Planning principles and requirements.

(1) Land uses and open space areas. The open space areas shall serve to unify the entire development visually and functionally and to buffer the development from surrounding land uses.

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(2) Vehicular circulation. Streets in the RDD shall serve the function and be designed to the standards prescribed in § 205-22. Scenic, collector and major streets as designated by the Zoning Bylaw and the Subdivision Rules and Regulations shall normally be fronted on both sides by open space and shall have no direct frontage by single-family dwellings. Streets shall be designed to the standards of the then current Planning Board rules and regulations, provided that the Planning Board may waive any part thereof which it deems inappropriate in specific instances.

(3) Pedestrian circulation. The presence of open space areas throughout the development creates the opportunity for a pedestrian circulation system separate from the street system. Wherever possible and appropriate, pedestrian circulation shall be provided within the open space areas, minimizing street crossings and reducing the need for streetside walkways.

G. Natural features protection. Because open space areas are critical features of the RDD, all RDD's shall have primary importance attached to the natural features conservation requirements prescribed in § 205-18. Failure to comply strictly with the intent of these standards and guidelines shall constitute grounds for disapproval of the RDD.

H. Open space areas.

(1) Design and location. The open space areas shall be designed to accomplish the following objectives:

(a) To maintain as much land as possible in its natural state, or for specific active or passive recreational purposes, and in large parcels that would not be possible in lot by lot ownership, with access guaranteed to all users of the development.

(b) To create buffers between the RDD and abutting development.

(c) To distribute the open space areas such that the entire development is unified functionally and visually by each space.

(d) To provide open space areas within easy access of all users. All parts of the system shall be appropriate to their functions as buffers, large natural areas, open fields, and developed recreational areas. Such characteristics as area, breadth and nature of foliage shall be considered by the Planning Board in determining whether the open space areas satisfy the standards and intent of the RDD.

(2) Ownership and maintenance. The plans and documentation submitted to the Planning Board shall include description of all open space areas as required in § 205-59. The open space, recreation and RD standards shall apply to RDD's.

I. Nonresidential uses.

(1) Public and quasi-public. Public parks and community recreation centers, Town buildings and uses and utilities as allowed by special permit under Articles IV, V and VI or § 205-27 may be permitted uses in RDD's, subject to the prescribed

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standards and any conditions required by the Planning Board under the procedures for the RDD.

J. Administration. In reviewing an RDD proposal, the Planning Board shall be governed by the special permit and environmental design conditions and procedures as specified in § 205-9.

K. Transfer of development rights. Residential density permitted in an RDD may be increased with the transfer of development rights from other parcels of land, whether contiguous or noncontiguous, within any Rural Residential Zoning District and as specified in § 205-59, Recreational development, Subsection F(7), Planning principles and requirements, transfer of development rights. [Added 4-10-2002 ATM by Art. 23]

§ 205-66. Village open space development (VOSD). [Added 4-6-2004 ATM by Art. 33]

A. Intent. The intent of the Village Open Space Development (VOSD) Zoning Bylaw is to permit residential development that is consistent with the Town's Village Centers Plan and provide for meaningful open space within village areas. Varying unit types, lot widths and alternating building setbacks are encouraged. It is also the intent of the VOSD to promote development that is in harmony with the topographical, vegetative, archaeological, and historic character of the land.

B. Definitions.

VILLAGE OPEN SPACE DEVELOPMENT (VOSD) — A parcel(s) designed and developed as a unit, with common open space as an integral characteristic and which departs from the zoning requirements conventionally required in (R-20MF, R-20SL, R-20MD, and R-25) Residential Districts concerning use of land, lot size, density, or other requirements.

OPEN SPACE — May include conservation land, land donated to the Town of Plymouth, recreational land, or land left substantially in its natural state, maintained and preserved for each use, and designed and intended for the use or enjoyment of the occupants of the VOSD. In limited situations, the open space may be privately held provided it meets the overall intent of the VOSD and appropriate restrictions are applied.

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Open space may contain such complementary structures and improvements as are necessary and appropriate for the benefit and enjoyment of the residents of the VOSD, including but not limited to vehicular and pedestrian ways and trails.

C. Objectives.

(1) To encourage flexibility in the design of developments through a carefully controlled process of negotiation of particular plans.

(2) To permanently preserve natural areas and to provide usable open space and recreational facilities for the community.

(3) To encourage a mix of attached and detached housing types and designs.

D. Uses. All allowed uses and all special permit uses in the Multifamily (R-20MF) District, § 205-45B and C, and subject to the density limitations of Subsection E.

E. Location and density. A VOSD may be established in the R-20MF, R-20SL, R-20MD, and R-25 Districts by special permit issued by the Planning Board, provided that all VOSDs shall comply with the standards of environmental design review (§ 205-9C).

(1) The minimum dimensional requirements for single-family dwellings:

Minimum Single-Family Lot Requirements

Area Width Front Yard Other Yard

6,000 60 feet 20 feet 10 feet

(2) The minimum dimensional requirements for multifamily dwellings:

Minimum Multifamily Lot Requirements

Area Least Dimension Front Yard Other Yard

15,000 100 feet 30 feet 2-story 30 feet

3-story 50 feet

(3) The Planning Board may waive VOSD dimensional requirements when deemed appropriate based upon siting and design considerations unique to the specific site development. A minimum of 40% of the property shall be designated as open space.

(4) The density of development shall not exceed the following:

VOSD Densities

Zoning District Density

R-25 1 dwelling unit per 25,000 square feet

R-20SL 1 dwelling unit per 20,000 square feet

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Zoning District Density

R-20MD 1 dwelling unit per 20,000 square feet

R-20MF 8 dwelling units per acre

(5) In calculating density of use and allocation of recreational areas, the following standards shall be used:

(a) Land or water areas contained in flood hazard areas designated as Zones A, A1-30, and B as defined in § 205-58C shall be subtracted from the total land area before calculating densities.

(b) Other areas which are considered by the Planning Board as marginal or unsuitable for building such as wetlands, water areas, steep slopes (25% or greater), highly erodible or poorly drained areas, or areas of very shallow bedrock or of very high water table shall be subtracted from the total land area before calculating densities.

(c) Roads should be subtracted from total area in determining net densities. For preliminary and general planning purposes, roads may be established as 15% of total area. For definitive plans, all lot sizes and densities as specified herein shall be net figures with rights-of-way for streets figured exactly.

(6) In making the determination as to the number of allowable dwelling units, the Planning Board may require that the applicant provide satisfactory evidence that the number of units shown on the VOSD plan is no greater than the number that could otherwise be developed, including soil and other such tests.

(7) The Planning Board shall not grant a special permit for a VOSD unless it is adequately demonstrated that the VOSD is superior in design and land use to a conventional development and that the proposed VOSD is consistent with the objectives of this section.

F. Planning principles and requirements.

(1) Land uses and open space areas. The open space areas shall serve to unify the entire development visually and functionally and to buffer the development from surrounding land uses.

(2) Vehicular circulation. Streets shall be designed to the standards of the then-current Planning Board Rules and Regulations, provided that the Planning Board may waive any part thereof that it deems inappropriate in specific instances.

(3) Pedestrian circulation. The presence of open space areas throughout the development creates the opportunity for a pedestrian circulation system separate from the street system. Wherever possible and appropriate, pedestrian circulation shall be provided within the open space areas, minimizing street crossing and reducing the need for streetside walkways.

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G. Natural features protection. Because open space areas are important features of the VOSD, all VOSDs shall have primary importance attached to the natural features conservation requirements prescribed in § 205-18. Failure to comply strictly with the intent of these standards and guidelines shall constitute grounds for disapproval of the VOSD.

H. Open space areas.

(1) Design and location. The open space areas shall be designed to accomplish the following objectives:

(a) To maintain as much land as possible in its natural state, or for specific active or passive recreational purposes, and in large parcels that would not be possible in lot by lot ownership, with access guaranteed to all users of the development.

(b) To create buffers between the VOSD and abutting development.

(c) To distribute the open space areas such that the entire development is unified functionally and visually by each space.

(d) To provide open space areas within easy access of all users. All parts of the system shall be appropriate to their functions as buffers, large natural areas, open fields, or developed recreational areas. Such characteristics as area, breadth, and nature of foliage shall be considered by the Planning Board in determining whether the open space area satisfies the intent of the VOSD.

(2) Ownership and maintenance. The plans and documentation submitted to the Planning Board shall include descriptions of all open space areas required in this section.

I. Administration. For the purposes of this section, the Planning Board is designated as the special permit granting authority. In reviewing a VOSD, the Planning Board shall be governed by the special permit and environmental design conditions and procedures as specified in § 205-9.

Which entity is the special permit granting authority for cluster/flexible zoning?

Combination Zoning Board of Appeals and Planning Board are the SPGAs for various types of cluster development.

Has any housing been built under the cluster/flexible provisions?

Yes

Plympton

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

No

Which entity is the special permit granting authority for cluster/flexible zoning?

Has any housing been built under the cluster/flexible provisions?

Princeton

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

No

Which entity is the special permit granting authority for cluster/flexible zoning?

Has any housing been built under the cluster/flexible provisions?

Quincy

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Zoning Ordinance City of Quincy, Section 17.12.020 (On website: <http://www.bpcnet.com/codes/quincy/>, 8/13/04)

Section 17.12.020 Planned Unit Development and Planned Unit Development 1 districts--Requirements.

A. Permitted Uses. Within any Planned Unit Development and Planned Unit Development 1 district, no buildings or premises shall be used, and no building or structure shall be permitted for other than one of the following specified purposes:

1. Detached dwellings occupied by not more than one family, conforming to the requirements of Residence A districts, shall be permitted by right;
2. Planned communities under unified ownership or control in those areas of the city provided with sanitary sewers, disposal facilities, adequate highway access and public water supply. Within such planned communities, the location of all residential, commercial, industrial and governmental uses, school sites, parks, playgrounds, recreation areas, parking areas and other open spaces shall be controlled in such a manner as to permit a variety of housing accommodations and

land uses in orderly relationship to one another. All uses permitted by right or by special permit shall be allowed in a Planned Unit Development district;

3. Public ways and private access ways, with planning board approval of a definitive subdivision plan, of at least fifty-foot width, to land in any district which is isolated or landlocked or which has inadequate access.

B. Dimensional Requirements. In any Planned Unit Development district and Planned Unit Development 1 district, the following dimensional requirements shall apply for all development except detached dwellings occupied by not more than one family which shall conform to the dimensional requirements of Residence A districts:

Min. PUD/PUD 1 size (sq. ft.) Min. PUD/PUD 1 area per DU (sq. ft.) Min. open space per DU (sq. ft.)

100,000 2,000 100

Max. FAR Max. No. of Stories

4.0 8

C. Off-Street Parking. Off-street parking facilities shall be provided as follows (See also Sections 17.28.010 through 17.28.050):

Residence Assembly

Minimum number spaces per DU Number of seats requiring one space

1.25 10

Type Number of square feet requiring one space

Institution 1,000

Retail 400

Office 400

Factory and Warehouse 2,000

D. Off-Street Loading. Off-street loading requirements shall be set forth in Sections 17.28.060 through 17.28.080.

E. Location of Structures -- Open Space. The proposed location and arrangement of structures as indicated on plans submitted initially to the planning board shall not be detrimental to existing or prospective adjacent land uses or to existing or prospective development of the neighborhood. Open spaces, including those between structures, shall be protected where necessary by adequate restrictions or covenants, running with land conveyances or dedications. Every single-family dwelling shall have access to a public court, walkway or other area dedicated to public use.

F. Special Permit Required -- Issuance -- Plans. Planned communities as set forth in subsection A 2 of this section shall be permitted upon affirmative recommendation of the planning board and the issuance of a special permit by the city council. The plans and descriptions, when approved by a two-thirds vote of all the members of the city council in conformance with the standards

regulations set forth in this section, should constitute the controls placed on the special permit. Any change or amendment in the plan or written description shall require the affirmative recommendation of the planning board and the approval of all members of the city council.

G. In any Planned Unit Development district and Planned Unit Development 1 district, a congregate elderly facility may be permitted under this section providing that the facility satisfies the application and submittal requirements of subsections B, C, D and F of Section 17.12.030 of this chapter in addition to the requirements of this section and, for such congregate elderly facility, the revised dimensional requirements applicable shall be as follows:

Minimum area per DU: five hundred SF; and

Minimum number of parking spaces per DU: 0.5 spaces.

H. In any Planned Unit Development district and Planned Unit Development 1 district, and age-restricted senior housing facility may be permitted under this section PROVIDING that the facility satisfies the application and submittal requirements of subsections B, C, D, E and F of this Section 17.12.020 and, for such age-restricted senior housing facility, the revised dimensional requirements applicable shall be as follows:

Minimum PUD/PUD 1 Size 5 Acres

Minimum PUD/PUD 1 Area Per Dwelling Unit (Sq. Ft.) 1,250 SF

The special permit granting authority shall approve the form or forms of ownership and management controls which limit the occupancy to residents who have attained the age of fifty-five years and which forms may be altered or modified from time to time during the useful life of the facility so long as the age-restricted limitations is not altered and so long as no temporary or permanent overnight occupancy for a period in excess of fourteen days by any person who has not attained the age of fifty-five years, related or not, is permitted. The spouse of a qualified resident who has attained the age of fifty-five years may be exempted from the age-restricted limitation hereby imposed.

(Ord. 2000-117 § 2; Ord. 97-070; prior code Ch. 24, § 31 (part))

Which entity is the special permit granting authority for cluster/flexible zoning?

Selectmen/Council F. Special Permit Required -- Issuance -- Plans. Planned communities as set forth in subsection A 2 of this section shall be permitted upon affirmative recommendation of the planning board and the issuance of a special permit by the city council.

Has any housing been built under the cluster/flexible provisions?

Yes Dennis Harrington, Director of Planning, (8/17/04) said that PUD has been triggered "dozens of times." "For mixed use projects, for a furniture store by the highway, for the most part it has been triggered for multifamily units. Currently there are 200-300 units under construction."

Randolph

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

No Although there is a reference to cluster zoning in the section on age-restricted multifamily, it is only one paragraph, and the building inspector said that nobody has built a cluster development and that it would require rezoning by town meeting. It is only listed as a use, but is not actually zoned on the map.

Town of Randolph Zoning Bylaw, Section 200-14 (Amended 2003). "4. Cluster development and construction permitted for those sites containing a minimum of five (5) acres, pursuant to MGL 40A sec. 9 and in accordance with MGL 41 sec. 81K to 81GG inclusive."

Section 200-14 MULTIFAMILY DISTRICTS

No building or structure shall be erected in a Multifamily District which is designed or intended to be used as a single-family dwelling unit or for a mercantile, mechanical, manufacturing or other commercial use on land situated in Multifamily Districts or zones, except

as hereunder provided.

A. Permitted uses. The following uses are permitted in a Multifamily District:

B. Permitted uses. A Multi Family Fifty-Five (55) Plus dwelling shall constitute housing intended for persons of age fifty-five or over within the meaning of Mass. General Laws, c. 151B, Section 4 and 42 U.S.C. Section 3601, and in accordance therewith, one hundred percent (100%) of the dwelling units shall be owned and occupied by at least one person fifty-five years of age or older per dwelling unit and such development shall be operated and maintained in all other respects in compliance with the requirements of such statutes and regulations promulgated pursuant thereto, as the same are currently in effect and as the same may be amended. The following uses are permitted in a Multi-family Fifty-Five (55) Plus District:

4. Cluster development and construction permitted for those sites containing a minimum of five (5) acres, pursuant to MGL 40A sec. 9 and in accordance with MGL 41 sec. 81K to 81GG inclusive.

Letter received from Mary McNeil, Building Commissioner, on 5/17/05:

"Cluster/flexible Zoning. At present, none is allowed."

Which entity is the special permit granting authority for cluster/flexible zoning?

Has any housing been built under the cluster/flexible provisions?

Raynham

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

Yes

Cluster multi-family development is allowed by right with site plan approval from the planning board in the Residential B District.

Town of Raynham Zoning Bylaw (Amended 2003)

4.1.2 RESIDENTIAL B DISTRICT

A. Any use permitted in Residential District "A."

B. Multi-family dwellings. (amended S.T.M. 2/12/90)

C. Cluster multi-family development. (added A.T.M.5/21/90)

1. Cluster multi-family developments shall only be permitted in "Residential B" district (and in no other district, including "General Use" district) upon issuance of "Site Plan Approval" from the Raynham Planning Board.

2. Purposes:

The purposes of open space multi-family development are to:

- Allow for greater flexibility and creativity in the design of multi-family subdivisions, provided that the overall density of the development is no greater than what is normally allowed in a Residential B district.
- Encourage the permanent preservation of open space, agricultural lands, and other natural resources.
- Facilitate the construction and maintenance of streets, utilities and public services in a more economical and efficient manner.
- Encourage a less sprawling form of development that consumes less open land, and offers more protection for wetland and conservation areas.

3. Additional General Requirements:

The following standards shall be used as additional requirements in the site plan approval process for all cluster developments.

- a. The development shall include multi-family dwellings only.
- b. There shall be adequate, safe, and convenient arrangement, to be determined by the Raynham Planning Board, of pedestrian circulation, recreational facilities, roadways and parking.
- c. The site plan shall identify the location and extent of all wetlands on the site.
- d. All site plans shall be in compliance with all of Raynham Zoning By-Laws for Residential B districts, except that portion of Section 6.8.1 of the Raynham Zoning By-Laws which reads "Each building shall occupy one lot"; and no site plan shall be approved if the Raynham Planning Board receives written opposition from the Raynham Board of Health based upon Raynham Board of Health Rules and Regulations.

4. Additional Utility Requirements:

The applicant shall submit a public sewer connection or septic system design prepared by a certified engineer and the location of public water lines or private well locations.

5. Dimensional and Density Requirements:

- a. The maximum number of dwelling units permitted in a cluster development shall not be greater than the number of dwelling units that would be allowed in a Residential B subdivision.
- b. Under the supervision of the Board of Health, percolation tests shall be conducted for all septic system locations.
- c. The minimum street, rear and side yard setbacks shall be the same as required in a Residential B district. (See Section 5.1 of the Raynham Zoning By-Laws.)
- d. There shall be no more than sixteen (16) bedrooms per building, and in any event, no more than twelve (12) units allowed in any one building.
- e. No multi-family building will be located within sixty (60) feet of any one building.

6. Common Open Space Requirements:

All land not devoted to dwellings, accessory uses, roads, parking or other developments shall be set aside as common land for recreation, conservation, or agricultural uses which preserve the land in essentially its natural condition. The said common land will be maintained by the owner.

7. Procedures for Site Plan Approval:

All preliminary Site Plans shall conform to all the Rules and Regulations of the Raynham Planning Board as if it were a Form B Preliminary Subdivision Plan. All definitive Site Plans shall conform to all the Rules and Regulations of the Raynham Planning Board as if it were a Form C Definitive Subdivision Plan.

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Town of Raynham Zoning Bylaw (Amended 2003)

4.1.2 RESIDENTIAL B DISTRICT

C. Cluster multi-family development. (added A.T.M.5/21/90)

1. Cluster multi-family developments shall only be permitted in "Residential B" district (and in no other district, including "General Use" district) upon issuance of "Site Plan Approval" from the Raynham Planning Board.

2. Purposes:

The purposes of open space multi-family development are to:

- a. Allow for greater flexibility and creativity in the design of multi-family subdivisions, provided that the overall density of the development is no greater than what is normally allowed in a Residential B district.
- b. Encourage the permanent preservation of open space, agricultural lands, and other natural resources.
- c. Facilitate the construction and maintenance of streets, utilities and public services in a more economical and efficient manner.
- d. Encourage a less sprawling form of development that consumes less open land, and offers more protection for wetland and conservation areas.

3. Additional General Requirements:

The following standards shall be used as additional requirements in the site plan approval process for all cluster developments.

- a. The development shall include multi-family dwellings only.
- b. There shall be adequate, safe, and convenient arrangement, to be determined by the Raynham Planning Board, of pedestrian circulation, recreational facilities, roadways and parking.

- c. The site plan shall identify the location and extent of all wetlands on the site.
- d. All site plans shall be in compliance with all of Raynham Zoning By-Laws for Residential B districts, except that portion of Section 6.8.1 of the Raynham Zoning By-Laws which reads "Each building shall occupy one lot"; and no site plan shall be approved if the Raynham Planning Board receives written opposition from the Raynham Board of Health based upon Raynham Board of Health Rules and Regulations.

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- a. The maximum number of dwelling units permitted in a cluster development shall not be greater than the number of dwelling units that would be allowed in a Residential B subdivision.
- b. Under the supervision of the Board of Health, percolation tests shall be conducted for all septic system locations.
- c. The minimum street, rear and side yard setbacks shall be the same as required in a Residential B district. (See Section 5.1 of the Raynham Zoning By-Laws.)
- d. There shall be no more than sixteen (16) bedrooms per building, and in any event, no more than twelve (12) units allowed in any one building.
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7. Procedures for Site Plan Approval:

All preliminary Site Plans shall conform to all the Rules and Regulations of the Raynham Planning Board as if it were a Form B Preliminary Subdivision Plan. All definitive Site Plans shall conform to all the Rules and Regulations of the Raynham Planning Board as if it were a Form C Definitive Subdivision Plan.

ARTICLE 14 - OPEN SPACE PRESERVATION

(added at Annual Town Meeting of May 18, 1998)

14.1 Purpose

To provide for the public interest by permanently preserving open space and natural landscape features, and to promote variety in SINGLE FAMILY residential housing patterns by encouraging development which is designed to accommodate a site's physical characteristics such as: topography, vegetation, water bodies, wetlands, open spaces, farmlands, meadows, major scenic views, wildlife habitats, and to reduce the amount of infrastructure needed through conventional patterns of development.

14.2 General Requirements

- a. A tract of land consisting of not less than five (5) acres, within Zoning Districts Residential A and Farm & Forest serviced by Town Water or Sewer may be developed for the construction of SINGLE FAMILY DWELLINGS under the Open Space Preservation Bylaw.
- b. Development under Open Space Preservation may only be authorized by a Special Permit granted by the Planning Board in accordance with M.G.L. Ch. 40A, Planning Board Rules & Regulations governing the Subdivision of Land in Raynham as most recently amended, and Planning Board Rules and Regulations governing the issuance of a Special Permit.
- c. The number of BUILDING LOTS in a tract to be developed under the Open Space Preservation Bylaw shall not exceed the number of BUILDING LOTS of said tract permitted under the intensity of use regulation of the Raynham Zoning Bylaws as most recently amended and Planning Board Rules and Regulations as most recently amended (conventional subdivision plan).

14.3 Intensity Requirements:

The Planning Board may grant a reduction of all intensity regulations of the underlying zoning bylaws for all portions of an Open Space Preservation development if the Planning Board finds that such reduction will result in better design, improved protection of natural and scenic resources, and will otherwise comply with this Bylaw, provided that in no instance shall any LOT deviate from the following Minimum Requirements.

*Setbacks for side and rear yards shall be guided by the characteristics of the site, proposed structures, the nature of the existing built environment in the area, and principles of good site planning. Zero lot line development may be permitted.

14.4 Development Standards

Prior to issuance of a Special Permit for Open Space Preservation development, the APPLICANT shall submit the information necessary to demonstrate that the following development standards have been met:

- a. The natural landscape is preserved in large contiguous areas enhancing the likelihood of continuation of existing ecosystems.
- b. Extensive topographic changes necessitating vegetation and tree removal is minimized.
- c. Scenic views from public ways are preserved. All efforts shall be made to avoid driveway cuts on existing public ways.
- d. Contiguity with preserved open space is provided for a large proportion of the LOTS having reduced LOT area.
- e. There is variation in LOT sizes and BUILDING arrangements.
- f. Open space is used to protect valuable natural environments such as stream valleys, outstanding vegetation or scenic views. Development of geographically unsuitable land is avoided.
- g. The character of the neighborhood in which the tract lies is enhanced.
- h. The development will improve pedestrian and vehicular safety within the site and will not cause unreasonable traffic

congestion or unsafe conditions.

- i. The development will provide for and maintain convenient and safe emergency vehicle access to all BUILDINGS and STRUCTURES at all times.
- j. The site shall be developed in such a way as to preserve slopes in excess of ten (10%) percent.
- k. Roads shall be designed to follow the natural terrain of the site.

14.5 Open Space Use and Design Standards

- a. The open space may be used for active and passive recreation, conservation, forestry, agriculture, natural buffers, and/or structures necessary for approved uses subject to approval of the Planning Board.
- b. Provision shall be made so that at least forty (40%) percent of the tract of land shall remain open space. This shall not include land set-aside for roads and/or parking spaces.
- c. Where possible, existing trees and vegetation shall be preserved and integrated into the landscape design plan to ensure visual privacy between STRUCTURES, abutting properties and neighborhoods.
- d. No more than thirty (30%) percent of the required open space shall consist of wetlands as defined in M.G.L., Chapter 131.
- e. Open space shall be planned as large contiguous areas wherever possible, but may be in more than one parcel provided the size and shape of such parcels are appropriate and accessible for the intended uses as determined by the Planning Board.

No more than twenty (20%) percent of the open space shall be covered by man-made IMPERVIOUS SURFACES. Natural looking drainage areas may be included in the percent man-made impervious surfaces.

Affordable housing requirements: For every ten (10) lots created under the provisions of this subsection, one (1) additional lot, located within the development, shall be made in perpetuity via deed restriction at terms affordable to persons or families qualifying as low and moderate income as defined by the Department of Housing and Community Development. Such additional lot shall not count toward the calculation of the basic number of units nor shall such lot count as an incentive lot below. Such lots shall be subject to the approval of the Planning Board. (this section added at 5/21/01 A.T.M. adjourned session on 5/23/01)

14.6 Site Improvements:

Streets and Utilities - All streets, sewers, drainage facilities, utilities, and other improvements shall be designed in compliance with the Rules and Regulations Governing the Subdivision of Land, Raynham, latest edition, unless waived as part of the Definitive Plan Certificate of Action. In general, waivers may be granted when waivers will minimize environmental disruption and maintain rural character. Examples of waivers are minimizing pavement width, rural drainage systems, curvilinear road layouts, and preservation of existing topography and natural features of the site.

14.7 Ownership and Management of Open Space:

- A. Ownership Options: At the developer's request, but subject to approval by the Planning Board, all areas to be protected as open space shall be:
 - 1. Conveyed at no cost to the town, subject to acceptance at Town Meeting for park or open space purposes. * Land conveyed to the town should be open for public use; (* Amended at S.T.M. of 11/22/99)
 - 2. Conveyed at no cost to a non-profit organization, the principal purpose of which is the conservation or preservation of open space and/or any of the purposes and uses to which the open space may be dedicated, with a conservation restriction as specified below, such organization shall be acceptable to the town as a bona fide conservation organization;
 - 3. Conveyed at no cost to a corporation or trust owned or to be owned by the owners of lots or residential units within the development (i.e. "homeowners association") and placed under a conservation restriction. If such a corporation or trust is utilized as indicated herein, ownership thereof shall pass with conveyance of the lots or residential units. The developer is responsible for the maintenance of the open space and other facilities to be held in common until such time as the homeowners' association is capable of assuming such responsibility. Thereafter, the members of the association shall share the cost of maintaining the open space. The Planning Board shall require the applicant to provide documentation that the homeowners' association is an automatic (mandatory) association that has been established prior to the conveyance of any lots within the subdivision; and/or
- B. Permanent Restriction: In any case where open space is not conveyed to the town, a permanent conservation restriction or an agricultural preservation restriction shall be recorded to prevent future residential development of said parcel(s). A conservation restriction shall be in accordance with Massachusetts General Law Chapter 184, Section 31-33 as most recently amended. An Agricultural Preservation Restriction shall be in accordance with Massachusetts General Law Chapter 132A, Section 11a-d as most recently amended. Restrictions shall provide for periodic inspection of the open space by the town. Such restriction shall be submitted to the Planning Board prior to approval of the project and recorded at the Registry of Deeds/Land Court prior to the conveyance of any building lot. A management plan may be required by the Planning Board, which describes how existing woods, fields, meadows or other natural areas shall be maintained in accordance with good conservation practices.
- C. Maintenance of Open Space. In any case where open space is not conveyed to the town, the town shall be granted an easement over such land sufficient to ensure its perpetual maintenance as conservation or recreation land. Such easement shall provide that in the event that the trust or other owner fails to maintain the open space in reasonable condition, the Town may, after notice to the lot owners and public hearing, enter upon such land to maintain it in order to prevent or abate a nuisance. The cost of such maintenance by the town shall be assessed against the properties within the development and/or to the owner of the open space. The town may file a lien against the lot or lots to ensure payment of such maintenance expenses.
- D. Monumentation: Where the boundaries of the open space are not readily observable in the field, the Planning Board may require placement of surveyed bounds sufficient to identify the location of the open space.

Survey received from Raynham in June 2005 marked that the cluster/flexible provisions were last amended in May 03.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board Town of Raynham Zoning Bylaw (Amended 2003)

b. Development under Open Space Preservation may only be authorized by a Special Permit granted by the Planning Board in accordance with M.G.L. Ch. 40A, Planning Board Rules & Regulations governing the Subdivision of Land in Raynham as most recently amended, and Planning Board Rules and Regulations governing the issuance of a Special Permit.

Has any housing been built under the cluster/flexible provisions?

Yes According to the town planner (10/19/04), there have been five successful developments under cluster multifamily development.

Survey received from Raynham in June 2005, completed by Richard McCarthy:

Has any housing been built under the cluster/flexible provisions? (none, 1-8 projects, more than 8)

"3"

Reading

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Selected provisions of PUD/PRD bylaws (the entire sections are over 50 pages in a Word document:

4.9. PLANNED UNIT DEVELOPMENT

4.9.1 Statement of Purpose and Authority:

The purpose of this Section is to encourage the construction of Planned Unit Developments (PUDs) in designated Districts within the Town. Planned Unit Developments shall:

- a. Permit a mix of land uses, densities and building types in one development.
- b. Facilitate high quality, integrated planning of large-scale developments beneficial to the Town and constructed in a manner which is highly responsive to specific sites and their surroundings.
- c. Require more rigorous development standards than those found in other zoning districts.

4.9.2. Overlay Districts: Planned Unit Development Districts shall take the form of overlay districts covering all or part of Industrial Districts and designated portions of Residential Districts on the Reading Zoning Map. For any land within a PUD District, a Developer may choose to conform either to the zoning regulations which govern the underlying district or to the PUD overlay regulations and procedures set forth by this Section, whose specific provisions shall supersede all other provisions in the Zoning By-Laws with respect to the underlying district including, without limitation, use, intensity, dimensions, parking and site plan review; however, the provisions of any other overlay district shall continue to apply. Planned Unit Development Districts are overlaid on two zoning districts: Industrial and Residential Zones. Section 4.9 controls development in this overlay utilizing the following terms: PUD-1 for Planned Unit Development District - Industrial for PUD's overlaid in the industrial Zone and PUD-R for Planned Unit Development District- Residential overlaid in the Residential zone. Language noted herein for PUD denotes the control is for development in both Residential and Industrial zones.

Planned Unit Development-Business District as an Overlay District

A PUD-B District shall take the form of an overlay district covering an underlying Business A District and may include land situated within the S-15 District that was a part of a lot existing on January 1, 2003, a portion of which lot was also in the Business A District, but only as is applied to a specific parcel or parcels through a formal and proper amendment to the Reading Zoning Map. A PUD-B Overlay District may be applied only through action by Town Meeting to amend the Reading Zoning Map placing such land within the PUD-B Overlay District.

****Webmasters Note:** The previous paragraph has been added as per an update approved at a town meeting held on 4/26/04.

4.9.2.1. Definitions:

The following terms shall have, for the purposes of this PUD By-Law, the meanings hereby assigned to them:

- a. **AFFORDABLE HOUSING** : Housing units priced to be available for purchase or rental by households with annual incomes that do not exceed eighty percent (80%) of the median annual household income for the Boston Metropolitan Area as determined by the most recent calculation of the U.S. Department of Housing and Urban Development and so that the annual housing unit cost to the household does not exceed 30% of the annual gross income of the household.
- b. **COMMERCIAL** : A use or structure that is used other than for residential, public, quasi-public or heavy industrial purposes.
- c. **DEVELOPER** : One or more entities proposing together to develop a Planned Unit Development parcel.
- d. **DNA** : Deoxyribonucleic acid.
- e. **EXISTING** : In existence at the time of filing a complete Preliminary PUD Plan submission.
- f. **FLOOR AREA RATIO (OR "FAR")** : In a PUD, the ratio of total gross building floor area in a PUD to the area of the development parcel. Gross floor area shall be measured from outside wall surfaces and shall include ground floor areas of interior atriums and lobbies, and mechanical and utility space on habitable floors; but shall exclude rooftop space, balconies, elevator pits, or non-habitable areas enclosed by ornamental roofs. Structured parking shall not be counted in the determination of Floor Area Ratio. Areas classified as wetlands in MGL, Chapter 131, Section 40, as amended, may not exceed 10% of the development parcel area used to compute FAR.
- g. **MINOR STREET** : A street used primarily for access to abutting properties or carrying volumes of traffic less than 10,000 vehicles per average day.
- h. **MAJOR STREET** : A street used for through access and carrying volumes of traffic greater than 10,000 vehicles per average day.
- i. **PUD BY-LAW** : Section 4.9. of the Reading Zoning By-Laws including all subsections thereof.
- j. **RECOMBINANT DNA (RDNA) TECHNOLOGY** : The industrial science of molecular construction outside living cells by joining natural or synthetic DNA segments to DNA molecules that can replicate in a living cell.
- k. **RESIDENTIAL STREET** : Any section of a street which lies within a residential zoning district or any section of a street the centerline of which forms a boundary of a residential zoning district.
- l. **SITE** : The development parcel upon which a PUD is proposed.
- m. **STRUCTURED PARKING** : In a PUD, a parking garage or all or part of building floors above or below grade to be used for automobile parking.

4.9.3 Special Permit for Planned Unit Development: The Community Planning and Development Commission (the "CPDC"), as the Special Permit Granting Authority, shall have authority to grant a Special Permit to construct a Planned Unit Development ("PUD") by a vote of at least four members of the five-member CPDC. The CPDC shall evaluate proposed PUD projects and require all such projects to conform to the Planned Unit Development requirements, standards and guidelines set forth in Sections 4.9.4. and 4.9.5. as to a PUD in the Industrial District ("PUD-1") and as set forth in Sections 4.9.5. and 4.9.6. as to a PUD in a Residential District ("PUD-R") to ensure that the benefits to the Town of a proposed project outweigh any adverse impacts before granting a Special Permit. The CPDC shall adopt and from time to time may amend regulations for the review of PUD Developments as provided in MGL, Chapter 40A, Section 9. The CPDC shall interpret all provisions of this PUD By-Law and all definitions and regulations pertinent thereto and shall provide such interpretations upon request by an applicant for a Special Permit to construct a PUD.

4.9.3.1. Overview of Special Permit Process: A Developer choosing to construct a Planned Unit Development in a PUD District shall apply for a Special Permit with the Community Planning and Development Commission. The Special Permit process shall include:

[...]

4.9.4. Use and Dimensional Requirements at PUD-I: The following paragraphs shall serve as the basic Use and Dimension Requirements to which all PUD-I projects shall adhere within each PUD-I overlay district and shall be used by the Community Planning and Development Commission to evaluate any proposed project.

4.9.4.1. PUD-1 Parcel Size and Eligibility: The minimum size of a PUD-I development parcel shall be 80,000 square feet. Development parcels of 500,000 square feet or larger shall be termed "large PUD-Is" and qualifying parcels smaller than 500,000 square feet shall be termed "small PUD-Is." A development parcel may consist of land in more than one ownership, provided that all lots comprised by the parcel lie entirely within the PUD4 overlay district and are contiguous. Lots separated by a minor street or right-of-way as defined in Section 4.9.2.1. may be considered contiguous for this purpose. Proposed developments may include pre-existing buildings provided that all PUD-1 requirements are satisfied by each new or existing building and for the PUD as a whole. More than one principal building may be located on a lot, Section 5.2.8. notwithstanding.

4.9.4.2. PUD-1 Permitted Uses, Planned Unit Developments in an Industrial District may contain two or more of the following uses subject to the findings of the CPDC as to net benefit and adverse impacts of the proposed PUD:

- a. Office use;
- b. Research and Development uses, such as electronic or computer laboratories; biotechnology laboratories including those which utilize RDNA technology and low-level nuclear materials; light manufacturing related to electronic or computer laboratories or biotechnology laboratories including those which utilize RDNA technology and low-level nuclear materials, but excluding activities which exclusively possess, use or transfer licensed nuclear materials (including source materials, special nuclear materials, (including source 10, Chapter 1 of the Code of Federal Regulations, Part 20, "Standards for Protection Against Radiation"), or other toxic or hazardous materials;
- c. Hotel;
- d. Restaurant (with no drive-thru service), place of assembly, and recreational use;
- e. Retail;
- f. Financial institution;
- g. Consumer service, ancillary to a permitted primary use pursuant to this Section 4.9.4.2.;
- h. Parking (including structured parking) to accommodate the above-,
- i. Residential uses within 200 feet of Residence Districts;
- j. Open space.

All other uses are excluded from a Planned Unit Development in an Industrial zone.

4.9.4.3. PUD-I Intensity of Use:

...

4.9.4.4. PUD-I Discretionary Intensity and Height Determination:

...

4.9.4.6. PUD-I Dimensional Requirements: Each PUD-I development shall be governed by the dimensional requirements of this section. These requirements apply only to the development parcel as a whole, not to individual lots within the PLID-I. The basic maximum height within a PUD-I shall be the lesser of 84 feet or six stories. Height shall be measured in the manner defined in Section 2.0. of this By-Law. The maximum height of residential structures within a PUD-I shall not exceed 40 feet or three stories. If 10 percent of such units are restricted for low or moderate income or elderly housing, the maximum height of all proposed residential structures shall not exceed 50 feet or four stories. In a large PUD-I, the CPDC may in its discretion and in accordance with Section 4.9.4.4. approve building heights. up to 168 feet or 12 stories, whichever is less, subject to the following limitations:

...

However, the CPDC shall in no case approve building heights above the basic maximum height for any Planned Unit Development-industrial in the area bounded by the MBTA railroad right-of-way and by the lots fronting on Ash Street.

4.9.4.6.1. PUD-I Setbacks and Buffers:

...

4.9.6. Use and Dimensional Requirements as to PUD-R: The following paragraphs shall serve as the basic Use and Dimension Requirements to which all PUD-R projects shall adhere within each PUD-R overlay district and shall be used by the Community Planning and Development Commission to evaluate any proposed project.

4.9.6.1. Parcel Size and Eligibility: The minimum size of a PUD-R development parcel shall be 10 acres. A development parcel may consist of land in more than one ownership, provided that all land comprising the parcel. lies entirely within the PUD-R overlay district and is contiguous. Lots separated by a minor street as defined in Section 4.9.2.11 or right-of-way or private way may be considered contiguous for this purpose. Proposed developments may include pre-existing buildings provided that all PUD requirements are satisfied by each new or existing building and for the PUD as a whole. More than one principal building may be located on a lot, Section 5.2.8. notwithstanding.

4.9.6.2. Permitted Uses in PUD-R: Planned Unit Developments in an underlying residential district may contain two or more of the following uses subject to the findings of the CPDC as to net benefit and adverse impacts of the proposed PUD:

- a. Residential uses, including one family dwellings, two-family dwellings townhouses and apartments.

b. Any or all of the uses allowed in a PUD-I in paragraphs (a), (b), (c), (f) and (h) of Section 4.9.4.2, housing for the elderly, day care facility, elder care facility, nursing home, medical clinic and ancillary offices and facilities, but only if such uses are located within 300 feet of a Town boundary.

c. Retail, consumer service, restaurant (with no drive-thru service), and, place of assembly and recreational use, but only if such use is located within 300 feet of a Town boundary and is specifically found by the CPDC to be ancillary to or supportive of a permitted use proposed in the PUD-R development.

d. Open space Areas used for open space, yards, buffer areas, private ways, walkways, driveways, parking, recreation areas and areas classified as resource areas in MGL, Chapter 131, Section 40, as amended, and in the Reading Wetlands By-Law; such open spaces as may be included in determining open space requirements pursuant to Section 4.9.6.4.2.e.

e. Recreational Uses.

f. Public and Quasi-Public Uses as set or in Section 4.2.2.

g. All other uses are excluded from a Planned Unit Development in a PUD-R. Adult Uses are expressly prohibited in a PUD-R District.

h. To encourage and promote the establishment of those uses permitted in Section 4.9.6.2(b) within portions of a PUD-R district that are within 300 feet of a Town boundary, no two-family dwellings, or multifamily dwellings shall be built pursuant to a PUD-R Special Permit on land that is within 300 feet of a Town boundary for a period of seven years after the adoption of the Zoning By-Law placing such land within the PUD-R overlay district. In recognition of increased density and economic benefits to the applicant pursuant to a PUD-R Plan, the CPDC may consider and condition the number and interior layout of bedrooms in each residential unit that are being proposed by the developer in evaluating the criteria pursuant to Section 4.9.5 of this By-Law.

4.9.6.3. Intensity of Use in PUD-R

4.9.6.3.1. Residential: The basic permitted intensity of the residential use in a PUD-R development shall not average more than six (6) units to the acre for the portions of a PUD-R development that are more than 300 feet from a municipal boundary. If developed residentially, as per Section 4.9.6.2.h., the basic permitted intensity of residential use in a PUD-R development shall not average more than eleven (11) units to the acre for the portions of a PUD-R development that lies within 300 feet of a Town boundary.

4.9.6.3.2. Uses as described in Section 4.9.6.2 b, c, and f, respectively: The basic permitted intensity of commercial use in a PUD-R development, expressed as the Floor Area Ratio, is 0.55. In order to assist in making this calculation, plans submitted for a PUD-R Special Permit that contain a such use shall show what portion and area of the development parcel will be put to such use. Land under dwellings, residential court yards, residential driveways, non-structured parking areas that serve only residential uses and roadways that serve only residential uses shall not be counted as part of the development parcel in calculating the FAR. Areas which have been counted to satisfy the intensity limit for residential use may not be counted also to satisfy the intensity limit for commercial use and areas which have been counted to satisfy the intensity limit for commercial use may not be counted also to satisfy the intensity limit for residential use.

4.9.6.4. Dimensional Requirements:

Each PUD-R development shall be governed by the dimensional requirements of this section. These requirements apply only to the subject parcel as a whole, not to individual lots created within the PUD-R.

4.9.6.4.1. Height: The maximum building height within a PUD-R shall be as follows:

a. ...

b. The maximum height of a commercial building shall be 72 feet. Height shall be measured in the manner defined in Section 2.0. of this By-Law.

4.9.6.4.2. Setbacks and Buffers in a PUD-R:

...

e. Open Space: A PUD-R shall set aside at least 25% of its total parcel area as required open space. Required Open Space may include wetlands and water bodies; vegetated/landscaped area, including buffers; pedestrian paths, sidewalks, and covered walkways; public plazas and hard surfaced recreation areas. Required Open Space shall have a minimum dimension of 20 feet (which may include the dimension across, a water body) and shall be open to occupants within the PUD-R; access by the general public is desirable.

f. Recreation Space: A PUD-R that includes land within three hundred (300') of the Town boundary must provide at least 15% of land within three hundred feet (300') of the municipal boundary for recreational uses, such uses being subject to approval of the CPDC.

4.9.6.5. Private Ways: Private ways shall be allowed in a PUD-R development, provided that:

- a. Site circulation shall meet accepted standards in the judgement of the Town Engineer for private automobiles, service vehicles and emergency vehicles.
- b. Private way pavement widths shall not be less than twenty four (24) feet. The construction standards for such private ways shall provide sufficient base and surface strength in the judgment of the Town Engineer to support normal vehicular usage, including but not limited to emergency vehicles and delivery trucks, and plowing. The allowable private way grades shall be between 1 % and 10% and private ways shall have a minimum centerline radius of 75 feet. Private ways ending in a dead-end shall have a cul de sac with a minimum curve radius of forty-five feet.
- c. A private way in a PUD-R must have adequate, alternative vehicle connectors to other private ways or roadways to provide alternative access for emergency vehicles. Such emergency access connectors may be gated in a manner satisfactory to the CPDC to avoid non-emergency use, but may cross any existing zoning district.
- d. Drainage and surface runoff are suitably accommodated.
- e. Ways shall be continuous and, where possible, in alignment with existing ways. All proposed ways shall compose a convenient system with adequate connections to ensure full movement of vehicular travel.
- f. If adjoining property is not subdivided, consideration shall be given to the possibility of future connections. In any case where developable land, whether publicly or privately owned, adjoins the subject property, proposed ways and/or easements shall continue to the exterior boundary of the PUD-R site plan unless otherwise approved by the CPDC. PUD-R Plans shall specify that such private ways are not to be dedicated to the Town but are to remain private ways; and all deeds conveying any portion of land or a structure in a PUD-R development containing private ways shall specify that such private ways shall always remain private ways. Driveways which provide access only to one residential building that contains 15 or fewer units or driveways that provide access only to a residential parking area do not need to meet the private way requirements, but such driveways shall be of a sufficient layout to provide safe and adequate access, in the judgment of the CPDC as advised by the Town Engineer.

4.9.6.6. Owners' Association:

[...]

4.9.6.7. Landscaping Requirements in PUD-R:

[...]

4.9.6.8. Stormwater Drainage: All PUD applications shall provide proof of compliance with the Department of Environmental Protection Stormwater Regulations.

4.9.6.9. Pedestrian Access: All PUD applications shall contain safe and convenient pedestrian access throughout the project site and connecting to adjacent roadways and/or parcels.

4.9.6.10. Affordable Housing: The intent of this section is to increase the supply of housing in the Town of Reading that is available to and affordable by low and moderate income households and to encourage a greater diversity of housing accommodations to meet the needs of the Town and to develop and maintain a satisfactory proportion of the Town's housing stock as affordable housing. Any PUD-R development shall provide within the Town of Reading, affordable housing units equal to ten percent of the total residential units in the PUD-R. For property within 300' of the municipal boundary if developed residentially, requisite affordable units shall be equal to fifteen percent of the total residential units in this area. When the percentage calculation does not result in a whole number it shall be rounded to the nearest whole number.

The following standards shall apply to assure the maximum public benefit from such affordable housing:

- a. Restriction: The developer shall provide an adequate guarantee, acceptable to the CPDC, to ensure the continued availability of the affordable units in perpetuity; such guarantee may include deed restrictions, recorded deed covenants relative to equity limitation, or other acceptable forms.
- b. Marketing/Selection: The marketing and household selection process as to the affordable units shall be conducted in collaboration with the Town or its designee.
- c. Local Preference: To the extent to do so would not cause the affordable units not to be qualified as affordable housing pursuant to guidelines established by the Massachusetts Department of Housing and Community Development and to the extent allowed by law, preference as to affordable units shall be given initially to current Reading residents, employees of the Town of Reading, or those prospective buyers who were formerly Reading residents for ten (10) years or more. The Town shall establish an equitable procedure to implement this preference.
- d. Appearance: On site affordable housing units shall have a minimum gross floor area of one thousand (1,000) square feet and an exterior appearance designed to be substantially indistinguishable from market-rate units.
- e. Minimize Fees: If the affordable units are being sold as condominium units, in order to minimize the monthly condominium fees to be paid by those affordable units, the value assigned to such units and the percentage of interest in the common areas allocated to those affordable units shall recognize the affordable restrictions imposed on such affordable units, to the maximum extent allowed

by MGL Chapter 183A and other applicable law.

f. Developing Units: No more than twenty-five percent (25%) of the building for the market rate residential units shall be issued for any PUD-R development until construction has commenced on one-sixth of the affordable units. No more than fifty percent (50%) of the occupancy permits for the market rate residential units shall be issued for any PUD-R development until occupancy permits are issued for one-third of the affordable. No more than eighty five percent (85%) of the occupancy permits for the market rate residential units shall be issued until occupancy permits have been issued for two thirds (2/3) of the affordable units. The CPDC may require financial assurances in an amount as determined by CPDC from the applicant for the remaining one third (1/3) of affordable units required to be provided.

g. Off-Site Units: Up to 50% of the required affordable units may be located offsite from the PUD-R location within the Town of Reading. In order to use this option, the size and types of units, unit location, and density of said units shall be approved by the CPDC as part of their approval for the related PUD-R Special Permit. As a premium for the Developer being able to place affordable units off-site, for every three affordable units the developer elects to place off-site, the Developer must provide an additional bonus affordable unit, which additional bonus unit does not count towards the ten percent of affordable units the Developer is required to provide. The placing of bonus affordable units off-site does not result in a requirement of additional bonus units.

4.9.7. Use and Dimensional Requirements in the PUD-B

The following use and dimensional requirements shall be adhered to by all PUD-B Special Permit developments that lie within a PUD-B Overlay District and which shall be used by the CPDC in evaluating each PUD-B development proposal.

4.9.7.1 Parcel Size and Eligibility:

The minimum land area of a project under a PUD-B Special Permit is three (3) acres in size.

A development parcel may consist of land in more than one ownership, provided that all land comprising the parcel lies entirely within the PUD-B Overlay District and is contiguous. Lots separated by a minor street as defined in Section 4.9.2.1 or right-of-way or private way may be considered, in CPDC's discretion, contiguous for this purpose.

Proposed developments may include pre-existing buildings provided that all PUD requirements are satisfied by each new or existing building and for the PUD as a whole. More than one principal building may be located on a lot, Section 5.2.8. notwithstanding.

Permitted Uses in the PUD-B

The following uses may be allowed by a PUD-B Special Permit, subject to the findings of the CPDC as to the net benefit and adverse impacts of the proposed PUD:

a. Within a PUD-B Overlay District, any portion of land that is within the underlying Business A District or within 30 feet of the underlying Business A District zoning boundary line may be used for those various uses allowed within the underlying Business A District, excepting that Automotive Uses and enclosed storage as a primary use as listed in the Table of Uses in Section 4.2.2 (Table of Uses), and fast food restaurant or drive-thru uses shall not be allowed.

b. Any land within the PUD-B Overlay District that is both in the underlying residential district and more than 30 feet from the underlying Business A District zoning boundary line may only be used for the parking of registered motor vehicles in a parking lot or structure, related driveways, landscaping, lighting, fencing, drainage systems and containerized and enclosed trash storage, all as accessory uses for the uses allowed elsewhere in the PUD-B Overlay District subject to conditions imposed by the CPDC.

4.9.7.3 Intensity of Use in PUD-B

4.9.7.3.1 Uses as described in 4.9.7.2:

The basic permitted intensity of a business use in a PUD-B development, expressed as the Floor Area Ratio as defined in Section 4.9.2.1 .f, may not exceed 0.50. In order to assist in making this calculation, plans submitted for a PUD-B Special Permit that propose such a use shall show what portion and area of the development parcel will be put to such use.

Areas which have been counted to satisfy the intensity limit for residential use may not be counted also to satisfy the intensity limit for business/commercial use and areas which have been counted to satisfy the intensity limit for business/commercial use may not be counted also to satisfy the intensity limit for residential use.

4.9.7.4 Dimensional Requirements:

4.9.7.4.1 Building Height. The maximum building height within a PUD-B Overlay District shall be as follows:

a. Any portion of an allowed structure that is within an underlying residential zoning district portion of a PUD-B Overlay District and that is farther than 30 feet from the underlying Business A zoning boundary line shall not be greater in height than is allowed in the underlying zoning district in which it is located.

b. Any portion of a building that is in an underlying Business-A Zoning District or is within 30 feet of an underlying Business-A Zoning District shall be no higher than 50 feet.

4.9.7.4.2 Setbacks and Buffers in a PUD-B:

a. The extent of buffering and setbacks shall in every case be based upon the following criteria as reviewed by the CPDC:

****Webmasters Note:** The previous section, 4.9.7, has been added as per an update approved at a town meeting held on 4/26/04.

4.10. PLANNED RESIDENTIAL DEVELOPMENT (PRD)

4.10.1. Purpose: The purpose of the Planned Residential District (PRD) is to permit integrated high quality residential developments with variable densities while permitting preservation of open space and natural features, allowing reduced infrastructure and site development costs, to promote a greater diversity of housing opportunities within the Town while respecting and enhancing the existing character of the Town and of the neighborhood, and to promote attractive standards of appearance and aesthetics consistent with that character. There shall be the following types of PRD Districts:

PRD-G: General Planned Residential Development.

PRD-M: Planned Residential Development on current or former municipally owned properties. There may be included in a PRD-M Zoning Overlay District privately owned property which was not former municipally owned property provided that any such property can only be used for the purposes of providing access to, drainage control from or open space recreational uses for a contiguous parcel or parcels of property which otherwise complies in all respects for development as a PRD-M.

4.10.2. Planned Residential District as an Overlay District:

A PRD Zoning District shall take the form of an overlay district covering any part of an existing residential zoning district on the Reading Zoning Map. A PRD-M Zoning Overlay District shall be applied to a specific parcel or parcels only through specific action by Town Meeting in a manner identical to that required to amend the Reading Zoning Map. A PRD-G Zoning Overlay District may be applied to all or any portion of an underlying single-family residential zoning district (that is, S-10, S-20 or S-40) through action by Town Meeting to amend the Reading Zoning Map. For any land subject to a PRD Overlay District a Developer may choose to conform either to the zoning regulations which govern the underlying district or to the PRD overlay regulations and procedures set forth by this Section, the specific provisions of which shall supersede all other provisions in the Zoning By-Laws with respect to the underlying district including, without limitation, use, intensity, dimensions, parking, signage and site plan, review; however, the provisions of any other overlay district shall continue to apply. Notwithstanding any subsequent change in the development density provisions of Section 4.10.4.3. hereof, the land placed in a PRD Zoning Overlay District shall be governed by the development density requirements in effect at the time Town Meeting created the applicable Zoning Overlay District and for a period of eight (8) years from the date of such Town Meeting action.

4.10.2.1 Definitions: The following terms shall have for the purposes of this PRD By-Law the meanings hereby assigned to them:

a. DEVELOPER : One or more entities proposing together to develop a Planned Residential Development parcel.

b. EXISTING : In existence at the time of filing a complete Preliminary PRD Plan submission.

c. FLOOR AREA RATIO (OR "FAR") : In a PRD, the ratio of total gross building floor area in a PRD to the area of the development parcel. Gross floor area shall be measured from outside wall surfaces and shall include ground floor areas of interior atriums and lobbies, and mechanical and utility spaces on habitable floors; but shall exclude rooftop space, balconies, elevator pits, or nonhabitable areas enclosed by ornamental roofs. Structured parking and garages shall not be counted in the determination of Floor Area Ratio. Areas classified as wetlands in MGL, Chapter 131, Section 40 or Reading General Bylaws Section 5.7., may not exceed ten percent of the development parcel area eligible to be used in any computation of FAR.

d. HEIGHT : The vertical distance from the average grade around the perimeter of a building to the top of a flat roof, including any parapet, or to a point halfway between the bottom of an eave and the top of a ridge of a sloped roof.

e. INCLUSIONARY HOUSING :

(1) Affordable Housing: Housing units available for purchase by households with annual incomes less than one-hundred percent (100%) of the median annual household income for the Boston Metropolitan Area as determined by the most recent calculation of the U.S. Department of Housing and Urban Development.

(2) Moderately Priced Housing: Housing units available for purchase by households with annual incomes between one hundred percent (100%) and one hundred twenty-five percent (125%) of the median annual household income for the Boston Metropolitan Area as determined by the most recent calculation of the U.S. Department of Housing and Urban Development.

f. MAJOR STREET : A street used for through access and carrying traffic volumes of greater than 10,000 vehicles per average day.

g. MINOR STREET : A street used primarily for access to abutting properties or carrying traffic volumes of less than 10,000 vehicles per average day,

h. READING : Zoning By-Laws including all subsections thereof.

i. SITE : The development parcel upon which a PRD is proposed.

j. STRUCTURED PARKING : In a PRD, a parking garage, or all or part of building floors above or below grade to be used for automobile parking.

4.10.3. Special Permit for Planned Residential Development: The Community Planning and Development Commission ("CPDC"), as the Special Permit Granting Authority, shall have the authority to grant a Special Permit to construct a Planned Residential Development (PRD) by a vote of at least four members of the five-member CPDC. The CPDC shall evaluate proposed PRD projects and require all such projects to conform to the Planned Residential Development requirements, standards, and guidelines set forth in Sections 4.10.4. and 4.10.5. to ensure that the benefits to the Town of a proposed project outweigh any adverse impacts before granting a Special Permit. The CPDC shall adopt and from time to time may amend regulations for the review of PRD Developments and for the submission of PRD Plans as provided in MGL, Chapter 40A, Section 9. The CPDC shall interpret all provisions of this PRD By-Law and all definitions and regulations pertinent thereto and shall provide such interpretations upon request by an applicant for a Special Permit to construct a PRD.

4.10.3.1. Overview of Special Permit Process: A Developer choosing to develop a PRD in a PRD Overlay District shall apply for a Special Permit with the CPDC. The Special Permit Process shall include:

- a. Pre-Application Conference (Optional)
- b. Preliminary PRD Plan Review
- c. Final PRD Plan Review

[...]

4.10.3.3.14. Phased Development: If a phased development is proposed by the Developer, the Final PRD Plan shall contain all required written, quantitative, and graphic information as specified in Section 4.10.3.3.9. for evaluating the proposed PRD as a whole and to serve as a basis for granting the Special Permit, plus a final development schedule for the completion of the PRD indicating the proposed dates and scope of work to be accomplished in each phase. Site improvements may be phased only in conformity with the phasing schedule included in the approved Final PRD Plan', and only to the extent that all requirements, standards, and guidelines of this PRD By-Law are met in each phase. The initial phase shall include at a minimum the on-site and off-site improvements necessary for one or more buildings and may, at the Developer's option, include one or more buildings. Deviations, deletions, additions, or changes from or to the approved Final PRD Plan in any phase shall be designated a minor or major amendment, as defined in Sections 4.10.3.3.10.1. and 4.10.3.3.10.2., to the Final PRD Plan by the CPDC and treated as such in accordance with Section 4.10.3.3.12. If the PRD is to be developed in phases, the Developer shall begin the construction of each phase in accordance with the approved development and phasing schedule; however, the CPDC shall grant additional extensions in the timing of phases for up to twenty-four months each as minor amendments to the Final PRD Plan, upon the CPDC's determination of good cause. If the Developer fails to commence construction of a PRD phase within the specified time limit for that phase, including any approved extension period, said failure shall be deemed a major amendment to the Final PRD Plan, and the phase at issue and all subsequent phases which depend upon said phase for their construction and operation in conformance with the Final PRD Plan shall be re-approved in accordance with Section 4.10.3.3.12.

4.10.3.3.15. Conformity with PRD Plan and Special Permit: ...

4.10.4. Use and Dimensional Requirements: The following specifies the basic use and dimensional requirements which shall be adhered to in all PRD developments within each PRD Overlay District and which shall be used by CPDC in evaluating each PRD proposal.

4.10.4.1. Parcel Size: A development parcel may consist of land in more than one ownership, provided that all lots comprising the parcel lie entirely within a PRD Overlay District and are contiguous. Proposed PRD developments may include pre-existing buildings provided that all PRD requirements are satisfied by each new or existing building and by the PRD as a whole. More than one principal building may be located on the parcel.

The minimum size of any PRD development parcel shall be as follows:

PRD-G: Sixty-thousand (60,000) square feet

PRD-M: Eight (8) acres

4.10.4.2. Permitted Uses: Only residential uses, parking (including structured parking) to accommodate this use, and open space are permitted within a PRD, with the exception that a common facility for use by the residents of the PRD and their guests exclusively may be provided for the following uses:

- a. Indoor meeting, social, activity, or recreational rooms;
- b. Common dining and kitchen;
- c. Office only for the administration of the PRD;
- d. Maintenance, storage and recreational facilities or spaces solely for servicing the PRD.

4.10.4.2.1. Required Inclusionary Housing: PRD-G: Any PRD-G development may provide affordable and/or moderately priced housing units as allowed in Section 4.10.4.3.1. PRD-M: Any PRD-M development shall contain or provide off-site in a manner

acceptable to the Reading Housing Authority affordable housing units at a minimum equal to ten percent of its total units (both on-site and off-site).

4.10.4.2.2. Standards for On-Site Inclusionary Housing Units: Inclusionary housing units shall have a minimum gross floor area of nine-hundred (900) square feet. Inclusionary housing units shall be integrated into the PRD development and not grouped together and their exterior appearance shall be designed to be indistinguishable from the market-rate units in the same development. The developer shall provide adequate guarantee, acceptable to the CPDC, to ensure the continued availability of the inclusionary units in perpetuity; such guarantee may include deed restrictions, recorded deed covenants relative to equity limitation, or other acceptable forms. No more than eighty percent (80%) of the building permits for the market-rate units shall be issued for any PRD development until construction has commenced on all the inclusionary units in the PRD development; no more than eighty percent (80%) of the occupancy permits for the market-rate units shall be issued until all of the occupancy permits for the inclusionary units have been issued.

4.10.4.3. Intensity of Development:

For PRD developments, the following basic intensity factors shall apply:

Minimum parcel frontage: 50 feet,

Maximum coverage of the parcel by the aggregate ground area of all buildings: 25%,

Maximum floor area ratio: 0.40.

Minimum separation between buildings:

PRD-M: Equal to the height of the taller building but in no case less than 40 feet.

Maximum building height:

(1) PRD-G: As allowed in the underlying zoning district,

(2) PRD-M: 48 feet, not to exceed four stories.

Minimum setbacks as measured between bounds of the parcel and any portion of any building or structure: 60 feet in all directions.

Parking: An enclosed garage for an individual residential unit may count as one required parking space and a driveway for an individual residential unit may count as one required parking space provided said driveway has minimum dimensions of 10 feet by 20 feet:

(1) PRD-M: 1.75 spaces per residential unit,

(2) PRD-G: 2 spaces per residential unit.

Loading and unloading:

(1) PRD-M: One space per building containing multiple units with a common entrance, except that CPDC at its discretion and in accordance with Section 4.10.5.4. may allow fewer spaces.

(2) PRD-G: None, except that one space shall be provided for any common building or facility, except that CPDC at its discretion and in accordance with Section 4.10.5.4 may allow fewer spaces.

Maximum number of dwelling units contained within the parcel shall be determined as follows:

(1) PRD-G: Maximum basic development density for a PRD-G development shall be based on the underlying zoning district in which the development is located, as follows:

a. The Developer shall first submit to the Reading Conservation Commission a Request for Determination of Applicability, if required by law, relative to the parcel contemplated to be developed in accordance with this Section 4.10 in accordance with Chapter 131, Section 40 of the Massachusetts General Laws and Section 5.7. of the Reading General Bylaws, and obtain from said Conservation Commission an approved delineation of the bounds of any wetlands resource area on the parcel and/or within the jurisdiction of the Conservation Commission up to 200 feet from any portion of the parcel;

b. The Developer shall then submit to the CPDC a schematic Subdivision Plan ...

d. Following the close of the Public Hearing at which both the schematic Subdivision Plan and the Schematic PRD Plan are reviewed, the CPDC shall consider whether or not it will request that an Article be placed on the Warrant for a Town Meeting to place a PRD-G Zoning Overlay District on the parcel as specified in Section 4.10.2.;

e. Following favorable action by Town Meeting, the Developer may proceed with a Preliminary PRD Plan and a Final PRD Plan as set forth in this Section 4.10.

(2) PRD-M: 10 dwelling units per gross acre, with the additional limitation that no PRD development may contain more than 100 residential units.

4.10.4.3.1. Increased Development Intensity and Height: PRD-G: The basic intensity, but not height, factors specified in Section 4.10.4.3. may be increased as follows, provided that in no case shall the development density be increased to a level equal to more than one-hundred-twenty percent (120%) of the basic density.

(1) For every affordable housing unit provided, one additional market-rate housing unit may be provided.

(2) For every two moderately priced housing units provided, one additional market-rate housing unit may be provided.

PRD-M: The basic intensity and height factors specified in Section 4.10.4.3. may be increased up to the following levels if the CPDC finds that a proposed provision of public improvements or amenities by the Developer would result in substantial benefit to the Town and the general public:

(1) Maximum floor area ratio: 0.65

(2) Maximum building height: 72 feet, not to exceed six stories, except that not more than one-third of the total number of any PRD development's residential units may be contained in a building or buildings greater than 48 feet in height.

(3) Maximum number of dwelling units per gross acre of land contained within the parcel: 16 dwelling units, with the additional limitation that no PRD-M development may contain more than 160 residential units.

The aforementioned improvements or amenities which CPDC may consider in granting some amount of increased intensity and height shall include one or more of the following, provided that, in the estimation of the CPDC, the benefit to be derived from the proposed improvements or amenities shall be commensurate with the amount of increased intensity or height allowed:

(1) Significant improvement of the environmental quality or condition of the site and its surrounding areas, including a decrease in runoff,

(2) Provision of or contribution to off-site public facility improvements beyond those necessary to mitigate the effects of the proposed development which improvements would enhance the general condition of the surrounding areas,

(3) Dedication of open space or recreational facilities for use by the general public,

(4) Active cooperation by the Developer with other owners in the vicinity to develop and achieve district-wide and adjacent neighborhood improvement goals and objectives,

(5) Provision of public art, distinctive and appropriate design, or other amenities which would provide unique advantages to the general public or contribute to achieving Town-wide goals and objectives,

(6) Provision of affordable housing within the PRD in conformance with this PRD By-Law and/or off-site in a manner acceptable to the Reading Housing Authority in excess of the amount required in Section 4.10.4.2.1.

4.10.4.3.2. Fractional Computations: For all PRD density calculations which result in a fractional number, only fractions equal to or greater than x.76 may be rounded up to the next highest whole number; all other fractional numbers shall be rounded down to the nearest lower whole number.

4.10.4.4. Limitation of Subdivision and Ownership: No lot or development parcel shown on a PRD plan for which a permit is granted pursuant to this PRD By-Law and remains validly in effect may be further subdivided, and a note to this effect shall be shown on the plan. All wetlands and adjacent 25-foot buffer area contained in a PRD parcel shall be held in common ownership under the purview of the PRD's Residents Association; such 25-foot buffer area shall not count toward open space as required in Section 4.10.5.3.

4.10.5. Development Standards: All PRD developments shall conform to the following development standards: 4.10.5.1. Screening: Within the required setbacks, landscaping shall be provided so as to provide effective screening of the PRD from visibility from abutting properties. To the greatest extent practical, existing natural vegetation shall be preserved and enhanced. Except as necessary for vehicular access, natural grades and contours within these setbacks shall not be altered in any manner, and no parking, loading and unloading space, or any other physical improvement shall be made. All plantings shall be properly installed and maintained.

4.10.5.2. Shadows: Between 9:00 a.m. and 3:00 p.m. (EST) from February 21st to October 21st, no building may cast a shadow on any residential structure in existence at the time of Preliminary PRD Plan submission.

4.10.5.3. Open Space: A minimum of 40% of the PRD parcel shall be devoted to open space, completely devoid of any structure, or parking, loading and unloading space or accessway thereto, or as private yards, patios, or gardens for the exclusive or principal use by residents of individual dwelling units. To the greatest extent possible such open space shall be left in its undisturbed natural condition or developed so as to be appropriate, in size, shape, dimension, location, and character to assure its use as a park, recreational area, and visual amenity for the development and its residents. In evaluating the suitability and quality of the open space proposed to be provided, the CPDC shall apply the following standards:

- a. Usability: Other than wetlands, floodplains, and water bodies, including the normal water surface area of detention ponds, which may count for up to twenty-five percent of a PRD project's required open space area, all open space must have a surface which is adequately drained and permits active and passive recreational use. Such surface may include any combination of grass, plant materials, wood, or paving materials which allow pedestrian and recreational use. No open space shall be considered usable if the slope of the finished grade exceeds ten percent.
- b. Location: The nearest part of the open space shall not be more than 30 feet walking distance from the nearest point of any building it is proposed to serve.
- c. Size and shape: No open space shall be considered usable unless it has a minimum area of 1000 square feet and no dimension less than twenty-five feet.
- d. Structures and facilities: All usable open space shall be open to the sky, and may include unroofed facilities such as tennis courts, swimming pools, or similar recreational facilities.

4.10.5.4. Site Circulation and Parking: ...

Design Quality:

Project design shall be reviewed by CPDC with input from Town officials, any review consultant(s) employed by the CPDC, and others as appropriate. The following in this section are to be interpreted as guidelines to be applied flexibly by the CPDC and as appropriate to the situation under review, including factors such as foundation and soil characteristics and other extraordinary site constraints. These guidelines apply to all site improvements and buildings and structures:

4.10.5.5.1. Building Placement:

- a. Provide and preserve attractive views from major vantage points, especially from major thoroughfares and residential neighborhoods,
- b. Avoid regular spacings and building placements that will be viewed as continuous walls from important vantage points, which may be identified in a PRD PreApplication Conference.

4.10.5.5.2. Building Massing/Articulation:

- a. Avoid unbroken building facades longer than 100 feet,
- b. Provide human-scale features, especially at lower levels,
- c. Avoid unarticulated and monotonous building facades and window placement.

4.10.5.5.3. Roofline Articulation:

- a. Provide a variety of building heights and varied roofline articulation, utilities should be located underground,
- b. Locate taller buildings away from major streets and off-site single-family residential areas.

4.10.5.5.4. Building Material

- a. Use materials and building treatments that reduce the visibility of buildings from distant vantage points and that are compatible with backgrounds and surroundings,
- b. Use materials and colors compatible with other quality buildings of similar scale in the vicinity.

4.10.5.5.5. Landscaping:

- a. All open areas within a PRD should be landscaped in an appropriate manner, utilizing both natural and man-made materials such as grass, trees, shrubs, attractive paving materials and outdoor furniture,
- b. Deciduous trees should be placed along new and existing streets and ways,
- c. Outdoor lighting should be considered in the landscaping plan and should be designed to complement both man-made and natural elements of the PRD and adjacent areas,
- d. Intensive, high-quality landscaping should be provided within the PRD where it abuts-major streets, existing residential areas, and along internal drives,
- e. Parking lots should use landscaping and terracing to break up large areas of pavement and to enhance a residential flavor and appearance; trees and shrubs should be used to the maximum extent feasible.

4.10.5.5.6. Pedestrian Amenities:

- a. Emphasize pedestrian/oriented features such as covered walkways, pergolas, outdoor sitting plazas, landscaped open space, drop-off areas and recreational facilities,
- b. Tree-lined or otherwise appropriately landscaped pedestrian paths and walkways should link together areas designated as open space within the site and whenever possible to adjoining public areas.

4.10.5.5.7. Utilities:

- a. To the maximum extent feasible, all utilities should be located underground.

4.10.5.6. Signage:

...

4.10.5.7. Environmental Standards and General Development Guidelines:

...

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board 4.9.3 Special Permit for Planned Unit Development: The Community Planning and Development Commission (the "CPDC"), as the Special Permit Granting Authority, shall have authority to grant a Special Permit to construct a Planned Unit Development ("PUD") by a vote of at least four members of the five-member CPDC.

Has any housing been built under the cluster/flexible provisions?

Yes Email from Town Planner Chris Reilly on 6/2/05:
"-More than 8: 160 PUD units currently under construction
-PUD first Adopted: 11.87; last amended 4.04
-PUD: 16 units currently under construction"

Rehoboth

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

No

Which entity is the special permit granting authority for cluster/flexible zoning?

Has any housing been built under the cluster/flexible provisions?

Revere

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

No Revere will allow the construction of a PUD by a special permit from the City Council.

The Land Use Ordinance of Revere (City)
SUFFOLK COUNTY, MASSACHUSETTS
Title 17 ZONING
Chapter 17.20 PLANNED UNIT DEVELOPMENT
17.20.010 Authority to grant permits.

The city council may grant a special permit for the construction of a planned unit development (PUD) in the following districts: RC, RC1, RC2, RC3, GB, CB, HB, PDD1, PDD2, NB, TED, LI and IP. The special permit shall conform to this title and to Chapter 40A, Section 9, General Laws, and to regulation which the council shall adopt for carrying out its requirements under this title. (C.O. 97-105 Section 38; C.O. 87-661 Section 12; C.O. 85-4A Section 36; C.O. 83-508B Section 1; C.O. 83-3 Section 17-5(X)(1)) (Amended 3/26/01)

17.20.020 Project review board.

With the adoption of the ordinance from which this title derives the, city council designates a project review board to review each proposed PUD. The project review board shall consist of the city engineer, the building inspector, city planner, health agent and superintendent of public works. (C.O. 83-3 Section 17-5(X)(2))

17.20.030 Purpose.

The purpose of the PUD district is to provide for a mixture of land usage within the city at greater density and intensity than would normally be allowed, provided that the land usage can be shown to be in the public good and:

- A. Will improve and/or reinforce the livability and aesthetic qualities of the surrounding neighborhood and/or environment;
- B. Is consistent with the objectives of this title;
- C. Promotes the development of housing in Revere;
- D. Preserve, promote and encourage use of public and private open space. (C.O. 83-3 Section 17-5 (X) (3))

17.20.150 Permitted uses.

In a PUD, the following uses are permitted:

- A. Residential: apartments, only on floors above the ground floor;
- B. Business, only within the first three floors:
 - 1. Restaurants, excluding fast-food restaurants,
 - 2. Theaters,
 - 3. General retail sales and services, excluding medical and dental laboratories, medical or dental centers, and medical and dental offices;
- C. Expansion of buildings or rehabilitation of existing interiors:
 - 1. Special permits can be granted to PUD projects that are essentially an expansion of the existing building, if the expansion will at least double the existing gross square footage (excluding basements); and if the project meets all parking and site plan criteria required by the council.
 - 2. Special permits can be granted to PUD projects that are essentially a major renovation of an existing building if the major renovation involves one hundred percent of the gross floor area, excluding basements; and if the project meets all parking and site plan criteria required by the council.

3. The council may reduce the required renovation percentage if it can be shown that the one hundred percent requirement would endanger historically significant interior space. (C.O. 90-37D(part); C.O. 85-4A Section 36(part); C.O. 83-508B Section 2; C.O. 83-3 Section 17-5(X)(9))

17.20.160 Site area.

For both new construction and expansion, there shall be a minimum twenty-five-thousand-square-foot requirement for PUD's. All portions of the project area must be zoned as RC, RC1, RC2, RC3, HB, PDD1, PDD2, NB, TED, LI and IP. (C.O. 97-105 Section 39; C.O. 90- 37D(part); C.O. 85-4A Section 36(part); C.O. 83-508B Section 3; C.O. 83-3 Section 17-5(X) (10))(Amended 3/26/01)

17.20.170 Usable open space.

A. The part or parts of land or structure within a PUD which are reserved for permanent active or passive recreation use. This space shall exclude parking areas but include required setbacks, waterways, walkways, and be open and unobstructed to the sky. Trees, plantings, arbors, flagpoles, sculpture, fountains, swimming pools, atriums, open-air recreational facilities and similar objects shall not be considered obstruction.

B. In all PUD's that are new construction, at least ten percent of the land shall be set aside as permanent usable open space, for the Use of the PUD residents, or for all PUD users, or for the community. The required open space shall, at the opinion of the council, be conveyed to the conservation commission or to a nonprofit conservation organization, or to a corporation or trust representing persons responsible for the PUD and shall be protected by a conservation restriction as required by Chapter 40A, Section 9, General Laws, for common open space in cluster developments. A covenant shall be placed on the land such that no part of the PUD can be built, sold or occupied until such time as a satisfactory written agreement has been executed for protection of the open space.

C. Open space requirements do not apply for PUD use projects which are expansions of existing buildings or are major internal renovations. It shall be the objective of this title in cases where private open space has been traditionally utilized by the public and where the public has been allowed to use the area as open space by the owner or owners of the building, that open space should not be included as part of the building expansion and is subject under this section of the bylaw. This section shall not apply to playgrounds so called. (C.O. 83-508B Section 4; C.O. 83-3 Section 17-5(X)(10)(b))

17.20.180 Setback requirements.

Insofar as the PUD abuts a residential district, all structures and facilities within the PUD shall be set back not less than twenty feet from adjacent residential property lines. (C.O. 90-37D, (part); C.O. 85-4A Section 36 (part); C.O. 83-508B Section 5; C.O. 83-3 Section 17-5(X) (10) (c))

17.20.190 Height.

No building in the PUD shall exceed one hundred feet in height above the mean finished grade of abutting properties for site areas containing between twenty-five thousand square feet and six hundred and fifty-three thousand square feet. No building in the PUD shall exceed two hundred feet in height above the mean finished grade of abutting properties for site areas containing over six hundred and fifty-four thousand square feet. (C.O. 87-32 Section 1; C.O. 83-3 Section 17-5(X)(10)(d))

Which entity is the special permit granting authority for cluster/flexible zoning?

Has any housing been built under the cluster/flexible provisions?

Rockland

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Town of Rockland Zoning Bylaw, Section V(H) (Last Amended 2003).

"H. Planned Unit Developments

Planned Unit Developments may be allowed in appropriate areas of any approved residence district in conjunction with the Permitted Principal Uses therein by special permit only, and must meet the following development standards:

1. General Size of Planned Unit Development

a. Plot and lot sizes and dimensions, and the location and height of buildings, if meeting the standards of this By-Law, may be freely disposed and arranged provided the construction conforms to comprehensive plans approved, pursuant to this By-Law, by the Special Permit Granting Authority. In reviewing and approving all plans, the Special Permit Granting Authority, in addition to the standards set forth herein, shall utilize the Town standards of subdivision control as well as the opinions of the Town Engineer, the Town Planning Consultant and the Town Water and Sewer Consultants. The Special Permit Granting Authority shall have full power to require modifications in the plan submitted by any applicant.

b. No tract, parcel or lot, or tracts, parcels or lots shall contain less than twenty (20) or more acres of adjoining and contiguous land and shall contain sufficient access to a State highway or to the Town road system as designated on the official or zoning map of the Town of Rockland as amended. For the purpose of this Section, internal streets, roads, and rights-of-way shall not be deemed to divide acreage of a planned unit development.

c. No more than 10,890 square feet of the land may be subject to the Rivers Protection Act. (Amended ATM May 18, 1998)

2. Boundary Line and Internal street Setback Requirements

a. Boundary Line Setback Requirements

All buildings, structures and uses shall be set back no less than twenty-five (25) feet from all external streets.

b. Internal Street Setback Requirements

All buildings and structures for principal or accessory non-residential uses shall be set back no less than twenty-five (25) feet from any public or private street within a planned unit development.

3. Building height

No building or structure shall have a height greater than as provided in Section V(A) of this By-Law.

4. Land Use Density

a. No areas devoted to single-family detached residential structures shall have a density in excess of four units per acre exclusive of all street rights-of-way.

b. No area or areas devoted to multi-family residences shall have a density in excess of fifteen units per acre exclusive of all street rights-of-way.

c. Each of the above residential density limitations shall be mutually exclusive of each other and shall not be cumulative.

d. The prepared 'grid' subdivision will only encompass that portion of said land which is not defined as wetlands under the Massachusetts Wetlands Protection Act. The total number of dwelling units within a Planned Unit Development shall not exceed the total number of dwelling units which would be permitted on the non-wetland portion of the parcel developed in a traditional (or grid) manner.

5. Common Recreation Areas

In connection with residential structures there shall be provided at least one (1) square foot of common recreation area for each two (2) square feet of residential floor area. The required common recreation area shall be provided in a lot, or lots, of at least 21,780 square feet that is free of structures associated with the residences in the Planned Unit Development. Common recreation areas shall be delineated on plans submitted to the Planning Board for review with the size of the area noted. Provisions for delineating this area in the finished development, method of delineation subject to Planning Board approval, shall be made by the developer. Common recreation areas shall be developed with either active or passive recreational facilities or both. No facility in which the residents of the planned unit development are excluded by outside or private membership shall qualify for the purposes of the requirements herein.

6. Open Space

a. Each planned unit development shall develop and maintain the following required open space:

One (1) square foot of open space for each one (1) square foot of total gross floor area of the planned unit development, but in no event shall less than thirty-five (35) percent of the gross land area of the planned unit development be open space.

b. Computation

Any required open space may include common recreation areas and required buffer areas for computation purposes. In no case shall more than thirty (30) percent of the required open space consist of areas defined as wetlands by the Massachusetts Wetlands Protection Act. For purposes of determining the total number of allowable dwelling units, the applicant must submit a 'grid' subdivision plan to the Planning Board which complies with the plan regulations set out in the Rules and Regulations Governing the Subdivision of Land.

c. Modification

The Special Permit Granting Authority, at its discretion, shall have the right to reduce the required minimum area of open space if all of the following conditions are met:

1) If one or more tracts, parcels or lots are required to be dedicated for public use or public purpose including, but not limited to, schools, fire stations, police facilities, libraries, or other similar municipal uses, but not including utility, sewer or storm water drainage easements; water or sewer improvements, roadways or any other recreational facilities or other similar dedication required by this By-Law.

2) If the area of open space shall not be less than thirty (30) percent of the total area of the planned unit development.

3) If the total reduction in said open space shall not be greater than one (1) acre or part thereof in open space for every one (1) acre or part thereof of lands required for public uses or public purpose dedication.

7. Circulation and Off-Street Parking Requirements

Off-street parking and loading facilities shall be provided in accordance with Sections V(C) and V(D) of this By-Law.

Parking Requirements

Parking space requirements as set forth in the Zoning By-Laws to ten (10) foot width by twenty (20) foot length to nine (9) foot width

by eighteen (18) foot length with a back-up area of twenty-three (23) feet. Ratio of thirty (30) percent compact cars to seventy (70) percent full-size cars, where the compact car has a width of 8 1/2 feet by 16 feet length or less. All required parking areas shall be set back a minimum of ten (10) feet from any property line and that ten (10) foot setback will be properly landscaped.

8. Streets

All streets and roads, either dedicated public streets or privately owned and maintained or any combination thereof shall be subject to all Town By-Laws and regulations as well as the laws of the Commonwealth of Massachusetts with regard to construction.

9. Other Improvements

a. All utility improvements including storm drainage systems, sanitary sewage collection and disposal and water supply systems shall be in accordance with the standards and procedures as established by other local, county, and state regulations. Said improvements shall be subject to review and approval by the Town Engineer and Town Boards, as well as appropriate county and state agencies.

b. Electric, gas and telephone service shall be provided by the developer in concert with the appropriate public utilities providing such service. Said service shall be provided as part of an underground system.

10. Review Procedure

The submission and approval of any planned unit development shall be subject to all Town, County, and Commonwealth laws, rules and regulations governing the subdivision of land in the Town of Rockland and for purposes of such review a planned unit development shall be considered a sub-division of land.

11. Ownership of Common Land

Ownership of common land shall be in accordance with Section Nine (9) of Chapter Forty A (40A)."

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board **2. Granting Authority**

a. The Zoning Board of Appeals is designated as the granting authority for special permits as required under Section IV, Schedule of permitted Uses, Uses Requiring Special Permit (except for Planned Unit Developments),

b. The planning Board is designated as the Special permit Granting Authority for special permits as required under Section V(H) Planned Unit Developments, and as the reviewing authority for action under Section V(I) Site Plan Review.

Has any housing been built under the cluster/flexible provisions?

Yes According to Doug Jeffrey, building inspector in Rockland, (7/20/04), only two large subdivisions were built since the PUD was established in the mid-1990s. One was built in the mid 1990s and the other was built in the later 1990s/early 2000.

Rockport

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

No

Which entity is the special permit granting authority for cluster/flexible zoning?

Has any housing been built under the cluster/flexible provisions?

Rowley

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Town of Rowley Zoning Bylaw

6.4 Open Space Residential Development

6.4.1 Purposes

6.4.1.1 This section is intended to promote integrated, creatively-designed residential development that results in the preservation of open space and natural resources, the reduction of infrastructure and site development costs, and the promotion of attractive standards of appearance consistent with Town character.

6.4.2 Special Permit Authority

6.4.2.1 The Planning Board may grant a special permit for an Open Space Residential Development ("OSRD") authorizing the construction of single family or townhouse dwellings in the Central District, the Residential District, the Outlying District, or the Coastal Conservation District, pursuant to the provisions of this section.

6.4.3 Eligibility

6.4.3.1 Any proposed development that would create two (2) or more single family dwellings or townhouse dwelling units on a parcel of land or set of contiguous parcels of land containing at least five (5) acres is eligible for consideration as an OSRD. Parcels separated by roadways shall be considered contiguous.

6.4.3.2 Any person that submits a conventional subdivision plan (preliminary or definitive) under the Subdivision Rules that would create five (5) or more single family dwelling lots on a parcel of land or set of contiguous parcels of land containing five (5) or more acres shall be required, simultaneously with the submission of such conventional subdivision plan, to submit an application for an OSRD special permit, together with an OSRD concept plan that meets the requirements of section 6.4.4.2, except that, at any time after the opening of the public hearing under section 6.4.5.2, the OSRD application and concept plan may be withdrawn.

6.4.3.3 Any application submitted under this section that involves a Subdivision of Land shall be subject to the approval of the Planning Board under the Subdivision Rules.

6.4.4 Submittal Requirements

6.4.4.1 All Applicants for an OSRD special permit shall submit the following to the Planning Board:

(a) An application on the form prescribed by the Board, and any fees determined by the Board under section 7.8.3.2.

****Webmasters Note:** The previous subsection has been amended as per an update approved at a town meeting held on 5/10/04.

(b) A Yield Plan. The Yield Plan shall establish the maximum number of single family dwellings that could be built under a conventional subdivision plan given the existence on the site of any topographical constraints and primary conservation areas. The Yield Plan shall also provide evidence acceptable to the Planning Board that on-site wastewater treatment and disposal systems would be permitted and constructed to serve such dwellings. Unless waived by the Planning Board, this evidence shall include a demonstration of suitable soil and groundwater conditions through representative sampling and testing of the buildable areas of the site by- methods by the Board of Health, and, shall at a minimum consist of one determination of soil permeability and one observation of maximum ground water elevation per two acres of buildable land, such tests being distributed with reasonable uniformity over the site.

6.4.4.2 For developments that involve a subdivision of land, the Applicant shall, in addition to the materials specified in section 6.4.4.1, submit an OSRD concept plan, except that, in lieu of an OSRD concept plan, the Applicant may submit an OSRD preliminary or definitive plan that meets the requirements of the Subdivision Rules. The OSRD concept plan shall address the general features of the land, and give approximate configurations of lots and roadways, and shall include all information required by the Planning Board under section 7.8.3.2.

****Webmasters Note:** The previous subsection has been amended as per an update approved at a town meeting held on 5/10/04.

6.4.4.3 For developments that do not involve a subdivision of land, the Applicant shall, in addition to the materials specified in section 6.4.4.1, submit an OSRD site plan. Such plan shall satisfy the requirements of section 7.6, and shall contain such additional information as may be required by the Planning Board under section 7.8.3.2.

****Webmasters Note:** The previous subsection has been amended as per an update approved at a town meeting held on 5/10/04.

6.4.4.4 The plans required by section 6.4.4 shall be prepared by a team including a registered civil engineer, land surveyor, and landscape architect.

6.4.5 Procedures for Approval

6.4.5.1 Any person that is interested in obtaining an OSRD special permit is encouraged to arrange for a pre-application with the Planning Board discuss the proposed OSRD.

6.4.5.2 The Board shall hold a public hearing on the special permit application, and a concurrent public hearing on the applicable OSRD plan filed under section 6.4.4. The Board may issue the special permit, with or without conditions, if it determines that:

(a) the proposed OSRD satisfies the requirements of this section, all other sections of the Bylaw, and any rules issued under section 7.8.3.2;

****Webmasters Note:** The previous subsection has been amended as per an update approved at a town meeting held on 5/10/04.

(b) the proposed OSRD is superior to a conventional subdivision; and

(c) the proposed OSRD promotes the purposes of this section.

6.4.5.3 For developments involving a subdivision of land, if the planning Board issues a special permit on the basis of an OSRD concept or preliminary plan, the Applicant shall thereafter file an OSRD definitive plan. The Planning Board shall reconsider the special permit, in accordance with section 6.4.13, if there is any variation between the OSRD concept or preliminary plan that was

submitted with the special permit application and the approved definitive plan.

****Webmasters Note:** Subsection 6.4.6 has been deleted and the following subsections renumbered as per an update approved at a town meeting held on 5/10/04.

6.4.6 Development Density

6.4.6.1 Unless a density bonus is permitted under section 6.4.8, the total number of dwelling units permitted in an OSRD shall not exceed the lesser of:

(a) the number of dwelling units determined under section 6.4.7.2; or

(b) the number of single family dwellings that would be allowed under a conventional subdivision plan, as determined by the Planning Board based on its review of the Applicant's yield plan. The Applicant shall bear the burden of proof regarding the permitted density.

6.4.6.2 The number of dwelling units determined under this section 6.4.7.2 shall be calculated by the following formula;

Total Number of Units = $(TA - (0.5 \times PCA) - (0.1 \times TA)) / (\text{District Minimum Lot Area})$

TA = Total Area of Parcel

PCA = Primary Conservation Areas

If a parcel lies in districts with different lot area requirements, a calculation should be made for each district.

6.4.7 Density Bonus

6.4.7.1 The Planning Board may authorize a density bonus in accordance with sections 6.4.8.2 and 6.4.8.3, except that the number of dwelling units awarded as a density bonus under such sections may not, in the aggregate, exceed thirty-five percent (35%) of the number of units permitted under section 6.4.7, and provided further that a density bonus may not be awarded under section 6.4.8.3 for an OSRD that would create three or more units in the Coastal Conservation District.

6.4.7.2 The Planning Board may authorize a density bonus of up to twenty percent (20%) if the Applicant proposes:

(a) on or off-site public improvements or amenities that result in substantial benefit to the Town and which are beyond those necessary to mitigate the impacts of the proposed OSRD; or

(b) townhouse dwellings constructed in a New England village style of architecture with a maximum of two bedrooms per unit.

6.4.7.3 For everyone and one half (1.5) affordable dwelling units created by the OSRD, one (1) dwelling unit may be added as a density bonus, except that this density bonus may not exceed fifteen percent (15%) of the number of units permitted under section 6.4.7. The affordable dwelling units must qualify as Local Initiative Units under 760 C.M.R. § 45.03, and shall be constructed concurrently with the market rate units.

6.4.8 Open Space Requirements

6.4.8.1 Except as provided by section 6.4.9.5, a minimum of fifty percent (50%) of the OSRD shall be dedicated as permanent open space. Such open space shall be devoid of structures and impervious surfaces, and shall either be left in its undisturbed natural condition or developed to assure its use as an area for passive recreation or a visual amenity.

6.4.8.2 The percentage of the open space that is wetlands shall not exceed the percentage of the entire tract that is wetlands, except that a greater percentage of wetlands may be included in the open space if the Planning Board determines that such inclusion promotes the purposes of this section.

6.4.8.3 Open space shall be contiguous, except that the Planning Board may waive this requirement if it determines that allowing non-contiguous open space will promote the purposes of this section and/or protect primary and secondary conservation areas.

6.4.8.4 Unless conveyed to the Town, the open space shall be subject to a recorded restriction enforceable by the Town. The restriction shall provide that the open space will remain in an open state, will be used solely for the purposes allowed by this section, and will be maintained in a manner that will ensure its suitability for its intended purpose.

6.4.8.5 For an OSRD that creates only single family dwellings, the minimum open space requirement shall be forty-five percent (45%), as opposed to fifty percent (50%), of the OSRD, but only if an additional area of the OSRD is reserved for active or passive recreational activities by the residents of the OSRD. The square footage of this common recreational space shall equal or exceed the square footage of fifty percent (50%) of the OSRD, minus the square footage of the area dedicated as open space under section 6.4.9.1 (which must equal or exceed forty-five percent (45%) of the OSRD). Accessory buildings and structures are allowed in this common recreational space. Dwelling units and other principal structures, and paved driveways and parking lots, are not allowed in this space.

6.4.9 Dimensional Requirements

6.4.9.1 Except as provided by sections 6.4.10.2 and 6.4.10.3; the Planning board may waive the minimum requirements for frontage, lot area, lot width, setbacks, and lot coverage that would otherwise apply to the parcel or portions of the parcel.

6.4.9.2 The Planning Board may not waive the frontage or setback requirement on a street that was not created by the OSRD.

6.4.9.3 At least fifty percent (50%) of the required front setback shall be maintained by the OSRD, unless the Planning Board determines that a further reduction would promote the purposes of this section.

6.4.10 Design Process and Development Standards

6.4.10.1 An Applicant shall determine the layout of streets, open space, and lots or building areas in the proposed OSRD in compliance with the following five step design process:

(a) Step One: Identify primary and secondary conservation areas.

(b) Step Two: Identify the potentially developable area of the site. To the maximum extent feasible, the potentially developable area should consist only of land outside of primary and secondary conservation areas.

(c) Step Three: Locate house sites within the potentially developable areas, and delineate private yards and shared amenities, so as to reflect an integrated community.

(d) Step Four: Delineate the streets that will provide access to the house sites, and any desirable trails or walkways.

(e) Step Five: Delineate lot lines, except where condominium or cooperative ownership is used.

6.4.10.2 In addition to any development and design standards adopted under section 7.8.3.2, the following is required:

****Webmasters Note:** The previous subsection has been amended as per an update approved at a town meeting held on 5/10/04.

(a) To the maximum extent feasible, all utilities shall be located underground.

(b) Signage shall be limited to one sign at each entrance to the OSRD, of a maximum signboard area of twelve (12) square feet, with content limited to the name and address of the development.

(c) Each lot or dwelling shall be served by Town water, and a sewage treatment facility approved by the Board of Health.

(d) A minimum of one and one half (1.5) off-street parking spaces per dwelling unit shall be provided.

(e) Where townhouse dwellings are proposed, individual buildings shall contain no more than eight (8) dwelling units.

(f) Unbroken building facades longer than sixty (60) feet, and regular spacings and building placements, shall be avoided.

(g) Intensive, high quality landscaping of all open areas (excluding areas that will remain in an existing natural state) shall be provided.

(h) Where townhouse dwellings are proposed, the development shall provide for varied roofline articulation that stresses New England village-style architecture, and the use of building materials and colors that are compatible with other quality buildings of similar scale in the vicinity.

6.4.11 Ownership of Open Space

6.4.11.1 The open space shall be conveyed to one of the following:

(a) To the Town for park or open space use.

(b) To a nonprofit organization dedicated to the conservation of open space.

(c) To a corporation or trust comprising a homeowners' association whose membership is limited to the owners of all lots or dwelling units within the OSRD: The developer shall include in the deed to such owners beneficial rights in the open space, and shall grant a perpetual open space restriction to the Town to insure that it will remain in an open state and not be used for residential purposes or accessory uses. Such restriction shall be in the form and substance prescribed by the Planning Board, and may contain such additional restrictions on the use of the open space as the Board deems appropriate.

6.4.12 Revisions to the Special Permit

6.4.12.1 The Planning Board may make minor lot line changes and other minor revisions to an OS RD plan without a public hearing.

6.4.12.2 If the Planning Board determines that a proposed or required revision to the OSRD special permit or plan is substantial, it shall hold a public hearing on the revision. A substantial revision shall include the following: any reduction in size or change in location of the preserved open space; any significant change in the layout of the ways or lots; an increase in the number of dwelling units or lots; or a significant change in the general development pattern.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board Town of Rowley Zoning Bylaw

6.4.2 Special Permit Authority

6.4.2.1 The Planning Board may grant a special permit for an Open Space Residential Development ("OSRD") authorizing the construction of single family or townhouse dwellings in the Central District, the Residential District, the Outlying District, or the Coastal Conservation District, pursuant to the provisions of this section.

Has any housing been built under the cluster/flexible provisions?

Yes According to Cliff Pierce, Chairman of the Planning Board, (10/26/04) the town has approved a couple of multifamily Open Space Residential Developments. There is a small 4-lot subdivision of single-family homes and another 30 unit development currently underway. The OSRD bylaw (though recent) has been successful in attracting the interests of developers. The town tried to reduce base density in 2003 (to one unit per two acres). This change would make the flexible density bonus even more attractive because developers may still build at density of one unit per 60,000 square feet if they follow the OSRD bylaw and 40,000 square feet if they provide affordable housing. According to Mr. Pierce, the initiative did not get the required 2/3 majority vote. He said this issue is still on the table.

Salem

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes

Sec.7.14. Cluster residential development.

(a) Purposes.

For the purposes of promoting the more efficient use of land in harmony with its natural features and with the general intent of the zoning ordinance and to protect and promote the health, safety, convenience and general welfare of the inhabitants of the city, an owner or owners of a tract of land situated within the R-1 One-Family Residential Districts, R-C Residential-Conservation Districts, R-2 Two-Family Residential Districts and R-3 Multifamily Residential Districts or a duly authorized agency thereof may, in connection with the submission of a subdivision plan for planning board approval under the Subdivision Control Law or, if no such approval is required, after consultation with the planning board, make application to the planning board for a special permit excepting his plan from the lot area and frontage requirements of Article VI herein.

(b) Any petition filed for a cluster residential development under this section shall be accompanied by five (5) copies of a site plan, which shall be at a scale to be established by the planning board, and shall include five (5) copies of all the information required for a definitive plan under section III B of the subdivision regulations of the planning board of the City of Salem, and such petition shall also be accompanied by five (5) copies of an environmental impact statement as set out in Appendix A of the subdivision regulations of the planning board of the City of Salem.

(c) The planning board shall, within seven (7) days after receipt of said application, transmit one (1) copy of said application and plan to the inspector of buildings, city engineer, board of health and conservation commission, who may at their discretion investigate the application and report in writing their recommendations to the planning board. The planning board shall not take final action on such plan until it has received a report thereon from the inspector of buildings, city engineer, board of health and conservation commission or until thirty-five (35) days have elapsed after distribution of such application without a submission of a report. Notice of the filing of the petition shall be given to the city clerk, fire department, police department, superintendent of streets and school department and further notice shall be given as required by the planning board, and a public hearing shall be held within sixty-five (65) days after filing of an application in accordance with Massachusetts General Laws, Chapter 40A.

(d) Failure by the planning board to take final action upon an application for a special permit within ninety (90) days following the date of the public hearing shall be deemed to be a grant of the permit applied for.

(a) After a notice and public hearing as set forth above, the planning board, by a two-thirds (2/3) vote, may grant such a permit, provided that:

(1) No structure shall exceed two and one-half (2.5) stories.

(2) As far as possible, the plan follows the natural contours of the terrain and respects the natural features of the site.

(3) The proposed plan is in harmony with the purpose and intent of this ordinance And the master plan of the City of Salem and that it will promote the purposes of this

(4) The area of the tract of land to be subdivided is net less than five (5) acres.

(5) When the open land is added to the building lots, the total area shall be at least equal in area to the land area required by this ordinance or by law for the total number of units or buildings contemplated in the development for the zoning district.

(6) At least twenty (20) percent of the total tract area (of which at least fifty (50) percent shall not be wetlands or slopelands, nor shall it include streets, ways and parking areas) shall be set aside as common land and shall consist of usable open space.

(7) The cluster development would not result in a net negative environmental impact.

(f) Provisions shall be made so that usable open space shall be owned:

(1) By the City of Salem for park, open space or conservation use;

(2) By a corporation or trust owned or to be owned by the owners of lots or residential units within the land that may be approved by the planning board, with provisions for limited easements for recreational use by residents of the city; provided that such ownership shall vest in sufficient rights to enable it to enforce compliance with the restrictions imposed by the planning board as conditions of its special permit.

(g) The planning board may, in appropriate cases as it determines, impose further restrictions upon the cluster residential development or parts thereof as a condition to granting the special permit.

(h) Any special permit granted hereunder shall lapse within two (2) years if a substantial use thereof has not sooner commenced except for good cause or, in the case of a permit for construction, if construction has not begun by such date except for good cause.

Sec.7.15. Planned unit development.

(a) The planning board may grant a special permit for a planned unit development for any parcel of land in the following districts:

R-3 Multifamily Residential District;

B-1 Neighborhood Business District;

B-2 Highway Business District;

B-4 Wholesale and Automotive Business District;

B-5 Central Development District;

I Industrial District; provided that said parcel contains a minimum of the lesser of sixty thousand (60,000) square feet or five (5) times the minimum lot size of the zoning district it is in, and subject to the requirements and conditions set out in this section.

(b) Purpose. The planned unit development district is designed to provide various types of land use which can be combined in compatible relationship with each other as part of a totally planned development. It is the intent of this district to ensure compliance with the master plan and good zoning practices, while allowing certain desirable departures from the strict provisions of specific zone classifications. The advantages which are intended to result from the application of the planned unit development district are to be ensured by the adoption of a precise development plan with a specific time limit for commencement of construction.

(c) All uses or any combination thereof permitted in R-3, B-1, B-2, B-4, B-5 and I Districts may be allowed in a planned unit development, subject to the following limitations of uses:

(1) There can be a multiplicity of types of residential development, provided that, at the boundaries with existing residential development, where typical development is permitted, the form and type of development on the planned unit development site boundary are compatible with the existing or potential development of the surrounding neighborhoods.

(2) A specific commercial or industrial use for property adjacent to an existing commercial or residential zone may be approved as a planned unit development. Where this is permitted, the plan for the total property shall be submitted and the applicant shall clearly detail, by engineering and architectural specifications and drawings, the manner in which the subject area is to be developed and the means that will be employed to protect the abutting property and the health, safety, welfare and privacy enjoyed thereon.

(3) Maximum bulk, yards, parking and loading requirements shall be established for each planned unit development district by the development plan approved by the planning board. Height limitations shall be in accordance with the zoning district in which the planned unit development is located.

(4) Minimum lot frontage. To preserve and protect the value of properties adjacent to a proposed planned unit development district and to provide for an orderly and uniform transition, lots which will be adjacent or across the street from existing residential developments shall be required to provide an amount of street frontage not less than that of existing lots but not greater than minimum ordinance requirements for the zone in which they are located.

(5) Minimum lot size. Residential lot sizes in a planned unit development district may be reduced below the minimum standards required by the zoning ordinance. As a pre-requisite, the developer shall demonstrate that there is a reasonable relationship between the proposed lot size and the usable and accessible open area within the total development. An individual lot shall be large enough to provide for private open space associated with the living accommodations.

(d) Any petition filed for a planned unit development under this section shall be accompanied by five (5) copies of a site plan, which shall be at a scale to be established by the planning board and shall include five (5) copies of all the information required for a definitive plan under section III B of the subdivision regulations of the planning board of the City of Salem, and such petition shall also be accompanied by five (5) copies of an environmental impact statement as set out in Appendix A of the subdivision regulations of the planning board of the City of Salem.

(e) The planning board shall, within seven (7) days after receipt of said application, transmit one (1) copy of said application and plan to the inspector of buildings, city engineer, board of health and conservation commission, who may at their discretion investigate the application and report in writing their recommendations to the planning board. The planning board shall not take final action on such plan until it has received a report thereon from the inspector of buildings, city engineer, board of health and conservation commission or until thirty-five (35) days have elapsed after distribution of such application without a submission of a report. Notice of the filing of the petition shall be given to the city clerk, fire department, police department, superintendent of streets and school department and further notice shall be given as required by the planning board, and a public hearing shall be held within sixty-five (65) days after filing of an application in accordance with Massachusetts General Law, Chapter 40A.

(f) Failure by the planning board to take final action upon an application for a special permit within ninety (90) days following the date of the public hearing shall be deemed to be a grant of the permit applied for.

(g) After notice and public hearing as set forth above, the planning board, by a two-thirds (2/3) vote, may grant such a permit provided the

(1) The proposed planned unit development is in harmony with the purposes and intent of this ordinance and the master plan of the City of Salem and that it will promote the purpose of this section.

(2) The mixture of uses in the planned unit development is determined to be sufficiently advantageous to render it appropriate to depart from the normal requirements of the district.

(3) The planned unit development would not result in a net negative environmental impact.

(h) Provisions shall be made so that usable open space shall be owned:

(1) By the City of Salem for park, open space or conservation use;

(2) By a corporation or trust owned or to be owned by the owner, of lots a, residential units within the land that may be approved by the planning board, with provisions for limited easements for recreational use by residents of the city; provided that such ownership shall vest in sufficient rights to enable it to enforce compliance with the restrictions imposed by the planning board as conditions of its special permit.

(i) The planning board may, in appropriate cases as it determines impose further restrictions upon the planned unit development or parts thereof as a condition to granting the special permit.

(j) Any special permit granted hereunder shall lapse within (2) years if a substantial use thereof has not sooner commenced except for good cause or, in the case of a permit for construction, if construction has not begun by such date except for good cause.

According to the survey received from Salem on 4/22/05, the first provisions for flexible zoning were adopted in 1977. More units can be built under cluster/flexible zoning than would be allowed through conventional zoning. Single family and multifamily are allowed. Cluster developments have been built (1-8.)

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board (b) Any petition filed for a cluster residential development under this section shall be accompanied by five (5) copies of a site plan, which shall be at a scale to be established by the planning board, and shall include five (5) copies of all the information required for a definitive plan under section III B of the subdivision regulations of the planning board of the City of Salem, and such petition shall also be accompanied by five (5) copies of an environmental impact statement as set out in Appendix A of the subdivision regulations of the planning board of the City of Salem.

Sec.7.15. Planned unit development.

(a) The planning board may grant a special permit for a planned unit development for any parcel of land in the following districts:

Has any housing been built under the cluster/flexible provisions?

Yes Survey received from Salem on 4/22/05:

Has any housing been built under the cluster/flexible provisions? (none, 1-8 projects, more than 8)

"Yes 1-8"

Salisbury

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Town of Salisbury Zoning Bylaw

SECTION X.C. CLUSTER RESIDENTIAL DEVELOPMENT

X.C.1 Objectives

The objectives of Cluster Residential Development are:

1. To allow relatively intensive use of land, while at the same time maintaining the existing character.
2. To preserve open space for conservation and recreation.
3. To permit greater flexibility and more attractive, efficient, and economic design of residential subdivisions.
4. To meet housing needs.

5. To facilitate economical and efficient provision of utilities.
6. To guide development consistent with the town plans.

X.C.2. Applicability

The Planning Board may grant a special permit for a Cluster Residential Development in the R-1 and R-2 zoning districts.

X.C.3. Procedural Requirements

These procedural requirements shall be in addition to the general requirements for a special permit specified elsewhere in IX.F.

1. Pre-Application Review: To promote better communication and to avoid misunderstanding, applicants are encouraged to submit preliminary materials for informal review by the Planning Board prior to formal application. Preliminary subdivision plans, if any, should be submitted to the Planning Board prior to the application for a special permit. Such preliminary subdivision plans shall be submitted and comply with the Rules and Regulations governing the Subdivision of Land in the Town of Salisbury.

2. Application: Applicants for a special permit for a Cluster Residential Development shall submit to the Planning Board five (5) copies of each of the following: An application, an overall development plan, and a site analysis. If the plan involves more than one ownership, each owner of land included in the plan shall be a party to the application and, upon approval, subject to its provisions.

3. Overall Development Plan: The Overall Development Plan shall indicate locations and boundaries of the site, proposed land topography, grading plan, location and width of streets and ways, parking, areas of proposed and retained vegetation, distinction between upland and wetland, landscape plan, drainage, sewerage, and typical height, bulk, use, elevation and location of proposed structures. It is recommended that the plan shall have been prepared by a team to include a registered civil engineer and a land surveyor.

4. Site Analysis: The Site Analysis shall consist of a transparent copy of the Overall Development Plan, plus a series of site analysis drawings at the same scale, each on a separate sheet, indicating analysis of hydrologic systems, vegetative cover, slope and land form, soils and geology, and such other characteristics as the applicant deems advisable.

5. Other Materials: The application material shall also indicate each landowner's interest in the land to be developed, the form of organization proposed to own and maintain the common open space, the substance of covenants and grants of easements to be imposed upon the use of land and structures and a development schedule.

6. Review of Other Boards and Agencies: Upon receipt of the application and related plans/analyses, the Planning Board shall within ten (10) days transmit one copy each to the Board of Health and Conservation Commission. These Boards and Agencies shall review said plans and provide recommendations to the Planning Board within 35 days.

7. Criteria: In addition to the general special permit findings required by this bylaw, the Planning Board shall also make the following determinations: that the plan complies with all requirements of these sections; that the plan is superior to a conventional one in preserving open space for conservation or recreation and in utilizing the natural features of the land; that clustering does not generate new and substantial adverse impacts on abutting neighborhoods; that the plan allows more efficient provision of streets, utilities, and other public services; and that consideration has been given to recommendations of the Salisbury Master Plan.

X.C.4. Requirements

A. Cluster Residential Development shall conform to the following:

1. Minimum Tract Size: The tract in a single or consolidated ownership at the time of application shall be at least ten (10) acres in size.

2. Number of Dwelling Units: The maximum number of dwelling units allowed is to be determined by dividing "Applicable Land Area" by the lot area requirements for a single-family dwelling in that district.

"Applicable Land Area" shall be determined by a registered land surveyor and equal the total area encompassed by the Overall Development Plan minus land subject to either inland or coastal wetland regulations (Section 40, Chapter 131, G.L.), minus land otherwise prohibited from development by local bylaw or regulations, minus land used for streets, and minus land designated on the plan for uses not primarily serving residents of the development. Where the Cluster Residential Development includes more than one ownership, and/or lies in more than one district, the number of units allowed shall be calculated as above for each district and summed to give an overall allowable total, which may be located on the plan without respect to allowable subtotals by district or ownership area.

3. Allowable Uses: The following principal uses of the lots within the Cluster Residential Development shall be permitted; one-family detached dwellings; church or other religious purposes; public park, conservation area, and preserved open spaces; and membership club for the exclusive use of the residents of the development. The accessory uses permitted by right or special permit shall be as indicated elsewhere in this ordinance, for the appropriate zoning district in which the Cluster Residential Development lies.

4. Dimensional Regulations: Each individual lot within the Cluster Residential Development shall be subject to the Dimensional and Density Regulations for a lot in the district it is located, except that the minimum lot area and frontage in a Cluster Residential Development may be as little as one-half the amount otherwise specified.

5. Locational Conditions: Lot size and shape and building site shall be subject to approval by the Planning Board, which may also impose special conditions pertaining to buffers, screening, building separation, and setback of buildings and parking from adjacent properties.

6. Improvements: All streets, drainage, water systems, sewerage, utilities, grading, and other improvements shall be made in accordance with the Rules and Regulations Governing the Subdivision of Land in the Town of Salisbury. The Planning Board shall require a performance guarantee to insure the proper installation of all improvements.

7. Open Space: Not less than thirty percent (30%) of the "Applicable Land Area" within the Overall Development plan shall be preserved as common open space for recreation and conservation. Ownership of common open space shall be arranged and maintenance permanently assured through an incorporated nonprofit house owners' association condominium deeds, or other recorded land agreement through which each lot owner in the development is automatically a member and each lot is subject to a charge for a share of the maintenance expenses, or through comparable arrangement satisfactory to the Planning Board. The preservation of the common open space shall be guaranteed through dedication, by covenant, or comparable legal instrument, to the community use and enjoyment of residents of the development tract, for recreational purposes servicing those residents and their nonpaying guests only, or for conservation. As determined by the Planning Board, the open space may alternatively be conveyed to the Town or conveyed to a non-profit organization, the principal purpose of which is the conservation of open space. In addition, the Town shall be granted an easement or restriction providing that such land shall be kept in an open or natural state, not

subdivided or reduced in size and not built upon or developed for any use other than open space for recreation or conservation. Buildings or structures used for common recreational purposes and associated parking lots may occupy up to five percent (5%) of the required common open space.

8. Other Provisions:

a. No lot shown on a plan for which a permit is granted under this section may be further subdivided, and a notation to this effect shall be shown on the plan.

b. No certificate of occupancy shall be issued by the building inspector until he has certified to the Planning Board that the premises have been built in accordance with the plan approved by the board hereunder.

c. Each unit shall have separate entrances and the board may impose other conditions, safeguards, and limitations on time and use pursuant to its regulations.

d. All streets, ways, and utilities within or serving the cluster development shall conform with all Planning Board and subdivision regulations, even if the proposed development is not subject to the subdivision control law.

e. The Planning Board may grant a special permit hereunder for a cluster residential development even if the proposed development is not subject to the subdivision control law.

f. Subsequent to granting the permit, the Planning Board may permit relocation of lot lines within the cluster. However, any change in overall density, street layout, or open space layout will require further hearings.

9. Bonus Provision: Subject to the approval of the Planning Board, the applicant may apply for the inclusion of up to an additional 20 percent more units in the proposed Cluster Residential Development. Such increased density shall not exceed the density equivalent of the difference between the total site area and the Applicable Land Area. The density bonus may be allowed only after a determination by the Planning Board that the applicant has provided additional unique amenities and/or features such as:

a. the provision of open space amounting to at least 50 percent of the area;

b. historic preservation;

c. below market cost housing or the provision of equivalent funds for such housing on another site;

d. the setting aside of lands for a Town approved purpose.

X.C.5. Relationship To Subdivision Plan

Planning Board approval of a special permit shall not be construed as obliging the Planning Board to approve any related definitive plan or substituting for such approval. Normally a preliminary plan for subdivision of land should be prepared concurrently with preparation of the Overall Development Plan, consistent with the Subdivision Regulations of the Salisbury Planning Board, and submitted to the Planning Board prior to application for a special permit. Following approval of a special permit, a Definitive Plan shall be submitted to the Planning Board consistent with their Subdivision Regulations, and in substantial conformity to the approved Overall Development Plan.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board X.C.2. Applicability
The Planning Board may grant a special permit for a Cluster Residential Development in the R-1 and R-2 zoning districts.

Has any housing been built under the cluster/flexible provisions?

Yes Town Planner Lisa Pearson (11/30/04) said that the town has had 5 cluster subdivisions.

Saugus

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes It is allowed by special permit in R-1 and R-2 [Residential One-Family Planned Cluster] and R-4 [Planned Multi-Density Residential - Apartment House, Town House].

ARTICLE XII

SPECIAL PERMITS AND CONDITIONS

SECTION 12.4 - SPECIAL CONDITIONS. In addition to the general conditions set forth in Section 12.1 for all special permits, the following special conditions shall apply for uses as shown in various districts in Article V - "Table of Use Regulations" as follows:

C. PLANNED MULTI-DENSITY RESIDENTIAL DEVELOPMENT:

I. GENERAL REQUIREMENTS. For the purpose of promoting the more efficient use of land in harmony with its natural features and within the general intent of the Zoning By-

Law, an owner or owners of a tract of land situated within a Limited Apartment District may, after consultation with the Planning Board, make application to the Board of Appeals for a special permit exempting such land from the requirements of the Zoning By-Law as pertains to lot size, usable land area, density or percentage of lot covered, yards, frontage requirements, and proximity of off-street parking space from any building or lot line. The major purpose of this section is to permit a creative approach to the development of residential land by accomplishing a more desirable environment than would be possible through the strict application of these Zoning By-Laws. A planned multi-residential development should thus result in (1) economical and efficient street, utility and public facility installation, correction and maintenance; (2) efficient allocation, distribution, and maintenance of common open space; (3) land use harmonious with natural features; and (4) development of real property values for the long range future.

After notice and public hearing, and after due consideration of the report and recommendations of the Planning Board, the Board of Appeals may grant such a permit, subject to the following:

1. The tract shall be at least 10 contiguous acres in single or consolidated ownership at the time of application.
2. At least 50 percent of the land area shall be set aside as common open space and offered to the Town for acceptance as public open space or covenanted by the owner as open space for passive or active recreation or cultural uses by all residents of the district.
3. The remaining 50 percent of the land area may be developed for residential and community facilities.
4. The residential net density within the developed area shall not exceed 20 dwelling units per acre, not including streets.
5. Buildings shall be at least 50 feet from any district boundary and at least 15 feet from any street line or parking area and at least 24 feet apart.
6. Buildings shall not exceed six (6) stories in height.
7. The development shall be served by a public water and sewerage system.
8. The principal streets shall be offered for acceptance as public ways. The minimum roadway width of interior one-way streets shall be 18 feet. The minimum roadway width of two-way streets shall be 20 feet.
9. Reasonable visual and acoustical privacy shall be provided where feasible. Fences, walks, barriers, and landscaping shall be used, as appropriate, for the protection and aesthetic enhancement of property and the privacy of its occupants, screening of objectionable views or uses, and reduction of noise.
10. Parking convenient to all dwelling units and other uses shall be provided pursuant to the minimum requirements of Article VIII with the exception that such parking may be closer than 10 feet from any lot line. Where appropriate, common driveways, parking areas, walks, and steps shall be provided, maintained and lighted for night use.
11. If topographical or other barriers within 50 feet of the perimeter of the development do not provide reasonable privacy for existing uses adjacent to the development, the Board of Appeals shall require either or both of the following:
 - (a) Structures located on the perimeter of the development must be set back in accordance with the provisions of these Zoning By-Laws controlling the area in which the development is situated; and/or,
 - (b) Structures located on the perimeter of the development must be well screened in a manner approved by the Board of Appeals.
12. The Board of Appeals may, in appropriate cases, impose further restrictions upon the tract, or parts thereof, as a condition to granting the special permit.

II. PROCEDURE. Each application for a special permit hereunder shall be accompanied by a plan, in triplicate, of the entire tract under consideration as a multi-density residential development prepared in accordance with the rules and regulations of the Planning Board as pertains to preliminary subdivision plans (whether or not all of the development constitutes a "subdivision") and without limiting the generality of the foregoing said plan shall show:

1. The existing topography at a suitable scale and contour intervals.
2. Proposed grading and drainage system for all ways within the development and the location therein of all off-street parking areas.
3. Utility design and layout.
4. Proposed fences, walks, barriers and landscaping.
5. Location of all Common Open Spaces and, if feasible, the proposed location therein of all accessory structures and improvements for educational, passive or active recreational and cultural uses, if any. The location of any proposed easement or easements shall also be shown.

Within 10 days after the receipt of the plan, the Board of Appeals shall transmit a copy thereof to the Planning Board which shall submit, in writing prior to the hearing upon such special permit, its recommendations and report to the Board of Appeals; said report by the Planning Board shall include as a minimum:

- (a) A general description of the neighborhood in which the tract lies and the effect of the plan upon the area.
- (b) The relation of the plan to the long range plan of the Town.

- (c) The extent to which the plan is designed to take advantage of the natural terrain of the tract.
- (e) The Planning Board's opinion of the overall design of the plan.
- (f) The Planning Board's opinion of the advisability of granting the special permit and as to any restrictions that should be imposed upon the tract as a condition of such permit.

D. CLUSTER RESIDENTIAL DEVELOPMENT. GENERAL REQUIREMENTS. For singlefamily residential development in a cluster pattern subject to the dimensional regulation less than the minimum required for development of an individual lot in the same district, the following conditions shall apply:

1. The tract of single or consolidated ownership at the time of application shall be at least 10 acres in size and subject to approval by the Planning Board under the Subdivision Control Law.
2. A site plan shall be presented for the entire tract.
3. Each individual lot shall be subject to the yard requirements for a one-family detached dwelling in the District.
4. The total number of proposed lots in the development within any district shall not exceed the number of lots that could be developed under normal application requirements of the district.
5. The development shall be served by a public water and sewer system.
6. At least 10 percent of the total tract area (of which at least 50 percent shall not be wetlands or over 5 percent slope land) shall be set aside as common land and shall be either deeded to the Town or covenanted to be maintained as permanent "open space" in private or cooperative nonprofit ownership.
7. Such common land shall be restricted to open space recreational uses as park, playground, play field, or conservation area.
8. Such common land shall have suitable access to a street.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board & Board of D. CLUSTER RESIDENTIAL DEVELOPMENT. GENERAL REQUIREMENTS. For singlefamily residential development in a cluster pattern subject to the dimensional regulation less than the minimum required for development of an individual lot in the same district, the following conditions shall apply:

1. The tract of single or consolidated ownership at the time of application shall be at least 10 acres in size and subject to approval by the Planning Board under the Subdivision Control Law.

C. PLANNED MULTI-DENSITY RESIDENTIAL DEVELOPMENT:

I. GENERAL REQUIREMENTS. For the purpose of promoting the more efficient use of land in harmony with its natural features and within the general intent of the Zoning By-Law, an owner or owners of a tract of land situated within a Limited Apartment District may, after consultation with the Planning Board, make application to the Board of Appeals for a special permit exempting such land from the requirements of the Zoning By-Law as pertains to lot size, usable land area, density or percentage of lot covered, yards, frontage requirements, and proximity of off-street parking space from any building or lot line.

Has any housing been built under the cluster/flexible provisions?

Scituate

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

SECTION 500 RESIDENTIAL CLUSTER DISTRICT

500.1 Purpose

The purpose of the Residential Cluster ("RC") District, in addition to purposes set out in Massachusetts General Laws, Chapter 40A and the local zoning, is to encourage the more efficient use of land in harmony with its natural features; to encourage creativity in the design of developments through a carefully controlled process; to encourage a less sprawling form of development, a shorter network of streets and utilities, more economical development of land with less consumption of open space; to permanently preserve natural topography and wooded areas within developed areas to preserve usable open space and recreation facilities close to homes; to provide an efficient procedure to ensure appropriate high-quality design and site planning and to enhance the neighborhoods in which they occur and to the town as a whole. The planning board shall be the special permit granting authority in the "RC" District.

500.2 Permitted Uses "RC" District

In the "RC" District, the following uses are permitted as a right: All of the uses permissible as of right in the "A-3" District subject to the same conditions and procedures as therein specified. Minimum lot size, frontage, setback, and width requirements for the above uses shall be in accordance with the "A-3" District provisions.

500.3 Uses Permissible By Special Permit

Pursuant to Section 770. of this bylaw, the planning board may issue a special permit for any of the uses permissible by special permit in the "A-3" District, subject to the same conditions and procedures as therein specified; or for the purpose of accommodating the following uses:

A. Detached single-family units and/or attached town house units and uses and buildings accessory thereto.

B. Recreational uses related to the residence in the "RC" District or for use by other residents in the neighborhood.

500.4 Design Standards and Requirements

A. Any project shall contain a minimum of twenty acres of lot area.

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B. A maximum of one unit per ten thousand square feet of lot area, but; in no event, more than four units per acre. In determining lot area, any area held in the same ownership and separated by a public or private way may be considered as a contiguous lot area. Any area in the Town of Scituate Flood Plain and Watershed Protection District shall not be included in determining lot area.

C. Any land area that is given to, and accepted by, the town for recreational, municipal, or school use shall be included in determining lot area.

D. The height of buildings in the "RC" District shall not exceed two and one-half stories and/or thirtyfive feet, the height to be measured vertically from average finished grade of the ground adjoining said buildings to the ridge.

E. All residential structures and accessory uses within the project shall be set back from the boundaries of the development by a buffer strip of at least sixty feet in width, to be kept in a natural or landscaped condition, except in relation to roads existing at the time of the adoption of this bylaw where such strip shall be sixty feet.

F. There shall be an adequate, safe, and convenient arrangement of pedestrian circulation facilities, roadways, driveways, and parking. Parking facilities shall be provided in a ratio of two and one-half spaces per dwelling unit, either covered or uncovered. There shall be no parking in the buffer strip referred to in 500.4.e. herein.

G. The planning board shall give preference to a layout which minimizes paved areas.

H. All residential units shall be connected to all public and private utilities, including the public sewerage system, at the developers expense and in accord with the rules and regulations of the Town Department of Public Works.

I. The developer shall grant to the town such easements as it may request for the proper maintenance, testing or repair of any public utilities.

J. Quality of construction design standards for roads and utilities shall generally conform to those contained in the planning board's Regulations for Subdivision Control and/or Design Guidelines for Site Development insofar as reasonably applicable, but the board may vary those standards to meet the particular needs of the "RC" District and/or the general area.

K. As a condition of granting a special permit, land not devoted to the dwelling units, or to permitted accessory uses, shall be set aside as common open space for the use of the residents. Such open land shall either be conveyed to the town or accepted by it for a park or open space use, or be conveyed to a nonprofit organization the principal purpose of which is the conservation of open space or to be conveyed to a corporation or trust owned by the owners of lots or residential units within the project, or any combination of the above. If such a corporation or trust is utilized, ownership thereof shall pass with conveyances of the lots or residential units in perpetuity. In any case where such land is not conveyed to the town, a restriction enforceable by the town shall be recorded providing that such land shall be kept in an open or natural state and not to be built for residential use or developed for accessory uses such as parking and roadway. The restriction shall further provide for maintenance of the common land in a manner which will ensure its suitability for its function, appearance, cleanliness, proper maintenance of drainage and sewer pipes, and the like.

L. The board shall insure proper siltation control and site stabilization during construction.

M. In addition, the planning board shall employ the following design provisions for the "RC" District

1. No more than two residential units may share a common facade line without having an offset of three feet for an adjoining unit.
2. No building shall be more than one hundred fifty linear feet in length nor contain more than seven units.
3. Buildings in the district shall be separated from each other by a distance of no less than thirty-five feet.
4. Public bikeways and pedestrian walkways may be required by the planning board to provide circulation or access to schools, playgrounds, parks, shopping, transportation, open spaces and/or community facilities or for such other reasons as the board may determine.
5. The planning board shall give preference to a design that minimizes the possibility of substantial through traffic between existing ways.

500.5 Procedures

A. Pre-application Conference

Prior to the submission of an application for a special permit to develop one or more projects within the "RC" District, the applicant at his option may confer with the planning board to obtain information and guidance before entering into binding commitments or incurring substantial expense in the preparation of plans, surveys and other data.

B. Submission of Preliminary Plan

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The applicant shall file an original plus ten copies of the preliminary plan with the planning board. The planning board, within forty-five days from receipt of the preliminary plan, shall review and determine whether the proposed project is consistent with the general or specific provisions set forth therein. The planning board may suggest modifications and changes to the preliminary plan in anticipation of the filing of the definitive plan. The contents of the preliminary plan shall be established by regulations of the planning board adopted hereunder. In connection with the submission, review, and approval of all plans, preliminary and definitive, the applicant shall deposit with and pay to the planning board an amount in accord with the then applicable fee schedule of the planning board.

C. Submission of Definitive Plan

1. The applicant shall submit to the town clerk an application for a special permit accompanied by the original of the definitive plan plus ten copies thereof, together with a fee to be determined by the board, to include the cost of advertisement and notification of all "parties in interest" as defined in Massachusetts General Laws, Chapter 40A, Section 11.

a. The town clerk shall transmit the application, the original and nine copies of the definitive plan to the planning board. One copy each shall be forwarded to the superintendent of public works, board of health, fire department, police department, conservation commission, building commissioners, recreation commission, and any other bodies as the planning board may determine.

b. The agencies receiving copies of the definitive plans shall submit to the planning board written recommendations on the proposed project within forty-five days of filing. Failure to comment shall be deemed lack of objection.

c. The planning board, within sixty-five days of submission of the plan, shall hold a public hearing, notice of which shall be published in a local newspaper once in each of two successive weeks with the first publication to be not less than fourteen days before the date of the hearing and shall be mailed to all "parties in interest" as defined in Massachusetts General Laws, Chapter 40A, Section 11, and to any other property owners deemed by the board to be affected thereby. Notice shall be given by certified mail by the applicant. The list of persons to be notified shall be prepared by the applicant and certified by the board of assessors. Insofar as possible, this hearing shall be held jointly with any other hearing required to be held for this project.

d. The planning board shall, within ninety days following the public hearing, certify in writing that the application is approved as submitted, approved subject to modification, or denied. When approved, modified or denied, the planning board shall include written reasons for the action. If the planning board fails to issue its findings within said ninety days, the plan shall be deemed approved. However, no building permit shall be issued until the plan shall be recorded in the Registry of Deeds and until any appeal period has passed.

e. Approval of a special permit hereunder shall require a four-fifths vote of the planning board.

f. If the project is denied, the developer shall not submit substantially the same proposal for two years, except as provided under Massachusetts General Laws, Chapter 40A, Section 16.

g. Special permits granted under this section shall lapse within two years, excluding time required to pursue or await the determination of an appeal, from the grant thereof, if a substantial use has not sooner commenced or if construction has not begun the planning board may grant an extension for good cause, which shall include, but not be limited to, the phased construction of the development, and shall grant an extension if the delay has been caused by the need to seek other permits.

h. The planning board may approve a development plan to be completed in phases, however, no substantial construction or reconstruction except as shown on the recorded plan shall occur without a further submission of plans to the planning board, and a notation to this effect shall appear upon the recorded plan and upon deeds to any property within the RC District.

i. Approval of a special permit hereunder shall constitute review and approval under Section 730. of this bylaw, Site Plan Approval.

j. Within a reasonable time after the granting of a special permit hereunder, the planning board shall appoint an agent, or agents, with such authority as the board shall prescribe.

2. Contents of Definitive Plan

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The application for a special permit shall be accompanied by:

a. The original and copies of the definitive plan which shall comply with the requirements of a site plan under Section 730. of this bylaw, Site Plan Review.

b. Impact studies on the following

i. Traffic study evaluating the impact of the development on capacity, safety, and levels of service on each approach street;

ii. Impact on transportation facilities, shopping facilities, and local businesses;

iii. Impact on the public school system;

iv. Effect of the development on existing town services, including water system, sewage disposal facility, electrical system and highway or other public works services;

v. Fiscal analysis demonstrating cost versus revenue of the proposed development.

c. Other data required to be submitted by any other regulations of the planning board which may be adopted hereunder.

500.6 Performance Guarantee

Before approving the definitive plan, the planning board shall require that construction of ways, installation of utilities, and possible restoration of the site be secured by a type and amount of security satisfactory to the board.

500.7 Findings of the Board

After following the proper procedural requirements specified for the granting of a special permit in the Massachusetts General Laws, Chapter 40A, including the holding of a Public Hearing, the planning board may grant a special permit if it finds that the applicant has demonstrated the following:

That the project will be in harmony with the general purposes of this bylaw and the requirements of Massachusetts General Laws, Chapter 40A, that it will not have a greater detrimental impact on the neighborhood than a conventional plan, will be designed with due consideration for health and safety, and is superior to a conventional plan in preserving open space, minimizing environmental disruption, and allowing for more efficient provision of services. In addition, the plan must meet the Design Standards and Requirements identified above.

If the plan is approved, there shall be no amendments or changes without planning board, or its designated agents, review and approval. The planning board must, however, approve all substantive amendments or changes.

520 Open Space Preservation Development

520.1 Purpose

In order to provide for the public interest by the preservation of open space in perpetuity, variety in residential housing development patterns which allow for development more harmonious with natural features and town growth policies than traditional residential development, to promote the maximum possible protection of open space, visual quality and watershed protection, and to encourage efficient provision of necessary utilities and community services, the following regulations are established for Open Space Preservation Development (OSPD) within the Town of Scituate. In making any and all determinations under this bylaw the planning board shall always compare the impact of an open space development, and may approve open space development only if the proposal is superior to a conventional development.

520.2 Applicability

Open Space Preservation Development shall be allowed within "A-1" and "A-2" Districts only, subject to the requirements of this bylaw for those districts, and in accordance with the additional requirements specified herein.

520.3 General Requirements

A. Any parcel of land located within a zone permitting OSPD containing ten acres or more may be considered for an OSPD subject to a special permit issued by the planning board.

B. After an OSPD application has been submitted, no utility installations, no ditching, no grading of land or lots, no excavation except for purposes of soil testing, no dredging or filling, and no construction of structures shall be done on any part of the development site until the application has been reviewed and approved as provided by these regulations.

C. No OSPD will be approved within an established single-family residential neighborhood if the planning board determines that such land use would have a detrimental effect upon the surrounding

property.

D. It shall be the responsibility of an applicant for an OSPD special permit to demonstrate to the planning board that this form of land development will be as or more appropriate than conventional patterns of residential development for the particular site being considered.

520.4 Permitted Uses

A. Detached single-family dwellings, as defined, including all accessory uses as permitted in the zoning bylaw for the district in which the land lies.

B. Uses permitted within the Common Open Space as described in these regulations.

C. Recreational vehicles for OSPD purposes.

520.5 Minimum Requirements

A. Density

The total area of the tract proposed for OSPD shall be at least ten acres. The total number of lots allowable on a site proposed for OSPD shall not exceed the number of lots that would be allowed in the zoning district in which the site is located. The maximum number of lots allowed shall be determined by the layout of a preliminary sketch plan showing the total number of lots which could

25 be obtained by utilizing a conventional grid subdivision. The burden of proof shall be upon the applicant. The required minimum tract area, as well as the calculation of the number of lots allowed by a conventional grid subdivision, as specified above shall be exclusive of any lands under water bodies, bogs, swamps, meadows or marshes, as defined in Massachusetts General Laws, Chapter 131, Section 40.

B. Intensity Regulations

The planning board may grant a reduction on all intensity regulations of the underlying zoning regulations for all portions of an OSPD, if the planning board finds that such reduction will result in better design, improved protection of natural and scenic resources, and will otherwise comply with these regulations provided that in no instance shall any lot deviate from the following Table of Minimum Requirements. Such development shall comply with Section A. above.

TABLE OF MINIMUM REQUIREMENTS

Zoning District

A-1 A-2

Minimum Area 20,000 sq. ft. 15,000 sq. ft.

Minimum Frontage 100 ft. 75 ft.

Minimum Front Yard Setback 25 ft. 25 ft.

Minimum Side Yard Setback 15 ft. 15 ft.

Minimum Rear Yard Setback 8 ft. 8 ft.

Minimum Lot Width 125 ft. 100 ft.

Minimum Setback from Outside Perimeter Boundary 50 ft. 35 ft.

The minimum area specified above shall be exclusive of any lands under water bodies, bogs, swamps, wet meadow, or marshes as defined in Massachusetts General Laws, Chapter 131, Section 40.

C. Frontage Requirements

Minimum frontage requirements for lots on the arc of the curve at the end of so called "cul-de-sacs" may be reduced to sixty feet. However, the lot width at the building line must meet the minimum frontage requirements established in Section 520.5. above.

D. Development Standards

Prior to the issuance of a special permit for an OSPD, the applicant shall submit the information necessary to demonstrate the following development standards have been met:

1. The development will not cause unreasonable traffic congestion or unsafe conditions both within and outside of the development and will comply with the town standards for parking access, road design and construction.

2. The development will provide for and maintain convenient and safe emergency vehicle access to all structures at all times.

3. The nature of the soils and subsoils shall be suited for the intended purposes. This determination shall focus upon, but shall not be limited to the locations, design and construction of roadways, buildings, and surface water drainage systems. Soil borings or test pits may be made to provide information on soil texture, color, percolation rates and depth to the ground water table at its maximum elevation.

4. Anticipated storm water runoff from the site shall not exceed peak runoff from the site prior to development. The applicant shall submit formal drainage calculations by a registered professional engineer for this purpose.

5. Proper soil erosion and sedimentation control measures shall be employed to minimize sedimentation and siltation of existing surface water bodies and wetlands. In areas where the land slopes downward towards any surface water body, or fresh water wetland, proposed filling, cutting, clearing or grading shall be minimized and all such development activities shall be carried out in such a way as to retain the natural vegetation and topography wherever possible. The planning board may require that an erosion and sedimentation control plan be submitted if significant erosion is anticipated in slope areas.

6. The site design shall preserve and, where possible, enhance the natural features of the property, including scenic views, by adapting the location and placement of structures and ways to the existing topography in order to minimize the amount of soil removal, tree cutting and general disturbance to the landscape and surrounding properties.

7. The development shall comply with all other provisions of the Subdivision Rules and Regulations of the planning board and any other Land-use regulations of the town in effect at the time of application insofar as they are appropriate.

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520.6 Open Space Use and Design Standards

A. Within an OSPD, no less than thirty percent of the total land area shall be devoted to common open space. The common open space shall not include land set aside for roads and/or parking uses. No more than fifty percent of the common open space shall contain land subject to protection under Massachusetts General Laws, Chapter 131, Section 40 (The Wetlands Protection Act and the Regulations promulgated thereunder (310 Code of Massachusetts Regulations 10.00)).

B. The common open space shall be designed and maintained in accordance with the following standards:

1. Naturally existing woods, fields, meadows and wetlands shall be maintained and improved in accordance with good conservation practices.

2. Common open space shall be planned as large, contiguous units whenever possible. Strips of narrow parcels of common open space shall be permitted only when necessary for access or as vegetated buffers along the site's perimeter.

3. Common open space may be in more than one parcel providing that the size, shape and location of such parcels are suitable for the designated uses.

4. No more than twenty percent of the common open space shall be covered by man-made impervious surfaces.

5. Common open space may be used for active and passive recreation, conservation, forestry, agriculture, natural buffers, structures necessary for the convenience and enjoyment of the residents, subject to approval by the planning board.

6. There shall be a minimum setback of fifty feet between any common open space structures and all property lines of the site.

520.7 Common Open Space Ownership and Management

A. Common open space in an OSPD shall be conveyed to: (1) the town and may be accepted by it for park or open space use; (2) a nonprofit corporation, the principle purpose of which is the conservation of open space; or (3) to a corporation or trust owned or to be owned by the owners of lots within the development. If a corporation or trust owned by the owners of lots is utilized, ownership thereof shall pass with the conveyances of the lots. In any case, where such land is not conveyed to the town, a restriction enforceable by the town shall be recorded providing that such land shall be kept in open or natural state and not be built upon for residential use or developed for accessory uses such as parking or roadway.

B. If the common open space is not to be conveyed to the town, then the applicant shall include as part of the road covenant a provision that the common open space will be deeded as approved by the planning board. In addition, the road covenant shall not be released until proof of ownership has been provided to the planning board.

C. If the common open space is not to be conveyed to the town, the application for an OSPD special permit must include a program describing how the common open space will be maintained in perpetuity to standards satisfactory to the planning board. The applicant shall also provide as part of the common open space proposal an agreement empowering the town to perform maintenance of the common open space in the event of failure to comply with the program included in the application pursuant to the preceding sentence providing that, if the town is required to perform any maintenance work, the owners of lots within the OSPD shall pay the cost thereof and that the cost shall constitute a lien upon their properties until said cost has been paid.

520.8 Review Procedures

All applications for OSPD shall be submitted in conformity with the requirements and procedures for submission and review under the Subdivision Rules and Regulations of the planning board and as required by Massachusetts General Laws, Chapter 40A, Section 9 for special permit applications. Further, all applications for a special permit under this section shall be referred by the planning board to the board of health, conservation commission and any other board, agency, or department for its review and comments within fourteen days after its submission to the planning board. Any such board, agency, or department to which applications are referred for comment shall make its recommendations and send copies thereof to the planning board and the applicant within thirty-five days of receipt of the referral request by the planning board or there shall be deemed no opposition or desire to comment. The planning board shall not act upon said special permit until either comments from referred boards, agencies, or departments have been received, or said thirty-five days have elapsed, whichever is sooner. Applications referred to more than one board, agency, or department may be reviewed jointly by said boards, agencies, or departments.

520.9 Duration of Approval

A. Notwithstanding anything to the contrary within this bylaw, any special permit granted by the planning board for an OSPD shall become void within two (2) years from the date of issue, which two (2) shall not include time required to pursue or await determination of an appeal referred to in Massachusetts General Laws, Chapter 40A, Section 8 unless any construction work contemplated

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thereby shall have commenced and proceeded in good faith continuously to completion, except for a good cause. All open space shall be dedicated at the time the permit holder proceeds with construction under a building permit.

B. If at any time before, during or after construction of the proposed development unforeseen

conditions make it necessary or preferable to modify the project as described in the approved definitive OSPD application, the planning board may authorize such modifications provided that they are within the spirit of the original proposal and comply with these regulations.

550 Flexible Open Space Development

550.1 Purpose.

The purpose of Flexible Open Space Development is to preserve natural and cultural resources which contribute to the town's history and character, to discourage development sprawl which may result from conventional zoning, and to allow maximum flexibility and creativity in the design of single and two family residential subdivisions, permitting greater preservation of open space than would normally occur with conventional development.

550.2 Applicability.

The Planning Board may issue a Special Permit for a Flexible Open Space Development for any parcel containing a minimum of 160,000 sq. ft. in the Residential A-1 Zoning District or 80,000 sq. ft. in the Residential A-2 Zoning District, exclusive of wetlands as defined in M.G.L. Chapter 131, Section 40 or local wetlands regulations (Town of Scituate Bylaws Section 30700). Lots created through a Flexible Open Space Development shall be exempt from the lot area, frontage, and lot width requirements of Scituate Zoning Bylaw Section 610, Lot Size Regulation for Dwellings, and Section 620.3, Setback and Yard Requirements, except as required in Section 550.6 below.

The number of housing units for a Flexible Open Space Development shall not exceed that allowed under conventional development of the property in accordance with the Scituate Zoning Bylaw and Town of Scituate Subdivision Rules and Regulations. The Planning Board shall be the Special Permit Granting Authority for any Special Permit for a Flexible Open Space Development issued under this Section.

550.3 Application Requirements.

Applicants seeking approval of a Flexible Open Space Development shall file an application for a Special Permit with the Planning Board for a Definitive Flexible Open Space Development Plan. This application shall include an application form, applicable fees, fourteen (14) copies of a Conventional Density Sketch Plan and the Definitive Flexible Open Space Development Plan, and ten (10) copies of one witnessed percolation and deep hole test for each proposed lot shown on the Conventional Density Sketch Plan.

The Conventional Density Sketch Plan shall show the number of lots which could be developed utilizing a conventional grid subdivision under current zoning, state and local health and wetlands regulations, and the Town of Scituate Subdivision Rules and Regulations. The determination of lots allowed by a conventional grid subdivision shall be exclusive of any land under water bodies, bogs, swamps, wet meadows or marshes, as defined under Mass General Laws, Chapter 131, Section 40 and local wetlands regulations (Town of Scituate Bylaws Section 30700). The maximum number of lots allowed in the Definitive Flexible Open Space Development Plan shall not exceed the number of lots shown in the Conventional Density Sketch Plan.

The Conventional Density Sketch Plan shall be prepared by the applicant's engineer and shall follow the drawing specifications for a Preliminary Plan as described in Section IV.2, subsections a. through s. of the Town of Scituate Subdivision Rules and Regulations, excluding subsections m. n. and s. (storm drainage, road profiles, and aerial photographs). However, drainage improvements shall be sketched on the plan to illustrate the plan's drainage concept.

The Definitive Flexible Open Space Development Plan shall contain the following information:

A. All zoning classification(s) applicable to the site. Where any land on or within 100' of the site has been determined by the Conservation Commission to be subject to the state Wetlands Act, M.G.L. Chapter 131, Section 40 or local wetlands regulations (Town of Scituate Bylaws Section 30700), the

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boundaries of such area(s) shall be indicated on the plan, together with the area on each lot defined as upland and wetland.

B. A Physical Features and Natural Resources Plan of the entire property at a scale of 1" = 40' showing water bodies, streams, wetlands, vistas, areas of greater than 12% slope, geological features, topography at 2' elevations (except 1' elevations where cuts or fills are proposed,) unique vegetation, historic features, large boulders or ledge outcroppings, treed and open areas, and any stone walls.

C. The boundaries of the area(s) within each lot that will contain all principal and accessory structures shall be shown on the plan and designated as the "developed areas." The areas so designated shall be of a size and location to satisfy the stated purposes and standards of Section 550.1.

D. If amenities are proposed, such as buffers along interior or access roads, areas proposed to remain undisturbed, walkways, bikepaths or pedestrian amenities, a plan showing these should be provided with the application for the Flexible Open Space Development. Applicants are encouraged to provide buffers along major roads, wetlands, or adjoining developed property.

E. The Planning Board may require drainage calculations where deemed necessary to evaluate proposed drainage or the potential for additional runoff onto adjacent properties.

550.4 Procedure.

A. Pre-Application Meeting.

A pre-application meeting with the Town Planner prior to the Special Permit application and preparation of a Definitive Flexible Open Space Development Plan is strongly encouraged. A preliminary concept plan for the Conventional Density Sketch Plan, and the Flexible Open Space

Development Plan, should be provided at this meeting. The preliminary concept plans shall be at a scale of 1" = 40', unless the applicant and Town Planner agree on a more appropriate scale. The preliminary concept plans shall illustrate sufficient detail to describe the design concepts and key development issues for each plan.

B. Review Procedure.

The applicant shall submit to the Planning Board all application materials referenced in Section 550.3, above.

All applications for Flexible Open Space Developments shall be submitted in conformity with the requirements and procedures for submission and review under Subdivision Rules and Regulations of the Planning Board and as required by Massachusetts General Laws, Chapter 40A, Section 9 for Special Permit applications. Copies of the Special Permit application, the Conventional Density Sketch Plan and the Flexible Open Space Development Plan shall be forwarded by the Planning Board to the Board of Health, Conservation Commission, Department of Public Works, and any other board, agency, or department which the Planning Board deems necessary for review, for their review and comments within fourteen days after submission of the application to the Planning Board. The Planning Board shall also forward copies of one witnessed percolation and deep hole test per proposed lot shown on the Conventional Density Sketch Plan to the Board of Health. The Board of Health shall review the proposed density shown on the Conventional Density Sketch Plan as provided in Paragraph C. below as part of their review of the Special Permit application and Flexible Open Space Development Plan.

Any such board, agency, or department to which the applications are referred shall make its recommendation and send copies thereof to the Planning Board and applicant within thirty-five days of receipt of the referral request by the Planning Board or there shall be deemed no opposition or desire to comment. The Planning Board shall not act upon said Special Permit until either comments from referred boards, agencies, or departments have been received, or said thirty-five days have elapsed, whichever is sooner. To evaluate road design and construction, and the proposed method of drainage, applications shall be reviewed by the town's consulting engineer at the applicant's expense.

C. Board of Health Review of Conventional Density Sketch Plan.

As part of their review of the proposed Special Permit application, the Board of Health will review the proposed number of lots and issue a letter to the applicant and Planning Board that based on the witnessed percolation and deep hole tests, other information provided, and any other information available, there is no evidence that the number of lots shown on the Conventional Density Sketch Plan exceeds the number which could be developed in compliance with Title V and local Board of Health regulations, or such other recommendation as they may deem appropriate.

D. Public Hearing.

Within sixty five days of submission of the Definitive Flexible Open Space Development Plan the Planning Board shall hold a Public Hearing for the Special Permit and Definitive Flexible Open Space Development Plan. Notice of the hearing shall be published in the local newspaper once in each of two successive weeks with the first publication to be not less than fourteen days before the

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date of the hearing and shall be mailed to all "parties of interest" as defined in Massachusetts General Laws, Chapter 40A, Section 11, and to any other property owners deemed by the board to be affected thereby.

E. Special Permit Approval.

Prior to the approval of the Flexible Open Space Development Plan, the Planning Board shall approve the Conventional Density Sketch Plan by a four-fifths vote and issue a certificate of approved density for the Flexible Open Space Development Plan based on the number of approved lots in the Conventional Density Sketch Plan.

As part of the approval of a Special Permit for a Flexible Open Space Development, the Planning Board shall make a finding based on evidence and information provided by the applicant and reviewed by the board, that the Flexible Open Space Development is superior to a conventional subdivision because of benefits to the town of the type described in the Purpose section above, and shall include a description of these benefits in their findings.

Within ninety days following the Public Hearing, the Planning Board shall certify in writing with the reasons for its action that the Flexible Open Space Development Special Permit is approved as submitted, approved subject to modification, or denied. Approval shall require a four-fifths vote of the board. If the Planning Board fails to issue its findings within said ninety days, the plan shall be deemed approved, unless at the applicant's request the Planning Board grants an extension beyond the ninety day period.

550.5 Design Standards.

In reviewing an application for a Special Permit for a Flexible Open Space Development, the Planning Board shall consider the extent to which the application meets the purposes of a Flexible Open Space Development by satisfying the following standards:

A. The design shall minimize the size of developed areas.

B. The laying out of developed areas, roads, storm drains, sewage disposal systems, retaining walls and utilities shall be in conformance with the natural features of the parcel, minimizing changes to the topography and maximizing the amount of preserved wooded areas, open space, amenities and buffers if proposed.

C. The amount of land to be disturbed for the construction of buildings, driveways, sewage disposal

systems, retaining walls, utilities, storm drainage systems and roads should be minimized by:

- (i) providing site disturbance lines within road right of ways in order to minimize site disturbance beyond the paved area of the road. Trees and land outside of these disturbance lines should be preserved in their natural state;
- (ii) Whenever feasible, water and sewer utilities shall be placed under the paved section of the roads in order to minimize site disturbance in the unpaved area of road right of way;
- (iii) Whenever feasible smaller leaching catch basins on each lot shall be used rather than large detention/retention basins for multiple lots.

D. Important natural and historic features of the land, as determined by the Planning Board, shall be protected.

E. The Flexible Open Space Development shall be in keeping with and enhance the overall semi-rural appearance of Scituate by:

- (i) preserving views from existing roads;
- (ii) avoiding undue adverse impacts on neighborhoods;
- (iii) conserving natural and historic resources, including but not limited to those linked to off-site protected resource areas.

F. The impacts of road and utility installations shall be less than those generated by a conventional development of the same land.

G. The design, number and location of curb cuts shall be such that any conflict with existing traffic flow is minimized, and the semi-rural appearance of existing streets is maintained or enhanced.

H. Provision, satisfactory to the Planning Board, shall be made with regard to the ownership and maintenance of any and all common land and other common facilities within the Flexible Open Space Development.

550.6 Minimum Requirements.

A Special Permit for Flexible Open Space Development may authorize the creation and use of lots meeting the following minimum dimensional requirements in lieu of those of Section 610, Lot Size Regulation for Dwellings, and Section 620.3, Setback and Yard Requirements. The maximum number of lots for building sites in a Flexible Open Space Development shall not exceed the maximum number of buildable lots which could be created through conventional development of the site as determined by an approved Conventional Density Sketch Plan for the parcel.

A. Lot Area.

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Each lot shall be at least of a size capable of supporting the construction of a single or two-family dwelling, its accessory structures in accordance and an individual sewage disposal system, unless a viable alternative method of sewage disposal is proposed.

B. Frontage.

The frontage for each proposed building lot in a Flexible Open Space Development shall be that necessary, in the opinion of the Planning Board, to provide for adequate access to the lot.

C. Setbacks.

All dwellings shall be set back a minimum of fifteen (15) feet from front, side and rear lot lines. One story detached accessory structures shall be set back a minimum of eight (8) feet from front, side and rear property lines. However, setbacks from the perimeter of the development shall conform to the required setbacks for conventional development in the underlying zoning district.

D. Not more than one single or two family dwelling and its accessory structures and uses may be located on a lot created as part of a Flexible Open Space Development pursuant to this Section.

E. Protection of Open Space.

In order to preserve open space or buffer areas for the future, in those proposals where open space is proposed, the Planning Board may require a perpetual restriction, running with the land to be recorded with respect to land set aside for these purposes within the Flexible Open Space Development. Open space may be dedicated for private use by the individual lot owner, for shared use by the development's lot owners, or for general public use.

When dedicated for public use, public access to open space should be provided and planned so that it is linked to other open space uses abutting the property. In planning for open space use the use shall be designated whether it be for preservation, passive or active recreation, view-shed protection, buffer protection, and/or other open space uses deemed appropriate by the board. Protection of open space is an integral part of this bylaw and is encouraged in all applications.

F. Restriction on Further Subdivision.

A restriction shall be provided that no lot in the Flexible Open Space Development may be further subdivided into additional building lots. A note shall be added to the plan to reference this condition. The Planning Board may impose additional restrictions on development and use of the lots as is deemed appropriate.

G. The Planning Board may specify roadway, drainage and utility design requirements deemed necessary to ensure adequate access, lessen congestion, provide proper drainage, protect public safety or provide for water, sewage, utilities or other municipal services.

550.7 Recording of Plans.

An approved Definitive Flexible Open Space Development Plan, the Special Permit, agreements for maintenance of roads or utilities, any required conditions, and any other agreements, as applicable, shall be recorded at the Plymouth County Registry of Deeds.

Copies of as-built plans and the recorded documents shall be forwarded to the Planning Board within three months of the date of recording. Failure to comply with this condition shall be grounds for invalidation of the

Special Permit.

490 Planned Development District

490.1 Purpose

The purpose of the Planned Development District (PDD) is to encourage a mix of land uses and activities, including an 18 hole golf course and a community recreation complex, a mix of residential land uses, including permanent affordable housing, and building types that complement each other; to provide for the development of these uses in a comprehensive manner instead of piecemeal to save open space that otherwise would be lost or wasted; to promote more efficient use of land while protecting natural resources such as wetlands, water bodies, ground water and native vegetation; all in conformity to the provisions of Massachusetts General Laws, Chapter 40A, Section 9 for "planned unit developments". The planning board shall be the special permit granting authority in the PD District.

490.2 Permitted Uses In PDD

In subdistricts A, B, C, D, E and F in the PD District, the following uses are permitted as of right:

A. Uses permitted as of right in Flood Plain and Watershed Protection Districts (Section 470. of this bylaw);

B. Religious and public educational uses, agricultural uses permitted as of right in Residence Districts (Section 420.); and

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C. Municipal water supply and wastewater treatment plant facilities.

D. In subdistrict B all of the uses permissible as of right in an A-2 District subject to the same conditions and procedures as therein specified. Minimum lot size, frontage, setback and width requirements for the above uses shall be in accordance with "A-2" District provisions.

490.3 Uses Permissible By Special Permit

Pursuant to Section 1200. of this bylaw, the planning board may issue a special permit for municipal, residential, recreational and commercial uses within the subdistricts, as outlined below. The subdistricts may be developed in whole or in part, together or separately, in one of several ownerships, on land publicly or privately owned, for the purpose of accommodating the following uses:

A. Subdistrict A - Affordable Residential Housing District

This Subdistrict shall consist of two sub-subdistricts:

A-1 - Affordable - Home Ownership and

A-2 - Affordable Rental Housing.

1. Goals

Any Subdistrict A residential proposal must be designed to meet the following goals:

- a. To serve the affordable housing needs of Scituate residents and their immediate families.
- b. To serve the affordable housing needs of Scituate town employees.
- c. To be compatible with the needs of disabled and elderly persons, and
- d. To provide for long-term, affordable housing for people with low income levels.

2. General Requirements

Any Subdistrict A residential proposal must meet the following requirements:

- a. Contain long-term affordability restrictions that ensure that future Scituate residents, their immediate family and Scituate town employees will continue to have their affordable housing needs met by housing constructed in Subdistrict A. Scituate residency and status of "immediate family" shall be determined by the Scituate Housing Authority.
- b. Contain a low-income formula requirement for prospective owners or tenants for proposed housing units that is consistent with the regulations promulgated by EOCD or any successor agency; and
- c. Meet a "community necessity" within the town, which requirement will be deemed to have been met provided that the town has not already met the minimum requirement set forth in Massachusetts General Laws, Chapter 40B, Section 20, et. seq., that ten percent of the town's housing stock meet affordability requirements.

3. Subdistrict A-1 Specific Requirements

- a. Any applicant shall be a nonprofit corporation.
- b. The applicant shall make its application in response to a Request For Proposals issued by the Scituate Board of Selectmen or shall make its application directly to the board of selectmen and petition that a Request For Proposals be issued.
- c. Title to the land underlying the property shall be transferred to the nonprofit corporation with the restriction that ownership shall revert to the Town of Scituate should the underlying property be put to a nonaffordable housing use, unless the affordability requirement is released as provided herein.
- d. The nonprofit corporation shall retain title to the underlying property at all

times.

e. The Town of Scituate shall be granted an appreciating mortgage by each individual unit owner which shall be junior to any other mortgage granted by the unit owner to secure the purchase price of the property (which shall include the unit, the land underlying the unit and any interest in any common areas). Said mortgage shall be for an amount that represents the difference between the original purchase price and the fair market value of the unit at the time that said mortgage is discharged. Said mortgage will become due, payable and dischargeable only upon either a release of the affordability requirement imposed by this bylaw. A certificate by the Scituate Housing Authority that a purchase price meets the affordability formula shall be dispositive.

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f. Any sale of any affordable unit constructed pursuant to this section shall include a 99 year ground lease. Said 99 year ground lease shall be renewable upon its expiration and shall be automatically revoked upon a sale of the unit for a non-affordable purchase price. An appreciating mortgage held by the Town of Scituate to secure a particular unit may be assumed by any subsequent buyer of the unit or the Town of Scituate shall discharge the prior existing, junior appreciating mortgage simultaneously with the subsequent buyer's granting of a new appreciating mortgage, provided that, in either case, affordability requirements are met.

g. The affordability of the purchase price of any unit constructed pursuant to this section shall be determined by the nonprofit corporation holding title to the land underlying the property in cooperation and consultation with the Scituate Housing Authority and shall be tied to the original purchase price plus an allowance for inflation as determined by the Consumer Price Index. In the event of a disagreement about affordability, the Scituate Housing Authority's judgment shall control.

h. Each affordable unit constructed and sold pursuant to this section shall pay an annual fee to the nonprofit corporation for the costs of the nonprofit administration and upkeep of common areas. Said fee and any schedule of increases shall be set by the nonprofit corporation prior to any sale or resale of a unit. Said fee and fee schedule shall receive prior approval from the Scituate Housing Authority and shall be disclosed to prospective buyers prior to sale or resale.

i. The nonprofit corporation shall ensure proper maintenance of the common areas in cooperation and consultation with a homeowners association which shall consist of at least five unit owners elected by majority vote of the unit owners on an annual basis.

j. Release Provision

In the event that the nonprofit corporation [by a three-fourths vote of its board of directors] and three-fourths of all unit owners within the nonprofit's administration determine that there is no longer a reason to require that the units remain affordable, then they may dissolve the affordability requirement, convey the land to the owners outright and turn responsibility for maintenance of common areas over entirely to the homeowners association, provided that a three-fourths vote of the Scituate Town Meeting approving the dissolution of the affordability requirement is obtained prior to any such conveyance; and provided further, that such owners shall each satisfy the outstanding appreciating mortgage held by the Town of Scituate prior to accepting title to the underlying land and prior to selling an individual unit for more than an affordable purchase price.

4. Subdistrict A-2 Specific Requirements

a. The Scituate Housing Authority may, after petitioning the Scituate Board of Selectmen for title to or for permission to develop the property designated as Subdistrict A-2, submit an application for a special permit for the development of affordable rental housing in accordance with the rules and regulations promulgated by the Executive Office of Communities and Development....

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board	500.3 Uses Permissible By Special Permit Pursuant to Section 770. of this bylaw, the planning board may issue a special permit for any of the uses permissible by special permit in the "A-3" District, subject to the same conditions and procedures as therein specified; or for the purpose of accommodating the following uses:
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520.8 Review Procedures

All applications for OSPD shall be submitted in conformity with the requirements and procedures for submission and review under the Subdivision Rules and Regulations of the planning board and as required by Massachusetts General Laws, Chapter 40A, Section 9 for special permit applications. Further, all applications for a special permit under this section shall be referred by the planning board to the board of health, conservation commission and any other board, agency, or department for its review and comments within fourteen days after its submission to the planning board. Any such board, agency, or department to which applications are referred for comment shall make its recommendations and send copies thereof to the planning board and the applicant within thirty-five days of receipt of the referral request by the planning board or there shall be deemed no opposition or desire to comment. The planning board shall not act upon said special permit until either comments from referred boards, agencies, or departments have been received, or said thirty-five days have elapsed, whichever is sooner. Applications referred to more than one board, agency, or department may be reviewed jointly by said boards, agencies, or departments.

550.5 Design Standards.

In reviewing an application for a Special Permit for a Flexible Open Space Development, the Planning Board shall consider the extent to which the application meets the purposes of a Flexible Open Space Development by satisfying the following standards:

Has any housing been built under the cluster/flexible provisions?

Yes Laura Harbottle, Town Planner, l(7/15/04) indicated that in the past two years about 19 units have been built under these plans.

Seekonk

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

No The only mention of any kind of PUD is exclusively for commercial and industrial use.

SECTION 9. SPECIAL DISTRICTS

9.1 PLANNED UNIT DEVELOPMENT DISTRICTS

9.1.1 DEFINITION AND INTENT

A planned unit development district means a non-residential mixed use development on a plot of land containing a minimum of the greater of sixty thousand square feet or five times the minimum lot size of the zoning district in which a mixture of commercial uses or a mixture of industrial uses and a variety of building types are determined to be sufficiently advantageous to render it appropriate to grant special Permission to depart from the normal requirements of the district to the extent authorized by these by-laws.

Planned unit development districts may be for commercial use - PLANNED UNIT DEVELOPMENT DISTRICT COMMERCIAL - or industrial use - PLANNED UNIT DEVELOPMENT DISTRICT INDUSTRIAL. Such districts may be established from time to time in such a manner as best to fit the general pattern of land use established by these by-laws and to constitute a harmonious, efficient, and convenient commercial or industrial center. ...

Which entity is the special permit granting authority for cluster/flexible zoning?

Has any housing been built under the cluster/flexible provisions?

Sharon

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes

Sharon Zoning Bylaws

ARTICLE II. DISTRICT REGULATIONS and ARTICLE IV. SPECIAL REGULATIONS

ARTICLE II. DISTRICT REGULATIONS

2300. DISTRICT USE REGULATIONS

2310. General Residence, Single Residence, Suburban, Rural and Housing Authority Districts.

2315. Uses allowed on Special Permit (from the Board of Appeals except as indicated).

a. Residential Uses:

(1) Conversion to create one or more dwelling units, as specified at Section 4210.

(2) In Single Residence, Suburban and Rural Districts, municipal building conversion as specified at Section 4220 if authorized by the Board of Selectmen.

(3) Flexible Development under Section 4300, including (in Suburban Districts only) multifamily developments.

(4) Nursing homes.

ARTICLE IV. SPECIAL REGULATIONS

4300. Flexible Development

4310. Intent and Applicability.

The Intent of Section 4300 is to allow flexibility in meeting the basic intent of the dimensional requirements of Section 2400, and to provide incentives for development to better serve public interests than otherwise required, and to provide for multifamily development. These provisions shall apply to all parcels of ten (10) acres or more in Rural, Suburban or Single Residence A Districts, except where more specifically limited herein.

4320. Application and Review Procedure.

4321. Applicants for a Special Permit for flexible development shall file with the Board of Appeals eight (8) copies of the following, to have been prepared by an interdisciplinary team including a registered land surveyor, a professional engineer and a registered architect or landscape architect.

a. Two (2) or more substantially different alternative development plans, one of which shall be a conventional plan. Each plan shall have been endorsed by the Planning Board as conforming to the requirements for a preliminary subdivision plan under the Land Subdivision Rules and Regulations of the Planning Board. Such plans shall also indicate proposed topography and the results of recent deep test pits and percolation tests at the rate of one per every five (5) acres, but in no case fewer than five (5) per subdivision. To promote better communication and to avoid misunderstanding, applicants are encouraged to submit preliminary proposals for informal review before formal application for such endorsement. Upon request, the Planning Board shall arrange a meeting for such review, inviting the Board of Health, Conservation Commission, Town Engineer and any other officials who might be helpful.

b. An "Environmental and Community Assessment" as required by the Land Subdivision Rules.

c. Any additional information necessary to make the assessments cited in Section 4350 at a level of detail commensurate with the scale of the development, as determined by the Zoning Board of Appeals.

4322. At the time of application, copies of these materials shall be transmitted by the applicant to the Planning Board, Conservation Commission, Town Engineer, Fire Chief, Police Chief, and Superintendent of Public Works. Those agencies shall report on the proposal within 38 days of the referral, and the Board of Appeals shall make no decision upon the application until receipt of all such reports, or until 35 days have elapsed since date of referral without them.

4323. Approval of a Special Permit for flexible development by the Board of Appeals does not constitute definitive plan approval under the Subdivision Control Law, nor does it obligate the Planning Board to give such approval.

4330. Basic Flexible Development.

The Board of Appeals may authorize flexible development with reduced requirements for the area and width of individual lots not having frontage on an existing public way, provided that the following are complied with and made conditions of approval.

4331. The number of lots to be developed shall not exceed the number of lots (as defined by Article V) which could reasonably be expected to be developed under the conventional plan endorsed by the Planning Board under Paragraph 4321(a) and in full conformance with Zoning, with Land Subdivision Rules and Regulations, and with the State and Town sanitary codes for on-lot septic systems, including area and percolation requirements.

****Webmasters Note:** The previous subsection has been amended as per an update approved at a town meeting held on 12/8/03.

4332. Every residential structure shall be constructed on an individual lot. Lot area shall be not less than 20,000 square feet; lot width at the required setback shall not be less than one hundred (100') feet for flexible development; and each lot shall have frontage on an existing Town way or a street approved under the Subdivision Control Law.

4333. All sites and structures officially designated as being of national, state or local historical or architectural significance shall be maintained and preserved.

4334. Any proposed open land, unless conveyed to the Town of Sharon, shall be covered by a recorded restriction enforceable by the Town of Sharon, providing that such land shall be kept in an open state and not developed for such accessory uses as parking or roadway. A minimum of eighty percent (80%) of the open land shall be maintained as a natural vegetation area.

4340. Multifamily Development.

In Suburban Districts, the Board of Appeals may grant a Special Permit for multifamily units in flexible developments, subject to the following:

4341. Density and Parcel Size Requirements:

- a. In the Suburban 1 District, the allowable number of dwelling units for a multifamily development shall not exceed two hundred percent (200%) of the number of lots (as defined by Article V) which could reasonably be expected to be developed under the conventional plan endorsed by the Planning Board under Section 4321(a) and in full conformance with Zoning, Land Subdivision Rules and Regulations and with the State and Town sanitary codes for on-lot septic system disposal systems including area and percolation requirements.
- b. In the Suburban 2 District, the allowable number of dwelling units shall not exceed one hundred fifty percent (150%) of the number of lots which could reasonably be expected to be developed under the conventional plan endorsed by the Planning Board under Section 4321(a) and in full conformance with Zoning, Land Subdivision Rules and Regulations and with the State and Town sanitary codes for on-lot septic disposal systems including area and percolation requirements.
- c. No more dwelling units shall be located in the Water Resource Protection District or the Lake Massapoag Drainage Basin than would be allowed there under conventional development.
- d. Only parcels having a minimum area of ten (10) acres in the Suburban 1 District or 100 (one hundred) acres in the Suburban 2 District are eligible for multifamily development.

4342. Other Requirements.

- a. Departure from the scale of single family development shall be minimized through including not more than six (6) dwelling units in a single structure, serving not more than a single unit through each building entrance, limiting building length to not more than two hundred (200') feet, and having parking areas individually contain not more than fifteen (15) parking spaces and being separated from all other parking areas by at least fifty (50') feet.
- b. Visual separation from abutting premises shall be assured through providing a buffer containing dense trees and other vegetation for at least fifty (50') feet width between any multifamily structure or parking area for more than six (6) cars and the side and rear boundaries of the development.
- c. On-site disposal systems for multifamily dwellings shall be allowed only at locations where the percolation rate is ten (10) minutes/inch drop or faster and the maximum water table is eight (8') feet or more below natural grade, based on deep hole tests taken between January 1 and April 1.
- d. The total number of bedrooms in multifamily dwellings shall not exceed twice the allowable number of such dwelling units, counting studio units as one bedroom.
- e. There shall be no more than two (2) floors of habitable space within a dwelling unit, provided, however, the number of habitable floors may be increased to allow a third floor of habitable space if each of the following conditions are met: (Amended 11/13/00)
 - (i) The third floor of habitable space shall be used only for a den, office, exercise room, hobby room, library, storage room, or other similar use;
 - (ii) No more than two (2) rooms in the dwelling unit, including the third floor of habitable space, shall be used as bedrooms. For purpose(s) of this section, use of a room for a majority of the days in any six (6) month period for sleeping accommodations shall constitute the use of such room as a bedroom;
 - (iii) The unit owner and the Homeowners' Association, if any, shall enter into a written agreement as provided below in subsection (vi) hereof. Said Agreement shall permit the Association, if any, and the Building Inspector to enter the dwelling unit to monitor compliance with the provisions of this section as a condition for allowing the continued maintenance and use of said third floor of habitable space. Said Agreement shall be enforceable by the Building Inspector and/or the Homeowners' Association;
 - (iv) The Building Inspector shall not permit the use of said third floor of habitable space without proof that said agreement has been recorded at the Registry of Deeds.
 - (v) The unit owner and all subsequent unit owners shall provide in any subsequent deed or other conveyance of the dwelling unit notice of the provisions of this section;
 - (vi) The Planning Board, following a public hearing, shall adopt the form of an agreement suitable for filing at the Registry of Deeds setting forth the requirements of this by-law for execution by each homeowner and the specified Homeowners' Association seeking to make use of this by-law. Said agreement must contain a requirement that the aforesaid unit owner shall deliver a Registry Certified copy of the fully executed duly recorded agreement to the Building Inspector and the Condominium Association certifying under penalties of perjury as to conformity with Section 4342(e).
- f. Each structure shall be on an individual lot, and even if the development comprises a single structure, it must conform to the requirements of the subdivision control law, if applicable, and be subject to subsequent review, approval and surety arrangements by the Planning Board under the Land Subdivision Regulations.

4343. Each lot containing multifamily dwellings shall have lot area as otherwise required but not less than five thousand (5000) square feet per dwelling unit.

4350. Decision Criteria.

The Board of Appeals may approve, or approve with conditions, an application for flexible development provided that it determines that such development would be superior for the Town to that which is likely under conventional development. In making its determination, the Board shall consider the reports from Town Boards and agencies, the design objectives specified at Section 4.1.2 of the Land Subdivision Rules and Regulations, and also the following:

4351. Criteria for All Flexible Development:

- a. It is desirable to decrease municipal costs and environmental impacts through reduction in the length of streets, utilities and drainage systems per dwelling unit served.
- b. It is desirable to increase the scale of contiguous area assured of preservation in a natural state, off-street pathways and trails, recreation areas open at least to all residents of the development, and wilderness areas.
- c. It is desirable that each flexible development, fronting on an existing town way or a street approved or to be approved under the Subdivision Control Law, have a buffer strip, which will be preserved in its natural state at least two hundred (200') feet deep along the entire length of said way or street.
- d. It is desirable that all existing scenic vistas be preserved and that new scenic vistas be created.
- e. It is desirable to reduce the number of driveway openings onto existing streets, onto new street fronts to serve more than twenty (20) dwelling units, or within one hundred (100') feet of roadway intersections.
- f. It is desirable to increase vehicular safety by having fewer, better located or better designed egresses from the development onto existing streets.

- g. It is desirable to locate septic disposal systems outside of any Water Protection District, in areas where the percolation rate is highly favorable, the groundwater is deep and slopes are moderate.
 - h. It is desirable to preserve environmental quality by providing for the following, relative to the number of units developed:
 - (1) Reduction of the total area over which vegetation is distributed by cut or fill or displacement.
 - (2) Reduction in critical lands disturbed by construction. "Critical lands" include slopes in excess of fifteen (15%) percent, land within one hundred (100') feet of a water body, wetland or stream, land having outstanding or rare vegetation.
 - (3) Reduction of the extent of water ways altered or relocated.
 - (4) Reduction in the volume of cut and fill for roads and construction sites.
 - (5) Reduction in the number of on-site disposal systems or amount of impermeable surfaces located within areas tributary to Lake Massapoag or a well or well development area.
4352. Additional Criteria for Multifamily Development.
- a. The design and location of the structure on the site should be consistent with the visual scale and character of single family development.
 - b. The location of the development and its density should be reasonable in relation to its demands upon access and utilities.
 - c. There should be positive benefit to the Town by comparison with conventional single family development in some important respect, such as reduction of environmental damage, better controlled traffic or preservation of current character through location of reserved open space.

ARTICLE IV. SPECIAL REGULATIONS

4360 - CONSERVATION SUBDIVISION DESIGN (CSD)

****Webmasters Note:** Section 4360 Conservation Subdivision Design has been added as per Case No. 1555 dated 5/7/01.

4361 PURPOSE AND INTENT

1 The Primary Purposes for CSD are the following

- a To allow for greater flexibility and creativity in the design of residential developments,
- b To encourage the permanent preservation of open space, agricultural land, forestry land, wildlife habitat, other natural resources including aquifers, waterbodies and wetlands, and historical and archeological resources in a manner that is consistent with the Town's comprehensive and open space plan,
- c To encourage a less sprawling and more efficient form of development that consumes less open land and conforms to existing topography and natural features better than a conventional or grid subdivision,
- d To minimize the total amount of disturbance on the site,
- e To further the goals and policies of the comprehensive and open space plans,
- f To facilitate the construction and maintenance of housing, streets, utilities, and public service in a more economical and efficient manner

2 The Secondary Purposes for CSD are the following

- a To preserve and protect agriculturally significant land,
- b To protect the value of real property,
- c To protect community water supplies and private drinking water wells,
- d To provide for a diversified housing stock,
- e To provide affordable housing to persons of low and moderate income,
- g To preserve and enhance the community character

3 Except as otherwise provided herein all other by-laws and regulations of the Town shall apply to the CSD

4364 SPECIAL PERMIT REQUIRED

The Planning Board may authorize a CSD pursuant to the grant of a special permit Such special permits shall be acted upon in accordance with the following provisions

PRE-APPLICATION

1 Conference The applicant is very strongly encouraged to request a pre-application review at a regular business meeting of the Planning Board If one is requested, the Planning Board shall invite the Conservation Commission, Board of Health, and the Board of Appeals The purpose of a pre-application review is to minimize the applicant's costs of engineering and other technical experts, and to commence negotiations with the Planning Board at the earliest possible stage in the development At the pre-application review, the applicant may outline the proposed CSD, seek preliminary feedback from the Planning Board and/or its technical experts, and set a timetable for submittal of a formal application At the request of the applicant, and at the expense of the applicant, the Planning Board may engage technical experts to review the informal plans of the applicant and to facilitate submittal of a formal application for a CSD special permit

2 Submittals In order to facilitate review of the CSD at the pre-application stage, applicants are strongly encouraged to submit the following information

a Site Context Map This map illustrates the parcel in connection to its surrounding neighborhood Based upon existing data sources and field inspections, it should show various kinds of major natural resource areas or features that cross parcel lines or that are located on adjoining lands This map enables the Planning Board to understand the site in relation to what is occurring on adjacent properties

b Existing Conditions/Site Analysis Map This map familiarizes officials with existing conditions on the property Based upon existing data sources and field inspections, this base map locates and describes noteworthy resources that should be left protected through sensitive subdivision layouts These resources include wetlands, floodplains and steep slopes, but may also include mature undegraded woodlands, hedgerows, farmland, unique or special wildlife habitats, historic or cultural features (such as old structures or stone walls), unusual geologic formations and scenic views into and out from the property By overlaying this plan onto a development plan the parties involved can clearly see where conservation priorities and desired development overlap/conflict

c Other Information In addition, applicants are invited to submit the information set forth in Section 4366 in a form acceptable to the

Planning Board

3 Site Visit Applicants are encouraged to request a site visit by the Planning Board and/or its agents in order to facilitate pre-application review of the CSD. If one is requested, the Planning Board shall invite the Conservation Commission, Board of Health, Department of Public Works, Fire Department, and Building Inspector.

4 Design Criteria The design process and criteria set forth below in Section 4365 should be discussed by the parties at the pre-application conference and site visit.

From ordinance.com:

4360 - CONSERVATION SUBDIVISION DESIGN (CSD)

**Webmasters Note: Section 4360 Conservation Subdivision Design has been added as per Case No. 1555 dated 5/7/01.

4361 PURPOSE AND INTENT

1 The Primary Purposes for CSD are the following

a To allow for greater flexibility and creativity in the design of residential developments,

b To encourage the permanent preservation of open space, agricultural land, forestry land, wildlife habitat, other natural resources including aquifers, waterbodies and wetlands, and historical and archeological resources in a manner that is consistent with the Town's comprehensive and open space plan,

c To encourage a less sprawling and more efficient form of development that consumes less open land and conforms to existing topography and natural features better than a conventional or grid subdivision,

d To minimize the total amount of disturbance on the site,

e To further the goals and policies of the comprehensive and open space plans,

f To facilitate the construction and maintenance of housing, streets, utilities, and public service in a more economical and efficient manner.

2 The Secondary Purposes for CSD are the following

a To preserve and protect agriculturally significant land,

b To protect the value of real property,

c To protect community water supplies and private drinking water wells,

d To provide for a diversified housing stock,

e To provide affordable housing to persons of low and moderate

f income,

g To preserve and enhance the community character.

3 Except as otherwise provided herein all other by-laws and regulations of the Town shall apply to the CSD.

4362 ELIGIBILITY

1 Minimum Size of Tract. To be eligible for consideration as a CSD, the tract shall contain a minimum of five (5) acres.

**Webmasters Note: The previous subsection has been amended as per an update approved at a town meeting held on 12/8/03.

2 Zoning Classification. Only those tracts located in the Rural 1, Rural 2, Suburban 1, Suburban 2, Single Residence A, and Single Residence B Districts shall be eligible for consideration as a CSD.

**Webmasters Note: The previous subsection has been amended as per an update approved at a town meeting held on 12/8/03.

3 Contiguous Parcels To be eligible for consideration as a CSD, the tract shall consist of a parcel or set of contiguous parcels.

4 Land Division To be eligible for consideration as a CSD, the tract may be a subdivision or a division of land pursuant to G L c 41, s 81P, provided, however, that CSD may also be permitted where intended as a condominium on land not so divided or subdivided.

4363 DEFINITIONS

Terms used in this Section that are defined in Article V (Definitions) of the By-Law shall have the meaning set forth in Article V For the purpose of this Section, the following terms shall have the following meaning

CONSERVATION SUBDIVISION DESIGN (CSD) - A tract of land, designed and developed with mixed uses, with open space used for recreational purposes as an integral characteristic of the development, in a way that departs from the underlying zoning regulations concerning use of land or buildings, lot size, density, bulk or type of structure, lot coverage, or other requirements conventionally required in the district

USABLE OPEN SPACE - A parcel of land within the tract of land designated for a CSD, maintained and preserved for open space uses, and designed and intended for the use and enjoyment of residents and the general public Usable open space shall include conservation use, historic preservation use, educational use, recreation use, park purposes, agriculture use, horticulture use, forestry use or for a combination of these uses including complementary structures, streets or parking areas and other improvements that are necessary and appropriate for the benefit and enjoyment of the usable open space In calculating the amount of usable open space to satisfy the requirements of this by -law, complementary structures, streets or parking areas and other improvements that are necessary and appropriate for the benefit and enjoyment of the usable open space shall not be included In addition, usable open space shall not include designated yard areas accessory to dwelling units within the CSD

RECREATION USE - Land devoted to recreational enjoyment including swimming facilities, hiking trails, tennis courts, and incidental facilities

AGE QUALIFIED RESIDENCES - Dwelling units intended and operated for occupancy by persons 55 years of age or older, and at least ninety five (95%) percent of the occupied units are occupied by at least one person who is 55 years of age or older and with no more than one person who is younger than 55 years of age

BELOW MARKET VALUE RESIDENCE - The determination of below market value made according to Executive Order 418 or any superceding order or legislation

4364 SPECIAL PERMIT REQUIRED

The Planning Board may authorize a CSD pursuant to the grant of a special permit Such special permits shall be acted upon in accordance with the following provisions

PRE-APPLICATION

1 Conference The applicant is very strongly encouraged to request a pre-application review at a regular business meeting of the Planning Board If one is requested, the Planning Board shall invite the Conservation Commission, Board of Health, and the Board of Appeals The purpose of a pre-application review is to minimize the applicant's costs of engineering and other technical experts, and to commence negotiations with the Planning Board at the earliest possible stage in the development At the pre-application review, the applicant may outline the proposed CSD, seek preliminary feedback from the Planning Board and/or its technical experts, and set a timetable for submittal of a formal application At the request of the applicant, and at the expense of the applicant, the Planning Board may engage technical experts to review the informal plans of the applicant and to facilitate submittal of a formal application for a CSD special permit

2 Submittals In order to facilitate review of the CSD at the pre-application stage, applicants are strongly encouraged to submit the following information

a Site Context Map This map illustrates the parcel in connection to its surrounding neighborhood Based upon existing data sources and field inspections, it should show various kinds of major natural resource areas or features that cross parcel lines or that are located on adjoining lands This map enables the Planning Board to understand the site in relation to what is occurring on adjacent properties

b Existing Conditions/Site Analysis Map This map familiarizes officials with existing conditions on the property Based upon existing data sources and field inspections, this base map locates and describes noteworthy resources that should be left protected through sensitive subdivision layouts These resources include wetlands, floodplains and steep slopes, but may also include mature undegraded woodlands, hedgerows, farmland, unique or special wildlife habitats, historic or cultural features (such as old structures or stone walls), unusual geologic formations and scenic views into and out from the property By overlaying this plan onto a development plan the parties involved can clearly see where conservation priorities and desired development overlap/conflict

c Other Information In addition, applicants are invited to submit the information set forth in Section 4366 in a form acceptable to the Planning Board

3 Site Visit Applicants are encouraged to request a site visit by the Planning Board and/or its agents in order to facilitate pre-application review of the CSD If one is requested, the Planning Board shall invite the Conservation Commission, Board of Health, Department of Public Works, Fire Department, and Building Inspector

4 Design Criteria The design process and criteria set forth below in Section 4365 should be discussed by the parties at the pre-application conference and site visit

4365 DESIGN PROCESS

At the time of the application for a special permit for CSD, in conformance with Section 4366, applicants are required to demonstrate to the Planning Board that the following Design Process was performed by a licensed landscape architect or a licensed professional acceptable to the Planning Board in accordance with the Land Subdivision Rules and Regulations of the Planning Board of the Town of Sharon

****Webmasters Note:** The previous paragraph has been amended as per an update approved at a town meeting held on 12/8/03.

1 Step One Identifying Conservation Areas Identify preservation land by two steps First, Primary Conservation Areas (such as wetlands, and floodplains regulated by state or federal law) and Secondary Conservation Areas (including unprotected elements of the natural landscape such as steep slopes, mature woodlands, prime farmland, meadows, wildlife habitats and cultural features such as historic and archeological sites and scenic views) shall be identified and delineated

Second, the Potentially Developable Area will be identified and delineated To the maximum extent feasible, the Potentially Developable Area shall consist of land outside identified Primary and Secondary Conservation Areas

2 Step Two Locating House Sites Locate the approximate sites of individual houses within the Potentially Developable Area and include the delineation of private yards and shared amenities, so as to reflect an integrated community, with emphasis on consistency with the Town's historical development patterns The number of homes enjoying the amenities of the development should be maximized

3 Step Three Aligning the Streets and Trails Align streets in order to access the house lots Additionally, new trails should be laid out to create internal and external connections to existing and/or potential future streets, sidewalks and trails

4 Step Four Lot Lines Draw in the lot lines when applicable

4366 PROCEDURES

1 Application An application for a special permit for a CSD shall be submitted on the form(s) provided by the Planning Board in accordance with the Land Subdivision Rules and Regulations of the Planning Board Applicants for CSD shall also file with the Planning Board twelve (12) copies of the following

Concept Plan

The Concept Plan shall include a Sketch Plan and a Yield Plan The applicant shall submit both the Site Context Map and Existing Conditions/Site Analysis Map prepared according to Section 4364 Additional information reasonably necessary to make the determinations and assessments cited herein shall be provided, including existing site contour maps and existing current soil maps

A Sketch Plan

The Sketch Plan shall address the general features of the land, and give approximate configurations of the lots, open space, and roadways

(1) Quality Standards

Engineering specifications as to scale, number of copies, sheet size, and other requirements shall conform to those specified by the Planning Board Rules and Regulations for Subdivisions

(2) Required Content

The Sketch Plan shall include the following

(a) The subdivision name, boundaries, north point, date, legend, title "Concept Plan," and scale,

(b) The names of the record owner and the applicant and licensed professional who prepared the plans,

(c) The names, approximate location, and widths of adjacent streets,

(d) The proposed topography of the land shown at a contour interval no greater than + or - 2 feet Elevations shall be referred to mean sea level or as specified in the Land Subdivision Rules and Regulations of the Planning Board,

(e) The location of existing landscape features including forests, farm fields, meadows, wetlands, waterbodies, archeological and historic structures or points of interest, rock outcrops, boulder fields, stone walls, cliffs, high points, major long views, forest glades, major tree groupings, noteworthy tree specimens, and habitats of endangered or threatened wildlife, as identified as primary and secondary resources according to Section 4364(2)b Proposals for all site features to be preserved, demolished, or moved shall be noted on the Sketch Plan,

(f) All on-site local, state, and federal regulatory resource boundaries and buffer zones shall be clearly identified and all wetland flag locations shall be numbered and placed upon the Sketch Plan,

- (g) Lines showing proposed private residential lots with approximate areas and frontage dimensions,
- (h) All existing and proposed features and amenities including trails, recreation areas, pedestrian and bicycle paths, community buildings, off-street parking areas, shall be shown on the plan and described in a brief narrative explanation where appropriate,
- (i) The existing and proposed lines of streets, ways, common driveways, easements and any parcel of land intended to be dedicated for public use or to be reserved by deed covenant for use of all property owners in the subdivision, or parcels of land or lots to be used for any purpose other than private residential shall be so designated within the subdivision in a general manner,
- (j) Proposed roadway grades,
- (k) Official soil percolation tests for the purpose of siting wastewater treatment options are not required for the Concept Plan. However, a narrative explanation shall be prepared by a certified Professional Engineer detailing the proposed wastewater systems that will be utilized by the development and its likely impacts on-site and to any abutting parcels of land. For example, the narrative will specify whether individual on-site or off-site systems, shared systems, alternative to Title V systems, or any combination of these or other methods will be utilized,
- (l) A narrative explanation prepared by a certified Professional Engineer proposing systems for stormwater drainage and its likely impacts on-site and to any abutting parcels of land. For example, the narrative will specify whether soft or hard engineering methods will be used and the number of any detention/retention basins or infiltrating catch basins. It is not intended to include specific pipe sizes. Any information needed to justify this proposal should be included in the narrative. The approximate location of any stormwater management detention/retention basins shall be shown on the plan and accompanied by a conceptual landscaping plan,
- (m) A narrative explanation prepared by a certified Professional Engineer, detailing the proposed drinking water supply system,
- (n) A narrative explanation of the proposed quality, quantity, use and ownership of the open space. Open space parcels shall be clearly shown on the plan,
- (o) All proposed landscaped and buffer areas shall be noted on the plan and generally explained in a narrative,
- (p) A list of all legal documents necessary for implementation of the proposed development, including any Conservation Restrictions, land transfers, and Master Deeds, with an accompanying narrative explaining their general purpose,
- (q) A narrative indicating all requested waivers, reductions, and/or modifications as permitted within the requirements of this bylaw.

B Yield Plan

Applicant shall submit a narrative explanation detailing the results of the determination of any proposed allocation of yield determined according to Section 4367, Basic Maximum Number of Lots, Units and Bedrooms.

C Relationship between Concept Plan and Definitive Subdivision Plan

The Concept Plan special permit shall be reconsidered if there is substantial variation between the Definitive Subdivision Plan and the Concept Plan. If the Planning Board finds that a substantial variation exists, it shall hold a public hearing on the modifications to the Concept Plan. A substantial variation shall be any of the following:

- (a) an increase in the number of building lots,
- (b) a significant decrease in the open space acreage,
- (c) a significant change in the lot layout,
- (d) a significant change in the general development pattern which adversely affects natural landscape features and open space preservation,
- (e) significant changes to the stormwater management facilities, and/or
- (f) significant changes in the wastewater management systems.

3 Procedures

Whenever an application for a CSD special permit is filed with the Planning Board, the applicant shall also file, within five (5) working days of the filing of the completed application, copies of the application, accompanying development plan, and other documentation, to the Board of Health, Conservation Commission, Building Inspector, Department of Public Works, Police Chief, Fire Chief, and Town Engineer for their consideration, review, and report. The applicant shall furnish the copies necessary to fulfill this requirement. Reports from other boards and officials shall be submitted to the Planning Board within thirty-five (35) days of receipt of the reviewing party of all of the required materials; failure of these reviewing parties to make recommendations after having received copies of all such required materials shall be deemed a lack of opposition thereto. In the event that the public hearing by the Planning Board is held prior to the expiration of the thirty-five (35) day period, the Planning Board shall continue the public hearing to permit the formal submission of reports and recommendations within that thirty-five (35) day period. The

Decision/Findings of the Planning Board shall contain, in writing, an explanation for any departures from the recommendations of any reviewing party

4 Other Information

The submittals and permits of this section shall be in addition to any other requirements of the Subdivision Control Law or any other provisions of this Zoning By-law To the extent permitted by law, the Planning Board shall coordinate the public hearing required for any application for a special permit for a CSD with the public hearing required for approval of a definitive subdivision plan

4367 BASIC MAXIMUM NUMBER OF LOTS, UNITS, AND BEDROOMS

The Basic Maximum Number shall be derived from a Yield Plan The Yield Plan shall show the maximum number of lots (or dwelling units) that could be placed upon the site under a conventional subdivision The Yield Plan shall contain the information required for a Sketch Plan as set forth above in Section 4366 The proponent shall have the burden of proof with regard to the Basic Maximum Number of lots (or dwelling units) resulting from the design and engineering specifications shown on the Yield Plan The allowable number of dwelling units within a CSD shall be as follows

1 In the case of single family residences, the maximum number of lots (or dwelling units) allowed in the CSD shall be the maximum number of lots (or dwelling units) that could be placed upon the site under a conventional subdivision,

2 In the case of multiple-family residences (with no more than two (2) bedrooms per dwelling unit), the allowable number of dwelling units shall not exceed one and a quarter ($1\frac{1}{4}$) times the allowable number of conventional lots,

3 In the case of age qualified residences (with no more than two (2) bedrooms per dwelling unit), the allowable number of dwelling units shall not exceed one and three quarter ($1\frac{3}{4}$) times the allowable number of conventional lots,

4 For every two (2) units of each type of residence classified as below market residences, with the determination of below market value made according to Executive Order 418 or any superceding order or legislation, one (1) additional unit of the same type may be added as a density bonus This density bonus shall not exceed ten (10%) percent of the basic maximum number,

5 An additional ten (10%) percent dwelling unit bonus shall be granted if the open space remains accessible to the public in perpetuity through either a full fee dedication to the Town or a conservation restriction with permanent access to the general public

For all CSD density calculations which result in a fractional number, only fractions equal to or greater than $\frac{1}{2}$ should be rounded up to the nearest whole number

4368 REDUCTION OF DIMENSIONAL REQUIREMENTS

The Planning Board encourages applicants to modify lot size, shape, and other dimensional requirements for lots within a CSD, subject to the following limitations

1 Lots having reduced area or frontage shall not have frontage on a street other than a street created by the CSD, provided, however, that the Planning Board may waive this requirement where it is determined that such reduced lot(s) will further the goals of this bylaw

2 At least fifty (50%) percent of the required setbacks for the district shall be maintained in the CSD unless a reduction is otherwise authorized by the Planning Board

4369 OPEN SPACE REQUIREMENTS

The amount of useable open space, percentage of useable open space allowed for recreational use and the minimum amount of natural vegetation in a CSD shall be determined by the size of the un-subdivided land area

For CSDs from five (5) to twenty-five (25) acres: A minimum of forty (40%) percent of the lot shall be useable open space A total of twenty (20%) percent of the useable open space can be used for recreational purposes Building lots within this group shall have a minimum of fifteen (15%) percent natural vegetation

****Webmasters Note:** The previous paragraph has been amended as per an update approved at a town meeting held on 12/8/03.

For CSD's from twenty-six (26) to fifty (50) acres A minimum of forty-five (45%) percent of the lot shall be useable open space A total of twenty (20%) percent of the useable open space can be used for recreational purposes Building lots within this group shall have a minimum of fifteen (15%) percent natural vegetation

For CSD's over fifty-one (51) acres A minimum of fifty (50%) percent of the lot shall be useable open space A total of twenty (20%) percent of the useable open space can be used for recreational purposes Building lots within this group shall have a minimum of fifteen (15%) percent natural vegetation

a The percentage of the minimum required open space that is wetlands shall not normally exceed the percentage of the tract which is wetlands, provided, however, that the applicant may include a greater percentage of wetlands in such open space upon a

demonstration that such inclusion promotes the purposes of this bylaw

b The open space shall be contiguous Contiguous shall be defined as being connected Open Space will still be considered connected if it is separated by a roadway or an accessory amenity The Planning Board may waive this requirement for all or part of the required open space where it is determined that allowing noncontiguous open space will promote the goals of this bylaw and/or protect identified primary and secondary conservation areas

c The open space shall be used for wildlife habitat and conservation and the following additional purposes historic preservation, education, outdoor education, recreation, park purposes, agriculture, horticulture, forestry, a combination of these uses, and shall be served by suitable access for such purposes Useable open space may include paved or unpaved pedestrian walks and bike paths

d Wastewater and stormwater management systems serving the CSD may be located within the open space Surface systems, such as retention and detention ponds, shall not qualify towards the minimum open space required

2 Ownership of the Open Space The open space shall, at the Planning Board's election, be conveyed to

a The Town or its Conservation Commission,

b A nonprofit organization, the principal purpose of which is the conservation of open space and any of the purposes for such open space set forth above,

c A corporation or trust owned jointly or in common by the owners of lots within the CSD If such corporation or trust is utilized, ownership thereof shall pass with conveyance of the lots in perpetuity Maintenance of such open space and facilities shall be permanently guaranteed by such corporation or trust which shall provide for mandatory assessments for maintenance expenses to each lot Each such trust or corporation shall be deemed to have assented to allow the Town to perform maintenance of such open space and facilities, if the trust or corporation fails to provide adequate maintenance, it shall grant the Town an easement for this purpose In such event, the town shall first provide fourteen (14) days written notice to the trust or corporation as to the inadequate maintenance, and, if the trust or corporation fails to complete such maintenance, the town may perform it, in which case the Trust or corporation shall be obligated to reimburse the Town Each individual deed, and the deed or trust or articles of incorporation, shall include provisions designed to effect these provisions Documents creating such trust or corporation shall be submitted to the Planning Board for approval, and shall thereafter be recorded

Which entity is the special permit granting authority for cluster/flexible zoning?

More than one entity Sharon Zoning Bylaws
ARTICLE II. DISTRICT REGULATIONS
2300. DISTRICT USE REGULATIONS
2315. Uses allowed on Special Permit (from the Board of Appeals except as indicated).
a. Residential Uses:
(1) Conversion to create one or more dwelling units, as specified at Section 4210.
(2) In Single Residence, Suburban and Rural Districts, municipal building conversion as specified at Section 4220 if authorized by the Board of Selectmen.
(3) Flexible Development under Section 4300, including (in Suburban Districts only) multifamily developments.
(4) Nursing homes.

4321. Applicants for a Special Permit for flexible development shall file with the Board of Appeals eight (8) copies of the following, to have been prepared by an interdisciplinary team including a registered land surveyor, a professional engineer and a registered architect or landscape architect.

4364 SPECIAL PERMIT REQUIRED
The Planning Board may authorize a CSD pursuant to the grant of a special permit Such special permits shall be acted upon in accordance with the following provisions

Has any housing been built under the cluster/flexible provisions?

Yes Town of Sharon Community Development Plan (Draft), May 2004, p. 36

"Conservation Subdivision Development (CSD) zoning is allowed in all residential zones except General Residence and the threshold for CSD projects was reduced in fall 2003 from 10 acres to 5 acres. . . . In practice, the zoning bylaw combined with market forces has resulted in single family homes, several luxury condominium developments, and a handful of CSD or cluster-style subdivisions. The two Suburban zoning districts are built out in condominium projects. Flexible Development appears to have been superseded by CSD, but both by-laws persist side by side."

Recommendations in the Town of Sharon Community Development Plan 2004:

"A. Make Conservation Subdivision Development the mandatory, by-right zoning for parcels of 5 acres or more.

The Town recently reduced the CSD threshold to 5 acres. However, CSD is still a special permit process and most developers prefer the path of least resistance and good profits, which is conventional subdivision development. Since the state legislature recently allowed cluster subdivisions to be a by-right use, Sharon can now make CSD the only by-right use for remaining parcels over 5 acres. This would encourage preservation of the most environmentally sensitive and most scenic elements of a site, as well as integration of open space with town recreational and open space networks. Because site plan review still applies, the Planning Board can still require the CSD Design Process, Concept Plan, and other aspects of the current by-law to make sure that the subdivision design meets the standards for a conservation subdivision.

B. Consider eliminating the Flexible Development By-Law as redundant.

The Flexible Development By-Law appears to be superseded by the CSD by-law, particularly if CSD is made a by-right use. The existence of both by-laws is potentially confusing and problematic. However, if one of the purposes of the Flexible Development by-law was to provide the option for the builder of even a single house to be able to site the building in a more environmentally and aesthetically pleasing way than by-right zoning would allow, then Flexible Development should be rewritten to reflect that objective. It should remain a special permit process subject to site plan review and the permitting and site plan processes should be consolidated in the Planning Board, rather than making the Board of Appeals the special permit granting authority."

Sherborn

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes The Town of Sherborn Zoning Bylaws, Section 4.6.2 Special Permit for Planned Unit Development (2004).

"Persons seeking to develop property as a Planned Unit Development may apply for a special permit under this Section 4.6 in accordance with General Laws Chapter 40A, Section 9. Applicants are strongly encouraged to meet with the Planning Board and other town boards informally prior to submitting an application for special permit. "

SECTION 4 DIMENSIONAL REGULATIONS (Amended 1975 and 1980)

4.5 Open Space Special Permit

(Added 1996)

4.5.1: Purpose

The purpose of this Section is to provide by special permit for an alternative to traditional subdivision development that preserves open space by permitting greater flexibility in site design than is otherwise allowed in this By-law for standard subdivision lots. The intent of this zoning provision to:

- encourage the conservation of open land for its scenic beauty and value to wildlife;
- preserve agricultural and forestry use of property;
- enhance recreational resources and use of property;
- protect ecological assets, including water supply wetlands, wildlife corridors, and uncommon geologic features;
- perpetuate the appearance of Sherborn's traditional small town New England landscape;
- promote better building location and overall site planning than may be possible under traditional zoning, while retaining standard setbacks from other properties not part of the Open Space Subdivision;

4.5.2 Special Permit for Open space Subdivision

Persons seeking to develop a parcel of land as an open space subdivision may apply for a special permit under this Section 4.5 in accordance with General Laws Chapter 40A, Section 9. Applicants are strongly encouraged to meet with the Planning Board and other town boards informally prior to submitting an application for special permit.

4.5.3 Minimum Requirements

a. Any parcel of land that is the subject of an application for special permit under this section must have

(i) at least four times the minimum area that would be required for a single family residence in the most restrictive zoning district in which all or any part of the parcel lies, and

(ii) no less than six acres;

b. Under this section, the Planning Board may, by issuing a special permit, vary the otherwise applicable dimensional requirements of this Zoning Bylaw, other than provisions as to height, provided that the Planning Board may not issue a special permit for a proposed Open Space Subdivision that shows any lot proposed for development with:

(i) a front yard setback of less than 30 feet;

(ii) an offset of less than 100 feet measured in a straight line between the principal building on one lot within the Open Space Subdivision and the principal building on an adjacent lot within the Open Space Subdivision;

(iii) frontage on a subdivision road or existing street of less than 50 feet;

(iv) a driveway that does not meet the requirements of the Sherborn driveway by-law, unless a waiver is granted pursuant to the terms of that bylaw;

(v) less than one acre in area.

c. The Planning Board shall not vary, and the proposed open space subdivision shall meet, all dimensional requirements pertaining to setback of structures from properties not included as part of the parcel proposed for open space subdivision.

d. With the exception of proposed subdivision ways and public access trails, sidewalks or bicycle paths, there shall be a 100 foot buffer left in its natural condition along any Scenic Road.

e. The Planning Board shall not approve a special permit under this section unless the proposed open space subdivision includes an Open space Parcel (as defined herein).

4.5.4 Planning Board as Special Permit Granting Authority

The Planning Board shall be the special permit granting authority for special permits authorized in this Section, and shall hear and decide all properly submitted applications in compliance with the time limitations and other procedural requirements specified in Chapter 40A of the General Laws, these Zoning Bylaws (including without limitation Section 6.2) and the Rules and Regulations of the Planning Board.

4.5.5 Contents of Application

An application for a special permit under Section 4.5 shall consist of:

(a) A locus plan clearly showing the location of the parcel with respect to all surrounding properties and streets, and containing thereon, the location of all lot lines, structures and driveways within 500 feet of the land that is the subject of the application.

(b) A preliminary subdivision plan prepared in accordance with the rules and regulations of the Sherborn Planning Board and showing a traditional subdivision or approval not required development meeting all dimensional requirements of the Sherborn Zoning By-law and all applicable requirements of the Sherborn Subdivision Regulations, and indicating thereon the number of Standard Subdivision Lots as defined in this section.

(c) An open space development plan consisting of one or more sheets showing:

i. all proposed building lots

ii. the location and configuration of the proposed Open Space parcel, and calculations demonstrating that the proposed Open Space Parcel satisfies the definition of an Open Space parcel in this section.

iii. building envelopes for all proposed principal and accessory structures with a footprint in excess of 250 square feet on the building lots, and a statement of the intended height and bulk of each proposed structure, and the number of bedrooms and maximum square footage for each proposed residence

iv. proposed setbacks to all lot lines

v. street layout for all proposed subdivision ways

vi. the location of existing and proposed driveways, bicycle paths, sidewalks and walkways

vii. topography, both existing and proposed, at two foot intervals.

viii. the location and results of all deep hole and percolation tests ix. the location of all proposed wells and components of proposed subsurface disposal systems, and existing wells and components of subsurface disposal systems on or within 500 feet of the

subject parcel.

x. the location of all components of any proposed fire protection system (e.g. storage tanks, dry hydrants, emergency access easements)

xi. the location (both existing and proposed to be retained) of wooded areas, wetland and buffer zone areas, stone walls, easements proposed or of record, trails or paths, and the location of any trees over 12 inches in diameter proposed for removal;

xii. the location of any existing or proposed landscaping for the purpose of visually distinguishing and enhancing the privacy of individual development lots.

(d) A brief written statement comparing the effect of the proposed open space development to the traditional development that could be build on the parcel, in terms of expected impact on tax base, town services, schools, traffic, wetlands, groundwater, views from public ways and lands, historic structures, recreational, wildlife, agricultural and forestry uses of land, and other relevant and applicable subjects.

(e) such other information and materials as the Planning Board may, in its discretion, require by regulation

The Planning Board may, upon request of an applicant, and for good cause shown, waive or modify any requirement of this subsection in connection with a particular application.

4.5.6 Filing of Application

Seven copies of applications for Special permit under this Section shall be prepared and filed with the Town Clerk as follows:

a) One (a) copy for the records of the Town clerk as required under Chapter 40A, Section 9 of the General Laws;

b) Three (3) copies for the Town Clerk as the filing agent for the Planning Board

c) One (1) copy for the Town Clerk as the filing agent for the Board of Appeals;

d) One (1) copy for the Town Clerk as the filing agent for the Board of Health;

d) One (1) copy for the Town Clerk as the filing agent for the Conservation Commission.

Immediately upon receipt of an application under this section and the filing fee associated therewith, the Town clerk shall transmit three (3) copies to the Planning Board, one (1) copy to the Board of Appeals, one (1) copy to the Board of Health, and one (1) copy to the Conservation Commission.

4.5.7 Review and Comment by Advisory Boards

The Board of Appeals shall review all applications under this section. The Board of Appeals shall make such recommendations on each application as it deems appropriate, and shall send copies thereof to the Planning Board and the applicant. Board of Appeals review shall be advisory and not directive. the failure of the Board of Appeals to make written recommendations within thirty-five (35) days of its receipt of an application shall be deemed to be lack of opposition thereto by the Board of Appeals.

The Conservation commission shall review all applications under this section for the purpose of advising the Planning Board as to what portion of the parcel is subject to jurisdiction under the Wetlands protection Act and the Sherborn Wetlands By-law. The Conservation Commission may provide such additional comment to the Planning Board as it deems appropriate. Conservation commission review shall be advisory and not directive. Such review by the Conservation Commission shall not substitute for or represent a waiver of the exercise of the Conservation commission's jurisdiction under other applicable laws and regulations.

The Board of Health shall review all applications under this section for the purpose of advising the Planning board on the number and location of lots shown on the standard preliminary subdivision plan required under 4.5.5(c) that could be developed on the parcel under applicable regulations of the Sherborn Board of Health and Title 5 of the Massachusetts Department of Environmental Protection regulations (310 C.M.R. 15.000). The Board of Health may provide such additional comment to the Planning Board as it deems appropriate. Board of Health review shall be advisory and not directive. Such review by the Board of Health shall not substitute for or represent a waiver of the exercise of the Board of Health's jurisdiction under other applicable laws and regulations.

The Planning Board may, by regulation or otherwise, solicit the comment of other town officials or boards prior to or during the public hearing on the special permit application.

4.5.8 Relationship to Subdivision Process

Planning Board approval of a special permit hereunder shall not substitute for compliance with the Subdivision control Law, nor oblige the Planning Board to approve any related definitive plan for Subdivision, nor reduce any time periods fro Planning Board consideration under the law. However, in order to facilitate processing, the Planning Board, insofar as practicable and allowed by law, may adopt regulations, establishing procedures for submission of a combined plan and application which shall satisfy this section and the Board's regulations under the Subdivision Control Law.

4.5.9 Standard for Issuance of Special Permit

A special permit under this section shall be approved only if the requirements of Section 6.1 and 7.2.3.c of this Bylaw are met and if the Planning Board further determines that:

- a. The proposed open space subdivision meets all the requirements of this section.
- b. The proposed open space subdivision is in harmony with the general purpose of this By-law, will further the purpose of this Section, and is superior for the Town in that regard to a conventional development plan.
- c. The creation of the development according to the plan will not result in a detrimental impact to the neighborhood or the Town, and such development is designed with due consideration for health and safety factors.

4.5.10 Conditions

- a. Any special permit issued under this section shall include as a condition the requirement that prior the clearing of vegetation, the issuance of a building permit for, or the commencement of any construction of buildings, or other improvements within the Open space Subdivision, the Open space parcel be deeded in fee to the Town of Sherborn for open a space use, or to a corporation or trust owned by the owners of lots within the open space Subdivision with a permanent conservation restriction imposed thereon for the benefit of the public in accordance with General Laws Chapter 184, Sections 31-33, and G.L. c. 40A, Section 9.
- b. Any special permit hereunder shall include as a condition the requirement that no lot in the Open Space Subdivision may be further divided or subdivided.
- c. A Special permit issued under this section shall incorporate such additional conditions as are appropriate to further the purposes of this by-law. Without limiting the foregoing, the Planning board shall impose such conditions as may be necessary to ensure that the number, type, size, arrangement, and design of proposed residences in the open space subdivision are suitable for the neighborhood within which it is to be located.

4.5.11 Definitions

The following definitions apply to this section of the Zoning By-law only

- i. Open Space Parcel: A parcel proposed for preservation as open space containing contiguous undeveloped land amounting to at least 40 percent of the total area of the parcel that is the subject of the application, at least half of which 40 percent minimum is Upland Area. such parcel shall be of a size, configuration and location having value to the public and the Town for purposes of preserving or creating agricultural, open space, forestry or recreational resources (including linkage to adjacent public lands or trails), water supply, wetlands, scenic beauty, wildlife protection, wildlife corridors, or similar public purpose.
- ii. Standard Subdivision Lot: A lot meeting all applicable dimensional and frontage requirements of Sections 4.2 and 4.3 of the Sherborn Zoning By-law without variance, special permit or exception, containing in the determination of the Planning Board with the advice of the Conservation commission, sufficient Upland Area with slope of less than 12 percent to provide for a building envelope of at least 100 feet by 100 feet and uninterrupted access thereto from an existing or proposed street or way which is at least 20 feet wide, and having suitable soils of sufficient area extent to accommodate an individual subsurface disposal system for a house under the applicable regulations of the Sherborn Board of Health and Massachusetts department of environmental Protection.
- iii. scenic Road: any of the roads that have been or are hereafter designated by the Town pursuant to M.G.L. Chapter 40, Section 15C.
- iv. Upland Area: Area not subject to the jurisdiction of the Conservation Commission under the Massachusetts Wetland Protection Act, but which may include buffer zone to such protected area.

The Town of Sherborn Zoning Bylaws, Section 4.6.3 Minimum Requirements (2004):

"(a) No property shall be the subject of an application for a special permit under this section unless at least 25% of such property is within the Business G or Business P districts and unless such property is at least sixty thousand square feet in total area and has frontage within a Business G or Business P district."

Survey received from Sherborn on 3/28/05:

What year was the first provision for flexible zoning adopted?

"1996"

What was the last year that the municipality amended the cluster/flexible provision?

"n/a"

Can more units be built under cluster/flexible zoning than would be allowed through conventional zoning?

"No"

What types of structures are allowed under cluster/flexible zoning?

"Single-family detached"

Has any housing been built under the cluster/flexible provisions? (none, 1-8 projects, more than 8)

"None"

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board The Town of Sherborn Zoning Bylaws, Section 4.6.2 Special Permit for Planned Unit Development (2004).

"Persons seeking to develop property as a Planned Unit Development may apply for a special permit under this Section 4.6 in accordance with General Laws Chapter 40A, Section 9. Applicants are strongly encouraged to meet with the Planning Board and other town boards informally prior to submitting an application for special permit. "

From ordinance.com:

4.5.4 Planning Board as Special Permit Granting Authority

The Planning Board shall be the special permit granting authority for special permits authorized in this Section, and shall hear and decide all properly submitted applications in compliance with the time limitations and other procedural requirements specified in Chapter 40A of the General Laws, these Zoning Bylaws (including without limitation Section 6.2) and the Rules and Regulations of the Planning Board.

Has any housing been built under the cluster/flexible provisions?

No Survey received from Sherborn on 3/28/05:

Has any housing been built under the cluster/flexible provisions? (none, 1-8 projects, more than 8)

"None"

Shirley

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes According to the Zoning Schedule, cluster residential housing can be built in all four residential zones in Shirley with a special permit granted by the planning board.

Shirley Zoning Bylaw

4.2 Cluster Residential Housing - Special Permit

Definition of Cluster Residential Housing (CRH) as follows:

Under Massachusetts General Law (MGL), Chapter 40A, Section 9, a CLUSTER DEVELOPMENT shall mean a "residential development in which the buildings and their accessory uses are clustered together into one or more groups separated from adjacent property and from other groups within the development by intervening open land". To achieve the above, one or more residential clusters of greater local density than is otherwise permitted will be allowed, in a manner which creates an overall average density for the tract as a whole no greater than would occur under conventional subdivision development of the same tract. The land

not included in the building lots shall remain as open space.

4.2.1 Applicability

Single tracts of land in one ownership consisting of ten (10) acres or more in the R-R district, or six (6) acres or more in the R-1, R-2, and R-3 districts, and to contain more than four (4) principal dwelling buildings, may be developed as Cluster Residential Housing (CRH) in place of the standard subdivision.

Development under this section requires a special permit and may also require subdivision approval under MGL, Ch. 41, by the Planning Board, as well as compliance with all requirements, provisions and conditions of the Shirley Zoning Bylaw.

4.2.2 Purpose

- a. To encourage the more efficient and economical use of land in harmony with its natural features, while preserving the overall density and the rural and historical character of the Town;
- b. To encourage the protection preservation of natural resources, including public and private groundwater supply;
- c. To encourage maximum flexibility and creativity in the design of developments;
- d. To encourage a less sprawling form of development with a shorter network of streets and utilities and other similar public installations, more rational development of land with less consumption of open space and focused on those portions most suitable for construction;
- e. To preserve to a maximum extent natural topography and woodlands, and to provide open land for conservation, agricultural, and outdoor recreational uses and recreational facilities close to homes;
- f. To implement the intent of the Town's Master Plan and Open Space Plan;
- g. To provide a more efficient procedure to ensure appropriate high quality design and site planning to enhance the neighborhood in which the development occurs and the Town as a whole;
- h. To promote diverse housing with consideration of size, cost, and other factors;
- i. To provide small residential communities within Shirley with opportunity for mutual support and shared responsibilities, yet with direct access to open land.

4.2.3 Use and Dimensional Standards

- a. The shape, dimensions and other aspects of the tract shall be sufficient to provide for open land, at least one cluster, and meet all other requirements of this section and of the Shirley Zoning Bylaw.
- b. A one-family detached dwelling, a two-family detached dwelling (duplex), or a multi-family dwelling or other lawful accessory building may be constructed on certain lots in a cluster development (as herein defined and limited) although such lots have less area, frontage, and/or rear and side yard dimensions than required under sections 3.1 and 4.1 above. Lots may be reduced in area from the minimum standard size requirement of the zoning district in which the tract is located, as approved by the Planning Board.
- c. Dwellings, accepted recreation facilities serving the development, maintenance facilities, accessory uses and facilities incidental to the principal uses may be situated on a single lot or on separate lots or on open land as approved by the Planning Board.

4.2.4 Maximum Number of Dwelling Units

The maximum number of dwelling units allowed on any tract shall be equivalent to the number of buildable lots into which the tract could be divided under normally applicable zoning and subdivision regulations within the given density zone, considering the whole tract, exclusive of water bodies, wetlands, and land prohibited from development by legally enforceable restrictions, easements or covenants. As used herein a buildable lot shall also contain sufficient and suitable percapable area to site an in-ground septic disposal system. The number of dwelling units in multi-family cluster shall be as herein or as computed pursuant to Section 4.1 or a per building basis, whichever is less.

These buildable lots shall be shown on a preliminary "paper" subdivision plan conforming to the requirements of the Town of Shirley's "Subdivision Rules and Regulations". Such Preliminary Plan shall include a perimeter survey prepared by a registered land surveyor, location of wetlands delineated by a botanist or by the Shirley Conservation Commission and topography based on the most recent USGS map. The applicant shall demonstrate to the satisfaction of the Board and its consultants that the "paper" plan is "buildable" without extraordinary engineering techniques. The Board's determination of the Basic number of units shall be conclusive for all purposes.

4.2.5 Dimensional Requirements

- a. See footnote (1) under Section 3.1;

b. A single cluster within any development shall be limited to a maximum of eight (8) multi-family or two-family principal buildings or sixteen (16) single family houses;

c. No building shall be more than thirty-five (35) feet in height;

d. A buffer zone of open land shall be maintained between building clusters and abutting land outside the project. A buffer shall also be left in its natural state or suitable landscaped to provide adequate screening toward the existing street. These buffer zones shall be maintained as dedicated open land or as privately owned lots with a fifty (50) foot depth in the R-R and R-1 districts and a forty (40) foot in the R-2 and R-3 districts. Minimum distance between all principal buildings shall be thirty (30) feet, and between each group of abutting clusters there shall be seventy-five (75) feet;

e. Each lot shall be of a size and shape as shall provide a building site which shall be in harmony with the natural terrain and other features of the tract, provided that in no case shall the access frontage on a subdivision road be reduced below seventy-five (75) feet in the R-R district and fifty (50) feet in the R-1, R-2 and R-3 districts, and not less than forty (40) feet on turning circles or dead end streets in all zoning districts. There shall be no access to individual lots from existing public way;

f. The front, side and rear yards of each lot shall be shown on said plan by dashed lines indicating the area within which a building may be built;

g. Any parts of the tract lying within a W-1 or W-2 Water Overlay District zone shall not be built upon.

4.2.6 Design Requirements

a. Vehicular and Pedestrian Circulation: primary routes shall be clearly differentiated from secondary routes and driveways; conflicts shall be minimized between vehicular routes and pedestrian routes and recreation areas;

b. Screening: layout and design shall respond to needs for visual and audible privacy between and around dwelling units, and in all required buffer zones;

c. Utilities and Services: utility lines shall be underground. Dumpsters shall be located in convenient locations, visually screened, and shall not impede pedestrian or vehicular circulation. The installation and location of drainage systems shall not impede access to common land;

d. Protection of Environmentally Sensitive Areas: for the protection of aquifers, wetlands, or other environmentally sensitive areas, the Board may reduce the number of units otherwise allowed;

e. Building Siting: the Planning Board shall review and approve the sites of all buildings, structures, driveways and parking areas for each lot and may establish footprints for all buildings within a cluster project. Privacy between units shall be a consideration;

f. The housing shall be planned and developed to harmonize with any existing or proposed development in the area surrounding the project site;

g. Treatment of the sides and rear of all buildings within the development shall be compatible in amenities and appearance to the treatment given to street frontages of these same buildings;

h. The architectural theme of a multi-family building shall be carried out by use of compatible building materials, color, exterior detailing, bulk and articulation of roof lines to reduce scale and maintain compatibility with surrounding single family dwellings;

i. No dwelling unit in any building of three (3) or more dwelling units shall be designed, constructed or altered to have more than three (3) bedrooms.

4.2.7 Landscape Design Standards

a. A maximum of one-third (1/3) of the Residential Cluster Development, exclusive of dedicated common open land may be covered by impervious surface;

b. Whenever appropriate, existing trees and vegetation shall be preserved and integrated into the landscape design plan. Suitable indigenous shrubs and other plant material may be used for screening;

c. Whenever possible, the existing terrain shall be preserved and earth moving or removal shall be kept to a minimum;

d. For active recreation areas, the Planning Board may require a fifty (50) foot buffer zone around such area(s);

e. Lands used as buffers may be retained as common open space or as private open space subject to a deed restriction.

4.2.8 Road, Parking and Circulation Standards

a. Roads must be constructed to the standards established by the Subdivision Regulations of the Planning Board except as may be specifically waived by said Board;

b. There shall be adequate, safe and convenient arrangement of pedestrian circulation facilities, roadways, driveways and off-street parking;

c. Off-street parking shall conform to the provisions of Section 5 of the Zoning Bylaw;

d. Parking facilities shall be designed with careful regard to arrangement, topography, landscaping, ease of access, and shall be developed as an integral part of an overall site design.

4.2.9 Common Open Space

a. Provision shall be made so that at least thirty-five (35) percent of the land area shall be open land and that open land shall include all land not dedicated to parking, roads or individual lots;

b. Areas which are considered by the Planning Board as marginal or unsuitable for building may be included in the permanent open space; but, not more than thirty-five (35) percent of the required open space shall consist of such marginal or unbuildable areas. At least ten percent (10%) shall consist of land suitable for recreational purposes;

c. Open spaces may be utilized as natural courses for disposal for storm drainage on the sites. No conditions shall be allowed which are likely to cause erosion or flooding of any structures;

d. Such open space may be in one or more parcels of a size and shape appropriate for its intended use as determined by the Planning Board, and shall be within easy access to all residents of the Residential Cluster development.

4.2.10 Ownership of Common Open Space

a. The open land, and such other facilities as may be held in common shall be conveyed in one of the following manners, as approved by the Planning Board:

1. To a corporation or trust comprising a homeowner association whose membership includes the owners of all lots or units contained in the tract. The developer shall include in the deed to owners of individual lots or units beneficial rights in said open land, and shall grant a conservation restriction to the Town of Shirley over such land pursuant to MGL, Ch. 184, Sec. 31-33, to insure that such land be kept in an open or natural state and not be built upon for residential use or developed for accessory uses such as parking or roadways. This restriction shall be enforceable by the Town through its Conservation Commission in any proceeding authorized by MGL, Ch. 184, Sec. 33. In addition, the developer shall be responsible for the maintenance of the common land and any other facilities to be held in common until such times as the homeowners association is capable of assuming said responsibility. In order to ensure that the association will properly maintain the land deeded to it under this section, the developer shall cause to be recorded at the Middlesex Registry of Deeds a Declaration of Covenants and Restrictions which shall, at a minimum provide the following:

a. Mandatory membership in an established homes association, as a requirement of ownership of any lot in the tract;

b. Provisions for maintenance assessments of all lots or units in order to ensure that the open land is maintained in a condition suitable for the uses approved by the homes association. Failure to pay such assessment shall create a lien on the property assessed, enforceable by either the homes association or the owner of any lot;

c. Provision which, so far as possible under existing laws, will ensure that the restrictions placed on the use of the open land will not terminate by operation of law;

d. The right of the homeowners association to limit open space to its members.

2. To a non-profit organization, the principal purpose of which is the conservation of open space. The developer or charity shall grant a conservation restriction as set out above. Maintenance will be the responsibility of the recipient organization;

3. To the Town for park or open space use, subject to the approval of the Selectmen for management by the Conservation Commission, with a trust clause insuring that it be maintained as open space.

4.2.11 Other Open Space Uses

Subject to the above, the open space may be used for recreational purposes including golf courses, riding trails, tennis courts, gardens and swimming pools. The Board may permit open land owned by a homeowners association to be used for individual septic systems, or for communal septic systems if it, and the Board of Health, are convinced that proper legal safeguards exist for proper management of a communally owned system. The Planning Board shall require adequate insurance and covenants that such facilities shall be maintained by the unit owners.

4.2.12 Driveways

Driveways shall be owned and maintained by the homeowners association, otherwise by individual unit owners served by those driveways.

4.2.13 Further Requirements in Clustered Residential Housing

- a. No use other than residential or recreational shall be permitted;
- b. No lot shown on a plan for which a permit is granted under this section may be further subdivided, and a notation to this effect be shown upon the plan;
- c. No certificate of occupancy shall be issued by the Building Inspector until he has certified to the Planning Board that the premises have been built according to the plan approved by the Board hereunder;
- d. The Planning Board may impose other conditions, safeguards, limitations on time and use, pursuant to its regulations;
- e. Except insofar as the subdivision is given five (5) years' protection under MGL, Ch. 40A, Sec. 6, the Special Permits granted under this section shall lapse within two (2) years excluding time required to pursue or await the determination of an appeal from the grant thereof, if a substantial use has not sooner commenced or if construction has begun, except that the Planning Board may grant an extension for good cause;
- f. Subsequent to granting of the permit, the Planning Board may permit relocation of lot lines within the individual cluster. However, any change in overall density, street layout or open space layout will require a further hearing;
- g. Except as specified in a Special Permit granted under this section, all requirements of the Zoning Bylaw shall be in full force and effect;
- h. In the interest of water supply protection, the Planning Board may impose, on a case-by-case basis, specific design and/or performance standards necessary to ensure that the proposed use is in harmony with the stated purposes of this Bylaw. Periodic monitoring may be required by the Board as a condition of the Special Permit. Such monitoring may include sampling of the wastewater disposed to on-site septic systems or drywells and sampling from ground water monitoring wells to be located and constructed as specified in the Special Permit. Reports shall be submitted to the Planning Board and to the Board of Health annually, and the costs shall be borne by the owners of the premises.

4.2.14 Procedure

To afford the Town of Shirley ample assurance that such developments will enhance the amenities of the neighborhoods in which they occur, and the Town as a whole, Cluster Residential Housing may only be constructed under a Special Permit granted by the Planning Board as hereinafter defined.

Applications for a Cluster Development Special Permit shall be submitted in accordance with the requirements specified below:

1. Preview: before submitting a formal application for a Special Permit under this article, the applicant is encouraged to meet informally with the Planning Board, Board of Health and the Conservation Commission together or separately to present informally the general concept of the development, and hear the concerns of the Town that should be considered in the design of the development;
2. Filing Application: Each application for a Special Permit to cluster shall be filed with the Planning Board, with a copy filed forthwith with the Town Clerk, and shall be accompanied by twelve (12) copies of the plan of the entire tract under consideration, prepared by a registered professional architect, engineer or landscape architect. The Planning Board requires a separate filing under its subdivision control law where necessary. A Special Permit issued hereunder by the Planning Board shall not be a substitute for compliance with the Planning Board Rules and Regulations or the Subdivision Control Act. However, in order to facilitate processing, the Planning Board may accept a combined plan and application which shall satisfy this section, the Planning Board Rules and Regulations and the Subdivision Control Act.

4.2.15 Contents of Application

The application and plan shall be prepared in accordance with the requirements for a subdivision plan in the Rules and Regulations of the Planning Board governing subdivision of land, whether or not the development constitutes a subdivision and shall include proposed location, bulk, and height of all proposed buildings. The applicant shall provide the following:

- a. The "paper" plan as specified in 4.2.4 above;
- b. A cluster plan indicating the location of proposed buildings, roads, driveways, parking, drainage, reserved open space, wells, on-site sewage disposal facilities, grading, wetlands, areas of retained vegetation and perimeter buffer areas and planting;
- c. An analysis of the site, including wetlands, slopes, soil conditions, areas within the Hundred Year Flood, trees over eight (8) inches diameter in the development area and such other natural features as the Planning Board may request;
- d. Sketch floor plans and architectural elevations of typical dwellings proposed, including building material, building and site landscaping, streets, drives and parking provisions;
- e. Drafts of any proposed deeds, easements and/or restrictions including:
 1. Proposed deed for transfer of dedicated land in fee simple to the municipal/state/federal/or private non-profit organization; or

alternately,

2. Proposed covenants and restrictions as detailed in Sec. 4.2 to secure the permanent legal existence of dedicated open land. Approval of a cluster development plan shall require the approval by the Planning Board of said covenants or restrictions.

f. An environmental impact analysis related to the proposed plan, as defined by the Planning Board's Subdivision Rules and Regulations for a subdivision plan;

g. A description of the neighborhood in which the tract lies, including utilities and other public facilities, and the impact of the proposed plan upon them;

h. Evaluation of the dedicated open space proposed within the cluster development, with respect to size, shape, location, access, natural resource value and accessibility by residents of the development or the Town;

i. Anticipated marketing and construction schedules;

j. Management program outlining the community organization, if any, and the transition procedure from developer management to community association management

k. Appropriate documentation demonstrating the applicant's right to develop the property;

l. Engineering data showing effects both on and off site of the proposed development on natural recharge of the groundwater, yield from abutter's private wells and quality of surface and groundwater. Information on impact on groundwater quality should include data on groundwater runoff, recharge, background water quality, on-site septic systems and other on-site operations, including use of pesticides, fuel, toxic materials, hazardous materials and fertilizers used in conjunction with the proposed development;

m. The Planning Board may at its discretion modify some of the requirements of Section 4.2 which could be detrimental to design flexibility related to a specific site, or might be excessive on small projects;

n. Review by other boards: before acting upon the application, the Board shall submit plan documents to related boards, which may review it jointly or separately, including the Board of Health, and the Conservation Commission. Any such board or agency to which petitions are referred for review may submit such recommendations as it deems appropriate to the Planning Board. Failure to make recommendations within thirty-five (35) days of receipt shall be deemed lack of opposition;

o. Public Hearing: the Planning Board shall hold a hearing under this section, in conformity with provisions of the MGL, Ch. 50A, Sec. 9, and of the Zoning Bylaw and regulations of the Planning Board. The hearing shall be held within sixty-five (65) days after filing of the application and plans with the Board and the Town Clerk. Notice shall be given by publication, posting and by first-class mailings to parties in interest as defined in MGL, Ch. 40A, Sec. 11. The decision of the Board and any extension, modification or renewal thereof, shall be filed with the Board and Town Clerk within ninety (90) days following the closing of the public hearing. Failure of the Board to act within ninety (90) days shall be deemed a grant of the Special Permit. Issuance of the Special Permit requires approval by vote of four (4) voting members.

p. Findings of the Board:

1. The Board may grant a Special Permit for a Cluster development project under this section only if it finds that the applicant has demonstrated the following: that the cluster plan will be in harmony with the general purpose of the Zoning Bylaw and meets all its relevant requirements as well as those of MGL, Ch. 40A, and the Shirley Master Plan; that it will not have a detrimental impact on the neighborhood, will be designed with due consideration for health and safety, and is superior to a conventional plan in reserving open space, minimizing environmental disruption, allowing for more efficient provisions of services, or allowing for greater variety in prices of types of housing, including affordability;

2. In connection with issuing or denying a Special Permit under this section, the Planning Board shall issue to the applicant and shall file with the Town Clerk a written decision which shall include:

a. Reference to the proposed cluster development application and its plans;

b. A finding that the plan is or is not in harmony with the purposes and intent of the Zoning Bylaw, especially this section;

c. A list of any conditions imposed by the Planning Board.

3. Reasons, if any, of the Planning Board disagreement with the recommendations of the Conservation Commission or the Board of Health;

4. No building permit shall be granted for any building in the cluster development until all documents required, including prepared deeds, easements, covenants, and/or restrictions have been submitted to and approved by the Planning Board: and further that all documents including the Special Permit and Definitive Plans, if any, have been recorded in the Registry of Deeds and proof of the recordings furnished to the Planning Board.

Survey received from Shirley (5/2005) completed by Susan Snyder, Board Assistant:

What was the last year that the municipality amended the cluster/flexible provisions?

"2005"

Can more units be built under cluster/flexible zoning than would be allowed through conventional zoning?

"Yes"

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board According to the Zoning Schedule, cluster residential housing can be built in all four residential zones in Shirley with a special permit granted by the planning board.

Has any housing been built under the cluster/flexible provisions?

Yes Survey received from Shirley (5/2005) completed by Susan Snyder, Board Assistant:

Has any housing been built under the cluster/flexible provisions? (none, 1-8 projects, more than 8)

"1-8 projects"

Shrewsbury

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Town of Shrewsbury Zoning Bylaw (Adopted 1967, Amended 2004)

**SECTION VII - DEVELOPMENT OF SITES AND
LOCATION OF BUILDINGS AND STRUCTURES**

J. Cluster Development: (amended 11/13/2001) 70

1. Purpose a. Intended as an alternative to conventional subdivision. b. To provide for the public interest by the preservation of open space and natural landscape features in perpetuity. c. To promote variety in single-family and multi-family residential housing patterns. d. To encourage development designed to accommodate a site's physical characteristics such as: topography, vegetation, water bodies, wetlands, open spaces such as farmlands and meadows, major scenic views and wildlife habitats. e. To encourage the preservation of important site features. f. Not intended to make undevelopable land developable. 2. Definition Cluster Development: A division of land into lots used, or available for use, as building sites where said lots are clustered together into one or more groups, separated from adjacent property and other groups of lots by intervening "common" land. 3. Application In all residential zoning districts the Planning Board may grant a special permit for any tract of land of not less than five (5) acres or more to be subdivided as a cluster development, for single family detached dwellings and multi-family dwellings, subject to the requirements and conditions of this section. Each application for the preliminary plan, definitive plan and special permit for a Cluster Development shall be filed with the Town Clerk along with 10 copies of required plans and supporting information. The Planning Board shall submit the plans and information with other boards and individuals of its choosing, and any such board or individual shall submit such recommendation as it deems appropriate to the Planning Board. 4. Submission Requirements a. Step One: Preliminary Plan The preliminary plan shall consist of: 1. A description of the overall development plan. 2. A Sketch Plan shall show development of the parcel as a conventional subdivision. 71 3. Must be prepared by a registered Landscape Architect and a Professional Engineer. 4. Show existing landscape features (including steep topography, wetlands and water resources, rock outcroppings, boulder fields, stone walls, cliffs, forest glades, drumlins, high points, hill tops and ridges). 5. Show existing open areas (including farm fields, meadows, and major long views). 6. Shows important natural, cultural and scenic features. This plan shall analyze the site's relation to adjacent land, such as the potential for linkages or public access. b. Step Two: Definitive Plan 7. The plan must be in accordance with the Shrewsbury Subdivision Rules and Regulations. 8. The applicant can request waivers from the Subdivision Rules and Regulations if such an action is in the public interest and is consistent with the intent and purposes of the Cluster Bylaw. 9. A public hearing is held (the second) for the Definitive Plan and Special Permit. 10. There shall be no substantial variation from the Preliminary Plan, except as authorized or recommended by the Planning Board. A public hearing is held for the Preliminary Plan. After the Planning Board

renders a decision based upon the Preliminary Plan, the applicant shall then file both a Special Permit application and a Definitive Plan application. c. Decision: The Planning Board shall hold a public hearing within 65 days after the filing of the Definitive Plan and render its decision within 90 days following the close of the public hearing in conformity with the provisions of M.G.L. Ch. 40A, §§ 9 and 11. In order to facilitate processing, the Planning Board may adopt Rules and Regulations, insofar as practicable, combining procedures which satisfy this section and the Board's regulations under the Subdivision Control Law. 5. Number of Dwelling Units Permitted The number of dwelling units permitted shall be the lesser of the two following methods; but in no case less than the number of lots developable on a subdivision under the Subdivision Rules and Regulations. 72

1. The number of lots developable on the definitive plan under the Subdivision Rules and Regulations plus fifteen (15) percent. 2. The maximum number of dwelling units permitted shall equal the "Net Usable Land Area" within the tract divided by the minimum lot area requirement specified in Table II for the existing zoning district in which the tract is located. Net Usable Land Area shall equal the lesser of: a. 70% of the gross tract area, or b. 75% of the gross tract area, minus 100% of all water bodies; and 75% of the land lying below the one hundred year flood elevation, land subject to M.G.L. Ch. 131 § 40 (wetlands), and land having slopes in excess of 15%. These calculations shall be submitted with the request for the Special Permit. 6. Minimum Lot Area and Frontage Cluster developments shall be permissible in all residential zoning districts and all lots therein shall have a minimum lot area of 12,500 square feet and a minimum lot frontage of 80 feet. Lots located on the turnaround of a dead-end street shall have a minimum of fifty (50) feet of street frontage providing a front building line is designated on the Plan for such a lot and the width of the lot at this building line is at least equal to the frontage requirement above. 7. Yard Requirements a. Front yards may be staggered to provide a variety in the size of such yards. The minimum average of all front yards shall be twenty-four (24) feet; however, no front yard shall be less than eighteen (18) feet. b. Side yards shall be a minimum of ten (10) feet each. c. Rear yards shall be a minimum of thirty (30) feet, except along the boundaries of the tract, the rear yard shall not be less than the minimum requirement for the district. d. The front, side and rear setback lines shall be shown on the definitive subdivision plan. 8. Open Space Criteria, Ownership and Management a. At least 40 percent of the total area of the tract shall be designated as common land, and except as provided below, shall not be covered with buildings, roads, driveways,

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or parking areas. No more than twenty-five (25) percent of the common land shall be wetland or land lying below the one hundred year flood elevation. b. The common land shall consist of contiguous parcels of land that have the maximum value for wildlife habitat, aquifer recharge, riparian protection, scenic value, historic & cultural value and where possible, shall provide a connection to adjacent open space. Furthermore, the common land shall consist in the form of one or more contiguous open spaces and not several small fragments of land. The Town shall not maintain the landscaping and signage at the subdivision's entrances. Any improvements to the subdivision entrances that are located within the right-of-way, open space or common land, that includes signage, lighting, landscaping and street furniture, shall be removed prior to acceptance by the Town. c. All open space must be conveyed to: 1. The Town and accepted for park or open space use; 2. To a non-profit corporation whose principal purpose is the conservation of open space; 3. The corporation or trust owned by the lot owners within the development, ownership shall pass with the conveyance of the lot. Land not conveyed to the town: 1. Must be placed under a conservation restriction enforceable by the Town; 2. The applicant shall include as part of the covenant, a provision that the common open space will be deeded as approved by the Planning Board; and, 3. The applicant must include in their Cluster application a program describing how the common open space will be maintained in perpetuity, including an agreement empowering the Town to perform maintenance (paid for by the lot owners) in the event of failure to comply with the program. d. A maximum of twenty (20) percent of the common land may be devoted to paved areas and structures used for, or accessory to, active recreational uses provided such uses are located and operated in such a manner as not to disturb the neighborhood. e. All entryways into the Common Land shall be designated with an appropriate sign that shows the shape and outline of the area. f. At least twenty-five (25) percent of the required common land shall be of a shape, slope, location and condition as are suitable for use as an informal field for group play or sport. 74

g. Perimeter buffer strips shall not be counted towards the required open space calculation. 9. Findings of the Planning Board The Planning Board may grant a special permit for a Cluster Development only if the Board finds that: a. The development helps to preserve open space, conserve important ecological features, and minimizes environmental disruption of the land. b. Diversity and originality in lot layout and street systems achieves an harmonious relationship between the development and the land. c. The common land is of such shape and character as to be well-suited for its intended use, and is appropriately located in relation to topography and places of residence as to be easily accessible to all residents of the development. d. The proposed use will not have a substantial or undue adverse effect upon adjacent property, the character of the neighborhood, utility facilities, and other matters affecting the public health, safety and welfare. 10. Revision of Lot Lines Subsequent to granting of the special permit and approval of a Definitive Plan of a subdivision, the Planning Board may permit relocation of lot lines within the development. However, any change in the number of lots, lines of streets, common land, its ownership or use, or any other conditions stated in the original special permit shall require a new special permit. 11. Design Guidelines In evaluating the layout of lots and common land, the following criteria will be considered by the Planning Board as indicating design appropriate to the natural landscape and meeting the purpose of cluster development. Development Standards for the Preliminary Plan • The street system provides for the safe and convenient movement of vehicles on and off the site and is designed to contribute to the overall aesthetic quality of the Development. • The pedestrian circulation system is designed to assure that pedestrians can move safely and easily on the site and between properties and activities within the site and neighborhood. 75

• The maximum number of house lots compatible with good design about the common land, and all house lots have reasonable access to the common land. • Landscaping screens areas of low visual interest, such as utility boxes, trash containers, and parking areas, and treats pedestrian systems and open space areas in a manner which contributes to their use and visual appearance. • The elements of the site plan (buildings, circulation, common land, landscaping, etc.) are arranged favorably with existing natural topography, streams, and water bodies. Development Standards for the Definitive Plan • Extensive topographic changes necessitating vegetation and tree removal are minimized. The site design shall preserve and, where possible, enhance the natural features of the property, including scenic views, by adapting the location and placement of structures, if any are approved, and ways to the existing topography in order to minimize the amount of soil removal, tree cutting and general disturbance to the landscape and surrounding properties. Open Space Use and Design Standards Standards and requirements for the land that is to remain undeveloped address: • The maintenance and improvements to naturally-existing woods, fields, meadows and wetlands; • The size and shape of common open space parcel(s) • The percentage of impervious surface allowed • Allowed uses • The location of retention/detention ponds • The perimeter buffer – size, shape, composition, allowed no-cut easements • The Developer shall

develop at least one active recreation area. Active recreational areas are suitably located and accessible to the residential units and adequate screening ensures privacy and quiet for neighboring residents. Said area(s) shall not have grades exceeding 2%. At least one such area shall be large enough to provide for facilities such as: football, soccer and baseball. • Common land is arranged to protect valuable natural environments such as stream valleys, outstanding vegetation, or scenic views, and to avoid development on hazardous areas such as flood plains and steep slopes. 76

11. Way, Interior Drives, and Utilities The construction of all ways, interior drives and utilities shall be in accordance with the standards specified in the Planning Board's Rules and Regulations Governing the Subdivision of Land. The Planning Board may waive the Subdivision Rules and Regulations if it determines that adequate access will be provided to all lots in the development by ways that will be safe and convenient for travel.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board Town of Shrewsbury Zoning Bylaw (Adopted 1967, Amended 2004)

3. Application In all residential zoning districts the Planning Board may grant a special permit for any tract of land of not less than five (5) acres or more to be subdivided as a cluster development, for single family detached dwellings and multi-family dwellings, subject to the requirements and conditions of this section.

Has any housing been built under the cluster/flexible provisions?

Somerset

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Town of Somerset Zoning Bylaw (2003)

8.0 OPEN SPACE COMMUNITY

8.1 Purpose.

The purpose of the Open Space Community By-law is to provide permanent open space for the use and enjoyment of the Town's residents and to protect unique, natural and man-made features from development.

8.2 Definitions.

(Applicable only to Section 8.0 of the Somerset Zoning By-Law).

FAMILY : A number of individuals living and cooking together on the premises as a single housekeeping unit in a domestic relationship, as distinguished from a group occupying a boarding house, club, fraternity or sorority house, or hotel.

DWELLING UNIT : A single independent housekeeping unit physically separated from any other dwelling unit which may be in the same structure and containing independent living, sleeping, eating, cooking, washing and toilet facilities, occupied or intended for occupancy by one separate household.

TOWNHOUSE : A free-standing building, exclusively for residential use, containing not more than three (3) dwelling units with each dwelling unit being from ground to roof. Townhouses shall have individual outside access and share common side walls.

MULTI-UNIT DWELLING : A free-standing building, exclusively for residential use, containing not more than three (3) dwelling units. Individual units may share a common outside access or have individual outside access.

INDIVIDUAL LOT AREA : The individual lot area is the land required for the siting of each single family dwelling in an Open Space Community exclusive of streets, wetlands, water areas, open space and land in common ownership, and not applicable to Townhouses and Multi-Unit Dwellings.

BASE SITE AREA : All land area within the boundaries of the site as defined in the deed.

8.3. Special Permit.

An open space community is a special permit use in the following districts: Residence and Open Recreation.

The Somerset Planning Board is the Special Permit Granting Authority (SPGA) for open space communities.

8.4. Special Permit Uses.

The following uses may be authorized by the SPGA in an Open Space Community subject to the general provisions of this bylaw applicable to special permits and to the special conditions imposed by the SPGA:

- a. Residence District; Single Family Dwelling; Townhouse (maximum of three (3) dwelling units); and Multi-Unit dwelling (maximum of three (3) dwelling units)
- b. Open Recreation District: Single Family Dwelling; Townhouse (maximum of three (3) dwelling units); and Multi-Unit dwelling (maximum of three (3) dwelling units)

Uses deemed by the SPGA to be accessory to uses allowed by special permit may be authorized as a condition of the special permit.

8.5 Dimensional Requirements.□

8.5.1 Residential District Open Recreation District□

- a. No special permit shall be granted unless the Base Site area consists of at least five (5) acres of contiguous land and has a minimum of 300 feet of frontage on an existing publicly accepted street or, alternatively, access to a private way, from a publicly accepted street, which private way is approved by the SPGA for the purposes of the Open Space Community.
- b. The overall site density for an Open Space Community shall not be less than 4,000 square feet of the Net Buildable Site Area per dwelling unit for Townhouses and Multi-Unit Dwellings. The overall site density for an Open Space Community shall not be less than 20,000 square feet of the Net Buildable Site Area for Single Family Dwellings.
- c. Each Open Space Community shall meet the dimensional requirements of Section 5.2 Table of Dimensional Requirements, except as modified in Table 1, Dimensional Requirements for Individual Lots and, Table 2, Dimensional Requirements for Townhouses and Multi-Dwelling Units.

Dimensional Requirements for Individual Lots Table 1

Single Family Dwelling (per Dwelling Unit) in Residence District and Open Residential District□
Minimum Individual Lot Area 8,000 square feet
Minimum Street Frontage 75 feet
Minimum Front Yard Depth 25 feet
Minimum Side Yard Depth 15 feet
Minimum Rear Yard Depth 15 feet
Minimum Distance Between Building 30 feet
Maximum Percentage Lot Coverage 30 percent
Maximum Dwelling Units Per Buildings 1
Maximum Building Height 35 feet

Dimensional Requirements for Townhouses and Multi-Dwelling Units

Table 2□
Townhouses and Multi-Dwelling Units in Residence District and Open Residential District
Net Buildable Site Area per dwelling unit 4,000 square ft.
Minimum Street Frontage per dwelling unit
For Townhouses and Multi-Dwelling (see Note 1) 20 feet
Minimum Front Yard Depth To be Determined by SPGA
Minimum Side Yard Depth To be Determined by SPGA
Minimum Rear Yard Depth To be Determined by SPGA
Minimum Distance Between Buildings 15 feet
Maximum Percentage Lot Coverage 35 percent
Maximum Dwelling Units Per Building 3
Maximum Building Height 35 feet
Minimum living area per Dwelling unit 1,200 square feet

Note No. 1 - Frontage on internal access private roadways as distinguished from frontage of a publicly accepted street.

8.5.2 Site Capacity Calculation. In determining the maximum number of dwelling units to be permitted in an: Open Space Community, the area of the site covered by wetlands (based on a vegetative analysis as prescribed by Mass. General Law Chapter 131, S. 40), slopes greater than 15 percent, utility rights of way and roads shall be calculated and deducted from the Base Site Area. Construction shall be allowed by special permit on the remaining Net Buildable Site Area. Notwithstanding anything herein to the contrary, when constructing Townhouses, Multi-Unit dwellings, the overall site density shall not be more than three (3) dwelling units per acre.

8.6 General Provisions

8.6.1 Buffer Yards. A 10-foot wide buffer yard shall be provided along all abutting property lines in an Open Space Community. The buffer yard shall be planted with a dense screen planting of a type and size acceptable to the SPGA. The buffer yard shall remain free of all parking areas and structures.

8.6.2 Streets, Drainage and Utilities. Streets, drainage and utilities shall be constructed pursuant to a special permit and shall be designed and installed in accordance with the standards of the Subdivision Regulations of the Planning Board in effect at the time of the filing of an application for a special permit or revision authorization as the case may be.

The SPGA shall not grant a special permit unless it determines that water, sewage and drainage facilities will be adequate to service the proposed development without a detrimental effect upon municipal services in any other area of the Town, and the SPGA shall not grant a special permit unless the Board of Water & Sewer Commissioners determines that water and sewage facilities will be adequate to service the proposed development without detrimental effect upon municipal services in any area of Town.

8.6.3 Parking. Parking areas shall conform to Section 6.7 of the Somerset Zoning By-law, except that a minimum of two off-street parking spaces shall be required per dwelling unit.□

8.6.4 Site Plan Requirements.

a. The applicant for a special permit shall submit a site plan prepared by a registered professional engineer or land surveyor, oriented to true north, showing the boundaries of the overall site, the lot lines of individual building sites, and showing the location of all proposed structures, parking areas, means of access, roadways, buffer yards, landscaped areas, common open areas, and recreation areas. The site plan shall also include a locus map.

b. The applicant shall also submit a map prepared by a registered professional engineer or land surveyor of existing natural and man-made features including public utility rights-of-way, wetlands (based on a vegetative analysis as prescribed by Mass. General Laws Chapter 131, S.40), forested areas, and archeological sites.

c. A map prepared by a registered professional engineer or land surveyor showing existing and proposed topographic contours at two foot intervals.

d. The applicant shall also submit a draft of the documents of the organization which will own and maintain the common open land and roadways including the substance of any restrictions and covenants to be imposed on the land and/or structures and recorded with the deeds to individual owners and to the home owners association.

8.7.1 Design Review. In its review of an Open Space Community, the SPGA may impose reasonable conditions for the purpose of achieving the following objectives:

- a. Minimizing the number of curb cuts onto existing roads and highways,
- b. Maximizing the amount of usable open space,
- c. Protecting and preserving existing, unique, natural and man-made features,
- d. Minimizing the disruptive influence of the development on surrounding neighborhoods,
- e. Minimizing impervious surface and stormwater runoff,
- f. Protecting the public health, safety and welfare.

8.8 Open Space Requirements

a. At least 30 percent of the Base Site Area shall be reserved as Common Open Space, inclusive of wetlands (based on vegetative analysis as prescribed by Mass. General Laws Chapter 131, S.40), slopes greater than 15 percent, floodplains, and utility rights-of-way, however, exclusive of roads as shown on the site plan.

b. All Common Open Space shall have a point of adequate dry access to a street suitable for maintenance and use by emergency vehicles.

c. Parking areas and streets shall not be computed into the area requirement for Common Open Space.

d. Such Common Open Space shall be conveyed to the Town of Somerset and accepted by the Town for park or common open space use or conveyed to a non-profit organization, the principal purpose of which is the conservation of open space, or a trust or corporation owned or to be owned by the owners of the residential units within the open space community as provided in MGL Chapter 40A or a combination of the above alternatives for separate tracts within the Base Site Area. In any case, where the Common Open Space is not conveyed to the Town of Somerset, a restriction (enforceable by the Town of Somerset) providing for keeping Common Open Space permanently in a common open state, shall be a condition to the special permit and shall be recorded with the appropriate registry of deeds.

Where such land is not conveyed to the Town, a perpetual restriction of the type described in MGL Chapter 184, Section 31 through 34 (including future amendments thereto and corresponding provisions of future laws) or some alternative legal instrument, recorded in the Registry of Deeds and providing for a permanent restriction against future developments, shall be made running to or enforceable by the Town.

e. Common Open Space shall be maintained at all times by the owner thereof. In the event this Common Open Space is conveyed to a trust or corporation owned or to be owned by the owners of the residential units within the Open Space Community, in addition

to the requirements of paragraph (d) above and to insure that the trust or corporation will properly maintain the Common Open Space deeded to it, the SPGA shall require as a condition to the granting of the special permit, the recording in the appropriate Registry of Deeds a Declaration of Covenants and Restrictions which shall, at minimum:

1. impose upon each residential unit owner an obligation to pay all maintenance assessments imposed by the corporation or trust to ensure that the Common Open Space is maintained in a condition suitable for the uses approved by the corporation or trust and required by the Special Permit;

2. create a lien enforceable by the corporation or trust upon any residential unit assessed for failure to pay any such maintenance assessment imposed by the corporation or trust; and

3. provide that upon recording by the corporation or trust of a notice of lien for delinquent assessment in the appropriate Registry of Deeds, such lien shall have preference over subsequent encumbrances not otherwise entitled to priority as a matter of law.

f. The applicant for a special permit under this Article shall give evidence that a reasonable functional relationship exists between the Common Open Space and the proposed residential units.

g. Such Common Open Space shall be restricted to open space recreational uses such as tot lots, parks, playgrounds, play fields, golf courses, or conservation areas and shall not be built upon except as needed for the above open space recreational uses.

8.9 Rules and Regulations of the SPGA.

The SPGA shall adopt rules and regulations relative to the procedures to be followed, criteria and performance standards for the evaluation of permits, and may provide for informal pre-application hearings for the consideration of preliminary plans. The rules and regulations shall specify any additional information the SPGA deems necessary to make its review, including the quantities, content, and scale of maps to be presented. Applications and site plans shall be submitted to the Conservation Commission and other such officials or boards deemed appropriate by the SPGA for review and recommendation.

According to table of uses:

"Open space community, single family dwelling" is allowed by special permit in Res and Open Rec.

Somerset survey received 5/17/05:

What year was the provision for flexible zoning adopted?

"1986"

Can more units be built under cluster/flexible zoning than would be allowed through conventional zoning?

"Yes"

Has any housing been built under the cluster/flexible provisions? (none, 1-8 projects, more than 8)

"1-8"

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board Town of Somerset Zoning Bylaw (2003)

8.3. Special Permit.

An open space community is a special permit use in the following districts: Residence and Open Recreation.

The Somerset Planning Board is the Special Permit Granting Authority (SPGA) for open space communities.

Has any housing been built under the cluster/flexible provisions?

Yes Land Use Coordinator Vanessa Farr said that cluster zoning has been used but rarely (she thinks that the by-law has not been used for at least two years.)

Somerset survey received 5/17/05:

Has any housing been built under the cluster/flexible provisions? (none, 1-8 projects, more than 8)

Somerville

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes The Somerville Zoning Ordinance, Article 6, Section 6.1.19 and 6.1.20 (adopted 1990, amended 2003) creates two Planned Unit Development Overlay Districts, Planned Unit Development Overlay District A (PUD-A) and the Planned Unit Development Overlay District B (PUD-B). Both of these zoning districts may either conform to the standards in the district in which the development falls or to the PUD controls in Article 16. The Planning Board acts as the special permit granting authority for both PUD-A and PUD-B.

ARTICLE 16: PLANNED UNIT DEVELOPMENT ((PUD))

Section 16.1. Purpose.

The purpose of a Planned Unit Development, or PUD, is to provide for a mixture of land usage at designated locations at greater variety, density and intensity than would normally be allowed. The purpose for a PUD is also to achieve, to the greatest possible degree, land development responsive to an analysis of the environmental assets and liabilities of a site, both natural and man-made. A PUD should be a well-integrated development in terms of land uses, functional activities, and major design elements such as buildings, roads, utilities, drainage systems and open space. A PUD is allowed greater design flexibility so that larger-scale site and master planning for a development may protect natural features and consider most fully the surrounding land use and development context. This may allow for development to be more highly concentrated on one portion of a site than would otherwise be the case, with a resulting lower intensity of development elsewhere on the site. Development should be concentrated in the most suitable and least environmentally sensitive areas of the landscape. Preservation and enhancement of open space is strongly promoted.

The PUD concept is deemed highly appropriate to large scale mixed use development in those districts where it may be permitted, and is strongly encouraged. In those base zoning districts where a PUD is permitted, it is intended that the benefits of Planned Unit Development to the developer will act to encourage consolidation of unused and/or underutilized land parcels so that comprehensive and responsible site planning will occur. A designated PUD may permit for inclusion certain land uses only allowable in a PUD context under provisions of this Zoning Ordinance. A PUD may be more responsive to economic and market conditions because of greater zoning flexibility and development phasing, resulting in a wider range of product type and development responsive to changes in design technology over time.

Section 16.2. Applicability.

A PUD shall be permitted only in a Planned Unit Development A and Planned Unit Development B Overlay Districts. In addition, all land included in the proposed PUD must be contiguous and/or separated only by streets, public or private ways. NOTE: § 16.2 was amended by Ordinance 2000-8 on May 25, 2000.

Section 16.3. Permit Authority and Designation of a Planned Unit Development

Planned Unit Development may be permitted under special permit with site plan review. Upon request of the owner(s) of a lot(s) meeting the criteria set forth in this Ordinance for PUD, and in accordance with the applicable provisions of Article 5 and with the provisions of this Article 16, the SPGA may grant a special permit with site plan review for and designate land tracts as a PUD.

Section 16.4. General Requirements and Features of PUD.

The SPGA shall review and find that the following requirements and features of a Planned Unit Development are satisfied in the proposed development. The permitted PUD shall clearly demonstrate that it is:

- a. a designated tract of land meeting the minimum lot size requirements of Section 16.5.1.a for the PUD district; NOTE: § 16.4.a was amended by Ordinance 2000-8 on May 25, 2000.
- b. developed in a comprehensive, design-integrated manner, according to an overall master plan, with two (2) or more types of use;
- c. consistent with the objectives of this Ordinance;
- d. consistent with the goals, objectives and plans of the City for the general subject area;
- e. developed so as to locate or cluster development sites, especially buildings, in a manner that provides usable open space, preserves natural or historic features, and preserves views of such features to the maximum extent possible;
- f. an efficient use of land which properly considers topography and protects significant natural features including, but not limited to, waterways, wetlands, floodplains and wildlife;
- g. an efficient use of land demonstrating full coordination of its own site development including, but not limited to, the land uses and functions contemplated, architecture, open space and pedestrian networks, vehicular access and circulation, and all other

infrastructure;

h. linked and coordinated with surrounding land uses, off-site public facilities, infrastructure al roadway access where appropriate, in a manner that is safe, efficient and non-injurious to the public, and an improvement or benefit to the public where possible;

i. designed with sizing of street and other infrastructure systems to accommodate the overall service demand of the PUD;

j. inclusive of provisions for the ownership and maintenance of usable open space as a (see Sec. 16.6 of this Article);

k. inclusive of appropriate deed restrictions or covenants requiring compliance of all development with the PUD master plan, and any architectural or other guidelines or standards;

l. when inclusive of a proposed use allowable under this Ordinance only within a PUD setting, that said use is integrated into the proposed development in terms of function and service to other users of the PUD site and/or to the immediately surrounding area.
Section 16.5. PUD Conformance with Standards.

16.5.1 Dimensional Requirements:

Within a PUD, the following dimensional requirements shall apply in place of those found in Section 8.5.

[Insert table]

NOTE: § 16.5.1 was amended by Ordinance 2000-8 on May 25, 2000.

16.5.2 Footnotes to Section 16.5.1

1. Lot Size: there shall be no required minimum lot size for any development within the PUD, excepting the lot size requirement for the PUD itself.

2. Site Intensity: the overall site intensity of a PUD, on average, shall comply with the requirements of Section 16.5.1.b, c, d, and e; however, a section or phase of the PUD may have concentration of land intensity greater than the site-specific intensity allowed, provided that any greater concentration shall be offset by a smaller concentration in another section or phase of the PUD or by an appropriate reservation of usable open space elsewhere in the PUD (see Section 16.6.2).

3. Height: see Section 8.6.3.

4. Height Limit for Structures Abutting Residential Lots: where a PUD abuts a lot or lots within an RA, RB, or RC zoning district, any structure (or portion of a structure) within thirty (30) feet of said lot shall be limited to three (3) stories and forty (40) feet in height.

5. Setbacks: setback requirements within a PUD shall apply only to the perimeter of the PUD. No minimum yards or setbacks are required for development tracts contained internally within the PUD.

6. Setbacks for Sites Abutting Residential Lots: where a PUD abuts a lot or lots within an RA, RB, or RC zoning district, no building (or portion of a building) shall be erected closer to said lot line than one-third (1/3) the height of the said building, but not less than fifteen (15) feet. NOTE: § 16.5.2 was established and effective by Ordinance 2000-8 on May 25, 2000.

16.5.3 Mixed Uses

In reference to the provisions of Article 7 of this Ordinance, when a specific use is permitted within a zoning district only within the context of a PUD, said permitted PUD use shall comply with the following stipulations:

1) the use(s) shall not exceed forty percent (40%) of the total PUD intensity, as measured by floor area ratio or lot area per dwelling unit, whichever is applicable;

2) the use(s) shall not occupy more than forty percent (40%) of the site area, defined as the total PUD lot area exclusive of the PUD minimum landscape area requirement and exclusive of any roads and parking designed within the PUD to serve permitted uses other than or in addition to the use(s) in question. NOTE: § 16.5.2 was re-titled and effective by Ordinance 2000-8 on May 25, 2000.

16.5.4 Waiver of dimensional standards

In order to maximize flexibility in the application of design standards to PUD projects, the SPGA may waive strict compliance with the standards of Section 16.5 upon making a determination that: (a) such a waiver would result in a better site plan than strict compliance with the stated standards; (b) the proposed PUD design furthers the Purpose and PUD Design Guidelines of this section; and (c) the granting of such a waiver will not cause detriment to the surrounding neighborhood. NOTE: § 16.5.4 was established and effective by Ordinance 2000-8 on May 25, 2000.

Section 16.6. PUD Usable Open Space.

16.6.1 General.

In all PUD's, at least 50% of the required minimum landscaped area shall be set aside as permanent usable open space. In designing and locating the required usable open space, each open space area should be connected to another existing or proposed open space area, to the greatest extent possible, with the intent of establishing a network of usable open space.

Said usable open space shall be accessible to the public at minimum from 9:00 am to 5:00 pm, and may be owned in whole or part by a private corporation or trust representing the owners or persons responsible for the PUD, or by a non-profit conservation organization, and shall be protected by a conservation restriction pursuant to M.G.L. Ch. 40A, Sec. 9 for common open space in cluster developments. A covenant shall be placed on the land such that no part of the PUD shall be sold or occupied until a satisfactory written agreement has been executed for protection of the open space. The required usable open space may also be in whole or part conveyed to a public entity, and the SPGA may require such for approval of the PUD, though the SPGA shall not make a requirement of public dedication of more than the 50% minimum landscaped area.

16.6.2. Bonus Incentives for Additional Provision of Usable Open Space.

Planned Unit Development shall be eligible under the provisions of Article 17 of this Ordinance for bonus floor area for provision of usable open space additional to that required in Section 16.6.1 above. To be eligible, the PUD shall first provide and, if required by the SPGA, improve its usual usable open space, defined above as fifty percent (50%) of its required minimum landscaped area. No bonus shall be awarded in satisfying this provision. For any additional publicly accessible usable open space, bonus floor area may then be awarded by the SPGA to a PUD in accordance with Article 17 of this Ordinance.

Section 16.7. PUD Design Guidelines.

PUD design shall comply with the purpose, general requirements and features, and standards for a PUD outlined in this Article, as well as with the special permit with site plan review requirements elsewhere in this Ordinance. The following design guidelines shall also be adhered to:

- a. PUD architecture should demonstrate the cohesive planning of the development and present a clearly identifiable design feature throughout. It is not intended that buildings be totally uniform in appearance or that designers and developers be restricted in their creativity. Rather, cohesion and identity can be demonstrated in similar building scale or mass; consistent use of facade materials; similar ground level detailing, color or signage; consistency in functional systems such as roadway or pedestrian way surfaces, signage, or landscaping; the framing of outdoor open space and linkages, or a clear conveyance in the importance of various buildings and features on the site;
- b. Buildings adjacent to usable open space should generally be oriented to that space, with access to the building opening onto the open space;
- c. When a building is proposed to exceed the base district height limit, it is intended that buildings be of slender proportions emphasizing the vertical dimension;
- d. It is strongly encouraged that landscaped space, and particularly usable open space, be designed and located to connect as a network throughout the PUD. It is also generally intended that said space be designed and located to connect with existing off-site usable open space, and provide potential for connection with future open space by extending to the perimeter of the PUD, particularly when a plan exists for the location and networking of such future open space;
- e. It is intended that no non-residential structure cause a casting of any shadow on any residential lands between 10:00 AM and 2:00 PM, solar time, on the vernal equinox (March 21); and that any shadow cast by a PUD structure on public usable open space be of minimal impact on the desired functional use of said open space, particularly in the period from March 21 to September 21;
- f. Vehicular access to and from public roads is intended to be consolidated. Vehicular access to PUD lands from a public roadway shall generally be limited to one (1) access point, particularly when PUD frontage along said roadway is three hundred (300) feet or less. When a PUD has more than six hundred (600) feet of frontage on a public road, separation between existing, approved, and proposed curb cuts, whether on or off-site, shall average a minimum of two hundred (200) feet. Consolidation to a minimal number of access points is strongly encouraged;
- g. Internal PUD streets shall consist of local and collector roadways, designed in accordance with standard traffic engineering practice. Any street proposed for public dedication shall meet the standards of the City's Director of Traffic and Parking.
- h. PUD block sides should reflect average city block size of Somerville, to maximize a pedestrian-friendly scale in the street grid. Align streets to give building energy efficient orientations.
- i. The PUD design should preserve and enhance natural features such as topography, waterways, vegetation, and drainage ways.
- j. The PUD design should minimize impervious surfaces and incorporate other design features to minimize storm water runoff.
- k. PUDs should maximize pedestrian transit-oriented development. Specifically they should use "traffic-calming" techniques liberally; provide networks for pedestrians as good as the networks for motorists; provide pedestrians and bicycles with shortcuts and alternatives to travel along high-volume streets, and emphasize safe and direct pedestrian connections to transit stops and other commercial and/or employment nodes; provide long-term, covered, bicycle parking areas; provide well-lit, transit shelters; incorporate transit-oriented design features; and establish Travel Demand Management programs at employment centers.

l. Make shopping centers and business parks into all-purpose activity centers. NOTE: § 16.7 was amended by Ordinance 2000-8 on May 25, 2000.

Section 16.8. Procedures for Application for PUD.

Application for PUD is a type of special permit with site plan review, requiring two (2) stages of review. A PUD applicant shall first file a preliminary master plan demonstrating a comprehensive land use plan for the entire PUD tract. Upon approval of this plan, the applicant may then submit special permit with site plan review applications for definitive plans of each portion or phase of development of the PUD tract. Prior to application for PUD, the owner/applicant may, and is encouraged to, arrange for an informal review of the PUD plan by the SPGA or its designee.

16.8.1. Submission of PUD Preliminary Master Plan.

In submitting an application for a PUD, the applicant shall first file a preliminary master plan accompanied by the form titled "Submission of Preliminary Master Plan, Planned Unit Development" to the SPGA. A copy of the preliminary plan and the above form shall also be filed in the City Clerk's office.

16.8.2. PUD Preliminary Master Plan Contents.

Any application for PUD preliminary master plan approval shall be accompanied by the following supportive information:

- A. A neighborhood context map, at a scale not less than one inch (1") equals one hundred feet (100'), providing a graphic description of the neighborhood in which the tract lies, including roads, utilities and other public facilities, major existing buildings and structures. There shall also be a statement and/or plan as to the general impact of the proposed PUD upon the area, indicating how the PUD relates to surrounding properties and what measures will be taken to create appropriate transitions and access from the subject property to abutting public properties (i.e. parks, waterfront, etc.) or other neighboring tracts (if applicable);
- B. A conceptual site plan drawn to a scale of not less than one inch (1") equaling fifty feet (50'), or series of drawings at the same scale, and any necessary supporting information, showing:

- 1) the approximate boundary lines of existing and proposed lots within and immediately adjacent to the PUD, with approximate areas and dimensions. With respect to residential areas, the proposed density, lot configuration, circulation and a typical plot plan shall be included in the application;

- 2) an analysis of the natural features of the site, including existing and/or adjacent natural waterways, wetlands, floodplains, the general topography of the land indicating slopes over 10%, oil conditions and other features requested or required by the regulations of the SPGA;

- 3) existing/proposed buildings and other significant structures, building groupings, parking areas, and other significant physical features of the site.

- 4) major circulation patterns surrounding and serving the site, the existing and proposed lines of streets (including the street width), ways, easements and any public areas within or next to the PUD;

- 5) major landscaping elements, features, and open space;

- 6) a generalized drainage plan for the site, indicating drainage ways, flows, points of outfall, and indicating impacts of development on affected drainage basins. The plan shall include contour information at not less than two-foot (2') contour intervals and document anticipated quantities of run off in relation to existing run off characteristics. General statements concerning storm water management shall also be submitted with the application;

- 7) the plan shall clearly show PUD boundaries, north arrow, date, scale, legend, the title "Preliminary Master Plan: Planned Unit Development" followed by the formal project name, and the name(s) of applicant(s), engineer(s), designer(s) and/or agent(s).

- C. Analysis of compliance with regulations as to dwelling units per square feet of lot area, height, building coverage, floor area ratio (FAR) and parking requirements;

- D. Names of all property owners within five hundred (500) feet of the PUD boundary;

- E. Explanation of provisions for the landscaping and maintenance of all open space and drainage areas;

- F. A traffic analysis and recommendations prepared by a registered professional engineer qualified to conduct such studies, including current traffic counts for streets surrounding the project, analysis of the existing capacity of those streets, projections of the amount of traffic that will be generated by the proposed development, and the ability of the thoroughfare system to absorb the increased traffic without decreasing the level of service below an acceptable level - said level to be determined by the SPGA in concert with the City Planning Department and the Director of Traffic and Parking;

- G. A utilities analysis and recommendations prepared by a registered professional engineer qualified to conduct such studies. Said analysis shall contain an inventory of existing utilities including, but not limited to, storm sewers and drains, sanitary sewers, electrical lines, fire alarm boxes and lines, gas lines/mains, water mains, lighting, curb and gutter, etc. Said inventory shall illustrate utility locations, sizes, diameters, carrying capacity and present load on the system. The engineer's report shall state if the current system is capable of adequately serving the proposed development. If the current utility system is found to be inadequate for the proposed development, the report shall confirm the deficiencies and make recommendation(s) as to the infrastructure improvements necessary to properly service the proposed development and maintain the existing service. The report shall also present a formal plan for infrastructure improvements, documenting timing, funding mechanisms and coordination with the City;

- H. All applicable information required for special permit with site plan review (See Article 5 of this Ordinance). This information may be submitted at a preliminary level, in consideration that PUD approval is a preliminary approval.

- I. Any other supportive information the applicant feels may be beneficial to the City of Somerville in the evaluation of the request.

The SPGA may reduce the level of information required at the preliminary master plan review stage, provided more detailed supportive documentation is provided at final level special permit with site plan review of the PUD or phases thereof.

16.8.3. PUD Final Level Application.

Application(s) for final level approval of the PUD (or a phase of the PUD) shall be submitted as application(s) for special permit with site plan review and conform with the requirements of Article 5 of this Ordinance, containing all information, plans and materials specified therein, and any applicable additional requirements of this Article 16.

In addition, in making application for final approval of the PUD (or phase thereof), an applicant shall supply full documentation as to how the final level plan complies with the approved PUD preliminary master plan. When final PUD approval is applied for in phases or stages of development, the applicant shall keep and submit with each final application a running total or status report of PUD compliance with the approved preliminary master plan, including, but not limited to, floor area ratio, residential density and number of units, PUD ground coverage, required landscaped area and usable open space and the like. The applicant shall provide full documentation and a comparison of approved master plan development data, existing PUD development data to date, final approved development data to date, and the currently proposed development data.

Section 16.9. SPGA Review of PUD Application.

The SPGA shall review and determine whether a PUD application is complete and place special emphasis in its review as to PUD compliance with provisions of Article 16 herein, including compliance with the purpose and general requirements/features of a PUD. The SPGA shall also determine whether the proposal is consistent with the most suitable development of the City, and conduct a review in accordance with the requirements for special permit with site plan review as set forth in Article 5 of this Ordinance. The PUD shall comply with all requirements of this Ordinance unless a deviation from these strict requirements is authorized here in Article 16. The SPGA may suggest modifications and changes to any PUD plan, consistent with the general and specific objectives and guidelines of this Ordinance, with emphasis on those of Articles 5 and 16.

PUD review shall be consistent with all procedural provisions of Article 5 with respect to special permit with site plan review, including procedures for public hearings, conduct of review, findings and determinations, and actions. In the case of review of a PUD preliminary master plan, if the SPGA fails to act within the stipulated time, the PUD preliminary master plan shall be assumed to be approved as submitted, and the applicant may proceed to file an application for a final level special permit with site plan review for the PUD as a whole or any phase thereof.

Section 16.10. Effect of Approval.

16.10.1. Approval of PUD Preliminary Master Plan.

The approval of a PUD preliminary master plan by the SPGA, with or without conditions, is deemed an approval of a certain PUD master plan with specific limits shown on the plan and its supporting documentation for floor area ratio and/or residential density, general types of uses, building coverage, generalized open space plans, and infrastructure systems, all of which shall be adhered to. PUD preliminary master plan approval shall not be construed as final authorization of development. By its nature, this PUD approval shall be considered as a preliminary approval and recognition that the plan is in general accordance with the provisions of this Ordinance. A PUD preliminary master plan approval shall lapse two (2) years from the granting thereof, unless a completed final PUD special permit with site plan review application has been properly filed with, and subsequently approved by the SPGA, within said two (2) year period.

As a part of PUD preliminary master plan approval, the applicant or developer consents to special permit with site plan review for all subsequent development proposals within the PUD. As final site plans become more definitive for the PUD as a whole, or in stages, these shall be submitted to the SPGA for special permit with site plan review. The SPGA shall review these definitive plans for compliance to the approved PUD master plan and to any applicable provisions of this Ordinance, and act on those plans in accordance with standard special permit with site plan review procedure.

16.10.2. Effect of Zoning Changes on Approved PUD Plans.

In general, it is intended that amendments to this Ordinance subsequent to approval of a PUD plan shall apply to the PUD consistent with the provisions of Article 5 for special permits with site plan review. However, due to the long-term, comprehensive nature of PUD planning and design -- and the City's desire to promote such -- the owner, developer or other responsible agent for the PUD may seek waiver of any new zoning regulation through the special permit with site plan review process before the SPGA. In granting any waiver, the SPGA shall follow the provisions of Article 5 of this Ordinance and be fully satisfied that the PUD is in full compliance with the intent of the Ordinance and being developed in a manner at or exceeding the level of compliance effective at the time of PUD preliminary master plan approval.

Section 16.11. Amendments to PUD Plans.

16.11.1. Minor Amendments.

A minor amendment to a PUD shall be defined as a change which does not propose any new general type of use beyond those approved initially, does not increase the building ground coverage, floor area ratio or residential density of the PUD, does not decrease any specified area regulations or enumerated parking ratios, nor substantially change access, circulation, or infrastructure on or adjacent to the site.

The SPGA or its designee shall be authorized to approve such minor amendments to a PUD upon written application and explanation of the change(s) by the owner (or its agent) of the property. No further public hearings shall be required.

16.11.2. Major Amendments.

Any other change to a PUD shall be considered a major amendment and be processed through the normal PUD special permit with site plan review procedure, requiring public hearings before the SPGA and full review of compliance with the requirements of this Ordinance. Only the SPGA shall have the authority to make a major amendment to the PUD plan.

PUD-A: the minimum lot area per development is 200,000 square feet. With regards to density, the minimum lot area/dwelling unit for 1 to 9 units is 875 sq. ft. For 10 or more units, it is 1000 sq. ft.

PUD-B: the minimum lot area per development is 75,000 square feet. With regards to density, the minimum lot area/dwelling unit for 1 to 9 units is 875 sq. ft. For 10 or more units, it is 1000 sq. ft.

Survey received from Somerville on 3/31/05:

What year was the first provision for flexible zoning adopted?

"2000"

What was the last year that the municipality amended the cluster/flexible provisions?

"2004"

What types of structures are allowed under cluster/flexible zoning?

"any type"

Has any housing been built under the cluster/flexible provisions?

"1 project"

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board The Planning Board acts as the special permit granting authority for both PUD-A and PUD-B.

Has any housing been built under the cluster/flexible provisions?

Yes Survey received from Somerville on 3/31/05:

Has any housing been built under the cluster/flexible provisions?

"1 project"

Southborough

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Zoning Chapter of the Town of Southborough, Massachusetts, Section 174-13.2: The provisions for Major Residential Developments include flexibility:
"D. [Amended 4-8-1996 ATM, Art. 521 The Planning Board may authorize flexible development within a major residential development, with reduced requirements for the area and frontage of individual lots not having frontage on an existing public way, provided that the following are complied with:
(1) Number of lots or units. The number of lots or units, excluding any bonus lots or units allowed under Subsection F, shall not exceed the number of lots in the conventional plan which shall be in full conformance with zoning, subdivision regulations and health codes. The Planning Board shall consider the recommendations of the Board of Health, the Conservation Commission and the Department of Public Works of the Town of Southborough in making said determination.
(2) General design criteria. Refer to Subsection G(2).
(3) Shape and dimension of lots. Provisions in Section 174-8, Schedule of Use Regulations, governing the shape and dimensions of lots, shall apply when calculating the number of lots allowed in a conventional plan, as required by Subsection D(1) above. However, these provisions shall not apply when creating new lots within a flexible plan, unless otherwise specified in this section. The dimensional requirements for flexible lots are specified in Subsection D(4) below.
(4) Single-family requirements. The following provisions shall only apply to detached single-family dwellings on their own individual lots. Where more than one (1) detached single-family dwelling is on the same lot (for example, single-family condominiums), then they shall be treated as multifamily dwellings for the purpose of this section, and they shall be governed by the provisions of Subsection D(5) below.
(a) Site with individual septic systems on each lot.
[1] Lot area. In order to ensure adequate lot area for individual septic systems, the minimum lot area shall be two-thirds (2/3) of the minimum required in Section 174-8, Schedule of Use Regulations, for each zoning district.
[2] Lot frontage. The minimum lot frontage in all zoning districts shall be eighty (80) feet, except as follows. Lots located on the

turnaround of a dead-end street shall have a minimum frontage of fifty (50) feet, provided that a front building line is designated on the plan for such a lot, and also provided that the width of the lot at this building line is at least equal to the minimum frontage requirement.

[3] Front yard. Front yards shall be staggered to provide a variety in size of such yards. In all zoning districts, the minimum average of all front yards shall be twenty-five (25) feet; however, no front yard shall be less than twenty (20) feet.

[4] Side yard. The minimum side yard shall be twenty (20) feet in the Residence A District and ten (10) feet in all other districts; provided, however, that dwellings on abutting lots shall be no closer than thirty (30) feet which may be accomplished by staggering or other means.

[5] Rear yard. In all zoning districts the minimum rear yard shall be forty (40) feet or thirty (30) feet if backing up to common open space.

[6] Setback lines. The front, side and rear setback lines shall be shown on the definitive subdivision plan.

[7] Open space. In all zoning districts, a minimum of ten percent (10%) of the overall site area shall be preserved in a natural state, exclusive of wetlands, and twenty five percent (25%) overall shall be dedicated as common open space.

[8] Common areas. Refer to Subsection G(2) for design criteria for common areas.

(b) Site with alternative sewage treatment systems. Based upon the reduced need for land on each lot if individual septic fields are no longer required and the benefits of consolidating this land into common preserved open space, the Planning Board may, at its discretion, approve the following:

[1] Lot area. The minimum lot area shall be one-third (1/3) of the minimum required in Section 174-8, Schedule of Use Regulations, for each zoning district. The reduction in lot area shall not be used to increase the total number of lots permitted in the overall site. All the site area saved through reduction in lot area shall be dedicated as common land or dedicated to the town.

[2] Lot frontage. The minimum lot frontage in all zoning districts shall be sixty-five (65) feet, except as follows: Lots located on the turnaround of a dead-end street shall have a minimum frontage of fifty (50) feet, provided that a front building line is designated on the plan for such a lot, and also provided that the width of the lot at this building line is at least equal to the minimum frontage requirement.

[3] Yards. The minimum yard dimensions shall be the same as for lots with septic systems, as provided under Subsection D(4)(a) above.

[4] Setback lines. The front, side and rear setback lines shall be shown on the definitive subdivision plan.

[5] Open space. In all zoning districts, a minimum of twenty percent (20%) of the site area shall be preserved in a natural state, exclusive of wetlands, and thirty-five percent (35%) overall shall be dedicated as common open space.

[6] Common areas. Refer to Subsection G(2) for design criteria for common areas.

(5) Multifamily requirements. The Planning Board may authorize inclusion of multifamily dwellings within a flexible development, subject to the following, unless authorized as housing for the elderly under Section 174-9H. Where more than one (1) single-family detached dwelling is on the same lot, (for example, single-family condominiums), they shall be treated as multifamily dwellings for the purpose of this section and governed by the provisions of this subsection.

(a) Number of dwelling units. The number of dwelling units allowed shall be governed by the provisions of Subsection D(1). More than one (1) structure may be allowed on a lot. Section 174-8C(2) shall not apply.

(b) Types of units. To assure internal diversity and continuity with surrounding development, single-family dwellings (whether on their own individual lots or on a shared lot) are required within a multifamily development. Not more than two-thirds (2/3) of the dwelling units on any parcel developed subject to these provisions shall be in multifamily dwellings containing two (2) or more units. (Note: Housing for the elderly is not governed by this section).

(c) Layout of buildings. To maintain the visual scale of the community, each multifamily dwelling unit shall have its own exterior entrance; there shall be not more than four (4) dwelling units in any structure, and the multifamily structures shall be clustered in groups, with not more than sixteen (16) dwelling units in any group. Buildings within groups shall normally be separated from each other by not less than twice the required side yard, and there shall be not less than one thousand (1,000) feet separation between dwellings in any such group and any other multifamily dwellings on or off the premises, unless the Planning Board authorizes a reduction of up to one-third (1/3) in such requirements, upon its determination that doing so serves the objectives of the bylaw.

(d) Visual buffers. Visual separation from nearby premises shall be assured through providing yards of double the usually required dimension between any multifamily structure or parking area for six (6) or more cars and the boundaries of the major residential development, and through having any exterior lighting shielded and mounted not more than fifteen (15) feet high.

(e) Open space. To assure environmental benefit from the compact development which multifamily development facilitates, the site area which shall be preserved in a natural state, exclusive of wetlands, shall be a minimum of ten percent (10%) and shall increase in direct proportion to the percentage of multifamily units, up to a maximum requirement of twenty percent (20%) preserved area. In addition, a minimum of thirty-five percent (35%) overall shall be dedicated as common open space. Where appropriate, open space not to be preserved in its natural state shall be utilized for recreation to serve the needs of the Town. [Amended 4/12/99]."

Additionally, there is a section which states that there is a flexible development option for smaller properties, properties creating 10 or fewer lots. These properties have to obtain a special permit and are governed by the rules above with the exception of not requiring the affordable housing component. (Town of Southborough, Massachusetts, Section 174-13.2(A)(3)).

The minimum lot area will be 2/3 of the of the minimum lot size required in the underlying zoning district.

If septic systems are no longer required, the lot size requirements are:

[1] Lot area. The minimum lot area shall be one-third (1/3) of the minimum required in Section 174-8, Schedule of Use Regulations, for each zoning district. The reduction in lot area shall not be used to increase the total number of lots permitted in the overall site. All the site area saved through reduction in lot area shall be dedicated as common land or dedicated to the town.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board "D. [Amended 4-8-1996 ATM, Art. 521 The Planning Board may authorize flexible development within a major residential development, with reduced requirements for the area and frontage of individual lots not having frontage on an existing public way, provided that the following are complied with:"

Has any housing been built under the cluster/flexible provisions?

Yes Survey received from Southborough on 3/22/05:

"Yes - 12 subdivisions"

Sterling

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

No

Which entity is the special permit granting authority for cluster/flexible zoning?

Has any housing been built under the cluster/flexible provisions?

Stoneham

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No Eugene Argiro, Stoneham's Building Inspector, (7/1/04) said that he has advocated for flexible zoning or cluster zoning, but it has not been positively received.

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

No Eugene Argiro, Stoneham's Building Inspector, (7/1/04) said that he has advocated for flexible zoning or cluster zoning, but it has not been positively received.

Which entity is the special permit granting authority for cluster/flexible zoning?

Has any housing been built under the cluster/flexible provisions?

Stoughton

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes According to the Town of Stoughton Zoning Bylaw, Section 11(D) (Last Amended 2001).

D. Cluster Residential Development.

"For residential development in a cluster pattern subject to the dimensional regulation less than the minimum required for development of an individual lot in the same District, the following conditions shall apply:

1. The tract of single or consolidated ownership at the time of application shall be at least 30 acres in size and shall be subject to approval by the Planning Board under the Subdivision Control Law. (Amended by action of Town Meeting, June 23,1976, Article #22)

2. A site plan shall be presented for the entire tract.

3. Each individual lot shall be subject to all requirements for a one-family detached dwelling in any "R-15" District.

4. The total number of proposed lots in the development within any District shall not exceed the number of lots, which could be developed under normal application of the Table of Dimensional and Density Regulations of zone in which the tract of land is located. (Amended by action of Town Meeting, June 23,1976, Article #23)

4a. All lots are drawn so that the rear lot line shall be no less than 20 feet. (Added by action of Town Meeting, June 23,1976, Article #23)

5. The development shall be served by a public water and sewer system except that individual on-lot sewerage systems may be used where the dimensional and density regulations for the R-20 district are applied. "

CLUSTER DEVELOPMENT : A division of land into lots for use as single family building sites where said lots are arranged into more than one group having area and yard measurements less than the minimum required in the Table of Dimensional and Density Regulations. These clusters or groups shall be separated from adjacent property and other groups of lots by intervening "common land". The number of lots over the entire tract of land shall not exceed the number of lots permitted under normal application of the Table of Dimensional and Density Regulations of the zone in which the tract of land is located. The number of lots in a group shall not exceed eight. Amended by action of Town Meeting, June 23,1975, Article #14.

PLANNED UNIT DEVELOPMENT : A development permitting single family, two family, and multifamily dwelling units, community facilities and commercial facilities on a single tract of land arranged in such a manner so that the number of dwelling units and/or facilities on said tract of land is consistent with the zoning in which the tract is located (namely, RU, RC, RB, RA, and R-M) and further that the number of dwelling units and/or facilities in all other zones (namely GB, HB, NB, I) shall be consistent with R-M zoning. Amended by action of Town Meeting, April 29,1974, Article #20.

SECTION XI SPECIAL PERMIT CONDITIONS

D. Cluster Residential Development.

For residential development in a cluster pattern subject to the dimensional regulation less than the minimum required for development of an individual lot in the same District, the following conditions shall apply:

1. The tract of single or consolidated ownership at the time of application shall be at least 30 acres in size and shall be subject to approval by the Planning Board under the Subdivision Control Law. (Amended by action of Town Meeting, June 23,1976, Article #22)

2. A site plan shall be presented for the entire tract.

3. Each individual lot shall be subject to all requirements for a one-family detached dwelling in any "R-15" District.
4. The total number of proposed lots in the development within any District shall not exceed the number of lots, which could be developed under normal application of the Table of Dimensional and Density Regulations of zone in which the tract of land is located. (Amended by action of Town Meeting, June 23, 1976, Article #23)
 - 4a. All lots are drawn so that the rear lot line shall be no less than 20 feet. (Added by action of Town Meeting, June 23, 1976, Article #23)
5. The development shall be served by a public water and sewer system except that individual on-lot sewerage systems may be used where the dimensional and density regulations for the R-20 district are applied.
6. At least 20 percent of the total tract area (of which at least 50 percent shall not be wetlands) shall be set aside as common land. (Amended by action of Town Meeting, June 23, 1975, Article #24)
7. Such common land shall be preserved for recreation, conservation or public use. Preservation shall be guaranteed at the time of approval of the definitive plan by the Planning Board as follows: (Amended by action of Town Meeting, June 23, 1975, Article #25)
 1. Conveyance to and acceptance by the Town, or
 2. Conveyance to and acceptance by the Conservation Commission, or
 3. Dedicated by covenant or comparable legal instrument for use by residents of the Subdivision, or
 4. Ownership shall be arranged and maintenance permanently assured through a suitable recorded land agreement through which each lot owner is involved and each lot is subject to a charge for a share of the maintenance expenses. (Added by action of Town Meeting, June 23, 1976, Article #25)
8. Deleted by action of Town Meeting, June 23, 1975, Article #26.
9. Such common land shall have suitable access to a street.
- E. Planned Unit Development.
Deleted by action of Town Meeting, June 10, 1974, Article #3
- F. Planned Business Development. ...
- G. Planned Industrial Development. ...

Which entity is the special permit granting authority for cluster/flexible zoning?

- Planning Board** 1. The tract of single or consolidated ownership at the time of application shall be at least 30 acres in size and shall be subject to approval by the Planning Board under the Subdivision Control Law. (Amended by action of Town Meeting, June 23, 1976, Article #22)

Has any housing been built under the cluster/flexible provisions?

Stow

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

- Yes** Town of Stow Zoning Bylaw, Section 8.5 (Last Amended 2003)
- 8.5 Planned Conservation Development (PCD)

8.5.1 Purpose

The purpose of the Planned Conservation Development is to allow residential development which encourages

protection of Stow's rural character by development of land in clusters and villages which is in greater harmony with the town's natural resources and historic development patterns;

preservation of land for conservation, OPEN SPACE, recreation, agriculture and forestry;

preservation of significant land and water resources, natural areas and scenic vistas; preservation of unique and significant historical and archaeological resources;

a greater mixture of housing types and more energy-efficient and cost-effective residential development; and reduced costs of providing municipal services.

It is not the intent of this bylaw to make undevelopable land developable, nor to permit an increase in the number of BUILDING LOTS that would otherwise be possible on a conventional plan pursuant to the provisions of the zoning bylaws that otherwise apply, but rather to encourage the preservation of important site features.

8.5.2 Special Permit

Planned Conservation Development as set forth in this section is authorized by the Zoning Act, Mass. General Laws Chapter 40A, Section 9, and is based on the general concept of "cluster development" described therein. As the Special Permit Granting Authority, the Planning Board may grant a Special Permit for the development and construction of a Planned Conservation Development on all land and parcels in the Residential District(s) subject to the following requirements.

8.5.3 Procedural Requirements

If the Planned Conservation Development requires approval under the Subdivision Control Law, Mass. General Laws Chapter 41, the "PCD Site Plan" shall contain a plan in the form and with the contents required of a Definitive Subdivision by the Rules and Regulations Governing the Subdivision of Land in Stow. The application for a PCD Special Permit and for approval of a Definitive Subdivision plan shall be filed concurrently. To the extent permitted by law, the Planning Board shall consider both applications at the same time.

8.5.4 Planning Board Action

In evaluating the proposed Planned Conservation Development, the Planning Board shall consider the general objectives of this bylaw and of Planned Conservation Development in particular; the existing and probable future development of surrounding areas; and the appropriateness of the proposed layout of the lots and the proposed layout and use of the Open Land in relation to the topography, soils and other characteristics and resources of the tract of land in question. The Planning Board shall grant a Special Permit for a PCD if it finds that the PCD

protects and enhances the rural character and environment of Stow;

provides Open Land which is of a size, shape and location and has adequate access so as to benefit the town and the residents of the PCD;

is appropriate to the natural terrain of the tract of land to be developed;

provides for the convenience and safety of vehicular and pedestrian movement in the development in a manner that is compatible with the narrow, tree-lined country roads of Stow;

the application sets forth a specific plan for maintenance of all Open Land, waste disposal and drainage facilities, roadways and other improvements to be constructed in the development;

complies with all other legal requirements for a Special Permit and the Zoning Bylaw, including those for a PCD; and

is consistent with the Stow Growth Management Plan or succeeding plan, as amended.

8.5.4.1 The Planning Board shall consider the recommendations of the Board of Health, the Conservation Commission and the Town's consulting engineer in making said findings.

8.5.4.2 The Planning Board may require changes to the "PCD Site Plan" and impose additional conditions, safeguards and limitations as it deems necessary to secure the objectives of this bylaw provision.

8.5.5 Application for a Planned Conservation Development Special Permit - Any person who desires a PCD Special Permit shall submit an application in writing which meets the requirements set forth herein and all other information which may be required by the Planning Board under its Rules and Regulations for PCD's.

8.5.5.1 Contents of an Application for a Planned Conservation Development Special Permit - The application for a PCD Special Permit shall be accompanied by a "PCD Site Plan" showing the information required by the Rules and Regulations for a PCD. The information shall include but not be limited to topography; soil characteristics as shown on the Soil Conservation Service maps; wetlands as defined by MGL Ch. 131, S.40 and the Stow Wetlands Protection Bylaw; flood plain boundary lines; existing types of vegetation; any other unique natural, historical, archaeological and aesthetic resources; the proposed layout of the lots; the proposed location of DWELLINGS, garages and other accessory STRUCTURES; the proposed location of roads, driveways, wells, septic systems and utilities; proposed finished grades; proposed landscaping; the approximate layout of lots under a conventional plan pursuant to the provisions of the Zoning Bylaw that otherwise apply without the benefit of PCD standards and under the given site limitations; the proposed layout and land use plan of the Open Land in the PCD; and the proposed form of ownership of the Open Land and any improvements proposed thereon.

8.5.6 Standards for Planned Conservation Developments

8.5.6.1 Minimum Tract Size - A Planned Conservation Development shall be permitted upon a tract of land with definite boundaries ascertained from a recorded deed(s) or recorded plan(s) which contains an area of not less than ten (10) acres in the Residential District(s).

1. The Planning Board may permit lots on directly opposite sides of a street to qualify as a single tract of land. To permit such division of a tract of land by a street, the Planning Board must find that this would enhance the purposes of the PCD bylaw provision and would not result in any more DWELLING UNITS than would be possible in accordance with the provisions of this bylaw if the lots on either side of the street were developed separately.

2. Where a tract of land is divided by a zoning district boundary between any residential district and the Recreation-Conservation District, the total area of the tract of land may be used in the PCD solely for the purpose of qualifying the tract of land as a PCD, provided that the portion of the tract of land contained within the Recreation-Conservation District is entirely preserved as Open Land within the PCD.

8.5.6.2 Number of Lots - The number of lots allowed in the PCD shall be the number of lots into which the parcel could be divided and built upon under the normally applicable dimensional requirements and land use regulations.

8.5.6.3 Permitted Uses - There shall be permitted in any Planned Conservation Development

1. Single-family DWELLINGS, single-family DWELLINGS with ACCESSORY APARTMENTS;

2. MULTI-FAMILY DWELLINGS which are designed to be consistent in character with the single-family DWELLINGS in the same development. Such MULTI-FAMILY DWELLINGS may be allowed provided

(a) no more than one (1) doorway faces the front yard area and further provided that, in terms of exterior appearance, the BUILDING is compatible in design and, to the extent practicable, indistinguishable from the single-family DWELLINGS in the same development; and

(b) not more than twenty-five percent (25%) of the total number of DWELLING UNITS are in MULTI-FAMILY DWELLINGS; and

(c) there shall be no more than four (4) DWELLING UNITS in any residential BUILDING; and

(d) the overall length of any residential BUILDING shall not exceed 200 feet.

3. Accessory uses and structures incidental to principal uses indicated above. In its Rules and Regulations for Planned Conservation Developments, the Planning Board may establish design guidelines for DWELLINGS, require submission of architectural floor plans and side elevation plans for all proposed DWELLINGS, and impose additional conditions affecting the design and location of DWELLINGS.

8.5.6.4 Special Conditions for MULTI-FAMILY DWELLINGS

1. Where MULTI-FAMILY DWELLINGS are part of the development, the Planning Board may permit the common side yard requirement to be eliminated.

2. Where MULTI-FAMILY DWELLINGS are allowed, the total LOT area upon which the MULTI-FAMILY DWELLING is located shall comply with the minimum LOT area requirement(s) for a single-family DWELLING for the first DWELLING unit and an additional 10,000 square feet for each additional DWELLING UNIT.

3. For each MULTI-FAMILY DWELLING unit in excess of one per LOT, an additional 10,000 square feet of OPEN SPACE, in addition to the OPEN SPACE required pursuant to the Planned Conservation Development Regulations, shall be provided for each DWELLING UNIT in excess of one (1) per LOT.

****Webmasters Note:** The previous subsection, 8.5.6.4, has been amended as per an update approved at a town meeting held on 5/17/04.

8.5.6.5 Prohibition of Future Development - No tract, LOT, parcel or exclusive use area for which a special permit is granted under this section shall be further subdivided, and such notation shall be shown on the plan and set forth in documents to be recorded and

to run with the land.

8.5.7 Dimensional Requirements

Where the requirements of the PCD differ from or conflict with other requirements of the Bylaw, the requirements established for PCD's shall prevail. The following requirements shall be met in all PCD's. Where appropriate, the Planning Board may impose additional requirements upon the tract of land as a condition of the Special Permit.

8.5.7.1 The following minimum requirements shall be met:

1. Minimum frontage *100 feet *frontage may be reduced to 50 feet if LOT is served by a common drive
2. Minimum front, rear and side yard setbacks 20 feet
3. Minimum LOT area per DWELLING 20,000 sq. ft.

8.5.7.2 No BUILDING shall be located within 100 feet of an existing public way or within 50 feet of the boundary line of the PCD or the Open Land.

1. To preserve the scenic qualities of Stow's roads and to encourage connection between neighborhoods, a 50-foot buffer shall be provided along the entire length of the frontage of the tract of land proposed for the PCD. Within this 50-foot buffer, the Planning Board may require a walkway that meanders in a manner to preserve public shade trees and stonewalls.

****Webmasters Note:** The previous subsection, 8.5.7.2, has been amended as per an update approved at a town meeting held on 5/17/04.

8.5.7.3 The Planning Board shall have the authority to require larger setbacks and distances, and it may permit smaller setbacks and distances if it finds that such alternate setbacks and distances will promote the intent and purpose of PCD and will not pose public safety problems.

8.5.7.4 The limitation on the number of lots served by a common drive under Section 6.2 of the Bylaw shall not apply to lots within a PCD. Specifications for common drives within a PCD shall be included within the Rules and Regulations.

8.5.7.5 Parking shall be provided as required in Section 7 of the Zoning Bylaw, provided that no more than eight (8) parking spaces shall be grouped together.

8.5.8 Dimensional Requirements for Open Land

A minimum of 60% of the total area of the tract of land to be developed as a PCD shall be designated as Open Land. The following additional requirements shall apply:

8.5.8.1 Except as otherwise permitted by the Planning Board, because it is in the public interest, the minimum required area of the Open Land shall not contain more than 50% wetlands, as defined in MGL Ch. 131, S.40 and the Stow Wetlands Protection Bylaw.

8.5.8.2 The location and layout of the Open Land shall take into account, preserve and, where appropriate, promote such features of the tract as rivers, streams, ponds, marshes, wetlands, historic sites, wildlife refuges, unique geological or botanical areas or features, and existing or potential trails, paths and open land links.

8.5.8.3 Open Land shall be planned as large contiguous parcels whenever possible and shall have a shape, dimension, character and location suitable for the designated uses of the Open Land. Strips or narrow parcels of Open Land shall be permitted only when necessary for access, or if the Planning Board finds that a vegetated buffer strip along the site's perimeter is appropriate and consistent with the purpose and intent of the PCD.

8.5.8.4 If the tract of land abuts adjacent Open Land or undeveloped lots, the Open Land shall be connected in a manner that provides significant continuity with such adjacent Open Land and with such undeveloped lots.

8.5.8.5 The Open Land shall be provided with adequate upland access from a way or street at least forty (40) feet wide in the form of a right of way.

8.5.9 Use of the Open Land

The Open Land shall be dedicated and used for conservation, historic preservation and education, outdoor education, recreation, park purposes, agriculture, horticulture, forestry, or for a combination of these uses. No other uses shall be allowed in the Open Land, except as otherwise provided herein,

8.5.9.1 The proposed use of the Open Land shall be specified on a Land Use Plan and appropriate dedications and restrictions shall be part of the deed to the Open Land. The Planning Board shall have the authority to approve or disapprove particular uses proposed for the Open Land in order to enhance the specific purposes of Planned Conservation Development.

8.5.9.2 The Open Land shall remain unbuilt upon, provided that an overall maximum of five percent (5%) of such land may be

subject to pavement and STRUCTURES accessory to the dedicated use or uses of the Open Land, and provided that the Open Land may be subject to temporary easements for the construction, maintenance and repair of roads, utilities and sewer or drainage facilities serving the PCD or adjacent land.

8.5.9.3 Wells and sewage disposal areas or facilities may be located on the Open Land as permitted or regulated by Title 5 or local Board of Health regulations, if serving the PCD, and if such use, in the opinion of the Planning Board, enhances the specific purpose of Planned Conservation Development to promote better overall site planning. Septic disposal easements shall be no larger than reasonable necessary. If any portion of the Open Land is used for the purpose of a community well or leaching area, the Planning Board shall require adequate assurances and covenants that such facilities shall be maintained by the LOT owners within the PCD.

8.5.9.4 In addition, a portion of the Open Land may also be used for ways serving as pedestrian walks, bicycle paths and emergency access or egress to the PCD or adjacent land if such a use, in the opinion of the Planning Board, enhances the general purpose of this Bylaw and enhances better site and community planning, and if the Planning Board finds that adequate assurances and covenants exist, to ensure proper maintenance of such facilities by the owner of the Open Land.

8.5.10 Ownership of the Open Land

The Open Land shall be owned in common by the owners of all DWELLING UNITs in the PCD or shall be conveyed in whole or in part to the Town of Stow and accepted by it; or to a non-profit organization, the principal purpose of which is the conservation of open space and/or any of the purposes and uses to which the Open Land may be dedicated; or to a corporation or trust owned, or to be owned, by the owners of lots or residential units within the PCD. If such a corporation or trust is utilized, ownership thereof shall pass with conveyances of the lots or residential units.

8.5.10.1 In all cases, a perpetual restriction approved by the Planning Board and enforceable by the Town of Stow shall be imposed on the use of such land, providing in substance that the land be kept in its natural state and that the land shall not be built upon or developed or used except in accordance with the provisions of PCD as set forth herein and, if applicable, as further specified in the decision of the Planning Board governing the individual PCD.

8.5.10.2 The proposed ownership of all Open Land shall be shown on the Land Use Plan for the PCD.

8.5.10.3 At the time of its conveyance the Open Land shall be free of all encumbrances, mortgages or other claims, except: as to easements, restrictions and encumbrances required or permitted by this Bylaw.

8.5.11 Streets and Utilities

All streets and ways, whether public or private, wastewater disposal systems, drainage facilities, drinking water supplies, and utilities shall be designed and constructed in compliance with the Town of Stow Rules and Regulations Governing the Subdivision of Land, as amended, whether or not the Planned Conservation Development is a subdivision.

8.5.11.1 Performance Guarantee - Before the issuance of any building permits for the PCD, the petitioner shall agree to complete the required improvements specified in the decision, such construction and installation to be secured in accordance with performance guarantee requirements of the Town of Stow Rules and Regulations Governing the Subdivision of Land. Special exceptions to the Subdivision Rules and Regulations may be authorized by the Planning Board in granting a Special Permit hereunder, provided the Board determines such exceptions are in the public interest and are consistent with the purposes of Section 8.5 of the Bylaw.

8.5.12 Revisions and Amendments of Planned Conservation Development Special Permit

Any change in the layout of streets; in the configuration of the Open Land; in the ownership or use of the Open Land; or any other change which, in the opinion of the Planning Board, would significantly alter the character of the PCD, shall require the written approval of the Planning Board. The Planning Board may, upon its own determination, require a new Special Permit and hold a public hearing pursuant to the requirements of this bylaw if it finds that the proposed changes are substantial in nature and of public concern.

According to survey received from Stow on 3/28/05, the first provisions for flexible zoning were adopted in 1970. They were last amended in 1995.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board 8.5.2 Special Permit

Planned Conservation Development as set forth in this section is authorized by the Zoning Act, Mass. General Laws Chapter 40A, Section 9, and is based on the general concept of "cluster development" described therein. As the Special Permit Granting Authority, the Planning Board may grant a Special Permit for the development and construction of a Planned Conservation Development on all land and parcels in the Residential District(s) subject to the following requirements.

Has any housing been built under the cluster/flexible provisions?

Yes Survey received from Stow on 3/28/05:

Has any housing been built under the cluster/flexible provisions? (none, 1-8 projects, more than 8)

"1-8 projects"

Sudbury

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Cluster Development or Flexible Development are allowed by a special permit from the Planning Board in the A-Residential (A-RES), C-Residential (C-RES), and Wayside Inn Historic Preservation Zone (WI).

ZONING BYLAW
ARTICLE IX
2003
TOWN OF SUDBURY
MASSACHUSETTS
SECTION 2230 APPENDIX A
TABLE OF PRINCIPAL USE REGULATIONS

ARTICLE 5000. ALTERNATIVE RESIDENTIAL REGULATIONS.

5100. CLUSTER DEVELOPMENT.

5110. Purpose. The purpose of Cluster Development is to maintain land use density limitations while encouraging the preservation of common land for conservation, agriculture, open space, and recreational use; to preserve historical or archeological resources; to protect existing or potential municipal water supplies; to protect the value of real property; to promote more suitable siting of buildings and better overall site planning; to promote better utilization of land in harmony with neighboring parcels, with its natural features and with the general intent of the zoning bylaw through a greater flexibility in design; and to allow more efficient provision of municipal services.

5120. Applicability. The Planning Board may grant a Special Permit for a Cluster Development in Single Residence "A", Single Residence "C" and the Wayside Inn Historic Preservation Residential Zone Districts for single family detached dwellings and accessory structures, subject to the provisions of this Section 5100.

5130. Standards. The following standards shall apply to all Cluster Developments:

5131. Minimum Tract Size. Cluster Developments shall be located upon a single tract, in common ownership with definite boundaries ascertainable from recorded deed or recorded plan, having an area of at least 10 acres and undivided by land of separate ownership or by a private or public right-of-way.

5132. Number of Building Lots Permitted. The total number of building lots in a cluster development shall be no greater than the number of building lots that would otherwise be allowed in the district in which the land is located. For purposes of this section, "building lot" shall mean any lot found by the Planning Board, Board of Health and Conservation Commission, at the time of application, assuming compliance with the Zoning Bylaw, to be suitable for the construction thereon of residential dwelling units under the rules and regulations of the Town of Sudbury and the applicable laws of the Commonwealth of Massachusetts relating thereto. In making the determination of the number of allowable lots, the Board shall require that the applicant provide evidence, satisfactory to the Board, that the number of lots shown on the Cluster Development Plan is no greater than the number of lots that could otherwise be developed. Such evidence shall include but not be limited to the materials specified in Section 5152, herein.

5133. Dimensional Requirements. Where the requirements of this section differ from or conflict with the requirements of Article 2000, the requirements of this

Section shall prevail. The following minimum dimensional requirements shall be observed in all Cluster Developments:

[Insert Table]

5134. Minimum Perimeter Buffer. To provide a buffer between a cluster development and surrounding properties, no structure shall be located within 100 feet of the overall perimeter boundary. A lesser buffer may be approved when, in the opinion of the Planning Board, such requirement would prohibit the use of this bylaw due to the shape, topography, or other physical constraints of the property.

5135. Water Quality Protection. To provide adequate dispersion of contaminated water originating on a cluster development, each applicant for a Special Permit shall demonstrate to the satisfaction of the Planning Board, Board of Health and Conservation Commission that the concentration of substances in surface and groundwater from the development shall nowhere exceed the concentrations that would be expected from the development that would otherwise be allowed on the tract.

5136. Preservation of Natural Site Features. Natural site features shall be preserved by minimizing disturbance to existing vegetation and by minimizing changes to existing topographic conditions on the site.

5137. Relation of Buildings to Environment. Proposed buildings shall be related harmoniously to the terrain and to the use, scale and proportions of existing buildings in the vicinity that have a functional or visual relationship to the proposed buildings.

5138. Interrelationship of Buildings. The proposed buildings shall be related harmoniously to each other with adequate light, air, circulation, privacy and separation between buildings.

5140. Common Land. Not less than 35% of the land area of the tract, exclusive of land set aside for road area, shall remain unsubdivided and shall be dedicated as common open land. The common open land shall contain, as a minimum and exclusive of land set aside for road area, 17.5% of the upland area of the parcel being subdivided. Uplands shall be defined as those portions of the parcel not defined as wetlands under G.L. c. 131, s. 40 and the Sudbury Wetlands Administration Bylaw, excluding buffer area. Ledge outcroppings, slopes in excess of 15% grade and Flood Plain shall not be included in the common open land for purposes of calculating the 17.5% minimum upland requirement.

5141. The common land shall be used for open space, conservation, agriculture, outdoor recreation or park purposes and shall be maintained and groomed by the owner in a manner appropriate for such use and in accordance with the purpose of this bylaw. The common land shall be in one or more parcels of a size, shape and location appropriate for its intended use as determined by the Planning Board. The common land shall be selected in order to maximize the value of wildlife habitat, shall be contiguous to the extent required to preserve significant habitat, and shall be configured to minimize the perimeter to surface area ratio in order to preserve large blocks of undisturbed land. The common land shall be left in an undisturbed, natural state. The common land shall remain unbuilt upon, except that a maximum of 5% of such land may be devoted to paved areas or structures accessory to active outdoor recreation and consistent with the open space use of the land. Such structures or paved areas may not be constructed on floodplain, wetland, slopes in excess of 10% grade, or ledge outcroppings. Provision shall be made so that the common land shall be readily accessible to all lots within the cluster development that do not abut the common land. Each parcel of common land shall be provided with at least one means of access at least 20 feet in width, leading from a public or private way. Such means of access shall be identified on the "Cluster Development Site Plan" submitted with the special permit application.

5142. The ownership of common land shall either be conveyed to the Town of Sudbury and accepted by it for open space, conservation, agriculture, outdoor recreation or park use, or be conveyed to a non-profit organization, the principal purpose of which is the conservation of open space, or be conveyed to a corporation or trust owned or to be owned by the owners of lots within the development. In all cases of ownership, a perpetual restriction of the type described in G.L. c. 184 ss. 31-32 (including future amendments thereto and corresponding provisions of future laws) running to or enforceable by the Town shall be recorded for all common land. Such restriction shall provide that the common land shall be retained in perpetuity for one or more of the following uses: conservation, agriculture, outdoor recreation or park purposes. Such restriction shall be in such form and substance as the Planning Board shall prescribe and may contain such additional restrictions on development and use of the common land as the Planning Board may deem appropriate.

[...]

5200. FLEXIBLE DEVELOPMENT.

5210. Purpose. The purpose of Flexible Development is to allow development to be sited in the most suitable areas of a property; to allow for greater flexibility and creativity in the design of residential developments; to facilitate the construction and maintenance of streets, utilities and public services in a more economical and efficient manner; to encourage a less sprawling form of development; and to minimize the total amount of disturbance on the site.

5220. Applicability. The Planning Board may grant a Special Permit for a Flexible Development in Single Residence "A", Single Residence "C", and the Wayside Inn Historic Preservation Residential Zoning Districts for the construction of single family detached dwellings and accessory structures, subject to the provisions of this Section 5200.

5230. Standards. The following standards shall apply to all Flexible Developments:

5231. Minimum Tract Size. Flexible Developments shall be located upon a single tract, in common ownership with definite boundaries ascertainable from recorded deed or recorded plan, having an area of at least 10 acres and undivided by land of separate ownership or by a private or public right-of-way.

5232. Number of Building Lots Permitted. The total number of building lots in a Flexible Development shall be equal to the number of buildable lots permitted under a conventional subdivision, with each lot satisfying minimum lot area, frontage and all other applicable zoning regulations, possessing suitable soils for the construction of a single family wastewater disposal system as determined by the Board of Health, and sufficient upland, buildable area to sustain a single family home.

5233. Dimensional Requirements. Where the requirements of this section differ from or conflict with the requirements of Article 2000, the requirements of this section shall prevail. The following minimum dimensional requirements shall be observed in all Flexible Developments:

[Insert Table]

5234. Single dwelling per lot. No more than one single family dwelling and its accessory structures and uses may be located on a lot created under this Flexible Development Bylaw.

5235. Restriction Against Further Development. No Flexible Development for which a Special Permit has been issued under this section may be further subdivided. A notation to that effect shall be made on the Definitive Plan prior to endorsement by the Planning Board and recording in the Registry of Deeds or the Land Court. In addition, a perpetual restriction, running with the land, and enforceable by the Town of Sudbury, shall be recorded with respect to the land within the Flexible Development. Such restriction shall provide that no lot in the Flexible Development may be further subdivided into additional building lots. Said restriction shall be in such form and substance as the Planning Board shall prescribe and may contain such additional restrictions on development and use of the lots as the Planning Board may deem appropriate.

5236. All applications for Flexible Development shall require subdivision approval pursuant to G.L. c. 41, and shall conform to the Preliminary or Definitive Plan requirements, and all design and construction standards in the Rules and Regulations Governing the Subdivision of Land, as may be amended.

[...]

Senior Residential Community also appears to be a type of flexible zoning:

5300. SENIOR RESIDENTIAL COMMUNITY.

5310. Purpose.

The purposes of the Senior Residential Community Special Permit are to provide alternative housing for a maturing population; to provide a type of housing which reduces residents' burdens of property maintenance and which reduces demands on municipal services; and to promote flexibility in land use planning in order to improve site layouts, protection of natural features and environmental values and utilization of land in harmony with neighboring properties.

5320. Applicability.

The Planning Board, acting as Special Permit Granting Authority, may grant a Special Permit for construction of a Senior Residential Community (SRC) and accessory structures, in the following districts: Single Residence "A", Single Residence "C", the Wayside Inn Historic Preservation, Limited Business, Village Business and Research Districts.

5330. Standards.

The following standards shall apply to all Senior Residential Communities:

5331. Tract Qualifications. At the time of granting a special permit by the Planning Board, the property under consideration for a SRC shall be located on one or more contiguous parcels, whether or not separated by a public or private way, with definite boundaries ascertainable from a recorded deed or recorded plan, having an area of at least 20 acres.

5332. Age Qualification. A SRC shall constitute housing intended for persons of age fifty-five or over within the meaning of M.G.L. c151B, 54,16 and 42 USC S3607(b)(2)(c), and in accordance with the same, one hundred percent (100%) of the dwelling units in a Senior Residential Community shall each be owned and occupied by at least one person fifty-five (55) years of age or older per dwelling unit, and such development shall be operated and maintained in all other respects in compliance with the requirements of said statutes and regulations promulgated pursuant thereto. In the event of the death of the qualifying owner/ occupant(s) of a unit, or foreclosure or other involuntary transfer of a unit in a SRC, a two-year exemption shall be allowed for the transfer of the unit to another eligible household.

5333. Applicant Qualifications. The applicant for a Special Permit for a SRC shall be the owner of the tract proposed for such development or be authorized in writing by the owner to apply for and be issued such Special Permit, and shall establish to the satisfaction of the Planning Board that the applicant has knowledge, experience and financial resources sufficient to construct and complete the development.

5334. Number of Dwelling Units Permitted. The maximum number of dwelling units in a SRC shall be computed based on the number of buildable lots permitted under a conventional subdivision, with each lot satisfying minimum lot area, frontage and all other applicable zoning regulations for which district the parcel is located within, possessing suitable soils as determined by the Board of Health, and sufficient upland, buildable area to sustain a single family home. In Village Business Districts and Research Districts, a minimum lot area of 40,000 sq. ft. and minimum frontage requirement of 180 feet shall be used to calculate each buildable lot. For the purposes of this section, minimum lot area in every district shall contain no more than 25% which is underwater land or wetland resource as defined in G.L. c. 131, s.40, or in the Sudbury Wetlands Administration Bylaw. For each buildable lot calculated, a maximum of five (5) bedrooms shall be permitted. The number of bedrooms shall determine the number of units, pursuant to section 5336 below, with the maximum number of bedrooms in any unit being less than or equal to 3.

5335. Perimeter Buffer. A 100-foot wide buffer between a SRC and abutting properties is required around the entire SRC perimeter; provided, however, that access roads and pedestrian paths may cross the buffer at the discretion of the Planning Board, and the Planning Board may otherwise reduce the width of the buffer to no less than 50 feet at appropriate locations, taking into account the character or open space use of abutting properties or the existence or requirement of buffer thereon. The perimeter buffer shall remain in a natural state to preserve the visual character of the parcel being developed. The perimeter buffer may be included in Open space computations.

5336. Building and Dwelling Unit Requirements. The following requirements shall apply to all buildings and dwelling units in a Senior Residential Community:

a. Dwelling units can be attached, or detached as single units, or a combination of these types.

b. Dwelling Units Per Building. No building shall contain more than four dwelling units.

c. Maximum Height. No building constructed in a SRC shall exceed 35 feet in height.

d. Maximum Number of Bedrooms. No dwelling unit constructed in a SRC shall contain more than three bedrooms. No more than ten percent (10%) of the total units in a SRC shall have fewer than two bedrooms.

5337. Accessory Buildings and Structures. In a SRC, accessory buildings and structures may be permitted, including clubhouse, swimming pool, tennis court, cabanas, storage and maintenance structures, garages, and other customary accessory structures. Accessory buildings and structures shall be shown on the Site Plan.

5338. Parking. Two parking spaces shall be provided for each dwelling unit (with the exception of one bedroom units, which shall require one parking space per unit), in reasonable proximity to the dwelling, or in garages. Additional parking in proximity to any clubhouse or other facility serving residents in common, or guest parking, shall be provided in off-street parking areas, provided that no single accessory parking area shall contain more than twelve parking spaces, and all such areas shall be adequately landscaped.

5339. Private Roads. Roads and driveways within a SRC shall meet such width, grades, radius of curvature and construction standards as the Planning Board shall determine, based upon the standards provided in the regulations governing subdivisions, as the same may be waived or modified by the Planning Board to meet site conditions and design requirements.

5339A. Other Facilities. All facilities for utility services, drainage, lighting and signage shall be in accordance with requirements established by the Planning Board, consistent with applicable provisions of the Zoning Bylaw and the regulations governing subdivisions, as the same may be waived or modified by the Planning Board to meet site conditions and design requirements.

5339B. Project Maintenance. In every SRC there shall be an organization of the owners of the dwelling units which shall be responsible for the maintenance and repair of internal roads and driveways, snow plowing, landscape maintenance, trash removal, utility services and maintenance and repair of other common elements and facilities serving the residents, and the Town of Sudbury shall not be responsible therefor.

5339C. Wastewater Disposal. In every development wastewater disposal comply with the regulations of the Sudbury Board of Health, the Sudbury Water Resource Protection District and Wastewater Treatment Facilities Bylaws, and applicable Department of Environmental Protection regulations.

5340. Open Space.

At least 25% of the upland area of the parcel shall be Open Space. No development, including clearing, primary or accessory structures, parking, wastewater disposal or stormwater management, shall take place within the 100-foot buffer area of any jurisdictional wetland, unless authorized by the Conservation Commission. Upon approval of the Conservation Commission, the buffer area may be reconfigured to provide better protection of resources on the site if such reconfiguration achieves a similar goal of resource protection; however, in no event shall the total area of the 100-foot buffer be reduced without compensation in an equal amount elsewhere on the site. The open space areas shall be selected to maximize the value of wildlife habitat, shall be contiguous to the extent required to preserve significant habitat, and shall be configured to minimize the perimeter to surface area ratio in order to preserve large blocks of undisturbed land. The open space shall be left in an undisturbed, natural state. Landscape plantings shall not be permitted, except in areas where revegetation may be necessary to increase buffering, as determined by the Planning Board. If revegetation of any area is within the jurisdiction of the Conservation Commission, the Commission shall determine the type and extent of plantings, to be compatible with the values and functions of the wetland and upland resources of the site.

Notes on density:

Cluster Development:
Minimum Tract Size: 10 acres
Minimum Lot Area:
A-RES: 20,000 sq ft
C-RES: 30,000 sq ft
Wayside: 2 acres

Flexible Development:
Minimum Tract Size: 10 acres
Minimum Lot Area:
A-RES: 30,000 sq ft
C-RES: 40,000 sq ft
Wayside: 2 acres

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board Cluster Development or Flexible Development are allowed by a special permit from the Planning Board in the A-Residential (A-RES), C-Residential (C-RES), and Wayside Inn Historic Preservation Zone (WI).

Has any housing been built under the cluster/flexible provisions?

Sutton

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

Yes Open Space Residential Development is allowed by right in R-1 and R-2.

Town of Sutton Zoning Bylaw 2003

Section I. General
B. Definitions

Open Space Residential Development: A residential development in which the buildings are clustered together with reduced lot sizes and frontage. The land not included in the building lots is permanently preserved as open space.

Section IV. Special Regulations K. Open Space Residential Development

1. Purpose and Intent

Open Space Residential Development is the preferred form of residential development in the Town of Sutton for residential developments in the R-1 Residential-Rural district and R-2 Residential-Suburban district. Use of this Open Space Residential Development bylaw will:

- a. Allow for greater flexibility and creativity in the design of residential developments.
- b. Encourage the permanent preservation of open space, agricultural and forestry land, other natural resources including water bodies and wetlands, and historical and archeological resources.
- c. Maintain the town's traditional character and land use pattern in which small villages contrast with open land.
- d. Protect scenic vistas from the town's roadways and other places.
- e. Facilitate the construction and maintenance of streets, utilities and public services in a more economical and efficient manner.
- f. Protect existing and potential municipal water supplies.
- g. Encourage a less sprawling and more efficient form of development that consumes less open land and conforms to existing topography and natural features better than a conventional or grid subdivision.
- h. Minimize the total amount of disturbance on the site.
- i. Preserve open space areas for active and passive recreational use, including the provision of neighborhood parks and trails.
- j. Encourage the provision of diverse housing opportunities and the integration of a variety of housing types.

2. Applicability

The Planning Board may grant definitive subdivision approval for an Open Space Residential Development for any parcel or contiguous parcels in the same ownership totaling at least five (5) acres.

3. Procedural Requirements

a. Rules and Regulations: The Planning Board shall adopt Rules and Regulations consistent with the provisions of this Bylaw and shall file a copy of said Rules and Regulations with the Town Clerk. Such rules shall address the size, form, contents, and number of copies of plans and other submittals and the procedure for the review of special permits. The Planning Board shall establish fees for the submission, processing, and administration of the application and shall assess review fees for the engineering and technical review of any proposal.

b. Pre-Application Meeting

A pre-application meeting between the Planning staff and the applicant is strongly encouraged.

c. Preliminary Plan/Open Space Concept Plan

1. Applicants considering Open Space Residential Development are strongly encouraged to submit an Open Space Concept Plan along with a Preliminary Subdivision Plan for review by the Planning Board. An Open Space Concept Plan consists of the existing conditions plan required in Section IV.K.3.e below, clearly indicating areas suitable for preservation or conservation as described in Section IV.K.5 and 6 of this Bylaw and a sketch plan of the overall development concept.

2. In addition to identifying appropriate areas for open space preservation, one of the purposes of this review is to determine the maximum number of lots which may be created in the Open Space Residential Development. Approval of a preliminary plan pursuant to M.G.L. Chapter 41, §81-S will also shorten the period of review for the Definitive Subdivision and Open Space Residential Development Plan.

d. Definitive Subdivision and Open Space Residential Development Plan: The Definitive Open Space Residential Development Subdivision Plan shall be prepared by a team including a Registered Civil Engineer, Registered Land Surveyor, and a Registered Landscape Architect. The plan shall show:

1. Location and boundaries of the site
2. Proposed land and building uses
3. Lot lines
4. Location of open space
5. Proposed grading
6. Location and width of streets and ways, parking, landscaping
7. Existing vegetation to be retained
8. Water supply or approximate location of wells
9. Drainage
10. Proposed easements and methods of sewage disposal.

e. Existing Conditions Plan

An accompanying Existing Conditions Plan shall depict:

1. Existing topography
 2. Wetlands, water bodies and the 100 year flood plain
 3. All existing rights of way
 4. All existing easements and structures
 5. The location of significant features such as woodlands, tree lines, open fields or meadows and scenic views
 6. Watershed divides and drainage ways
 7. Fences and stone walls
 8. Roads, driveways, and cart paths
 9. Priority areas for open space preservation and conservation as described in Sections IV.K.5 and 6 below
 10. Historic and archaeological resources
 11. Boundaries of any National Register Historic District
 12. The application shall also show locations of soil test pits and percolation tests, with supporting documentation on test results.
- Applicants shall also include a statement indicating the proposed use and ownership of the open space as permitted by this Bylaw, number and types of dwelling units, and lot plans, if any. Applicants shall refer to the Subdivision Rules and Regulations for provisions regarding preparation and submittal of definitive subdivision plans.

f. Density/Number of Dwelling Units

1. The number of dwelling units permitted shall generally not exceed that which would be permitted under a conventional ("grid") subdivision that complies with the Town Zoning Bylaw and the Subdivision Rules and Regulations of the Planning Board and any other applicable laws and regulations of the Town or the state.
2. The Planning Board may require that a preliminary subdivision plan be submitted to assist in demonstrating the allowable

number of units.

g. Review and Decision

With respect to materials submitted, time limits for action and other such procedural matters, the Planning Board shall act in accordance with the procedures specified in the Town of Sutton Subdivision Rules and Regulations regarding Definitive Subdivision submittal, review and decision. Where this bylaw requires additional submittals, those items shall also be submitted.

h. Approval Criteria

1. Findings: The Planning Board may approve the development upon finding that it complies with the purposes and standards of the Open Space Residential

Development bylaw and is superior in design to a conventional subdivision with regard to protection of natural features and scenic resources of the site. The Planning Board shall consider the following criteria in making its decision:

a. Upland open space as required by this Bylaw has been provided and generally conforms to the Design Requirements in Section IV.K.5 of this Bylaw.

b. Approximate building sites have been identified and are not located closer than one hundred (100) feet to wetlands and water bodies.

c. Proposed streets have been aligned to provide vehicular access to each house in a reasonable and economical manner. Lots and streets have been located to avoid or minimize adverse impacts on open space areas and to provide views of and access to the open space for the lots.

d. All lots and structures meet the applicable dimensional requirements of Section IV.K.4 of this Bylaw.

2. The Planning Board's findings, including the basis of such findings, shall be stated in the written decision of approval, conditional approval or denial of the application for special permit.

i. Conditions

The Planning Board shall impose conditions in its decision as necessary to ensure compliance with the purposes of this Bylaw. If individual or separate lots are proposed, approval of an Open Space Residential Development shall be conditioned upon Definitive Subdivision approval and shall be conditioned to provide that no further division of land which increases the number of lots or results in an alteration to the area to be set aside as open space may occur without a modification of the special permit. Any alteration of lot lines or layout of ways shall require approval of the Planning Board and shall be in compliance with the requirements of the Open Space Residential Development Bylaw and the Subdivision Rules and Regulations.

j. Time Limit

A special permit is granted for a period of two (2) years and shall lapse if substantial use or construction has not commenced by such date, except for good cause shown. The Planning Board is encouraged to grant extensions to allow construction of subdivisions within the grandfathering limits set forth in M.G.L. Chapter 40A, §6, except where such extension would derogate from the intent and purpose of this Bylaw.

k. Relationship to Subdivision Control Law

Nothing contained herein shall exempt a proposed subdivision from compliance with other applicable provisions of this Bylaw or the Subdivision Rules and Regulations of the Planning Board, nor shall it affect the right of the Board of Health and of the Planning Board to approve, condition or disapprove a subdivision plan in accordance with the provision of such Rules and Regulations and of the Subdivision Control Law. To the extent possible, the application for approval of an Open Space Residential Development and a definitive subdivision application shall be processed and administered contemporaneously.

4. Standards and Dimensional Requirements

Where the requirements of this section differ from or conflict with the requirements in the Table of Area Regulations and Table of Height and Bulk Regulations found elsewhere in this Bylaw, the requirements of this section shall prevail.

a. Dwelling Units per Structure

The Planning Board may permit structures to be constructed containing more than one (1) dwelling unit, but not more than four (4) dwelling units per structure. If multiple unit structures are to be constructed, the number of dwelling units per structure shall be varied within the Open Space Residential Subdivision, but structures containing four (4) dwelling units shall be limited to two (2) bedrooms per dwelling unit, and structures containing three (3) dwelling units shall be limited to three (3) bedrooms per dwelling unit.

b. For Structures on Individual Lots

1. Minimum Lot Size: The minimum lot size shall be not less than one-third (1/3) the square footage otherwise required by the Zoning District in which the subdivision is located or fifteen thousand (15,000) square feet, whichever is less.

2. Minimum Frontage: The minimum frontage may be reduced from the frontage otherwise required in the Zoning District, provided, however, that no lot shall have less than fifty (50) feet of frontage and provided further that such frontage reduction shall apply only to lots fronting on proposed internal roadways. The sharing of driveways to reduce curb cuts is encouraged.

3. Lot Shape: All building lots must be able to contain a circle of a minimum diameter of fifty (50) feet from the front lot line to the rear building line.

4. Setbacks: The Planning Board may reduce by up to one-half the setbacks otherwise listed in Section III.B.3, the Table of Area Regulations, in this Bylaw, if the Board finds that such reduction will result in better design, improved protection of natural and scenic resources, and will otherwise comply with this Bylaw.

c. Minimum Spacing

If structures, regardless of the number of dwelling units contained therein, are not located on individual lots, the minimum spacing between structures shall be not less than twenty (20) feet, unless the Fire Chief specifically recommends a greater separation.

d. Road and Perimeter Setbacks

Every dwelling fronting on the proposed roadways shall be set back a minimum of twenty-five (25) feet from the roadway right-of-way, and a minimum of fifty (50) feet from the outer perimeter of the land subject to the application. This fifty (50) foot setback shall be maintained in a naturally vegetated state to screen and buffer the development. The Planning Board may waive this requirement if it finds the proposed development abuts existing permanent open space.

e. Required Open Space

All land area not utilized for lots or building sites, roads, and drainage shall be set aside as open space. A minimum of forty percent

(40%) of the area of the parcel shall be provided as open space. Roadway rights-of-way shall not count toward the area to be provided as open space.

5. Open Space Design Requirements

The location of open space provided through this bylaw shall be consistent with the policies contained in the Master Plan and the Open Space and Recreation Plan of the Town. The following design requirements shall apply to open space and lots provided through this bylaw:

- a. Open space shall be planned as large, contiguous areas whenever possible. Long thin strips or narrow areas of open space (less than one hundred (100) feet wide) shall occur only when necessary for access, as vegetated buffers along wetlands or the perimeter of the site, or as connections between open space areas.
- b. Open space shall be arranged to protect valuable natural and cultural environments such as stream valleys, wetland buffers, unfragmented forestland and significant trees, wildlife habitat, open fields, scenic views, trails, and archeological sites, and to avoid development in hazardous areas such as flood plains and steep slopes. The development plan shall take advantage of the natural topography of the parcel, and cuts and fills shall be minimized.
- c. Open space may be in more than one parcel provided that the size, shape and location of such parcels are suitable for the designated uses. Where feasible, these parcels shall be linked by trails.
- d. Where the proposed development abuts or includes a body of water or a wetland, these areas and the one hundred (100) foot buffer to such areas shall be incorporated into the open space. Where appropriate, reasonable access shall be provided to shorelines.
- e. The maximum number of dwelling units compatible with good design shall abut the open space and all homeowners within the Open Space Residential Subdivision shall have reasonable physical and visual access to the open space through internal roads, sidewalks or paths. Such access may be limited where the Planning Board finds that resource areas are vulnerable to trampling or other disturbance.
- f. Open space shall be provided with adequate access, by a strip of land at least twenty (20) feet wide, suitable for a footpath, from one or more streets in the development.
- g. The visual impact of new development shall be minimized from scenic and historic roads by open space parcels or buffers separating the Open Space Residential Development from the road. Creation of new driveway openings on existing arterial roadways and existing scenic roads shall be minimized.
- h. Where a proposed development abuts land held for conservation purposes, the development shall be configured to minimize adverse impacts to abutting conservation land. Trail connections shall be provided where appropriate.

8. Density Bonuses

The Planning Board may approve density bonuses pursuant to one or both of the following provisions, provided, however, that in no case shall the density bonus permit greater than a fifteen percent (15%) increase in the number of lots permitted in the subdivision.

a. A density bonus may be permitted when the proposed subdivision provides permanently affordable housing opportunities, whether within the Open Space Residential Subdivision or elsewhere in Sutton. When located within the Open Space Residential Subdivision, affordable units shall be developed concurrently with the market rate units.

1. For each affordable dwelling unit provided under this section, one additional dwelling unit may be permitted, up to a maximum fifteen percent (15%) increase in number of dwelling units. For Open Space Residential Subdivisions with individual lots for each dwelling unit or structure, the increase in dwelling units shall correspond with an increase in the number of lots otherwise allowed to be created in the subdivision.

b. A density bonus may be permitted when the proposed subdivision provides for public access to open space areas within the subdivision. For every five (5) acres of land that is donated to the municipality and open to public use, one additional building lot may be permitted, up to a maximum fifteen percent (15%) increase in the number of building lots. Open space that is open to public use shall be accessible from a public way and adequate parking shall be provided to meet anticipated demand for the use.

Survey received from Sutton in July 2005 marked that flexible zoning was first adopted on 6/28/1999.

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes According to Table of Use Regulations (Town of Sutton Zoning Bylaw 2004):

Open Space Residential Development... by right in R-1, R-2
Traditional Neighborhood Development... by special permit from planning board in R-2, V
Limited Density Residential Development... by special permit from the planning board in R1, R2
Continued Care Retirement Community... by special permit from planning board in all districts

Town of Sutton Zoning Bylaw 2003

Section IV. Special Regulations L. Traditional Neighborhood Development

1. Purpose and Intent

Traditional Neighborhood Development (TND) is an alternative form of residential development in the Town of Sutton for new residential developments in the Residential-Suburban (R-2) and Village (V) zoning districts. Use of this Traditional Neighborhood Development bylaw will:

- a. Maintain the Town's traditional character and land use pattern in which small villages contrast with open land.
- b. Create a buffer of new, complementary residential development between the historic village centers and the remainder of the

Town.

- c. Facilitate the construction and maintenance of streets, utilities and public services in a more economical and efficient manner.
- d. Preserve small-scale neighborhood open space areas for active and passive recreational use, including the encouraging of the construction of new neighborhood parks and playgrounds.
- f. Encourage the provision of diverse housing opportunities and the integration of a variety of housing types.

2. Applicability

The Planning Board may grant a special permit for Traditional Neighborhood Development (TND) for any parcel or contiguous parcels for twelve (12) or more dwelling units, as calculated in this section.

3. Procedural Requirements

a. Rules and Regulations

The Planning Board shall adopt Rules and Regulations consistent with the provisions of this bylaw and shall file a copy of said Rules and Regulations with the Town Clerk. Such rules shall address the size, form, contents, and number of copies of plans and other submittals, the procedure for the review of special permits for a TND, and specify fees for the submission, administration, review, and inspection of TNDs. The Planning Board, in concert with the Historical Commission and others, may adopt a "pattern book" or manual providing design and layout guidance for TNDs.

b. Pre-Application Meeting

A pre-application meeting to identify issues relating to the proposed TND between the Planning staff and the applicant is strongly encouraged. At this pre application meeting, applicants are encouraged to submit a TND Concept Plan for review and comments by the Planning Board. A pre-application meeting between the applicant and the Historical Commission or historic district commission, if any, is also encouraged.

c. TND Concept Plan

A TND Concept Plan consists of a sketch plan showing the possible configuration of new development and the street layouts, lotting, and number of dwelling units on all land within five hundred (500) feet of the proposed development. This sketch plan shall show the proposed TND in a general or schematic way. The applicant is further encouraged to submit several alternative plans where appropriate.

d. Traditional Neighborhood Development Plan

The TND Plan shall be prepared by a team including a Registered Civil Engineer, Registered Land Surveyor, and a Registered Landscape Architect. The plan shall show:

1. Location and boundaries of the site
 2. Proposed land and building uses
 3. Lot lines
 4. Location of open space
 5. Proposed grading
 6. Location and width of streets and ways, parking, landscaping
 7. Existing vegetation and development to be retained
 8. Drainage
 9. Proposed easements and methods of sewage disposal
 10. Historic and archaeological resources
 11. Boundaries of any National Register Historic District
 12. The application shall also show locations of soil test pits and percolation tests, with supporting documentation on test results.
- Applicants shall also include a statement indicating the proposed use and ownership of the open space as permitted by this bylaw, number and types of dwelling units, and lotting plans, if any. If the plan shows either the creation of lots approval under subdivision control not required ("Form A lots" or "ANR plans") or a definitive subdivision plan, applicants shall refer to the Subdivision Rules and Regulations for provisions regarding preparation and submittal.

e. Density/Number of Dwelling Units

1. The number of dwelling units shall be determined by dividing the total developable area by thirty thousand (30,000) square feet if the land to be

developed as a TND is serviced by municipal water and municipal sewer or if municipal sewer is not available, a package wastewater treatment plant approved by the Board of Health, which is constructed to accommodate twice the design flow for the TND, the surplus to be utilized for remediation of existing dwellings and other uses adjacent to or near the proposed TND.

[Total area of land subject to the application] - [60% of the Area of wetlands and 100% of the area of water bodies] = Total Developable Land Area

90% [Total Developable Land Area] / 30,000 = Maximum number of dwelling units allowed

f. Density Bonuses

The Planning Board may approve density bonuses pursuant to one or more of the following provisions, provided, however, that in no case shall the density bonus permit greater than a twenty-five percent (25%) total increase in the number of dwelling units permitted in the TND as calculated above.

1. A density bonus may be permitted when the proposed TND provides permanently affordable housing opportunities. For each affordable dwelling unit provided under this section, one (1) additional dwelling unit may be permitted, up to a maximum fifteen percent (15%) increase in number of dwelling units.
2. A density bonus may be permitted when the proposed TND develops and constructs a playground or park on required open space areas within the development. For every one-half (½) acre of land developed and constructed as a playground, playing field, tot lot, or other active recreation area for children and donated to the Town, one (1) additional dwelling unit may be permitted, up to a maximum fifteen percent (15%) increase in the number of dwelling units. When deemed necessary by the Planning Board, adequate parking shall be provided to meet anticipated demand for the use.

g. Design Standards

1. Lots: The parcel as a whole shall be systemically divided into streets or ways, lots, and public space. The minimum lot size shall be relatively uniform throughout the TND, varying for the number of dwelling units per structure if necessary. Unless the existing lotting and street layout pattern abutting the TND would indicate otherwise, the lots shall be nominally rectangular. Whenever possible, lots shall not be created such that dwellings on them face or front on existing arterial roads in town.

2. Buildings within the TND shall be orientated to face the sidewalk and street. Parking shall locate along the side of buildings, setback equal to the structure and screened from the street, or in the rear of the lot. Lighting, including street lights, shall be generally historic in nature and not exceeding sixteen (16) feet in height. The architecture of the dwellings and other structures shall be consistent with the historic and design context of the abutting neighborhood. Accessory buildings, if any, shall set-back deeply on lots.

3. The Planning Board shall establish standards and specifications for streets, sidewalks, street trees, and the paved width of streets.

4. Open Space: Two thousand (2,000) square feet of public open space is required for each dwelling unit. This open space may take any one of the following forms:

a. An area of land suitably located and configured to be developed and used as a playground, playing field, tot lot, or other active recreation area for children.

b. Community garden plots for TND and neighborhood residents.

c. Greens, commons, or other public green spaces for passive recreation.

d. Conservation land.

e. Greenspace buffer between the TND and an existing abutting nonresidential use.

f. Public trails or bikeways.

g. Leaching Facilities: If not connected to public sewerage, and subject to the approval of the Board of Health, as otherwise required by law, the Planning

Board may permit a portion of the open space to be used for components of sewage disposal systems serving the TND, where the Planning Board finds that such use will not be detrimental to the character, quality, or use of the open space, wetlands or water bodies, and enhances the overall plan of the TND. The Planning Board shall require adequate legal safeguards and covenants to be included in the deed to the lots in the TND that such sewage disposal facilities shall be adequately maintained by the homeowners. The Planning

Board may require that such septic disposal system be conveyed to the Town at no cost.

h. Accessory Structures: Up to five percent (5%) of the open space may be set aside and designated to allow for the construction of structures and facilities accessory to the proposed use of the open space including parking.

i. Another open space or conservation use approved by the Planning Board.

j. Any combination of the above as approved by the Planning Board.

h. Standards and Dimensional Requirements

Where the requirements of this section differ from or conflict with the requirements in the Table of Area Regulations and Table of Height and Bulk Regulations found elsewhere in this Bylaw, the requirements of this section shall prevail.

1. Dwelling Units per Structure

Consistent with the character, scale, and massing of existing adjacent residential developments, the Planning Board may permit structures to be constructed

containing more than one (1) dwelling unit, but not more than four (4) dwelling units per structure. If multiple unit structures are to be constructed, the number of dwelling units per structure shall be varied, but structures containing four (4) dwelling units shall be limited to two (2) bedrooms per dwelling unit and structures containing three (3) dwelling units shall be limited to three (3) bedrooms per dwelling unit.

2. Front Set-Back

Instead of a minimum setback for dwellings within the TND, structures shall be built to the "build-to" line twenty (20) feet back from the street right-of-way line for minor streets, twenty-five (25) feet back from the street right-of-way line for arterial and collector streets (unless a greater distance is recommended by the police chief, highway superintendent, or the Board's engineer). Corner lots shall have front build-to dimensions facing both streets, although the side lot lines shall have a minimum setback of ten (10) feet (or one-half (½) the greater distance if required by the fire chief.)

3. For Structures Not on Individual Lots

If structures, regardless of the number of dwelling units contained therein, are not located on individual lots, the minimum spacing between structures shall be not less than twenty (20) feet, unless the Fire Chief specifically recommends a greater separation.

4. For Structures on Individual Lots:

a. Minimum Lot Size: The minimum lot size shall be not less than one-third (1/3) the square footage otherwise required by the zoning district in which the

subdivision is located or eight thousand (8,000) square feet, whichever is less.

b. Minimum Frontage: The minimum frontage may be reduced from the frontage otherwise required in the zoning district, provided, however, frontage shall be determined as the linear distance needed per lot, based on either the average frontages on existing residential lots abutting and adjacent to the TND, or the linear measure generated by separating structures by twenty (20) feet (or greater distance if required by the fire chief). In only the most exceptional situations shall the frontage be less than sixty (60) feet.

c. For rear setbacks, the Planning Board may reduce by up to one-half (½) the setbacks otherwise listed in the Table of Area Regulations in this Bylaw, if the

Board finds that such reduction will result in better design of the TND as a whole.

4. Review and Decision

a. Comments and Recommendations from Local Boards

Upon receipt of the application and the required plans, the Planning Board shall transmit one copy each to the Board of Health, the Conservation Commission, the Park and Recreation Commission, and the Historical Commission or historic district commission, if any. Within forty (45) days of their receipt of the application/plans, these agencies shall submit any recommendations to the Planning Board. The Planning Board shall act on applications according to the procedure specified in M.G.L. Chapter 40A, §9.

Notice shall be provided of hearings in accordance with

Chapter 40A, §11 and Chapter 41, §81-T. Public hearings for a definitive subdivision application if required and the special permit application shall be conducted concurrently.

b. Approval Criteria

1. Findings

The Planning Board may approve the development upon finding that:

- a. The proposed development complies with the purposes and standards of this Traditional Neighborhood Development Bylaw.
- b. The proposed development is superior in design and layout to a conventional development with regard to the historic and scenic resources near the site .
- c. The proposed streets and ways have been aligned to provide vehicular access to each house in a reasonable and economical manner.
- d. All lots and structures meet the applicable dimensional requirements of the Sutton Zoning Bylaw, except as provided for in the TND section of this

Bylaw.

- e. The Planning Board's findings, including the basis of such findings, shall be stated in the written decision of approval, conditional approval or denial of the application for special permit.

2. Conditions

The Planning Board shall impose conditions in its decision as necessary to ensure compliance with the purposes of this Bylaw.

Approval of a Traditional

Neighborhood Development shall be conditioned upon Definitive Subdivision approval and shall be conditioned to provide that no further division of land which increases the number of lots or results in an alteration to the area to be set aside as open space may occur without a modification of the special permit. Any alteration of lot lines or layout of ways shall require approval of the Planning Board and

shall be in compliance with the requirements of the Traditional Neighborhood Development Bylaw and the Subdivision Rules and Regulations.

c. Time Limit

A special permit is granted for a period of two (2) years and shall lapse if substantial use or construction has not commenced by such date, except for good cause shown. The Planning Board is encouraged to grant extensions to allow construction of subdivisions within the grandfathering limits set forth in M.G.L. Chapter 40A, §6, except where such extension would derogate from the intent and purpose of this Bylaw.

d. Relationship to Subdivision Control Law

Nothing contained herein shall exempt a proposed subdivision from compliance with other applicable provisions of this Bylaw or the Subdivision Rules and Regulations of the Planning Board, nor shall it affect the right of the Board of Health and of the Planning Board to approve, condition or disapprove a subdivision plan in accordance with the provision of such Rules and Regulations and of the Subdivision Control Law. To the extent possible, the application for approval of a Traditional Neighborhood Development and a definitive subdivision application shall be processed and administered contemporaneously.

C. Limited Density Residential Development

1. Intent

This Bylaw seeks to protect and enhance the rural character of the Town of Sutton by encouraging the orderly development of limited density residential developments, and regulating such growth. To this end, it shall be determined that a proposed development

offered hereunder:

- a. Promotes the more efficient use of land in harmony with its natural features;
- b. Encourages the preservation of open land for conservation, agriculture, open space and recreational use;
- c. Preserves historical and archaeological resources;
- d. Protects existing and potential water supplies; and/or,
- e. Protects and promotes the health, safety and convenience and general welfare of the inhabitants of the Town of Sutton.

2. Special Permit Granting Authority

The Planning Board is hereby designated as the Special Permit Granting Authority for all purposes under this section and shall adopt rules and regulations with respect to the administration of applications under this section of the Zoning Bylaw.

3. Definitions

In addition to the definitions contained in Section I.B, the following shall apply for purposes of this Section:

Board: Planning Board, Town of Sutton.

Buffer: A perimeter area of the tract designed to separate the proposed development from abutting properties.

Common Land and Facilities: All open land, interior ways, permitted supporting facilities, and land on which such supporting facilities are located.

Home Association: A corporation, trust, or unincorporated association, the membership of which consists of the owner or owners of dwelling units within the tract, which shall own and/or manage all interior ways and the land not occupied by residential units, including facilities and structures thereon, in perpetuity.

Interior Way: Vehicular access within the tract, not including parking spaces or individual unit driveways.

Open Land: All land within the tract not occupied by structures or interior vehicular ways or parking areas.

Tract: Single parcel or group of contiguous parcels under common ownership or proposed for common ownership.

4. Minimum Requirements for Initial Review

- a. Tract Size: Minimum twenty-five (25) and maximum one hundred (100) acres in R-1 or R-2 zones. A tract bisected by a public way shall be deemed two tracts.
- b. Frontage: Minimum of fifty (50) feet on a public way as defined in the Subdivision Control Law and the Sutton Zoning Bylaw.
- c. Density: The overall tract density (i.e., total dwelling units divided by total acres) shall not exceed eight-tenths (.8) dwelling units per acre, except as otherwise expressly provided in this section IV.C. 4. For a tract or tracts contiguous to a professionally managed, full service golf course of at least eighteen holes and at least as many acres

as the tract or tracts being developed, the overall tract density shall not exceed one and six-tenths (1.6) dwelling units per acre if the land on which such golf course is located contains deed restrictions requiring such land to be used for purposes of at least an eighteen hole professionally managed full service golf course for no less than ninety-nine

(99) years from the date that the special permit for such Limited Density Residential Development (LDRD) is approved by the Planning Board, and the special

permit shall contain a condition to that effect. The land on which the golf course is located shall not be considered open land for purposes of the open land requirements of each tract as provided in this Bylaw and in M.G.L. Chapter 40A, §9. No more than one LDRD may be located on any one golf course. A density bonus may be permitted when the proposed project provides permanently affordable housing opportunities for households earning less than or equal to 80% of the median income for Worcester County. Affordable units shall be developed concurrently with the market rate units and shall be dispersed evenly throughout the entire project with no two units adjacent. For each affordable dwelling unit provided under this section, one additional dwelling unit may be permitted, up to a maximum fifteen percent (15%) increase in number of dwelling units."

d. Layout: Structures shall be no closer than seventy-five (75) feet to an adjacent structure. The minimum building space requirement is intended to provide privacy. Where windows are placed in only one of two facing walls, or there are no windows, or where the windows are at a height or location to provide adequate privacy, the building spacing can be reduced to fifty (50) feet. No structure shall be closer than fifty (50) feet to an interior way.

e. Utilities: Each structure shall be served by public water and sewerage. All utility services shall be underground.

f. Design: Each structure shall not exceed thirty-five (35) feet in height nor contain more than four (4) dwelling units. The exterior design shall reflect the rural residential character of Sutton and achieve architectural diversity. The interior design of the dwelling units shall be limited to two (2) bedrooms, except that up to five percent (5%) of the units may contain three (3) bedrooms.

i. Open Land: At least forty percent (40%) of the tract area shall be maintained as Open Land. No more than fifty percent (50%) of Open Land shall be wetlands and/or land with slopes in excess of 2:1.

j. Further Subdivision: There shall be no further subdivision of the tract proposed.

k. Construction Activity: All construction activity shall be in accordance with the provisions of the Wetlands Protection Act and the River Protection Act.

l. Buffer: There shall be a perimeter buffer, as determined by the Planning Board, to provide visual separation from abutting properties, planted with a mixture of coniferous and deciduous trees and shrubs.

m. Supporting Facilities: In addition to residential structures, structures and facilities supporting recreational or maintenance use may be permitted in an appropriate proportion to the development. Such new structures shall not exceed twenty-five (25) feet in height.

n. Ownership and Maintenance Responsibility: All Common Land and Facilities shall be owned and maintained by a private corporation, in the form of a Homes Association, as set forth in M. G. L. Chapter 40A, § 9. The Town shall not be responsible for such ownership or maintenance.

5. Procedure for Application and Review by Planning Board: Any person who desires a special permit under this section shall submit an application, including all supporting documents, in writing to the Board in such form and number as the Board may require. Applicant agrees to pay required fees prior to commencing the LDRD Definitive Plan process, and all subsequent fees, as specified herein, which may result from revisions, whether by the applicant or the Board, in the process of obtaining a special permit or during any phase of construction under said special permit.

a. Plan Requirements

Application for a special permit under this section shall be accompanied by a Plan which shall show all of the information required for a LDRD Definitive Subdivision Plan as specified in the Subdivision Rules and Regulations and any additional information required under Site Plan Review. Review under this section shall constitute review under Site Plan Review.

b. Other Requirements

The Applicant shall also include other information the Board may require, including but not limited to:

1. Proposed building plans of a general nature to indicate building elevations, and a plan view of the individual dwelling units by floor.

2. Proposed informational, identification, and directional signage.

3. Proposed features relating to safety including but not limited to: proposed street names, unit and structure numbering sequence; street and exterior lighting; and, screened trash collection facilities.

4. Environmental and traffic impact studies.

5. All proposed instruments to be recorded with the plans, including the Open Land perpetual restriction, the Home Association articles of incorporation including provision for ownership and maintenance of Open Land and Common Land and Facilities, and a typical deed for transfer of individual interests.

6. A Development Statement which shall consist of a list of the parties of interest; the names of the development team; a long-range plan for maintaining the development after construction, including provision for a permanent organization responsible for such maintenance; proposed measures and schedules to guarantee construction in accordance with the plan which may include but are not limited to cash deposits, bonds, covenants, easements and grants which are enforceable by the Town and will oblige in a like manner subsequent holders of all or part of the applicant's interest. No application shall be approved until the Planning Board has in its possession all items listed above.

7. Homes Association

a. The developer, in deeding rights of ownership to individual dwelling units, shall include beneficial rights to all Common Land and Facilities. He shall also ensure through deed restrictions that Open Land be kept in an open or natural state and not be built upon for residential use or developed for accessory uses such as parking or interior ways. In addition, the developer shall be responsible for the maintenance of the Common Land and Facilities until such time as a Homes Association is able to assume such responsibility. In order to insure that the Association will properly maintain the land deeded to it under this section, the developer shall cause to be recorded in the Worcester County Registry of Deeds a Declaration of Covenants and Restrictions which shall, at a minimum, provide for the following:

1. Mandatory membership in an established Homes Association as a requirement of individual ownership of any dwelling unit within

the tract.

2. Provisions for maintenance assessments on all individual dwelling units in order to ensure that the Common Land and Facilities be maintained in perpetuity in a condition suitable for the uses approved by the Homes Association. Failure to pay such an assessment shall create a lien on the property assessed, enforceable by either the Homes Association or the owner of any individual dwelling unit membership in the Homes Association.

3. Provisions, which so far as possible under existing law, will ensure that the restrictions placed on the use of the Open Land will not terminate by operation of law.

b. The Homes Association shall be structured as an organization in accordance with the laws of the Commonwealth of Massachusetts and an instrument shall be recorded at Worcester County Registry of Deeds, which shall at a minimum provide:

1. The type and name of the Homes Association which will own, manage and maintain the Common Land and Facilities in perpetuity.

2. The ownership or beneficial interest in the Homes Association of each owner of a dwelling unit and a provision that such ownership or beneficial interest shall be appurtenant to the dwelling to which it relates and may not be conveyed or encumbered separately therefrom.

3. Provisions for the number, term of office, and the manner of election to office, removal from office and the filling of vacancies in the office of directors and/or officers of the organization.

4. Procedures for the conduct of the affairs and business of the corporation including provisions for the calling and holding of meetings of members and directors and/or officers of the corporation and provision for quorum and voting requirements for action to be taken. Each owner of a dwelling unit shall have voting rights proportional to his ownership or beneficial interest in the organization.

5. A legal description of the Common Land and Common Facilities.

6. A statement of the purposes for which the Common Land is intended to be used and the restrictions on its use and transfer.

7. Provision for the management, maintenance, operation, improvement and repair of the Common Land and Facilities, including provisions for obtaining and

maintaining adequate insurance and levying and collecting from the dwelling owners common charges to pay for expenses associated with the Common Land

and Facilities, including real estate taxes. It shall be provided that common charges are to be allocated among the dwelling unit owners in proportion to their

ownership or beneficial interest in the corporation and that each dwelling owner's share of the common charge shall be a lien against his real estate in the

development, which shall have priority over all other liens with the exception of municipal liens and first mortgages of record.

8. The method by which such instrument or instruments may be amended.

a. Hearing: Following filing of the application with the Board with a copy to the Town Clerk, the Board shall advertise and hold a public hearing in accordance with the requirements of M.G.L. Chapter 40A §§ 9 and 11. After such hearing and within ninety (90) days, the Board shall act on the application for special permit. Failure of the Board to take final action as above shall be deemed to be an approval of the application unless an extended time shall be agreed upon at the request of the applicant.

b. Unfavorable action by the Board shall cause the applicant to be governed by M.G.L. Chapter 40A, §16, with regard to Repetitive Petitions.

9. Fee Schedule and Security

a. The applicant shall, with initial submittal of his application for a special permit, include a fee as set by the Planning Board to cover the cost of professional review of plans. The applicant shall also pay the cost of legal review as necessary, and inspection of interior way construction and other required site improvements and/or required off-site improvements.

b. Prior to issuance of building permits pursuant to any special permit granted under this section, the applicant shall provide performance security in a form acceptable to the Board and an amount to be determined to assure the completion of interior ways and required site improvements.

c. All fees tendered to the Board are non-refundable and shall be by certified check or money order made out to "Town of Sutton". No cash will be accepted.

10. Administration

a. Enforcement of this Bylaw shall be by the Building Inspector or a duly appointed inspector working for the Building Department.

b. If a special permit is granted under this section, substantial performance must commence within six (6) months. Should substantial performance fail to commence, the special permit shall be revoked and the land returned to the normally applicable density regulations of this Bylaw unless the applicant has received a written extension from the Board, such extension being of six (6) months duration. Time of completion of all phases of construction shall be as determined by the Board and stated as a condition of granting the special permit.

c. The Building Inspector shall periodically inspect progress and compliance with this Bylaw and shall take whatever actions may be necessary in the event of noncompliance. No required performance bond or other security shall be released, nor shall occupancy permits be granted, until the Conservation Commission, Highway Surveyor, and Board of Health shall have notified the Board that the development conforms in all respects to those requirements for which each is responsible. No title to any dwelling unit shall pass nor shall any beneficial rights to Open Land be granted until the requirements of individual Certificates of Occupancy and Certificates of Compliance have been issued. Certificate of Occupancy shall only be issued to cover an entire structure and not any single dwelling unit therein.

d. Should completion of the development fail to occur within the time stated in the Special Permit, all securities held shall be called and the Town of Sutton or its agent may enter the premises to engage in and complete such works as will, in its opinion, bring the development to a state acceptable to state and local regulations.

D. Site Plan Review

1. Purpose and Intent

This section of the Sutton Zoning Bylaw is enacted under the authority of M.G.L. Chapter 40A to protect the health, safety, convenience and general welfare of the inhabitants of the Town of Sutton. Site Plan Review regulates the development of structures and sites in a manner which considers the following concerns and, where necessary, requires modification of development

proposals to eliminate or minimize potential problems and nuisances. The principal areas of concern are:

- a. The balancing of landowners' rights to use their land, with the corresponding rights of abutting and neighboring landowners to live without undue disturbances (e.g. noise, smoke, fumes, dust, odor, glare, storm water runoff, etc.);
- b. The convenience and safety of vehicular and pedestrian movement within the site, and in relation to adjacent areas or roads;
- c. The adequacy of parking, loading facilities, drainage and methods of waste disposal to protect from pollution of surface or groundwater; and
- d. The protection of historic and natural environmental features on the site under review, and in adjacent areas (i.e. hills, water bodies, trees and wooded areas, native plants, rock outcrops, wildlife habitat, and other areas of aesthetic and ecological interest).

2. Projects Requiring Site Plan Review

No permit for the construction, exterior alteration, relocation, occupancy, or change in use of any building shall be given and no existing use shall be expanded in floor area except in conformity with a site plan approved by the Planning Board. Site Plan Review shall also be required for the resumption of any use discontinued for more than two (2) years, or for the expansion of any existing use. "Expansion" shall include a floor space increase of twenty-five percent (25%) or more within any 10-year period, or the introduction of new materials or processes not previously associated with the existing use. Site plan approval is required for proposals for the following uses:

- a. Commercial and retail
- b. Industrial
- c. General and professional office
- d. Multifamily dwellings
- e. Municipal, institutional, and utility purposes
- f. Fraternal or recreational purposes

3. Exemptions from Site Plan Review

Site Plan Review shall not be required for:

- a. The construction or enlargement of any single family or two family dwelling, or building accessory to such dwelling;
- b. The construction or alteration of any building used exclusively for agriculture, horticulture, or floriculture;
- c. Construction, expansion or alteration providing for not more than two hundred (200) sq. ft. total floor area after construction;
- d. Customary home occupations as defined in this Bylaw; or,
- e. Limited Density Residential Developments. (Separate site plan requirements are made under Section IV.C of this Bylaw.) The Planning Board may waive Site Plan Review where the nature of the proposed construction, alteration or use is such as to have minimal effect on any of the standards or criteria provided for hereafter in this section when measured against existing conditions of the site. The Planning Board may also in any particular case, where such action is allowed by law, in the public interest and not inconsistent with the purpose and intent of this Site Plan Review, waive strict compliance with the specific provisions of this bylaw.
- r. The Planning Board may require the applicant to submit a Community and Fiscal Impact Assessment (including the methodology used) that shall address the following:
 1. Projections of cost arising from increased demands on public services and infrastructure;
 2. Projections of increased tax revenue, employment (construction and permanent), and value of public infrastructure to be provided;
 3. Projections of the proposed impacts of the development on the values of adjoining properties;
 4. Evaluation of the relation of the proposed new or altered structure to the surrounding community in terms of character and intensity of use (e.g., scale, materials, color, setbacks, roof and cornice lines, and other major design elements); and the location and configuration of proposed structures, parking areas, and open space with respect to neighboring properties;
5. Identification of impacts on significant historical properties, districts or areas, or archaeological resources (if any) in the vicinity of the proposed development;
6. Evaluation of the proposed project's consistency or compatibility with existing local and regional plans; and
7. A copy of all permits, approvals, variances, and applications applied for and obtained for the project and property including an application for public sewer and water connection permits.
- s. Waivers may be granted for any of the site plan requirements only if it is determined that:
 1. Literal compliance is impractical due to the nature of the proposed use;
 2. The location, size, width, depth, shape, or grade of the lot makes compliance impossible;
 3. Such waiver would be in the public interest; and/or
 4. Such waiver would not sacrifice the protection of natural features. Applicants seeking waivers will submit a formal request for waiver of particular requirements along with the site plan application.

5. Procedures

a. Submission: An applicant for Site Plan Review under this Bylaw shall file with the Planning Board, at a regularly scheduled meeting, twelve (12) copies the site plan and six (6) copies of all required written materials. The Planning Board shall acknowledge receipt of these plans by endorsing them by signature and the date of receipt. A copy of the site plan shall be given by the applicant to the Town Clerk to be kept on file.

b. Reasonable Fees

A filing fee of \$1.50 per \$1,000 of construction value, as reported by the proponent and approved by the Board, with a minimum of \$200, will be required at the time of submission. The applicant must also submit a check covering the cost of the legal ad and the certified mailings at the time of submission.

For all developments requiring site plan review, the applicant will be responsible for all reasonable fees or costs incurred in reviewing such plans. The Planning Board is authorized to retain a registered professional engineer, architect, landscape architect, or other professional consultant to review and advise the Board on any or all aspects of the site plan.

Two hundred dollars will be deducted from the filing fee to cover costs for staff review of the site plan, all billings received from the Town's consultants will be deducted from the filing fee. If the billings exceed the amount of the filing fee, the Town will bill the applicant for the difference. All bills must be paid prior to issuance of approval. If monies are left after all fees and billings are paid, any excess funds will be returned to the applicant.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board Town of Sutton Zoning Bylaw 2003

2. Applicability

The Planning Board may grant a special permit for Traditional Neighborhood Development (TND) for any parcel or contiguous parcels for twelve (12) or more dwelling units, as calculated in this section.

According to Table of Use Regulations (Town of Sutton Zoning Bylaw 2004):

Open Space Residential Development... by right in R-1, R-2

Traditional Neighborhood Development... by special permit from planning board in R-2, V

Limited Density Residential Development... by special permit from the planning board in R1, R2

Continued Care Retirement Community... by special permit from planning board in all districts

Has any housing been built under the cluster/flexible provisions?

No Survey received from Sutton in July 2005 marked the answer: "none."

Swampscott

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

No

Which entity is the special permit granting authority for cluster/flexible zoning?

Has any housing been built under the cluster/flexible provisions?

Swansea

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Swansea Zoning Bylaw (Adopted 1953, Amended 2002)

D. Open Space Residential Design

1. Purpose and Intent:

- a. To allow for greater flexibility and creativity in the design of residential developments.
- b. To encourage the permanent preservation of open space, agricultural and forestry land, plant and wildlife habitat, other natural resources including aquifers, waterbodies, wetlands, historical and archeological resources. h
- c. To protect existing and potential municipal water supplies.
- d. To preserve and enhance the community character:
- e. To protect the scenic vistas as viewed from the Town's roadways and other public places.
- f. To facilitate the construction and maintenance of streets; utilities and public services in a more economical and efficient in manner.
- g. To encourage a less sprawling and more efficient form of development that consumes less open land and conforms to existing topography and natural features better than a conventional or grid subdivision.
- h. To protect the value of real property.
- i. To minimize the total amount of disturbance on the site.
- j. To preserve open space areas for active and passive recreational use, including the provision of neighborhood parks and trails.
- k. To encourage the provision of diverse housing opportunities and the integration of a variety of housing types.

1. To further the goals and policies of the local comprehensive plans and open space and recreation plans.

2. Definitions:

In this By-law, the following words have the meanings indicated:

- a. Open Space Residential Development (OSRD): A residential development in which the buildings are clustered together with reduced lot sizes and frontage. The land not included in the building lots is permanently preserved as open space. Open Space Residential Development is the preferred form of residential development and/or redevelopment in the Town of Swansea for residential developments.
- b. Yield Plan: A plan conforming to the requirements of a preliminary subdivision plan, as specified in Sections 2.301- 2.309 inclusive, excepting 2.305, of the Rules and Regulations Governing the Subdivision of Land of the Planning Board.
- c. Sketch Plan: A plan conforming to the requirements of the OSRD special permit plan, as specified in Section 7. b. (1) of this by-law.
- d. Open Space Residential Development Special Permit: Approval granted by the Special Permit Granting Authority after review and public hearing of an OSRD plan. An OSRD plan must be granted a special permit prior to receiving definitive subdivision plan approval from the Planning Board.
- e. Primary Conservation Areas: Tracts of land containing natural features such as wetlands, riverfront areas, perennial streams, water bodies; floodplains and habitats for rare or endangered plant or animal species regulated by state or federal law.
- f. Secondary Conservation Areas: Tracts of land including, but not limited to unprotected elements of the natural landscape such as steep slopes, mature woodlands, prime farmland, meadows, intermittent streams, wildlife habitats and cultural features such as historic and archeological sites and scenic views.
- g. Potentially Developable Area: The area of a tract or tracts of land proposed for an Open Space Residential Subdivision that lie outside the identified Primary and Secondary Conservation Areas of such tract or tracts, and defines the location appropriate for siting of houses and accessory structures.

3. Eligibility:

- a. Minimum size of tract. To be eligible for consideration as an OSRD, the tract shall contain a minimum of 10 acres.
- b. Minimum Number of Lots. To be eligible for consideration as an OSRD, the tract shall contain not less than 5 lots.
- c. Contiguous Parcels. To be eligible for consideration as an OSRD, the tract shall consist of a parcel, abutting parcels, or set of parcels that demonstrate a significant functional relationship between the natural resources located on each of the parcels to be considered.

4. Special Permit Granting Authority:

A. special permit granting authority (SPGA) is hereby established to review and approve special permits applications for Open Space

Residential Developments subject to the regulations and conditions herein. The special permit granting authority is composed of the Planning Board members.

a. Rules and Regulations: The special permit granting authority shall adopt, and from time to time amend, rules relative to the issuance of such permits, and shall file a copy of said rules in the office of the town clerk. Such rules shall prescribe the size, form, contents, style and number of copies of plans and documentation to be submitted, and the procedure for submission and approval of such permits.

5. Design Process:

At the time of application for a special permit for OSRD in conformance with. Section 6., applicants are required to demonstrate to the SPGA that the Design Process was performed by a multi-disciplinary team of professionals, including registered professional engineer and landscape architect and considered in determining the layout of proposed open space, house lots, and streets.

a. Step One: Identifying Conservation Areas. Identify preservation land by two steps. First, Primary Conservation Areas and Secondary Conservation Areas shall be identified and delineated. Second, the Potentially Developable Area will be identified and delineated. To the maximum extent feasible, the Potentially Developable Area shall consist of land outside identified Primary and Secondary Conservation Areas.

b. Step Two: Locating House Sites. Locate the approximate sites of individual houses within the Potentially Developable Area and include the delineation of private yards and shared amenities, so as to reflect an integrated community, with emphasis on consistency with the town's historical development patterns.

The number of homes enjoying the amenities of the OSRD should be maximized. Houses should be sited to minimize impacts on the Primary and

Secondary Conservation Areas, while maximizing the views of and access to the open space. House location should maximize the privacy of each home with minimum disturbance to the surrounding topography and landscape.

c. Step Three: Aligning. Streets and Trails. Align streets to access the house lots. Additionally, a network of trails should be laid out to create internal and external connections to existing and/or potential future streets, sidewalks, and trails.

d. Step Four: Lot Lines. Draw in lot lines that meet the minimum area and space requirements. Lot areas should encompass only those areas identified as Potential Developable Areas, and all areas outside of the lot lines shall be dedicated as open space area.

6. Pre-Application

A.pre-application meeting between the SPGA and the applicant is required. The purpose of the pre-application review is to minimize the applicant's costs of engineering and other technical experts, and to identify important design considerations at the earliest possible stage in the development.

a. Conference. The pre-application meeting shall be scheduled at a regular meeting of the SPGA. The SPGA shall forward copies of any pre-application submittals to and invite members of the Conservation Commission, Highway Department, the Board of Health, the Zoning Enforcement Officer, the Fire Department, the Swansea Water District and any other affected boards or departments as determined by the SPGA to the pre-application review. The invited review authorities shall have 30 days to return written comments to the

At the pre-application review the applicant may outline the proposed OSRD, seek preliminary feedback from the SPGA and/or its invitees and technical experts, and set a timetable for submittal of a formal application.

The SPGA may engage technical experts, at the expense of the applicant; to review the informal plans of the applicant and to facilitate submittal of a formal application for an OSRD special permit. x

b. Submittals: To facilitate review of the OSRD plan at the pre-application stage, applicants are required to submit the following information:

(1) Site Context Map. This map illustrates the parcel in connection to its surrounding neighborhood. Based on existing data sources and field inspections, it should show various kinds of major natural resources areas or features that cross parcel lines or that are located on adjoining lands. This map enables the conference committee to understand the site in relation to what is occurring on adjacent properties.

(2) Existing Conditions/Site Analysis Map. This map familiarizes officials with existing conditions on the property. Based on existing data sources and field inspections, this base map locates and describes noteworthy resources that should be left protected through sensitive subdivision layouts. These resources include wetlands, riverfront areas, floodplains and steep slopes, but may also include mature woodlands, hedgerows, farmland, unique or special wildlife habitats, historic or cultural features (such as old structures or stone walls); unusual geologic formations and scenic views into and out from the property. By overlaying this plan onto a development plan the parties involved can clearly see where conservation priorities and desired development overlap/conflict.

(3) Other Information. Applicants are required to submit the information set forth in Section 6. in a form acceptable to the SPGA.

c. Site Visit. Applicants are required to conduct a site visit with the SPGA and other affected town bodies, and/or their agents to facilitate pre-application review of the OSRD.

d. Design Criteria.-The parties at the pre-application conference and site visit should discuss the design process and criteria set forth in Section 5.

7. Procedural Requirements:

The Open Space Residential Subdivision Special Permit Plan shall include a Sketch Plan and Yield Plan. The applicant shall submit both the Site context map and Existing Conditions/Site Analysis map prepared according to Sections 6. b. (1) and 6. b. (2). Additional information reasonably necessary to make the determinations and assessments cited herein shall be provided, including existing site contour maps and existing current soil maps.

a. Submission. The applicant shall file applications for OSRD special permits with the Town Clerk. The Town Clerk will certify the date and time of filing. The Clerk shall forward the application, with said certification, to the office of the SPGA. The SPGA shall commence a public hearing, for which notice has been given, within sixty-five days from the date of filing of the application.

(1) Escrow for employment of outside consultants. The SPGA may engage technical experts as necessary to assist with the review of the application and associated plans. The applicant shall deposit funds with the town to cover the costs of such technical reviews. The amount of said deposit, and any subsequent replenishment, shall be established by the SPGA. Expenditures from said account shall be made at the direction of the SPGA without further appropriation. Expenditures from said account shall be made only in connection with the review of a project for which a review fee has been collected from an applicant. The funds shall be deposited with, and released by, the Town Treasurer in accordance with M.G.L. c 44 § 53G. Administrative appeal from the selection of an outside consultant shall be taken in accordance with the provisions of M.G.L. c 44 §.53G.

b. Sketch Plan. Two plans are required to be submitted: 1) OSRD sketch plan incorporating the Four-Step Design Process outlined in Section 5.0, and the design standards included herein; and 2) Conventional subdivision yield plan, prepared based upon Zoning By-law requirements for a standard subdivision. The Sketch Plans shall be prepared by a multi-disciplinary team of professionals, including registered professional engineer and landscape architect, and shall address the general features of the land, and give approximate configurations of the lots, open space, and roadways. The SPGA shall determine which method of development furthers the purpose and intent of this by-law.

(1) Required Content of the Sketch Plan. The sketch plan shall include the following information:

(a) The subdivision name, boundaries, north point, date, legend, locus map, title "Concept Plan," and scale.

(b) The names of the record owner and the applicant, and the name of the landscape architect who prepared the plan.

(c) The names, approximate location, and widths of adjacent streets.

(d) The proposed topography of the land shown at a contour interval no greater than 10 feet. Elevations shall be referred to mean sea level.

(e) The location of existing landscape features including forests, farm fields, meadows; wetlands; riverfront areas; water bodies, and historic structures or points of interest, rock outcrops, boulder fields, stone walls, cliffs, high points, major long views, forest glades, major tree groupings, noteworthy tree specimens, and habitats of endangered or threatened wildlife or plant species, as identified as primary and secondary resources.

Proposals for all site features to be preserved, demolished or moved shall be noted on the Sketch Plan.

(f) All on-site local, state, and federal regulatory resource boundaries and buffer zones shall be clearly identified and all wetland flag locations shall be numbered and placed on the Sketch Plan.

(g) Lines showing proposed private residential lots, as located as part of the four-step design process with areas and frontage dimensions.

(h) All existing and proposed features and amenities including, but not limited to trails, recreations areas and facilities, pedestrian and bicycle paths, community buildings, and off-street parking areas shall be shown on the plan and described in a brief narrative explanation where appropriate.

(i) The existing and proposed streets, ways, common driveways, easements and any parcel of land intended to be dedicated for public use or to be reserved by deed covenant for use of all property owners in the subdivision, or parcels of land or lots to be used for any purpose other than private residential shall be so designated with the subdivision in a general manner.

(j) Proposed roadway grades.

(k) As sewer is not available, percolation and water table tests may be required as directed by the SPGA. A narrative explanation shall be prepared by a registered professional engineer detailing the proposed wastewater systems that will be utilized by the development and its likely impacts on site and to any abutting parcels of land. For example, the narrative will specify whether individual on-site or off-site systems, shared systems, alternative to Title V systems, or any combination of these or other methods

will be utilized. The applicant shall identify the proposed location of all wastewater disposal systems, and if so located in any proposed open space area, then identify how the system(s) will be constructed and maintained so as to not interfere with the function of the proposed open space.

(l) A narrative explanation prepared by a registered professional engineer proposing systems for stormwater drainage and its likely impacts on-site and to any abutting parcels of land. For example, the narrative will specify which engineering methods will be used and the number of any detention basins or infiltrating catch basins, it is not intended to include specific pipe sizes. Any information needed to justify this proposal should be included in the narrative. The approximate location of any stormwater management detention basins shall be shown on the plan and accompanied by a conceptual landscaping plan.

(m) A narrative explanation prepared by a registered professional engineer detailing the proposed drinking water supply system.

(n) A narrative explanation of the proposed quality, quantity, use and ownership the open space. Open space parcels shall be clearly shown on the plan.

(o) All proposed landscaped and buffer areas should be noted on the plan and generally explained in a narrative.

(p) A list of all legal documents necessary for implementation of the proposed development; including any conservation restrictions, land transfers, and master deeds, with an accompanying narrative explaining their general purpose.

(q) A narrative indicating all requested waivers, reduction, and/or modifications as permitted within the requirements of this by-law.

c. Yield Plan. The applicant shall submit a narrative explanation detailing the results of the determination of any proposed allocation of yield determined according to Section 8. Basic Maximum Number of Dwelling Units.

d. Relationship between OSRD special permit plan and definitive subdivision plan. The OSRD special permit plan shall be reconsidered if there is substantial variation between it and the definitive subdivision plan: If the SPGA finds that a substantial variation exists, it shall hold a public hearing on the modification to the OSRD special permit plan. A substantial variation shall be defined as any of the following circumstances:

(1) An increase in the number of building lots;

(2) A significant decrease in the open space acreage;

(3) A significant change in lot layout;

(4) A significant change in the general development pattern that adversely affects natural landscape features and open space preservation;

(5) Significant changes to the stormwater management facilities; and/or significant changes in the wastewater management systems.

8. The Basic Maximum Number of Dwelling Units/Density shall be derived from a Yield Plan:

The number of dwelling units permitted shall not exceed that which would be permitted under a conventional subdivision that complies with the town zoning bylaw and the Rules and Regulations Governing the Subdivision of Land of the SPGA and any other applicable laws and regulations of the Town or the state.

A yield plan shall be submitted to demonstrate the allowable number of units. If tract lies in more than one zoning district the lots for each district shall conform to their respective zoning district requirements.

The applicant shall have the burden of proof with regard to the Basic Maximum Number of dwelling units. The applicant may be required to submit additional site information as requested by the SPGA to satisfy the prescribed burden of proof.

9. Standards and Dimensional Requirements:

Where the requirements of this section differs from or conflict with the requirements found elsewhere in the Zoning By-law, the requirements of this section shall prevail.

a. Minimum Lot Size: The minimum lot size shall be 10,000 square feet of upland area.

b. Minimum Frontage: The minimum frontage may be reduced from the frontage otherwise required in the Zoning District, provided, however, that no lot shall have less than fifty (50) feet of frontage and provided further that such frontage reduction shall apply only to lots fronting on proposed internal roadways. The sharing of driveways to reduce curb cuts is encouraged. c. Lot Shape: All building lots must be able to contain a circle of a minimum diameter of fifty (50) feet from the front lot line to the rear building line. d. Setbacks: Every dwelling fronting on the proposed roadways shall be set back a minimum of fifteen (15) feet from any property line.

e. Required Open Space: All land area not utilized for lots, roads, and drainage shall be set aside as open space, lands being permanently deed restricted to their identified usage only. A minimum of 50% of the upland area of the parcel must be provided as open space. Wetlands and water bodies must be preserved, however they do not count toward the open space requirement. Roadway rights of way shall not count toward the area to be provided as open space.

10. Open Space Requirements

a. Permissible Uses of Open Space:

(1) Purposes: Open space shall be used solely for conservation, wildlife and plant habitat, aquifer recharge, agriculture, forestry or recreation purposes by residents and/or the public. Where appropriate, multiple use of open space is encouraged. At least half of the required open space may be required by the SPGA to be left in a natural state. The proposed use of the open space shall be specified in the application. If several uses are proposed, the plans shall specify what uses will occur in what areas. The SPGA shall have the authority to approve or disapprove particular uses proposed for the open space.

(2) Recreation Lands: Where appropriate to the topography and natural features of the site, the SPGA may require that at least 10% of the open space or two acres (whichever is less) shall be of a shape, slope, location and condition to provide an informal field for group recreation or community gardens for the residents of the subdivision.

(3) Leaching Facilities: Subject to the approval of the Board of Health, as otherwise required by law, the SPGA may permit a portion of the open space to be used for components of sewage disposal systems serving the subdivision, where the SPGA finds that such use will not be detrimental to the character, quality, or use of the open space, wetlands or waterbodies, and enhances the site plan. The SPGA shall require adequate legal and fiscal safeguards and covenants that such facilities shall be adequately maintained by the lot owners within the development.

(4) Community Structures: Up to 5% of the open space may be set aside and designated to allow for the construction of structures and facilities accessory to the proposed use of the open space including parking. Location of structures and facilities are subject to the approval of the SPGA.

b. Ownership of Open Space:

(1) Ownership Options: At the developer's option and subject to approval by the SPGA, all areas to be protected as open space shall be:

(a) Conveyed to the Town to be placed under the care, custody and control of the Conservation Commission, and be accepted by it for a park or open space use. Land conveyed to the Town should be open for public use; and/or

(b) Conveyed to a non-profit organization, the principal purpose of which is the conservation or preservation of open space, with a conservation restriction as specified in § 09.2.2 below. Such organization shall be acceptable to the Town as a bona fide conservation organization; and/or

(c) Conveyed to a corporation or trust owned, or to be owned, by the owners of lots or residential units within the development (i.e. "homeowners association") and placed under conservation restriction as specified in § 09.2.2 below.

If such a corporation or trust is utilized, as indicated herein, ownership thereof shall pass with conveyance of the lots or residential units in perpetuity. Documents creating such trust or corporation shall be submitted to the SPGA for approval, and shall thereafter be recorded:

(2) Permanent Restriction: In any case where open space is not conveyed to the Town, a permanent conservation or agricultural preservation restriction in accordance with M.G.L. c. 184 §31, approved by the SPGA and Board of Selectmen and enforceable by the Town, conforming to the standards of the Massachusetts Executive Office of Environmental Affairs, Division of Conservation Services, shall be recorded to ensure that such land shall be kept in an open or natural state and not be built for residential use or developed for accessory uses such as parking or roadways, except as permitted by this by-law and approved by the SPGA and not inconsistent with M.G.L. c. 184 §31. Restrictions shall provide for periodic inspection of the open space by the Town. Such restriction shall be submitted to the SPGA prior to approval of the project and recorded at the Registry of Deeds/Land Court simultaneously with recording of the definitive subdivision plan. A management plan may be required by the SPGA that describes how existing woods, fields, meadows or other natural areas shall be maintained in accordance with good conservation practices.

(3) Encumbrances: All areas to be set aside as open space shall be conveyed free of any mortgage interest, security interest, liens or other encumbrances.

(4) Maintenance of Open Space: In any case where open space is not conveyed to the Town, the Town shall be granted an easement over such land sufficient to ensure its perpetual maintenance as conservation or recreation land. Such easement shall provide that in the event the trust or other owner fails to maintain the open space in reasonable condition, the Town may, after notice to the lot owners and public hearing, enter upon such land to maintain it in order to prevent or abate a nuisance. The cost of such maintenance, administrative and other associated fees shall be assessed by the Town against the properties within the development and/or to the owner of the open space. The Town may file a lien against the lot or lots to ensure payment of such maintenance expenses.

(5) Monumentation: Where the boundaries of the open space are not readily observable in the field, the SPGA may require placement of surveyed bounds sufficient to identify the location of the open space.

c. Open Space Design Requirements: The location of open space provided through this by-law shall be consistent with the policies contained in the Swansea Master Plan and the Open Space and Recreation element of the plan. The following design requirements

shall apply to open space and lots provided through this by-law:

(1) Open space shall be planned as large, contiguous areas whenever possible. Long thin strips or narrow areas of open space (less than one hundred (100) foot wide) shall occur only when necessary for access, as vegetated buffers along wetlands or the perimeter of the site, or as connections between open space areas. Open space may be considered connected if it is separated by roadway or community facility.

(2) Open space shall be arranged to protect valuable natural and cultural environments such as stream valleys, wetland buffers, unfragmented forestland and significant trees, wildlife habitat, open fields, scenic views, trails, and archeological sites and to avoid development in hazardous areas such as floodplains and steep slopes. The development plan shall take advantage of the natural topography of the parcel and cuts and fills shall be minimized.

(3) Open space may be in more than one parcel provided that the size, shape and location of such parcels are suitable for the designated uses. Where feasible, these parcels shall be linked by trails.

(4) Where the proposed development abuts or includes a body of water or a wetland, these areas and the one hundred (100) foot buffer to such areas shall be incorporated into the open space. Where appropriate, reasonable access shall be provided to shorelines.

(5) The maximum number of house lots compatible with good design shall abut the open space and all house lots shall have reasonable physical and visual access to the open space through internal roads, sidewalks or paths. An exception may be made for resource areas vulnerable to trampling or other disturbance.

(6) Open space shall be provided with adequate access, by a strip of land at least twenty (20) feet wide, suitable for, a footpath, from one or more streets in the development.

(7) Development along existing scenic roads and creation of new driveway openings on existing regional roadways shall be minimized.

(8) Where a proposed development abuts land held for conservation purposes, the development shall be configured to minimize adverse impacts to abutting conservation land, and provide for the most contiguous arrangement of open space with abutting conservation land. New trail connections should be provided to existing recreation and trail facilities where appropriate.

11. Design Standards: The following generic and site specific design standards shall apply to all OSRD subdivisions and shall govern the development and design process:

a. Generic Design Standards

(1) The landscape shall be preserved in its natural state, insofar as practicable, by minimizing tree and soil removal. Any grade changes shall be in keeping with the general appearance of the neighboring developed areas. The orientation of individual building sites shall be such as to maintain maximum natural topography and cover. Topography, tree cover, and natural drainage ways shall be treated as fixed determinants of road and lot configuration rather than as variable elements that can be changed to follow a preferred development scheme.

(2) Streets shall be designed and located in such a manner as to maintain and preserve natural topography, significant landmarks, and trees; to minimize cut and fill; and to preserve and enhance views and vistas on or off the subject tract. Road and road right-of-way standards may be designed and constructed in accordance with the conventional standards or the reduced roadway standards as adopted by the Planning Board in its Rules and Regulations Governing the Subdivision of Land.

(3) Proposed building lots shall be designed and located to relate to their surroundings in such a manner as to maintain and preserve natural topography, significant landmarks, and trees; to minimize cut and fill; and to preserve and enhance views and vistas on or off the subject tract.

(4) The removal or disruption of historic, traditional or significant uses, structures or architectural elements shall be minimized insofar as practicable where these exist on the site or adjacent properties.

b. Site Specific Design Standards

(1) Parking. Each dwelling unit shall be served by two (2) off-street parking spaces when lot access is provided by standard subdivision roads, or four (4) off-street parking spaces when served by reduced standard roads. Parking spaces in and in front of garages may count in this computation. All parking areas with greater than six (6) spaces shall be screened from view.

(2) Buffer Areas. A buffer area of one hundred (100) feet shall be provided at the perimeter of the tract. Driveways necessary for access to and from the property may cross such buffer areas. No vegetation in this buffer area will be disturbed, destroyed or removed, except for normal maintenance of structures and landscapes approved as part of the project. The SPGA may waive the buffer requirement in these locations when it determines that a smaller buffer, or no buffer, will suffice to accomplish the objectives set forth herein.

(3) Drainage. The use of non-structural stormwater management techniques are encouraged, such as shallow grass-lined swales and overland flow that reduce impervious surfaces and promote infiltration where appropriate. Stormwater management designs

shall conform to the Department of Environmental Protection stormwater management regulations.

(4) Common/Shared Driveways. A common or shared driveway may serve a maximum of two (2) dwelling units provided that:

- a) a portion of the driveway traverses each lot;
- b) each lot have required frontage on the roadway; and,
- c) easements be recorded for each lot serviced by the shared driveway.

(5) Screening and Landscaping. All structural surface stormwater management facilities shall be accompanied by a conceptual landscape plan.

(6) On-site Pedestrian and Bicycle Circulation. Walkways and bicycle paths shall be provided to link residences with parking areas, recreation facilities, including parkland and open space areas, and adjacent land uses where appropriate.

12. Decision of the Special Permit Granting Authority

a. Review and Decision: Upon receipt of the application and the required plans, the SPGA shall transmit one copy each to the Conservation Commission, Highway Department, Fire Department, Board of Health, Zoning Enforcement Officer and Swansea Water District. Within thirty (30) days of their receipt of the application/ plans, said town bodies shall submit any recommendations to the SPGA. The SPGA shall act on applications according to the procedure specified in M.G.L. c. 40A, §9. Notice shall be provided of hearings in accordance with M.G.L. chapter 40A, §11.

b. Criteria for Special Permit Decision:

(1) Findings: The SPGA may approve the development upon finding that it complies with the purposes and standards of the Open Space Residential Development by-law and is superior in design to a conventional subdivision with regard to protection of natural features and scenic resources of the site. The SPGA shall consider the following criteria in making its decision:

- (a) Whether the OSRD achieves greater flexibility and creativity in the design of residential developments than a conventional plan;
- (b) Whether the OSRD maximizes the permanent preservation of open space, agricultural land, forestry land, other natural resources including water bodies and wetlands, and historical and archeological resources;
- (c) Whether the OSRD promotes a less sprawling and more efficient form of development that consumes a less open land and conforms to existing topography and natural features better than a conventional subdivision;
- (d) Whether the OSRD reduces the total amount of disturbance on the site;
- (e) Whether the OSRD special permit plan and its supporting narrative documentation complies with all sections of this zoning by-law;
- (f) Upland open space as required by this by-law has been provided and generally conforms to the Open Space Design Requirements in Section 10. c. of this By-law;
- (g) Approximate building sites have been identified and are not located closer than 100' to wetlands and waterbodies;
- (h) Proposed streets have been aligned to provide vehicular access to each house in a reasonable and economical manner. Lots and streets have been located to promote interconnection of the street network on site and to offsite locations, to avoid or minimize adverse impacts on open space areas, to provide views of and access to the open space for the lots and to protect the public safety;
- (i) All lots meet the applicable dimensional requirements of Section 9. of the Open Space Residential Development By-law.

The SPGA's findings, including the basis of such findings, shall be stated in the written decision of approval, conditional approval or denial of the application for special permit.

b. Conditions: The SPGA shall impose conditions in its decision as necessary to ensure compliance with the purposes of this By-law. Approval of an Open Space Residential Development shall be conditioned upon Definitive Subdivision approval and shall be conditioned to provide that no further division of land which increases the number of lots or results in an alteration to the area to be set aside as open space may occur without a modification of the special permit. Any alteration of lot lines or layout of ways shall require approval of the SPGA and shall be in compliance with the requirements of the Open Space Residential Development by-law and the Planning Board Rules and Regulations Governing the Subdivision of Land.

c. Time Limit: A special permit is granted for a period of two years and shall lapse if substantial use or construction has not commenced by such date, except for good cause shown. The SPGA may grant no more than one (1) extension for a period up to two years to allow construction of subdivisions within the plan freeze limits set forth in M.G.L. c. 40A, §6, except where such extension would derogate from the intent and purpose of this by-law.

d. Relationship to Subdivision Control Law: Nothing contained herein shall exempt a proposed subdivision from compliance with

other applicable provisions of these bylaws or the Rules and Regulations Governing the Subdivision of Land of the Planning Board, nor shall it affect the right of the Board of Health and of the Planning Board to approve, approve with conditions, or disapprove a Definitive subdivision plan in accordance with the provision of such Rules and Regulations of the Subdivision Control Law.

13. Severability:

If a court of competent jurisdiction holds any provision of this by-law invalid, the remainder of the by-law shall not be affected thereby. The invalidity of any section or sections or parts of any section or sections of this-by-law shall not affect the validity of the remainder of the Swansea zoning By-law.

**Webmasters Note: Subsection III D has been added as per Case No. 2081.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board Swansea Zoning Bylaw (Adopted 1953, Amended 2002)

4. Special Permit Granting Authority:

A.special permit granting authority (SPGA) is hereby established to review and approve special permits applications for Open Space Residential Developments subject to the regulations and conditions herein. The special permit granting authority is composed of the Planning Board members.

Has any housing been built under the cluster/flexible provisions?

Taunton

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes City of Taunton Zoning Ordinance

SECTION FOURTEEN: DEVELOPMENT METHOD

14.1 CLUSTER RESIDENTIAL DEVELOPMENT

14.1.1 GENERAL

14.1.1.1 General Description

A "Cluster Residential Development" shall mean a residential development in which the buildings and accessory uses are clustered together into one or more groups. The land not included in the building site area shall be permanently preserved as open space.

14.1.1.2 Purpose

A Cluster Residential Development as approved under a Special Permit of the Planning Board allows an alternative pattern of land development to the conventional subdivision. It is intended to encourage the conservation of more significant open space, while at the same time providing for a greater mixture of housing types in the City. Dwelling units shall be constructed in appropriate clusters which are harmonious with neighborhood development and will enhance the ecological and visual qualities of the environment. The overall site design and amenities should improve the quality of living for residents of the development and the City in general.

The following benefits are expected to be gained by the alternative pattern of development which a Cluster Residential Development allows:

Economical and efficient street, utility and public facility installation, construction and maintenance;

Efficient allocation, distribution and maintenance of open space, and the preservation of common land for conservation, agriculture, recreation and general open space use;

Protection of waterbodies, existing and potential municipal water supplies, wetlands, floodplains, agricultural lands, wildlife and other natural resources;

Compatibility with the character of the surrounding residential areas and the protection of real property values;

Housing development which allows for an integration of a variety of housing types in one project, and efficient use of the land to increase the options for affordable housing;

More sensitive siting of buildings and overall site planning; and a better utilization of land in harmony with its natural features and with the general intent of the zoning ordinance through a greater flexibility in design.

14.1.1.3 Objectives

The following objectives are important in the development of a cluster. It is desirable to decrease municipal costs and environmental impacts through reduction in the length of streets, utilities, and drainage systems per dwelling units served. It is desirable to increase the scale of contiguous area assured of preservation in a natural state, and to include off-street pathways and trails, recreation areas open to all residents of the city and wilderness areas. It is desirable that all existing scenic vistas be respected and preserved and that new scenic vistas be created. It is desirable to increase vehicular safety by having fewer, better located and designed egresses onto existing streets. It is desirable to preserve environmental quality by reduction of the total area over which vegetation is disturbed by cut or fill or displacement; by reduction in critical lands (slopes in excess of 8%, land within 100 feet by a water body, wetland or stream having outstanding or rare vegetation) disturbed by construction; reduction of the extent of waterways altered or relocated; reduction in the volume of cut and fill for roads and construction sites. It is desirable to have the design and location and materials of the structure(s) on the site be sensitive to the natural environmental conditions, vistas and abutting properties. There should be positive benefit to the City in some important respects, such as reduction of environmental damage, better controlled traffic, preservation of current character through location of reserved open space, meeting the shelter and/or health needs of special populations of the City and so on.

14.1.2 PROCEDURE

14.1.2.1 Applicability

Cluster Residential Development may be allowed by Special Permit of the Planning Board in zones specified in Section 5.2, the Table of Use Regulations.

14.1.2.2 Application

Application and approval will be by Special Permit of the Planning Board, in accordance with Section 3.4 and 3.5 of the Ordinance. The Planning Board decision will include the findings required for general special permits, multi-family special permits if applicable, and as well as the findings required specifically for this section.

14.1.2.4 Submittal Requirements

The submittal requirements and review standards including administration, application and submission requirements, fees, powers, hearings and time limits shall be as provided for Site Plan Review, Section Fifteen; as specified in other sections of this article and as specified for multifamily development, if applicable. Fees shall be as stated under the subdivision rule and regulations."

14.1.3 REQUIREMENTS

14.1.3.1 Allowable Uses

As allowed in the zoning district which contains the Cluster Residential Development, and:

Rural Res. - single family

Suburban Res. - two family

14.1.3.2 General Dimensional Requirements

Single family, duplex and multifamily cluster may be constructed with each structure on a separate lot or with all structures on a single lot under common ownership. All dimensional requirements of the zoning district which contains the Cluster Residential Development shall be followed, unless modified by the provisions of the Cluster Residential Development ordinance.

The following dimensional requirements shall apply:

Frontage, setbacks, side and rear yard dimensions shall be guided by the characteristics of the site, proposed structures, the nature of the existing built environment in the area, and principles of good site planning. Zero lot line development is permitted. * The required buffer zone width may be reduced by majority vote of the Planning Board if such reduction shall further the goals of Cluster Development and any overlay districts the proposed development is located in

14.1.3.3 Density

Base density shall be determined by the submission of a plan that at least meets the requirements of a preliminary subdivision plan under the "Rules and Regulations, Governing the Subdivision of Land - Taunton, Massachusetts," latest edition. Wetlands shall be delineated on the site as per Chapter 131, the Wetlands Act, any Local Wetlands General Ordinance and Conservation Commission Rules and Regulations. Said delineation shall be approved by the Conservation Commission as true and accurate under the Wetlands Act, the General Ordinance and the Rules and Regulations. Other site restrictions such as flood plain, and slopes over 8%. The Planning Board shall, based on this and other information it may require in its rules and regulations and during the hearing, determine as far as practical the maximum number of units that could be constructed on the site under a conventional subdivision allowed by right in the zoning district. Except by special permit under Section 16, Inclusionary Zoning, the number of dwelling units shall not exceed this number.

14.1.4 SITE IMPROVEMENTS

14.1.4.1 Streets and Utilities

All streets, sewers, drainage facilities, utilities, procedures and other improvements shall be designed in compliance with the Rules

and Regulations Governing the Subdivision of Land, City of Taunton, latest edition, unless waived as part of the Special Permit decision. In general, waivers may be granted when the following conditions are present:

1) The reduction in standards for construction of roads and other improvements will minimize environmental disruption and maintain rural character. Examples of this include minimizing pavement width, asphalt berms and curvilinear layouts that show due regard for the topography and natural features of the site.

2) These waivers will only be considered for multifamily dwellings in a condominium form of ownership. Ownership and maintenance will be the responsibility of the Condominium Association. Three permanent budget items will be included in the Condominium Documents in a form and amount acceptable to the Planning Board. These include a yearly maintenance budget, a Reserve for Repair, and a Reserve for Replacement. The Landscape Architect's letter of intent shall describe in detail how the proposed road layout and design standards serve to protect the natural features of the site and provide a higher level of amenity. Easements will be provided for all public utilities. For all streets and utilities, whether to be public or private, security shall be posted to insure their proper installation. The process for performance guarantee shall be as required in Article V of the Subdivision Rules and Regulations.

14.1.4.2 Buildings

The design of the buildings should show harmony with the terrain and the surrounding neighborhood. Good architectural principles shall be used in integrating the following elements: massing, rooflines, jogs, window and entrance details, and exterior finishes. Not more than three contiguous rowhouses shall be built in a row with the same or approximately the same front line, and not more than five rowhouses shall be contiguous. A jog of at least six (6) feet will be provided. Each rowhouse shall have on its own lot one yard containing not less than 400 sq. ft. reasonably secluded from streets or from neighboring property. Such yards shall not be used for off-street parking, garages, driveways, leachfields or for any accessory building. The Planning Board may vote to waive yard requirements in condominium developments. The minimum distance between any two rows of rowhouse buildings, substantially parallel to each other, shall be sixty feet. A rowhouse development shall not be permitted which by its design and/or location of structures could conflict with adjacent single-family residences. Intervening open space areas shall be designated for buffer purposes.

14.1.5 COMMON OPEN SPACE

14.1.5.1 Purpose

The location and layout of the Common Open Space shall take into account, preserve, and where appropriate promote such features of the parcel as rivers, ponds, wetlands, historic sites, wildlife habitats, unique geological or botanical areas or features, existing or potential trails, paths and open space links, and sites for active recreation. The Common Open Space shall have restrictions placed on it to insure that no buildings or roadways can be built on it in the future.

14.1.5.2 Minimum Common Open Space

The minimum common open space shall be as designated in Section 14.1.3.2. The percentage shall be expressed as a percentage of the area used in calculating the density in the conventional development plan. All land not designated for roads, dwellings, parking, utilities, seepage and other development shall be designated open space. The open space shall be legally described and bounded.

14.1.5.3 Use and Shape of Common Open Space

The Common Open Space shall be used for open space, conservation, agriculture, recreation or park purposes. The Common Open Space shall be in one or more parcels of a size, shape and location appropriate for its intended use. Each parcel of Common Space shall have adequate access, as determined by the Planning Board.

14.1.5.4 Ownership of Common Open Space

Such Open Land shall either be conveyed to

(1) the City of Taunton and accepted by it for park or open space use;

(2) to a non-profit organization the principal purpose of which is the conservation of open space, or

(3) to a corporation or trust owned or to be owned by the owners of lots or residential units within the Cluster Residential Development. Unless there is a significant public purpose, the Planning Board, normally shall require the third option. Provisions shall be made so that the Common Open Space and other common property shall be owned in common by the owners of all units in the Cluster Residential Development or by a corporation, non-profit organization or trust whose members are all the owners of the units. In all cases, a perpetual restriction of the type described in G.L.c. 184, Sec. 31 running to and enforceable by the City of Taunton shall be recorded in respect to the Common Open Space. Such restriction shall provide that the Common Open Space shall be retained in perpetuity for one or more of the following uses: conservation, open space, agriculture, recreation or park. Such restriction shall be in such form and substance as the Planning Board may prescribe and deem appropriate. Said Conservation Restriction shall be approved by the Secretary of the Massachusetts Executive Office of Environmental Affairs and recorded prior to the issuance of Certificates of Occupancy. If such a corporation or trust is utilized, ownership thereof shall pass with conveyances of the lots or residential units. In order to ensure that the corporation, non-profit organization or trust will properly maintain the Common Open Space and other common property an instrument(s) shall be recorded at the Bristol County District Registry of Deeds which shall as a minimum provide: A legal description of the Common Open Space. A statement of the purpose for which the Common Open Space is intended to be used and the restrictions on its use and alienation. The type and name of the corporation, non-profit organization, or trust which will own, manage and maintain the Common Open Space. The ownership or beneficial interest in the corporation, non-profit organization or trust of each owner of a dwelling in the Planned Residential Development and a provision that such ownership or beneficial interest shall be appurtenant to the dwelling to which it relates and may not be conveyed or encumbered separately therefrom. Provisions for the number, term of office, and the manner of election to office, removal from office and the filling of vacancies in the office of directors and/or officers of the corporation or non-profit organization or trustees of the trust. Procedures for the conduct of the affairs and business of the corporation, non-profit organization or trust including

provisions for the calling and holding of meetings of members and directors and/or officers of the corporation or non-profit organization or beneficiaries and trustees of the trust and provision for quorum and voting requirements for action to be taken. Each owner of a dwelling shall have voting rights proportional to his ownership or beneficial interest in the corporation, non-profit organization or trust. Provision for the management, maintenance, operation, improvement and repair of the Common Open Space and facilities thereon, including provisions for obtaining and maintaining adequate insurance and levying and collecting from the dwelling owners common charges to pay for expenses associated with the Common Open Space, including real estate taxes. It shall be provided that common charges are to be allocated among the dwelling owners in proportion to their ownership or beneficial interests in the corporation, non-profit organization or trust, and that each dwelling owner's share of the common charge shall be a lien against his real estate in the Cluster Residential Development, which shall have priority over all other liens with the exception of municipal liens and first mortgages of record, and The method by which such instrument or instruments may be amended.

14.1.6 DECISION

After following the proper procedural requirements specified for the granting of a Special Permit in the General Laws, Chapter 40A, including the holding of a Public Hearing, the Planning Board may grant a Special Permit. The decision of the Planning Board shall consider the reports specified from boards and agencies and shall be based upon these comparisons of the proposed cluster plan with the conventional plan.

(a) General Scope.

(1) Consistency in or reduction of the number of lots.

(2) Increase in amenities: off-street pathways, recreation areas, wilderness areas for which access is provided to at least all residents of the development.

(b) Functional, Systems.

(1) Reduction in the likely number of driveway openings onto existing streets, onto new streets serving more than twenty (20) dwelling units, or within one hundred (100) feet of an intersection.

(2) Reduction in the length of streets, water mains, and storm drains.

(3) Increase in the safety of egress from the development onto existing streets because of having fewer, better located, or better designed egresses.

(c) Visual Concerns.

(1) Increase in vistas preserved or created.

(2) Reduction in the number of dwellings within two hundred (200) feet of an existing street.

(d) Environmental Protection.

(1) Reduction of the total area over which vegetation is disturbed by cut or fill or displacement.

(2) Reduction in critical lands (slopes in excess of 8%; land within one hundred (100) feet of a water body, wetland, or strewn; land having outstanding or rare vegetation) disturbed by construction.

(3) Reduction of the extent of waterways altered or relocated.

(4) Reduction in the volume of cut and fill for roads and construction sites.

(5) Increase in the scale of contiguous area assured to be preserved in a natural state.

A proposed Cluster Development which meets all requirements of the Zoning By Law and other applicable controls and which is generally superior or conventional development based upon the above considerations may be granted a Special Permit unless, in comparison with development under a conventional plan, in other respects the Cluster Development would create relatively serious hazard, traffic congestions, reduction in the use and enjoyment of adjacent properties, a significant decrease in surface or groundwater quality, or environmental degradation. If the Special Permit is granted, there shall be no amendments, changes or transfer or ownership without Planning Board review and approval. In accordance with Section 9 of General Laws Chapter 40A, all granted permits necessary for the prosecution of the work shall be obtained and construction shall be commenced within two years from the date of filing of the Board's decision in the office of the City Clerk.

"Cluster, single family" ... by special permit from planning board in RRD, SRD.

"Cluster, multifamily/garden" ... by special permit from the planning board in RRD, SRD.

"Cluster, multifamily/rowhouse"... by special permit from the planning board in RRD, SRD.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board

"Cluster, single family" ... by special permit from planning board in RRD, SRD.

"Cluster, multifamily/garden" ... by special permit from the planning board in RRD, SRD.

"Cluster, multifamily/rowhouse"... by special permit from the planning board in RRD, SRD.

Has any housing been built under the cluster/flexible provisions?

Yes Town Planner Kevin Scanlon (11/12/04) said that cluster zoning is "actively used" and "used all the time."

Tewksbury

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Town of Tewksbury Zoning Bylaw, Section 7300 (Last Amended 2004).

"7300. CLUSTER DEVELOPMENT

7310. Purpose. The purpose of cluster development is to encourage the preservation of open space for conservation and recreation uses; to promote the better utilization of land in harmony with its natural features and with the general intent of the Zoning By-Law through a greater flexibility in design; to allow for a more efficient provision of municipal services.

7320. Special Permit Required. The Planning Board may grant a special permit for land to be subdivided as a cluster development, subject to the requirements and conditions set forth herein. The application for a special permit for a cluster development shall be, in addition to any other documents required by the Planning Board, accompanied by a preliminary subdivision plan. Plans for cluster development must also show the following:

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7321. soil characteristics as shown on Soil Conservation Service Maps;

7322. existing vegetation and the proposed landscaping;

7323. use of land which is to be reserved for recreation, conservation or park use, including any structures therein and the proposed ownership of all unsubdivided land.

Copies of the preliminary subdivision plan and all additional information as required above shall also be submitted to the Tewksbury Department of Public Works, the Tewksbury Board of Health and the Tewksbury Conservation Commission.

7330. Number of Lots Permitted. The total number of building lots in a cluster development shall be no greater the number of building lots that would otherwise be allowed in the district where the land is located as specified in this By-Law.

7340. Dimensional Requirements. The following standards shall be observed in all cluster developments. The Planning Board may, in appropriate cases, impose further restrictions upon the tract or parts thereof, as a condition to the granting of a special permit.

Area No less than 20,000 square feet per building

lot

Frontage Not less than 75 feet on a public way

Building Line Not less than 100 feet

Front Setback Not less than 25 feet

Minimum Open Space Access 20 feet in width shall be provided to each

parcel of unsubdivided land in the

subdivision. Such access shall be identified

in a manner as specified by the Planning

Board in the conditions of the special permit

Lot Shape and Perimeter The lot shape and perimeter requirement set

forth herein shall not apply to cluster

developments. The Planning Board shall

have the authority to require changes in lot

shape and perimeter as required or deemed

necessary to maintain the quality of the

development.

Minimum percent uplands No new lot created in a cluster development

shall have less than 75% contiguous uplands

as defined by M.G.L. c. 131, s. 40. Proposed

structures shall be located on said uplands.

All Other Lot Coverage and Dimensional

Requirements

As per the standards prescribed for that

district as set forth herein

7350. Conditions. The following conditions shall apply to cluster developments.

7351. The total area of the subdivision shall not be less than 12 acres.

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7352. The unsubdivided land when added to the building lots shall be at least equal in area to the land area required by this By-Law for the total number of units or buildings contemplated in the development.

7353. At least 30% of the unsubdivided land shall not be subject to the provisions of M.G.L. Chapter 131, Section 40, the Wetlands Protection Act, or have slopes in excess of 25%.

7354. In addition to the conditions set forth in 7351, 7352 and 7353, one or more of the following conditions must be met:

- a. The total area of the unsubdivided land shall be no less than 8 acres;
- b. There shall be a minimum of 4 acres of unsubdivided land that is not subject to M.G.L. Chapter 131, Section 40, nor have slopes in excess of 25%;
- c. The unsubdivided land shall be contiguous to existing land that is dedicated to open space, recreation or conservation use;
- d. The unsubdivided land shall be part of the shoreline of and provide access to the Shawsheen River, the Merrimack River, Ames Pond, Round Pond or Long Pond;
- e. The unsubdivided land is contiguous to an existing or proposed recharge area for the Tewksbury municipal water supply;
- f. The unsubdivided land is above the elevation of 300 feet on Ames Hill.

7360. Use of Unsubdivided Land. The unsubdivided land within the subdivision shall be used for conservation, outdoor recreation or park purposes. This section 7360 shall not apply to any cluster development approved prior to May 1993.

7361. The unsubdivided land shall be in one (1) or more parcels of size and shape appropriate for its intended use. However, no parcel less than 3 acres shall remain unbuilt upon except that a maximum of 20% of such land may be devoted to paved areas or structures used as an accessory to active outdoor recreation and consistent with the open space uses of land.

7362. Reserved."

From ordinance.com (continued from above):

7370. Ownership of Unsubdivided Land.

The unsubdivided land shall either be conveyed to the Town of Tewksbury and accepted by it for park, conservation or open space use, or be conveyed to a non profit organization, the principal purpose of which is the conservation of open space, or to be conveyed to a corporation or trust owned or to be owned by the owners of lots within the subdivision. In any case, where such land is not conveyed to the Town of Tewksbury, a restriction enforceable by the Town of Tewksbury shall be recorded providing that such land shall be kept in its open and natural state and not built upon for residential use or developed for an accessory use except as provided for herein. In order to insure that the corporation, non profit organization or trust will properly maintain the unsubdivided land or open space, an instrument(s) shall be recorded at the Middlesex North Registry of Deeds which shall provide as a minimum the following requirements:

7371. A legal description of the unsubdivided land or open space;

7372. A statement of the purposes for which the unsubdivided land or open space is intended to be used and the restrictions on its use and alienation;

7373. The type and name of the corporation, non profit organization, or trust which will own, manage and maintain the unsubdivided land or open space;

7374. The ownership or beneficial interest in the corporation, non profit organization or trust of each owner of a dwelling to which it relates and may not be conveyed or encumbered separately therefrom;

7375. Provision for the number, term of office, and the manner of election to office and the filling of vacancies in, the office of directors and/or officers in the corporation or non profit organization or trustees of the trust;

7376. Procedures for the conduct of the affairs and business of the corporation, non profit organization or trust, including provisions for the calling and holding of meetings of members and directors and/or officers of the corporation or non profit organization or beneficiaries and trustees of the trust and provision for quorum and voting requirements for action to be taken. Each owner of a dwelling shall have voting rights proportional to his ownership or beneficial interest in the corporation, non profit organization or trust;

7377. Provision for the management, maintenance, operation improvement and repair of the unsubdivided land or open space and facilities therein, including provisions for obtaining and maintaining adequate insurance and levying and collecting from the dwelling owners common charges to pay for expenses associated with the subdivided land or open space, including real estate taxes. It shall be provided that common charges are to be allocated among the dwelling owners in proportion to their ownership or beneficial interests in the corporation, non profit organization or trust, and that each dwelling owner's share of the common charge shall be a lien against his real estate in the cluster development, which shall have priority over all other liens with the exception of municipal

liens and first mortgages of record;

7378. The method by which such instrument(s) may be amended.

7379. Nonprofit Organization. A non profit organization for the purpose of this by law shall be defined as an organization incorporated for the purpose of land conservation and shall meet all of the following criteria:

a. have been. incorporated as a non-profit organization for a minimum of five years.

b. have adopted procedures and guidelines for open space or conservation land management which shall be submitted to the Planning Board and Conservation Commission for review.

c. have existing open space or conservation land holdings which shall total a minimum of 100 acres within the Commonwealth of Massachusetts.

7380. Action of the Planning Board.

In granting a special permit, the Planning Board may impose additional conditions and safeguards in order to protect the health, safety and welfare of the inhabitants of the neighborhood and the Town of Tewksbury. In determining whether to grant a special permit for a proposed, cluster development which meets the minimum, standards. stated herein, the Planning Board shall consider:

7381. The general objectives of cluster developments.

7382. The existing and probable future development of surrounding areas.

7383. The appropriateness of the proposed development in relation to topography, soils and other characteristics of the tract in question. 7384. The recommendations of the Department of Public Works, the Board of Health and the Conservation Commission.

7385. The Planning Board shall not grant a special permit for the subdivision of land into lots having reduced area and frontage, as provided in this section, if it appears that because of soil characteristics, drainage, traffic or other conditions, the granting of such a permit would be detrimental to the health, safety or welfare of the neighborhood or Town or inconsistent with the intent of cluster development.

7390. Other Requirements.

7391. Nothing contained herein shall in any way exempt a proposed subdivision from compliance with other sections of the Zoning By Law (except as specifically stated in this section), the Subdivision Rules and Regulations of the Town of Tewksbury, regulations of the Tewksbury Department of Public Works, Tewksbury Board of Health, the Tewksbury Conservation Commission, or any rules and regulations issued by the Commonwealth of Massachusetts.

7392. Any change in the number of lots, the lines of the streets, or any significant changes in the reserved open spaces, its ownership or use or any other conditions stated in the original special permit shall require a new special permit issued in accordance with the provisions in this By Law.

Minimum lot size: The total area of the subdivision shall not be less than 12 acres.

No less than 20,000 square feet per building
lot

Survey received from Tewksbury on 4/15/05:

What year was the first provision for flexible zoning adopted?

"Cluster - mid-eighties, Open Space - 2003"

What was the last year that the municipality amended the cluster/flexible provisions?

"2003"

What types of structures are allowed under cluster/flexible zoning?

"single family"

Has any housing been built under the cluster/flexible provisions? (none, 1-8 projects, more than 8)

"more than 8"

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board 7320. Special Permit Required. The Planning Board may grant a special permit for land to be subdivided as a cluster development, subject to the requirements and conditions set forth herein. The application for a special permit for a cluster development shall be, in addition to any other documents required by the Planning Board, accompanied by a preliminary subdivision plan.

Has any housing been built under the cluster/flexible provisions?

Yes Survey received from Tewksbury on 4/15/05:

Has any housing been built under the cluster/flexible provisions? (none, 1-8 projects, more than 8)

"more than 8"

Topsfield

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes According to Topsfield Zoning Bylaw, Article I, Section 1.55 and Topsfield Zoning Bylaw, Article IV, Section 4.09:

1.55 PLANNED DEVELOPMENT . A development involving the construction of two (2) or more principal buildings on the same lot or group of lots for any permitted use which is planned, designed and developed as a unit so as to provide a functional and attractive development.

4.09 Open Space Development Plan (Amended Art.40, ATM 5/7 /97)

A. All Applicants submitting a conventional Definitive Plan to the Planning Board for a tract of land of at least ten (10) acres, shall simultaneously therewith submit a Definitive Open Space Development Plan. Said Open Space Development Plan shall be complete, and prepared by the Applicant in good faith with no less degree of professionalism than was utilized in the preparation of the conventional Definitive Plan. The Planning Board shall review the two Definitive Plans in the best interest of the Town of Topsfield, having reasonably considered such factors as safety, convenience of the roadways, conservation of natural resources, preservation of natural features, and the character and peculiar uses of the District.

B. The Planning Board shall approve according to the Subdivision Control Procedures authorized in Section 81L of Chapter 41 of the General Laws, a subdivision plan in any Inner Residential and Agricultural District and Outlying Residential and Agricultural District for a tract of at least ten (10) acres in which some of the individual lots do not conform specifically to the lot area or frontage requirement of this Article IV, provided that:

1. The total area, excluding roadways, in such proposed subdivision is not less than the product of the total number of lots times the minimum lot size for the zoning district in which the subdivision is located, and in no case shall an individual lot have less than one-half (1/2) of the required lot size for the zoning district in which the subdivision is located.
2. Each lot shall have a minimum street frontage of eighty (80) feet except that a lot on the turning circle of a dead end street may have a frontage of not less than fifty (50) feet, provided that in all cases, the distance between side lot lines shall be at least one hundred (100) feet at the front-most point of the dwelling in the Inner Residential and Agricultural District and one hundred thirty (130) feet at the front-most point of the dwelling in the Outlying Residential and Agricultural District.
3. The number of lots on the plan does not exceed the number of lots upon which dwellings could have been constructed on the total land area of the tract without this Open Space Development provision. In determining the number of lots which could have been constructed from a conventional plan, the Planning Board may consider economic and practical factors in addition to technical compliance, including but not limited to the regularity of lot shapes.
4. Front, side and rear yards conform with the requirements for conventional area lots in the same district.
5. Provisions shall be made so that at least fifty (50) percent of the land area of the tract, exclusive of land set aside for road area, shall be Open, or undeveloped, Land.

6. Provisions shall be made so that Open Land shall be owned in one of the following manners, as determined by the Planning Board:

- a. In common by owners of the lots in the tract.
- b. By a Membership corporation, trust or association whose members shall include all owners of the lots in the tract.
- c. By the Town. Provided that sufficient rights shall be vested in the Town to ensure payment of taxes and provisions of upkeep services. In such cases, said land may be accepted on behalf of the Town by the Planning Board.
- d. By an independent conservation entity approved by the Planning Board for Open Space land ownership.

7. A conservation restriction shall be filed in the Registry of Deeds restriction index, committing the Open Land to conservation and recreation use and permitting erection of no structures except small structures incidental to such uses.

8. The Open Space shall be in one contiguous parcel except where divided by streets and each lot shall have a boundary common with the Open Space or access by a right-of-way or easement. In the case of access by right-of-way or easement, the Planning Board shall determine whether said access is adequate and sufficient to meet the intent of this Bylaw.

9. The Planning Board finds that the proposed plan is in harmony with the intent of this By-Law, provides for the public interest, will provide permanent Open Space, will lead to efficient land use and to economy in the provision of town and public utility services, and will increase the amenities, attractiveness and recreation potential of the neighborhood specifically, all lots should be suitable for building and found to take best advantage of natural terrain.

C. Said subdivision plan when approved and recorded shall be considered a supplementary part of the Zoning By-Law, and thereafter no land therein shall be sold and no lot line shall be changed in such a way as to increase the extent of the nonconformity with the general provisions of this By-Law. (5-4 and 5-9-78; Art. 33, 5-5-81)."

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board B. The Planning Board shall approve according to the Subdivision Control Procedures authorized in Section 81L of Chapter 41 of the General Laws, a subdivision plan in any Inner Residential and Agricultural District and Outlying Residential and Agricultural District for a tract of at least ten (10) acres in which some of the individual lots do not conform specifically to the lot area or frontage requirement of this Article IV, provided that:

Has any housing been built under the cluster/flexible provisions?

Yes Glenn Clohcey, Topsfield Building Inspector, (7/20/04) said he can recall one planned development subdivision of about 25-30 units and one open space development of 32 units.

Townsend

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Town of Townsend Zoning Bylaw (Amended 2004)

§145-39. Open space preservation development (OSPD).
[Amended 5-7-1986 STM by Art. 5]

A. Purpose. In order to provide for the public interest by the preservation of open space in perpetuity, variety in residential housing development patterns which allow for development more harmonious with natural features and Town growth policies than traditional residential development, to promote the maximum possible protection of open space, visual quality and watershed protection, and to encourage efficient provision of necessary utilities and community services, the following regulations are established for open space preservation development within the Town of Townsend. In making any and all determinations under this bylaw, the Planning Board shall always compare the impact of an open space development with potential conventional development, and may approve open space development only if the proposal is superior to a conventional development..

B. Applicability. Open space preservation development shall be allowed and Residence "B" Zoning Districts subject to the requirements of this bylaw for those districts, and in accordance with the additional requirements specified herein.

C. General requirements.

(1) Any parcel of land located within a zone permitting OSPD which would accommodate at least 10 dwelling units, under the provisions of the underlying zoning district may be considered for an OSPD subject to a special permit issued by the Planning Board.

(2) After an OSPD application has been submitted, no utility installations; no ditching grading or construction of roads, no grading of land or lots, no excavation except for purposes of soil testing, no forest harvesting, no dredging or filling, and no construction of buildings or structures shall be done on any part of the development site until the application has been reviewed and approved as provided by these regulations.

(3) No OSPD will be approved within an established single-family residential neighborhood if the Planning Board determines that such land use would have a detrimental effect upon the surrounding property.

(4) It shall be the responsibility of an applicant for an OSPD special permit to demonstrate to the Planning Board that this form of land development will be as or more appropriate than traditional patterns of residential development for the particular site being considered.

D. Permitted uses.

(1) Detached single-family dwellings, as defined, including all accessory uses allowed appurtenant thereto.

(2) Uses permitted within the common open space as described in these regulations.

(3) Recreational facilities for OSPD purposes.

E. Minimum requirements.

(1) Density. The total area of the tract proposed for OSPD shall be at least 10 acres of contiguous upland. The total number of residential units allowable on a site proposed for OSPD shall not exceed the number of units that would be allowed in the zoning district in which the site is located. The burden of proof shall be upon the applicant in determining the allowable number of units. The total number of units allowed shall be determined by the following method:

(a) Layout by a preliminary sketch plan showing the total number of lots which could be obtained by utilizing a conventional grid subdivision. The plan shall show all wetlands along the potential sites for home; and if individual septic systems and/or wells for drinking water would be necessary to serve the homes, then also the location of subsurface sewage disposal system and/or well on each lot. Where available, medium intensity soil survey maps, such as those available from the USDA Natural Resource Conservation Service, shall be provided. Furthermore, the SPGA may require the applicant to provide or pay for the creation of more detailed, high-intensity maps, or other data, if there is any indication of ledge, shallow soils, or other indication that the lots shown on the conventional plan may not be buildable as a practical matter. The applicant shall also provide financial data, based on the known data, including current housing prices and reasonable inflation and population projections, demonstrating that the conventional subdivision is financially viable, and could be completed and sold within the same time frame planned for the open space proposal. [Amended 5-2-2000 ATM by Arts. 38 and 39]

(b) Data proving that adequate provision for sanitary sewage can be provided to each lot in the conventional subdivision. .If individual septic systems would be necessary to serve the homes, then the following data must be included: [Added 5-2-2000 ATM by Art. 38]

(2) Density regulations. The Planning Board may grant a reduction on all density regulations of the underlying zoning regulations for all portions of an OSPD, with the exception of height and front, side and rear yard setbacks, if the Planning Board finds that such reduction will result in better design, improved protection of natural and scenic resources, and will otherwise comply with these regulations provided that in no instance shall any lot deviate from the following table of minimum requirements:

Table of Minimum Requirements (RA/RB districts)

With Town Water:

MLA 20,000 sf; Frontage 50'

Without Town Water:

MLA 48,000 sf; Frontage 120'

(3) Frontage requirements. Frontage requirements for lots on the arc of the curve at the end of so called "cul de sacs" may be reduced to no less than 25% of the required minimum for the zoning district as established in Article VII of the bylaw. [Amended 4-27-1991 STM by Art. 10]

(4) Development standards. Prior to the issuance of a special permit for an OSPD, the applicant shall submit the information necessary to demonstrate that the following development standards have been met.

F. Open space use and design standards.

(1) Lots for building purposes shall be grouped in clusters and within each cluster the lots shall be contiguous.

(2) Within an OSPD, no less than 30% of the total land area shall be devoted to common open space. The common open space shall not include land set aside for toads and/or parking uses. No more than 50% of the common open space shall contain wetlands as defined by Massachusetts General Laws, Chapter 131, Section 40.

(3) The common open space shall be designed and maintained in accordance with the following standards:

(a) Naturally existing woods, fields, meadows, and wetlands shall be maintained and improved in accordance with good conservation practices.

(b) Common open space shall be planned as large, contiguous units whenever possible. Strips or narrow parcels of common open space shall be permitted only when necessary for access or as vegetated buffers along the site's perimeter.

(c) Common open space may be in more than one parcel provided that the size, shape and location of such parcels are suitable for the designated uses.

(d) No more than 20% of the common open space shall be covered by man-made impervious surfaces.

(e) Common open space may be used for active and passive recreation, conservation, forestry, agriculture, natural buffers, structures necessary to approved uses, utilities and other facilities necessary for the convenience and enjoyment of the residents, subject to approval by the Planning Board.

(f) There shall be a minimum setback of 50 feet between any common open space structures and all property lines of the site.

G. Common open space ownership and management.

(1) Common open space in an OSPD shall be conveyed to: the Town and may be accepted by it for park or open space use; a nonprofit corporation, the principal purpose of which is the conservation of open space; or to a corporation or trust-owned or to be owned by the owners of within the development. If a corporation or trust owned by the owners of lots or residential units is utilized, ownership thereof shall pass with the conveyances of the lots or units. In any case where such land is not conveyed to the Town, a restriction enforceable by the Town shall be recorded at the Middlesex District Registry of Deeds providing that such land shall be kept in open or natural state and not be built upon for residential use or developed for accessory uses such as parking or roadway.

(2) If the common open space is not to be conveyed to the Town, the application for an OSPD special permit must include a program describing how the common open space will be maintained in perpetuity to standards 'satisfactory to the Planning Board. The applicant shall also provide as part of the common open space proposal an agreement empowering the Town to perform maintenance of the common open space in the event of failure to comply with the program included in the application pursuant to the preceding sentence providing that, if the Town is required to perform any maintenance work, the owners of lots or units within the OSPD shall pay the cost thereof and that the cost shall constitute a lien upon their properties until said cost has been paid.

H. Duration of approval. Notwithstanding anything to the contrary in this 145-39., any special permit granted by the Planning Board for an OSPD shall become void within two years from the date of issue, which two years shall not include time required to pursue or await determination of an appeal referred to in Section 17 of Chapter 40A of the General Laws, unless any substantial part of the proposed construction work shall have been performed and proceeded in good faith continuously to completion, except for a good, cause. All open space shall be dedicated at the time the special permit, as required, has been granted.

(1) If at any time before, during or after construction of the proposed development unforeseen conditions make it necessary or preferable to modify the project as described in the approved definitive OSPD application, the Planning Board may authorize such modifications provided that they are within the spirit of the original proposal and comply with these regulations.

§145-47. Open space multifamily development (OSMD).

[Added 4-25-1989 ATM by Art. 25]

A. Purpose. In order to provide for the public interest by the preservation of open space in perpetuity, variety in residential housing which allows for development more harmonious with natural features and to promote the maximum possible protection of open space, visual quality, and watershed protection, and to encourage efficient provision of necessary utilities and community services, the following requirements are established for open space multifamily development within the Town of Townsend. In making any and all determinations under this bylaw, the Planning Board shall always compare the impact of an open space development with potential conventional development, and may approve open space development only if the proposal is superior to a conventional development. The Planning Board shall be guided by the findings and recommendations of the Townsend Open Space Plan and Townsend's Housing Policy, as amended.

B. Applicability. Open space multifamily development shall be allowed within RA and RB zoning Districts subject to the requirements of the Zoning Bylaw for those districts, and in accordance with the additional requirements specified herein.

C. General requirements.

(1) After an OSMD application has been submitted, no utility installations, no ditching, grading or construction of roads, no grading of land or lots, no excavation except for purposes of soil testing, no forest harvesting, no dredging or filling, and no construction of buildings or structures shall be done on any part of the development site until the application has been reviewed and approved as provided by this section;

(2) No OSMD will be approved within an established residential neighborhood if the Planning Board determines that such land use would have a detrimental effect upon the surrounding property;

(3) It shall be the responsibility of an applicant for an OSMD special permit to demonstrate to the Planning Board that this form of land development will be more appropriate than traditional patterns of residential development for the particular site being considered.

D. Permitted uses.

(1) Detached single-family dwellings, as defined; including all accessory uses allowed appurtenant thereto;

(2) Two-family dwellings including all accessory uses allowed appurtenant thereto;

(3) Apartment/multifamily building with six or fewer units per structure;

(4) Uses permitted within the common open space as described in this section;

(5) Recreational facilities for OSMD purposes.

E. Minimum requirements.

(1) Density. The total area of the tract proposed for OSMD must be able to contain 10 dwelling units. The total number of dwelling units allowable on a site proposed for OSMD shall not exceed the number of units that would be allowed in the zoning district in which the site is located. The burden of proof shall be upon the applicant in determining the allowable number of dwelling units. The total number of units allowed shall be determined by the following method: layout by a preliminary sketch plan showing the total number of lots which could be obtained by-utilizing a conventional grid subdivision of detached one-family. dwelling units. The Planning Board may require information to substantiate the validity of the preliminary sketch plan. Where available, medium intensity soil survey maps, such as those available from the USDA Natural Resource Conservation Service, shall be provided. Furthermore, the SPGA may require the applicant to provide or pay for the creation of more detailed, high-intensity maps or other data, if there is any indication of ledge, shallow soils, or other indication that the lots shown on the conventional plan may not be buildable as a practical matter. The applicant shall also provide financial data, based on the known data, including current housing prices and reasonable inflation and population projections, demonstrating that the conventional subdivision is financially viable, and could be completed and sold within the same time frame planned for the open space proposal. [Amended 5-2-2000 ATM by Art. 39]

(a) The plan shall show all wetlands along with potential sites for homes; and if individual septic systems and/or wells for drinking water would be necessary to serve the homes, then also the location of a subsurface sewage disposal system and/or well on each lot. [Added 5-2-2000 ATM by Art. 38]

(b) The applicant shall submit data proving that adequate provision for sanitary sewage can be provided to each lot in the conventional subdivisions. If individual septic systems would be necessary to serve the homes, then the following data must be included: [Added 5-2-2000 ATM by Art. 38]

[1] Records of all soil tests performed on the site, whether or not performed by or on behalf of the applicant, on file with the Board of Health and the Nashoba Associated Boards of Health.

[2] Soil test data meeting the requirements of the Board of Health which show that a subsurface sewage disposal system conforming with all current state and local requirements could be installed on each lot in the conventional subdivision.

(2) Density regulations. The Planning Board may grant a reduction on all density regulations of the underlying zoning regulations for all portions of an OSMD, with the exception of height and front, side and rear yard setbacks, if the Planning Board finds that such reduction will result in better design, improved protection of natural and scenic resources, and will otherwise comply with this section, provided that in no instance shall any lot deviate from the following table of minimum requirements:

Table of Minimum Requirements (RA/RB districts):

Single Family ~

With Town Water:

MLA 20,000 sf; Frontage 35'

Without Town Water:

MLA 48,000 sf; Frontage 35'

Two Family ~

With Town Water:

MLA 30,000 sf; Frontage 35'

Without Town Water:

MLA 60,000 sf; Frontage 35'

Apartments/Multi-family ~

With Town Water:

MLA 48,000 sf; Frontage 35'

Without Town Water:

MLA 80,000 sf; Frontage 35'

(3) Development standards. Prior to the issuance of a special permit for an OSMD, the applicant shall submit the information necessary to demonstrate that the following development standards have been met:

(a) The development will not cause unreasonable traffic congestion or unsafe conditions both within and outside of the development and will comply with Town standards for parking, access, road design and construction.

(b) The development will provide for and maintain convenient and safe emergency vehicle access building and structures at all times.

(c) The nature of the soils and subsoils shall be suited for the intended purposes. This determination shall focus upon, but shall not be limited to, the location, design and construction of roadways, buildings, septic systems and surface water drainage systems. Soil borings or test pits may be made to provide information on soil texture, color, percolation rates and depth to the groundwater table at its maximum elevation.

(d) Anticipated stormwater runoff from the site shall not exceed peak runoff from the site prior to development. The applicant shall submit formal drainage calculations by a registered professional engineer for this purpose.

(e) Proper soil erosion and sedimentation control measures shall be employed to minimize sedimentation and siltation of existing surface water bodies and wetlands. In areas where the land slopes downward toward any surface water body, or freshwater wetland, proposed filling, cutting, clearing, or grading shall be minimized and all such development activities shall be carried out in such a way as to retain the natural vegetation and topography wherever possible. The Planning Board may require that an erosion and sedimentation control plan be submitted if significant erosion is anticipated in slope areas.

(f) The site design shall preserve and, where possible, enhance the natural features of the property, including scenic views, by adapting the location and placement of structures and ways to the existing topography in order to minimize the amount of soil removal, tree cutting and general disturbance to the landscape and surrounding properties.

(g) The development shall comply with all other provisions of the Subdivision Rules and Regulations of the Planning Board and any other land use regulations of the Town of Townsend in effect at the time of application.

(h) The Planning Board may require, at the project proponent's expense, a qualified firm or firms to evaluate the technical information presented to the Planning Board.

(4) Architectural standards. Specific architectural standards for construction within the OSMD shall be made part of the special permit and will be used to ensure conformity and compatibility between units and the existing neighborhood. Prior to the issuance of a special permit for an OSMD, the applicant shall submit the following information to demonstrate that the architectural standards have been met:

(a) Building elevations;

(b) Schedule of exterior materials;

(c) Any other pertinent information the Planning Board deems appropriate.

F. Open space use and design standards.

(1) Lots for building purposes shall be grouped in clusters and within 'each cluster the lots shall be contiguous;

(2) Within an OSMD, no less than 60% of the total land area shall be devoted to common open space. The common open space shall not include land set aside for roads and/or parking uses. No more than 50% of the common open space shall contain wetlands as defined by MGL c. 131, 40;

(3) The common open space shall be designed and maintained in accordance with the following standards:

(a) Naturally existing woods, fields, meadows and wetlands shall be maintained and improved in accordance with good conservation practices.

(b) Common open space shall be planned as large, contiguous units whenever possible. Strips or narrow parcels of common open space shall be permitted only when necessary for access or as vegetated buffers along the site's perimeter.

(c) No more than 20% of the common open space shall be covered by man-made impervious surfaces.

(d) Common open space may be used for active and passive recreation, conservation, forestry, agriculture, natural buffers, structures and utilities necessary to the aforementioned uses subject to approval by the Planning Board acting with due regard to the open space plan.

(e) There shall be a minimum setback of 50 feet between any common open space structures and all property lines of the site.

G. Common open space ownership and management.

(1) Common open space in an OSMD shall be conveyed to the Town and may be accepted by it for a park or open space use, a nonprofit corporation, the principal purpose of which is the conservation of open space, or a corporation or trust owned or to be

owned by the owners of lots or residential units within the development. If a corporation or trust owned by the owners of lots or residential units is utilized, ownership thereof shall pass with the conveyances of the lots or units. In any case, where such land is not conveyed to the Town, a restriction enforceable by the Town shall be recorded at the Middlesex District Registry of Deeds providing that such land shall be kept in open or natural state and not be built upon for residential use or developed for accessory uses such as parking or roadway.

(2) If the common open space is not to be conveyed to the Town, the application for an OSMD special permit must include a program describing how the common open space will be maintained in perpetuity to standards satisfactory to the Planning Board. The applicant shall also provide as part of the common open space proposal an agreement empowering the Town to perform maintenance of the common open space in the event of failure to comply with the program included in the application pursuant to the preceding sentence providing that, if the Town is required to perform any maintenance work, the owners of lots or units within the OSMD shall pay the cost thereof and that the cost shall constitute a lien upon their properties until said cost has been paid.

H. Duration of approval. Notwithstanding anything to the contrary in this 145-47, any special permit granted by the Planning Board for an OSMD shall become void within two years from the date of issue, which two years shall not include time required to pursue or await determination of deal referred to in 17 of c. 40A, unless any substantial part of the proposed construction work shall have been performed or has proceeded in good faith continuously to completion, except for a good cause. All open space shall be dedicated at the time the special permit, as required, has been granted. If at any time before, during, or after construction of the proposed development unforeseen conditions make it necessary or preferable to modify the project as described in the approved definitive OSMD application, the Planning Board may authorize such modifications provided that they are within the spirit of the original proposal and comply with this section. All the provisions of MGL c. 40A, 9, including the requirements of public hearing, shall be applicable to proceedings under this section.

§145-48. Affordable housing conditional density bonus.
[Added 4-25-1989 ATM by Art. 33]

A. Purpose and authority. This section is adopted pursuant to MGL c. 40A, 9 in order to encourage various housing types for persons of various ages and income levels and create affordable housing, to help people who have lived and worked in Townsend and have been unable to obtain suitable housing at a reasonable price, and to maintain a stable economy by preventing the out migration of lower income groups who provide essential services. The Planning Board may issue a special permit which allows an increase in density through a partial relaxation of requirements of this bylaw but only in conjunction with procedures described in 145-39, Open space preservation development, and 145-47, Open space multifamily development, and shall require that a minimum of 30% of all units developed on the site be sold and maintained at affordable prices, according to the standards contained in Subsection C below. The Planning Board may not allow an increase in density beyond one total dwelling unit per acre. As a further incentive for the construction of affordable housing, the Board may, in its discretion, waive certain improvement requirements set forth in the Townsend Subdivision Rules and Regulations."

B. Definitions.

AFFORDABLE HOUSING DEVELOPMENT - A project requiring approval under this section.

AFFORDABLE HOUSING UNITS - Units which may be purchased or rented by those who meet the guidelines for maximum annual income for a low-income, or moderate-income family. Low-income families shall have an income between 50% and 80% of the Townsend median income, and moderate-income families shall have an income between 80% and 120% of the Townsend median income. Affordability means that housing costs for a family shall not exceed 30% of their gross annual income in the previous calendar year. Housing costs include:

(1) For homeowners: payments for principal and interest on a mortgage, real estate taxes, homeowner's insurance, and condominium fees, if any; or

(2) For renters: rent including heat but not other utilities. In determining median income, the most recent data available from the Massachusetts Housing Partnership Program shall be used.

DESIGN STANDARDS - Specific design standards for construction within the plan shall be made part of the special permit and will be used to ensure conformity and compatibility between units. Other requirements for design shall be as required under 145-39 and 145-47 of the Zoning Bylaw, and applicable sections of the Townsend Subdivision Rules and Regulations.

MODIFICATION OF STANDARDS - The minimum requirements of 145-39E and 145-47E of the Townsend Zoning Bylaw may be modified upon a finding by the Board that such modification creates no adverse impacts on health, safety and welfare; and is found to be in the public interest because of the high quality of design that would result, and does not derogate from the intent of this bylaw.

NUMBER OF AFFORDABLE UNITS - The number of units allowed in excess of that permitted by underlying zoning will be subject to negotiation with the Planning Board and will be determined with due regard to the project approval requirements of this bylaw. In no case shall the maximum density increase beyond one total dwelling unit per acre.

PHASING - A schedule of construction must be submitted providing the timely delivery of the affordable units.

SALE PRICE - The sale price for the affordable units will be determined by reference to the most recent Massachusetts Housing Finance Agency (HOP) figures depicting the ability to purchase of target groups whose income is approximately 50% to 120% of the Town of Townsend median income figures. [Amended 12-4-1990 STM by Art. 8]

C. Applicability. Density increases associated with the creation of affordable housing shall be allowed only within open space preservation developments, 145-39 and open space multifamily developments, 145-47.

D. Application requirements. Preliminary plan applications for proposed cluster residential developments are to be made to the Planning Board according to 145-39 and 145-47 of the Townsend Zoning Bylaw. In addition to those requirements noted in 145-39 and 145-47, a statement as to how the proposal conforms to the purposes and objectives of this bylaw shall be required for such preliminary Submittals.

E. Site plan review.

(1) Purpose. The purpose of the site plan review is to ensure that the design and layout of all developments occurring under Townsend 's Affordable Housing Conditional Density Bonus Bylaw will constitute suitable development and will not result in a detriment to the neighborhood or the environment;

(2) Applicability. Any affordable housing development which would, under the parking requirements, Article VIII, require five or more parking spaces, regardless of the number of parking places existing on the premises, shall be subject to the 145-42, Site plan review;

(3) Procedure. Applications under this section subject to site plan review shall adhere to the procedures for site plan review of 145-42 of this bylaw, except that the Planning Board shall not require an additional special permit for site plan review but, rather, incorporate site plan review conditions in the special permit required under 145-39 or 145-47.

F. Project approval requirements. The Planning Board will review all projects and will recommend approval of the special permit if, in the Board's sole discretion:

(1) The Board is satisfied that the applicant has conformed to the development, architectural, and design standards of this bylaw, and will deliver the affordable units required under Subsections A and B of this Affordable Housing Bylaw;

(2) The proposed development site plan is designed in its site allocation, proportions, orientation, materials, landscaping and other features as to provide a stable and desirable character, complimentary and integral with the site's natural features;

(3) The Board makes a finding that such development, density increase, or relaxation of zoning standards does not have a material, detrimental effect on the character of the neighborhood or Town and is consistent with all performance standards of the Townsend Zoning Bylaw, including Subsections D and E above;

(4) The proposed development is consistent with all municipal comprehensive plans and objectives.

G. Long-term afford ability.

(1) In order to maintain long-term afford ability for low- and moderate-income home buyers, there shall be certain resale restrictions upon the unit's resale value. This resale price restriction will be incorporated into the deed conveying the property to the initial purchaser and will bind all subsequent purchasers for a period of 40 years after the initial conveyance;

(2) The resale of "affordable housing units," as defined in Subsection B above, will be limited to a percentage of the unit's fair market value at the time of resale. This limitation will be determined by the percent below fair market value for which the home originally sold. This percentage shall be recorded as part of the deed restriction. All subsequent resales for a period of 40 years after the initial conveyance shall be discounted by this same percentage from the fair market value of the house at the time of the resale. Through agreement between the Planning Board and the developer, these parties may chose, at the time of the recording of the deed, to modify the differential by plus or minus 5% in order to assure that the target income groups' ability to purchase be kept in line with the unit's market appreciation and to provide a proper return on equity to the seller;

(3) All deed restrictions will require that the homeowner give 90 days' notice to the local housing agency or partnership program of his or her intent to sell. if the local housing agency or partnership program fails to respond to the homeowner within 30 days to the effect that they are proceeding to find an eligible buyer, the homeowner may thereafter sell the home to anyone meeting income guidelines;

(4) The Planning Board will designate either the local housing agency or partnership program as the authority which shall control long-term afford ability under the requirements of this section, based on submission of information showing the agency's ability to carry out these restrictions and the administrative criteria and process by which the resales shall occur.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board Town of Townsend Zoning Bylaw (Amended 2004)

C. General requirements.

(1) Any parcel of land located within a zone permitting OSPD which would accommodate at least 10 dwelling units, under the provisions of the underlying zoning district may be considered for an OSPD subject to a special permit issued by the Planning Board.

Has any housing been built under the cluster/flexible provisions?

No Survey received from Townsend Planning Board on 5/27/05:
"Harbor Trace not built yet."

Tyngsborough

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Tyngsborough Zoning Bylaw (2001)

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4.14.00 Special Permit - Open Space Residential Development

The Planning Board may grant a special permit for Open Space Residential Development in the R1 District for single family detached dwellings and accessory structures subject to the provisions of this section.

Town Meeting approval of an Open Space Residential Plan-is required prior to the granting of a Special Permit.

4.14.10 Objectives - The objective of this section is to allow an optional scheme of development so as to encourage the preservation of common land for conservation, acquisition, open space and recreational use; to preserve historical or archeological resources; to protect existing or potential municipal and private water supplies; to promote more sensitive siting of buildings and better overall site planning; to promote better utilization of land in harmony with its natural features and with the general intent of the Zoning By-law through a greater flexibility in design; and to allow for the more efficient provision of municipal services.

4.14.20 Open Space Residential Regulations - The following regulations shall apply to all developments submitted under this section.

4.14.21 Minimum Parcel Size - Open space residential developments shall be located upon a parcel of land having a minimum of nine acres in the R1 District.

4.14.22 Number of Building Lots Permitted - The total number of building lots in an Open Space Residential Development shall be no greater than the number of building lots that would otherwise be permitted in the district within which the land is located. The Planning Board shall require that the applicant provide satisfactory evidence that the number of lots shown on the Open Space Residential Plan is no greater than the number of lots that could otherwise be developed. All determinations of area for the purpose of determining the number of lots shall be based upon the criteria included in sections 2.12.20 and 2.12.30, and 2.12.40 through 2.12.49 of this By-law.

4.14.23 Dimensional Requirements - Where the requirements of this section differ from or conflict with the requirements of section 2.12.00 of this By-law, this section shall prevail. The following minimum dimensional requirements shall be met for all Open Space Residential Developments pursuant to this section.

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1. Minimum lot area. The minimum lot area shall be 35,000 square feet.

2. Frontage. The minimum frontage shall be 100 feet.

3. Side and Rear Yards. The minimum side and rear yards shall be not less than 30 feet.

4. Front Yard. The minimum front yard shall be 50 feet.

5. Lot Width. The minimum lot width shall not be less than 75 feet.

6. Buffer Zone. The minimum distance from any structure in the Open Space Residential Development to the Open Space Residential Development boundary shall be 100 feet.

4.14.24 Common Land. Any development submitted pursuant to this section shall provide common land in area not less than the sum of the areas by which the building lots are reduced below the minimum lot area required for conventional development of the tract as per section 2.12.00 of this By-law. All common land must have access to a roadway within the subdivision.

4.14.30 Legal Requirements for Common Land Ownership and Maintenance. The common land and other facilities which may be held in common shall be conveyed to a

mandatory homes association, whose membership includes the owners of all lots or units contained in the tract or if the development is a cooperative, then the owners of the shares in the cooperative association. The developer shall include in the deed to the owners of individual lots beneficial rights in said common land and shall grant a conservation restriction to the Town of Tyngsborough over such land pursuant to Massachusetts General Laws Chapter 184 Sections 31-33, to insure that such land be kept in an open or natural state and not be built upon for residential use or developed for accessory uses such as parking or roadways. This restriction shall be enforceable by the Town through its Conservation Commission in any proceeding authorized by Massachusetts General Laws Chapter 184, Section 33. In addition, the developer shall be responsible for the maintenance of the common land until such time as the homes association is capable of assuming said responsibility or in the case of a trust, for the benefit of the tenant upon the execution of the trust.

In order to ensure that the homes association will properly maintain the land deeded to it under this section, the developer shall prepare a Declaration of Covenants and Restrictions, which shall at a minimum provide for the following:

TOWN OF TYNGSBOROUGH - ZONING BY-LAW

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1. Mandatory membership in an established homes association as a requirement of residence or ownership of any lot in the tract.

2. Provisions for maintenance and tax assessment of all lots in order to insure that the common land is maintained in a condition suitable for the uses approved by the homes association. Failure to pay such assessment shall create a lien on the property assessed, enforceable by either the homes association or the owner of any lot.

3. Provisions which, so far as possible under the existing law, will ensure that the restrictions placed on the use of the common land will not terminate by operation of law.

This Declaration of Covenants and Restrictions shall be reviewed and approved by the Planning Board and then shall be recorded with the Middlesex Registry of Deeds. A copy of said Declaration or trust shall also be filed with the Town Clerk. Prior to the Building Inspector's issuance of a building permit for any lot, the developer shall provide satisfactory assurance of the conveyance and recording as required above in the form of copies of the recorded instruments bearing the recording stamps.

4.14.40 Submissions Generally - The applicant for a Special Permit pursuant to this section shall submit appropriate materials as per the regulations adopted by the Planning Board pursuant to Section 1.16.00 of this By-law.

4.14.41 Specific Regulations - All submission made pursuant to this section shall include materials as per 4.14.40 as well as the following:

1. All applications and accompanying plans shall be in a form consistent with the requirements for a preliminary subdivision plan in the rules and regulations of the Planning Board governing subdivision of land and shall include proposed location, and bulk and height of all proposed buildings.

2. The number of dwellings which could be constructed under this By-law by means of a conventional development plan, considering the whole tract, and excluding from the lot and roadway layout those portions of the site which are not buildable due to flood plains, wetlands, and soils which are unsuitable for on-site sewage disposal systems, and slopes in excess of 20% gradient.

3. An analysis of the site, including wetlands, slopes, soil conditions, areas within the 100 year flood, trees over six inches and such other natural features as the Planning Board may request.

TOWN OF TYNGSBOROUGH - ZONING BY-LAW

4. A summary of the environmental concerns relating to the proposed plan.

5. A description of the neighborhood in which the tract lies, including utilities and other public facilities, and the impact of the proposed plan upon them.

6. Evaluation of the open land proposed within the cluster, with respect to the size, shape, location, natural resource value, and accessibility by residents of the Town or of the cluster.

4.14.50 Decision Criteria. A special permit for open space residential development shall be approved only upon determination of the Planning Board that the requirements of Section 1.16.00 "Special Permit" including Section 1.16.14 Mandatory Findings of the Special Permit Granting Authority and the following additional criteria have been met.

1. The plan meets all requirements of this section.

2. The plan is in harmony with the general purpose of this By-law and the requirements of Massachusetts General Laws Chapter 40A and the long range plan of the Town.

3. The approval of the plan will not have a detrimental impact on the neighborhood, will be designed with due consideration for health and safety and is superior to a conventional plan in preserving open space, minimizing environmental disruption, allowing for more efficient provision of services, and or allowing for greater variety in prices and types, of housing.

4.14.60 Relation to Subdivision Control Act. Planning Board approval of a special permit hereunder shall not substitute for compliance with the Subdivision Control Act, nor oblige the Planning Board to approve any related definitive plan for subdivision, nor reduce any time periods for board- consideration under the law. However, in order to facilitate processing, the Planning Board shall, insofar as practical under existing law, accept regulations establishing procedures for submission of a combined plan and application which shall satisfy this section and the Board's regulations under the Subdivision Control Act.

Which entity is the special permit granting authority for cluster/flexible zoning?

Combination Tyngsborough Zoning Bylaw (2001)

4.14.00 Special Permit - Open Space Residential Development
The Planning Board may grant a special permit for Open Space Residential Development in the R1 District for single family detached dwellings and accessory structures subject to the provisions of this section.
Town Meeting approval of an Open Space Residential Plan-is required prior to the granting of a Special Permit.

Tyngsborough Master Plan 2004 recommends:

"Eliminate requirement that Town Meeting approve each Open Space Residential Development"

Has any housing been built under the cluster/flexible provisions?

Upton

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

Yes Email from Denise Smith on 6/9/05, in response to question "Is 'Open Space Preservation Subdivision' a use that is allowed 'by right,' or does it require a special permit granted by the planning board?" :

"The Open Space Preservation Subdivision is allowed 'by right'"

Town of Upton Zoning Bylaw (Amended 2002)

I. Open Space Preservation Subdivision

1. Purpose

- a. Encourage the conservation of viable areas of open land valued for scenic beauty, agricultural areas, and wildlife habitat.
- b. Promote the preservation of geological, historical, and natural resources.
- c. Promote the more sensitive siting of buildings and more efficient site planning.
- d. Perpetuate the rural and Village character of Upton.
- e. Facilitate the construction and maintenance of streets, utilities, and public service in an economical and efficient manner.
- f. Enhance the agricultural, forestry, and recreational uses of property in town.

The Planning Board may, through its approval of a definitive subdivision of land, allow the creation of Open Space Preservation lots meeting the dimensional requirements specified in this Bylaw, Open Space Preservation subdivisions are the division of a tract of land into building lots and open space whereas a subdivision is one which is comprised of lots meeting the full requirements of the district in which they are located.

2. It is not the intent of this section to make unbuildable land buildable nor to permit an increase in the number of building lots over that which would be possible in a plan with lots complying with the full dimensional requirements. The maximum number of Open Space Preservation lots shall determined by the Planning Board after review of a preliminary subdivision plan having lots complying with the full dimensional requirements for the district in which the land is located.

3. In addition to the building lots, no less than forty percent of the original tract shall be preserved in perpetuity as open space. No more than thirty percent of the minimum open space area. No more than thirty percent of the minimum open space area shall consist of land classified as a wetlands resource area as defined by MGL Chapter 131, Section 40 and Town bylaws and regulations. The open space within the subdivision shall be configured to be usable within the subdivision shall be configured to be usable to serve or fulfill the purposes for which it was

preserved. Open space may only be used for the purposes enumerated above and may not include land used or set aside for roadways, easements, or drainage structures and systems. Land to be preserved for open space shall not be used as a staging area or altered during construction of the subdivision.

Parks, active recreation areas, trails, and when not in conflict with the preservation or conservation use of land, other open space areas shall be accessible to the people of Upton.

Open space shall be preserved in perpetuity by either:

Upton Zoning Bylaws Page 11 of 52 12/2/2004

- Being conveyed to the Town, at no cost, and accepted by Town Meeting for park, conservation, agriculture, or other open space use.
- Being conveyed to a not-for-profit organization or land trust, the principle purpose of which is the conservation of open space.
- Being conveyed to a corporation, association, or trust owned or to be owned by the owner of the lots created in the subdivision. If such corporation, association, or trust is utilized, ownership shall pass with the conveyance of the lots within the subdivision.
- Unless conveyed to the Town, a restriction enforceable by the Town shall be approved and recorded to ensure that open space land is kept in an open or natural state and shall not be built upon for residential or developed for accessory uses.

The Planning Board shall adopt rules and regulations to further implement the design, laying out, construction, bonding, and administration of Open Space Preservation Subdivision.

A.2 A dwelling may be erected in the Single Residential C, Single Residential D, and Agricultural Residential districts within a Definitive Subdivision Approved by the Planning Board on a Open Space Preservation lot having not less than the minimum requirements set forth in the table below. A building permit for an Open Space lot may not be issued until the open space has been set aside and preserved in perpetuity.

Table A.2 Minimum Lot Dimensions

Minimum Set back Requirements Maximum Height of Building Maximum % Coverage Minimum Floor Area Districts Area

SF (a)

Front

LF (b)

Front

LF (b)

Side

LF

Rear

LF

Number

of Stories

LF Including

Accessory Bldg

SF (f)

Single Res. C
open space lot
(RC-OP)

24,000

(g)

150 40 25 30 2-1/2 30 30 -

Single Res. D
open space lot
(RD-OP)

36,000

(g)

150 40 30 30 2-1/2 30 30 -

Agricultural
Res., open
space lot (AROP)

40,000

(g)

150 50 30 50 2-1/2 30 30 -

(g) Open Space Preservation lots shall only be created upon the approval of a Definitive Plan by the Planning Board. The total number of lots in an Open Space Preservation subdivision shall not exceed the number of lots in a standard subdivision as determined by the Planning Board.

"3-A Cluster Housing and Open Space Subdivisions: [...] Upton does have a provision for Open Space Subdivisions within its current zoning bylaw (Section 3, Item I - Use Regulations, Open Space Preservation Subdivisions). This development option requires that no less than 40% of the original tract shall be preserved in perpetuity as open space. Of the required open space area, no more than 30% shall consist of wetlands. The open space provided shall be preserved in perpetuity by being conveyed to the Town (at no cost), a not-for-profit organization, land trust, or a corporation/association/trust owned by the owner of the lots created as part of the open space preservation subdivision.... Although Massachusetts case law has generally been supportive of cluster housing bylaws where the regulatory entity is given the discretion of specifying what portions of the overall tract of land are to be preserved as open space and the purpose of such open space (active and passive recreation, resource protection, etc.), Upton's open space preservation subdivision bylaw does not explicitly give the Planning Board the discretion of specifying what portions of the overall tract are to be preserved for open space and what purpose the open space lands are intended to serve. The bylaw simply provides some dimensional requirements and a few general guidelines as to the layout of open space.

Upton's open space preservation subdivision provision is unique in that it does not specify a density bonus or even the total amount of new lots that can be created under this option. Rather, it is left to the Planning Board to determine the maximum number of lots that can be created under the open space preservation subdivision option on a case by case basis. In practice, the Planning Board has not allowed open space subdivisions to create more lots than could be created through a traditional subdivision plan. Although the current situation may provide the Planning Board with flexibility regarding the number of lots that can be created as part of an open space preservation subdivision, the provision as written is somewhat ambiguous for developers. Without a clearly defined density bonus, developers may choose to forgo the option of an open space preservation subdivision and opt for the more straightforward traditional subdivision plan."

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Town of Upton Zoning Bylaw (Amended 2002)

I. Open Space Preservation Subdivision

1. Purpose

- a. Encourage the conservation of viable areas of open land valued for scenic beauty, agricultural areas, and wildlife habitat.
- b. Promote the preservation of geological, historical, and natural resources.
- c. Promote the more sensitive siting of buildings and more efficient site planning.
- d. Perpetuate the rural and Village character of Upton.
- e. Facilitate the construction and maintenance of streets, utilities, and public service in an economical and efficient manner.
- f. Enhance the agricultural, forestry, and recreational uses of property in town.

The Planning Board may, through its approval of a definitive subdivision of land, allow the creation of Open Space Preservation lots meeting the dimensional requirements specified in this Bylaw. Open Space Preservation subdivisions are the division of a tract of land into building lots and open space whereas a subdivision is one which is comprised of lots meeting the full requirements of the district in which they are located.

2. It is not the intent of this section to make unbuildable land buildable nor to permit an increase in the number of building lots over that which would be possible in a plan with lots complying with the full dimensional requirements. The maximum number of Open Space Preservation lots shall be determined by the Planning Board after review of a preliminary subdivision plan having lots complying with the full dimensional requirements for the district in which the land is located.

3. In addition to the building lots, no less than forty percent of the original tract shall be preserved in perpetuity as open space. No more than thirty percent of the minimum open space area. No more than thirty percent of the minimum open space area shall consist of land classified as a wetlands resource area as defined by MGL Chapter 131, Section 40 and Town bylaws and regulations. The open space within the subdivision shall be configured to be usable within the subdivision shall be configured to be usable to serve or fulfill the purposes for which it was preserved. Open space may only be used for the purposes enumerated above and may not include land used or set aside for roadways, easements, or drainage structures and systems. Land to be preserved for open space shall not be used as a staging area or altered during construction of the subdivision.

Parks, active recreation areas, trails, and when not in conflict with the preservation or conservation use of land, other open space areas shall be accessible to the people of Upton.

Open space shall be preserved in perpetuity by either:

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- Being conveyed to the Town, at no cost, and accepted by Town Meeting for park, conservation, agriculture, or other open space use.
- Being conveyed to a not-for-profit organization or land trust, the principle purpose of which is the conservation of open space.
- Being conveyed to a corporation, association, or trust owned or to be owned by the owner of the lots created in the subdivision. If such corporation, association, or trust is utilized, ownership shall pass with the conveyance of the lots within the subdivision.
- Unless conveyed to the Town, a restriction enforceable by the Town shall be approved and recorded to ensure that

open space land is kept in an open or natural state and shall not be built upon for residential or developed for accessory uses.

The Planning Board shall adopt rules and regulations to further implement the design, laying out, construction, bonding, and administration of Open Space Preservation Subdivision.

A.2 A dwelling may be erected in the Single Residential C, Single Residential D, and Agricultural Residential districts within a Definitive Subdivision Approved by the Planning Board on a Open Space Preservation lot having not less than the minimum requirements set forth in the table below. A building permit for an Open Space lot may not be issued until the open space has been set aside and preserved in perpetuity.

Table A.2 Minimum Lot Dimensions

Minimum Set back Requirements Maximum Height of Building Maximum % Coverage Minimum Floor Area Districts Area

SF (a)

Front

LF (b)

Front

LF (b)

Side

LF

Rear

LF

Number

of Stories

LF Including

Accessory Bldg

SF (f)

Single Res. C

open space lot

(RC-OP)

24,000

(g)

150 40 25 30 2-1/2 30 30 -

Single Res. D

open space lot

(RD-OP)

36,000

(g)

150 40 30 30 2-1/2 30 30 -

Agricultural

Res., open

space lot (AROP)

40,000

(g)

150 50 30 50 2-1/2 30 30 -

(g) Open Space Preservation lots shall only be created upon the approval of a Definitive Plan by the Planning Board.

The total number of lots in an Open Space Preservation subdivision shall not exceed the number of lots in a standard subdivision as determined by the Planning Board.

From ordinance.com (with 2004 amendments):

SECTION XV - DEFINITIONS

PLANNED VILLAGE DEVELOPMENT : A development proposed for a single tract of land, authorized by Special Permit in Commercial and Industrial District, specifying a mixture of land uses, including residential uses such as single family, multifamily, townhouses, and other uses such as commercial, municipal, civic, or other uses permitted in Single Residence, Agricultural Residential, General Business Districts, and Special Use District.

****Webmasters Note:** The previous definition has been added as per an update approved at a town meeting held on 11/30/04.

SECTION III - USE REGULATIONS

E. Commercial and Industrial District.

1. Permitted Uses.

j. The following use(s) if authorized by a Special Permit granted by the Planning Board:

1. Planned Village Development.

****Webmasters Note:** The previous subsection, j., has been added as per an update approved at a town meeting held on 11/30/04.

Section XIX Planned Village Development, Special Permit

1.0 Intent

The intent of this Planned Village Development Bylaw is to permit greater flexibility and more creative and imaginative design for the development of municipal, commercial, retail, general business, and residential mixed-use areas than is generally possible under conventional zoning provisions. It is further intended to promote a vibrant, compact, pedestrian friendly development with the virtues of a traditional New England village, but with modern amenities and services, enabling residents of diverse income levels and ages to live, work, or retire in a well planned built and natural environment. In addition, the Town may use this bylaw to promote unmet housing needs, including affordable housing and handicap barrier free housing.

2.0 Special Permit Granting Authority

The Planning Board shall act as the Special Permit Granting Authority (SPGA) for Planned Village Development in the Town of Upton. The Planning Board is authorized to hear and decide upon applications for special permits for Planned Village Development in accordance with the provisions of this zoning bylaw.

3.0 Application in Zoning Districts

A Planned Village Development may only be permitted by a special permit in a Commercial & Industrial District in accordance with the requirements and regulations of this section of the Town of Upton Zoning Bylaws.

4.0 Design Requirements

4.1 Overall Threshold of Development

The maximum area of development or gross floor area of retail / office use or residential units permissible under a Planned Village Development Special Permit and for a Planned Village Development tract of land shall be determined as part of the Concept Plan review and approval process. Based on its review and in order to advance the purpose of this bylaw, to ensure that residential development is not the dominant land use, and mixed-use development is achieved, the Planning Board shall determine the following:

- a. Developable area as defined.
- b. Open space area as defined.
- c. The maximum amount of retail/office density.
- d. The maximum amount of residential density, not to exceed eight (8) dwelling units per developable acre.
- e. The maximum amount of municipal density.
- f. A minimum percentage of gross floor area to be devoted to retail/office and/or municipal uses that advance the purposes of this bylaw.
- g. A maximum ratio of total residential building gross floor area to total commercial and municipal building gross floor area.

4.2 Developable Area

Developable Area shall be defined as an area calculated by a Registered Civil Engineer and/or Registered Land Surveyor that does not include any of the following:

- a. Land within the 100-year flood plain as defined by M.G.L., Chapter 131, §40.
- b. Fresh water wetlands as defined by M.G.L., Chapter 131, §40.
- c. Land subject to the Massachusetts River Protection Act as defined by M.G.L., Chapter 131, §40.
- d. Land having a slope greater than 20%.

- e. Land subject to any local and/or state law or regulation, right of way, public or other restriction, which prohibits development.

4.3 Open Space

Open Space should generally be planned as contiguous areas that promote the objectives of this Bylaw while retaining the natural features of the site most worthy of preservation in a natural state. Open Space in a Planned Village Development shall consist of three categories:

- a. Open space for active and/or passive recreational pursuits including but not limited to ball fields, soccer fields, trail systems, parks, etc., that would be transferred to the town, state, or other non-profit agency;
- b. Open space associated with retail/office and/or municipal uses;
- c. Open space consisting of landscaped or natural vegetation that shall serve as buffers for the residential components of the Planned Village Development.

The first two categories of open space would generally provide for public access, which would be defined through covenants approved by the Planning Board as part of the special permit process.

4.4 Dimensional Requirements

In order to permit site planning best tailored to the land under consideration, there are no predetermined dimensional requirements except for the following:

- a. When the Planned Village Development property adjoins residential property, a buffer area shall be provided and delineated on a Planned Village Development Site Plan.
- b. The minimum frontage of a Planned Village Development property proposed for a Planned Village Development Special Permit shall be 200 feet on an existing Town accepted way.
- c. Open Space requirements for the property proposed for a Planned Village Development special permit shall be as follows:
 - 1. No less than 30% of the Developable Area within the Planned Village Development site shall be designated as open space.
 - 2. No less than 20% of the Planned Village Development site shall be designated as upland open space that shall not consist of wetlands as defined by M.G.L., Ch. 131, § 40.
 - 3. Wetland areas shall be incorporated into open space to the greatest extent possible.
 - 4. No less than half of the Planned Village Development site classified as upland open space shall be dedicated as publicly accessible and useable open space that shall not consist of wetlands as defined by M.G. L., Ch. 131, §40.

4.5 Unmet Housing Needs

In order to promote the intent and purpose of this bylaw, the Planning Board shall determine a percentage of housing built under the bylaw and within a Planned Village Development that, shall be required by covenant or restriction acceptable to the Planning Board to be set aside to meet unmet housing needs, as shall be determined by the Planning Board, including those specified in Section 1.0.

5.0 Procedures & Administration

Applications shall be filed in accordance with the Site Plan Review Rules and Regulations of the Planning Board. An application shall not be deemed complete until all copies of required information and documentation have been filed with the Planning Board.

5.1 Application Procedure

The application procedure shall consists of two steps:

- a. Submission of a conceptual site plan to the Planning Board for pre-application review.
- b. Submission of a application for approval of a Planned Village Development Special Permit to the Planning Board, which will include the following:
 - 1. A special permit application cover letter form.
 - 2. A preparation of plans with a designer certificate.
 - 3. A development impact statement.
 - 4. Development plans as specified herein this special permit bylaw.

5.2 Pre-Application

To be eligible to apply for a special permit, applicants are first required to have submitted a conceptual site plan prepared by a landscape architect, a registered architect, and a registered professional engineer for review at a scheduled Planning Board meeting. The Planning Board may conduct its review of a conceptual site plan at more than one meeting.

The conceptual site plan shall include a detailed analysis of site topography, wetlands, unique land features, soil type, site layout and building design. The purpose of this requirement is to help applicants and Town officials develop a better understanding of the property and to help establish an overall design approach that respects the intent of this bylaw.

As an integral part of the pre-application process and prior to its formal review conducted in its capacity as SPGA, the Planning Board shall set forth its preliminary findings pursuant to its review of a conceptual site plan. These findings may include but not be limited to suggestions related to the design, scope, building, use, or development program, open space, infrastructure, or other components related to an anticipated Planned Village Development proposal for the subject property.

5.3 Special Permit - Application

Applicants are required to submit a special permit application and site plan, conforming to the requirements of this bylaw, to the Planning Board for approval.

Contents of special permit application: The application for a Planned Village Development Special Permit shall be accompanied by a site plan including all of the plans and information listed below.

- a. A special permit application cover letter form.
- b. A preparation of plans, designer certificate.
- c. A Development Impact Statement, as defined in this Bylaw.
- d. Development plans as specified herein this special permit bylaw.
- e. Payment of any application fee(s) required under the Planning Board's Rules and Regulations for the administration of this Bylaw

5.4 PVD Special Permit - Rules and Regulations

The Planning Board shall adopt reasonable rules and regulations for the administration of this Bylaw, which may be amended from time to time.

5.5 Public Hearing

The Planning Board shall hold a public hearing on any application for a Planned Village Development Special Permit within sixty-five (65) days from the date of filing of the special permit application. The Planning Board shall provide notice of hearings in accordance with M.G.L., Ch. 40A, §9 and M.G.L., Ch. 40A, § 11.

5.6 Basis for Approval, and Required Findings and Determinations

Upon receipt of the application and required plans, the Planning Board shall transmit one copy each to the Board of Selectmen, Board of Health, Conservation Commission, Public Works Department, Fire Department, and Police Department for recommendations consistent with the intent of this Bylaw as set out in Section 1.0. Failure of such boards and officials to make any recommendation within thirty-five (35) days of receipt of the special permit application by such boards and officials shall be deemed lack of opposition to the special permit. The Planning Board shall act on applications according to the procedures specified in M.G.L., Ch.40A, §9.

The decision of the Planning Board shall be made within ninety (90) days following the date of such public hearing. The required time limit for a public hearing and said action may be extended by written agreement between the petitioner and the Planning Board. A copy of such agreement shall be filed in the office of the Town Clerk as required by M.G.L., Ch. 40A, §9. The Planning Board shall file its special permit granting decision with the Town Clerk as required by M.G.L., Ch. 40A, §9.

Special permits shall be granted by the Planning Board, unless otherwise specified herein, upon its written determination that: (1) the proposed development is consistent with the intent of this Bylaw, as set out in Section 1.0, (2) municipal services such as water, sewer or other services are adequate or will be adequate at the time of completion of the development, (3) the benefit to the Town and the neighborhood outweigh the adverse effects of the proposed use, taking into account the characteristics of the site and of the proposal in relation to that site.

5.6.1 In addition to the determination listed above, prior to granting approval of the Planned Village Development, the Planning Board shall also give consideration of each of the following:

- a. Social, economic, or community needs that are served by the proposal;

- b. Adequacy of vehicular and pedestrian traffic safety on and off the site, and adequacy of parking and loading areas;
- c. Adequacy of utilities and other public services;
- d. Impacts on neighborhood character and social interaction;
- e. Impacts on the natural environment; and
- f. Potential fiscal impact, including impact on municipal services, tax base, and employment.

5.6.2 The Planning Board shall not grant approval for the following:

- a. A Planned Village Development solely for residential use shall not be permitted. Strictly single-family detached residential development shall not be permitted.
- b. A Planned Village Development shall not be permitted when municipal services such as water, sewer or other services are not adequate or will not be adequate at the time of completion of the development. Proof of adequacy of municipal services shall be the burden of the developer. The Planning Board shall determine, based on all evidence submitted to it, what constitutes adequate municipal services.
- c. A Planned Village Development that does not meet the specified intent of this bylaw.

5.7 Conditions

The special permit may be granted with such reasonable conditions, safeguards, or limitations on time or use, performance guarantees, site construction requirements, inspection requirements, and owner /occupancy reporting requirements to satisfy compliance with the special permit. The Planning Board may require additional conditions as it finds reasonably appropriate to safeguard the health, safety, and welfare of the existing neighborhoods and the Town of Upton or otherwise serve the intent of this Bylaw.

5.8 Change in Plans after Grant of Special Permit

No change in any aspect of the approved plans shall be permitted unless approved by the Planning Board. A new or amended special permit will be required if the Planning Board determines any proposed change to be substantial. The Planning Board shall hold a public hearing if the proposed change is determined to be substantial, within the provisions of this bylaw.

No land for which a special permit for a Planned Village Development has been granted shall be further subdivided.

5.9 Lapse

The special permit shall lapse if a substantial use thereof or construction hereunder has not begun, except for good cause, within 24 months following the filing of the special permit approval (plus such time required to pursue or await the determination of an appeal referred to in M.G.L. Ch.40A, § 17, from the grant thereof) with the Town Clerk.

5.10 Appeal

An aggrieved party may appeal a Planning Board decision pursuant to M.G.L., Chapter 40A, §17.

5.11 Validity

If any provision of this Bylaw is determined to be invalid, it shall not affect the validity of the remaining provisions.

6.0 Development Impact Statement (DIS)

At the discretion of the Planning Board, the submittal of a development impact statement (DIS) may be required at the expense of the applicant. The Planning Board may deny a special permit when the DIS discloses that the proposed use does not comply with the provisions of this bylaw, or would be detrimental to the Town or its citizens. The DIS shall be prepared by an interdisciplinary team including a Registered Landscape Architect or Architect, a Registered Civil Engineer, Registered Surveyor, and a Land Planner, and may include all or some of the following information.

6.1 Physical Environment

- a. Describe the general physical conditions of the site, including amounts and varieties of vegetation, general topography, unusual geologic, archeological, scenic and historical features or structures, locations of significant viewpoints, stone walls, trees over 16 inches in diameter, trails and open space links, and indigenous wildlife.
- b. Describe how the project will affect these conditions, providing a complete physical description of the project and its relationship to the immediate surrounding area.

6.2 Surface Water and Subsurface Conditions

- a. Describe locations, extent, and types of existing water and wetlands, including existing surface drainage characteristics, both within and adjacent to the site.
- b. Describe any proposed alterations of shorelines or wetlands.
- c. Describe any limitations imposed on the project by the site's soil and water conditions.
- d. Describe the impact upon ground and surface water quality and recharge, including estimated phosphate and nitrate loading on groundwater and surface water from septic tanks, lawn fertilizer, and other activities within the site.

6.3 Vehicle Circulation System

- a. Project the number of motor vehicles to enter or depart the site per average day and during peak hours. Also state the number of motor vehicles to use streets adjacent to the site per average day and during peak hours. Such data shall be sufficient to enable the Planning Board to evaluate (i) existing traffic on streets adjacent to or approaching the site; (ii) traffic generated by or resulting from the site; and (iii) the impact of such additional traffic on all ways within and providing access to the site.
- b. Actual study results, a description of the study methodology, and the name, address, and telephone number of the person responsible for producing the study, shall be attached to the DIS.

6.4 Support Systems

- a. Water Distribution: Discuss the water system proposed for the site, and the means of providing water for fire fighting, and any problems unique to the site.
- b. Sewage Disposal: Discuss the sewer system to be used, and evaluate impact of sewage disposal on the wastewater treatment facility.
- c. Refuse Disposal: Discuss the location and type of facilities, the impact on existing Town refuse disposal capacity, hazardous materials requiring special precautions.
- d. Protection Service: Discuss the distance to the fire station, police station, and emergency medical service, and the adequacy of existing equipment and manpower to service the proposed site.
- e. Recreation: Discuss the distance to and type of public facilities to be used by the residents of the proposed site, and the type of private recreation facilities to be provided on the site.
- f. School System: Project the increase to the student population for nursery, elementary, middle school, and high school levels.

6.5 Phasing

Where development of the site will be phased over more than one [1] year, indicate the following:

- a. Describe the phasing of the construction with a dated time line with dated milestones.
- b. Describe the approximate size and location of the portion of the parcel to be cleared at any given time and the length of time of exposure.
- c. Describe the phased construction, if any, of any required public improvements, and how such improvements are to be integrated into site development.
- d. Describe how the site will be separated into work areas and made safe for workmen and residents.

7.0 Preparation of Plans

A Registered Professional Engineer, Registered Land Surveyor, Architect, or Landscape Architect shall prepare plans, as appropriate, which shall be clearly and legibly drawn in black line on white paper. Dimensions and scale shall be adequate to determine that all requirements are met and to enable complete analysis and evaluation of the proposal. Sheet size shall be as specified in the Planning Board Site Plan Rules and Regulations. If multiple sheets are used, an index sheet showing the entire Planned Village Development, adjacent streets, and abutting properties shall accompany them.

8.0 Contents of Plans

Plan form and content shall be as specified in the Planning Board's Site Plan Rules and Regulations.

A written statement indicating the estimated time required to complete the proposed project and any and all phases thereof shall accompany the plan. There shall be submitted a written estimate, showing in detail the costs of all site improvements planned.

A written summary of the contemplated project(s) shall be submitted with the plan indicating, where appropriate, the number of dwelling units to be built and the acreage in residential use, the evidence of compliance with parking and off-street loading requirements, the forms of ownership contemplated for the property and a summary of the provisions of any ownership or maintenance thereof, identification of all land that will become common or public land, and any other evidence necessary to indicate compliance with this bylaw.

Storm drainage design and roadways, private and public, must conform to the durability requirements and other requirements of the Town of Upton subdivision rules and regulations, unless another standard is specified by the Planning Board. When in the public interest, and to meet the objectives of this bylaw, alternative road width and other requirements varying from the subdivision rules and regulations may be specified in the granting of a Planned Village Development.

****Webmasters Note:** The previous section, Section XIX, has been added as per an update approved at a town meeting held on 11/30/04.

SECTION XVIII SENIOR HOUSING COMMUNITY

1.0 Scope

1.1 Purpose & Intent

The purpose of the Senior Housing Community [SHC] bylaw is to encourage development that provides alternative housing choices for people that are fifty-five years of age or older.

It is the intent of this bylaw to enhance and preserve the rural village character of Upton, to protect open space, to preserve our natural resources and to promote efficient use of the land and infrastructure.

2004 Upton Community Development Plan, Page 42

http://www.cmrpc.org/Downloads/Upton_EO418_CD_Plan_2004_Web.pdf

"3-A Cluster Housing and Open Space Subdivisions: [...] Upton does have a provision for Open Space Subdivisions within its current zoning bylaw (Section 3, Item I - Use Regulations, Open Space Preservation Subdivisions). This development option requires that no less than 40% of the original tract shall be preserved in perpetuity as open space. Of the required open space area, no more than 30% shall consist of wetlands. The open space provided shall be preserved in perpetuity by being conveyed to the Town (at no cost), a not-for-profit organization, land trust, or a corporation/association/trust owned by the owner of the lots created as part of the open space preservation subdivision.... Although Massachusetts case law has generally been supportive of cluster housing bylaws where the regulatory entity is given the discretion of specifying what portions of the overall tract of land are to be preserved as open space and the purpose of such open space (active and passive recreation, resource protection, etc.), Upton's open space preservation subdivision bylaw does not explicitly give the Planning Board the discretion of specifying what portions of the overall tract are to be preserved for open space and what purpose the open space lands are intended to serve. The bylaw simply provides some dimensional requirements and a few general guidelines as to the layout of open space.

Upton's open space preservation subdivision provision is unique in that it does not specify a density bonus or even the total amount of new lots that can be created under this option. Rather, it is left to the Planning Board to determine the maximum number of lots that can be created under the open space preservation subdivision option on a case by case basis. In practice, the Planning Board has not allowed open space subdivisions to create more lots than could be created through a traditional subdivision plan. Although the current situation may provide the Planning Board with flexibility regarding the number of lots that can be created as part of an open space preservation subdivision, the provision as written is somewhat ambiguous for developers. Without a clearly defined density bonus, developers may choose to forgo the option of an open space preservation subdivision and opt for the more straightforward traditional subdivision plan."

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board Town of Upton Zoning Bylaw (Amended 2002)

The Planning Board may, through its approval of a definitive subdivision of land, allow the creation of Open Space Preservation lots meeting the dimensional requirements specified in this Bylaw, Open Space Preservation subdivisions are the division of a tract of land into building lots and open space whereas a subdivision is one which is comprised of lots meeting the full requirements of the district in which they are located.

3.0 Special Permit Granting Authority

The Planning Board shall be the Special Permit Granting Authority for Senior Housing Community in the Town of Upton, and is authorized to hear and decide upon applications for special permits for senior housing communities in accordance with the provisions of this zoning section.

Town of Upton Zoning Bylaw (Amended 2004)

2.0 Special Permit Granting Authority

The Planning Board shall act as the Special Permit Granting Authority (SPGA) for Planned Village Development in the Town of Upton. The Planning Board is authorized to hear and decide upon applications for special permits for Planned Village Development in accordance with the provisions of this zoning bylaw.

Has any housing been built under the cluster/flexible provisions?

No Open Space Preservation Subdivisions?

"An Open Space Preservation Subdivision is in the very final stages of permitting and is expected to be started soon." --Email from Denise Smith on 6/9/05

Senior Housing Community? No (first application submitted in November 2004)

Planned Village Development? Zoning created 11/2004.

Uxbridge

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Town of Uxbridge Zoning Bylaws (Revised 2004)

SECTION VII Permitted Uses in Various Zones

a. ☐ RESIDENCE A: 8. Any of the following uses, provided that they are not injurious or offensive to the neighborhood, and subject to appropriate conditions and safeguards, and only if approved by the Board of Appeals:

12. Open Space Development

a. An Open Space Development, for the purpose of this By-Law is a development intended to encourage:

i. Optimum utilization of natural land features and characteristics through a greater design flexibility, and

ii. The preservation of open spaces for conservation, outdoor recreation or park purposes; and

iii. Efficient provision of municipal services; and

iv. The retention of the rural setting.

b. Definition - For the purposes of this section, an Open Space Development shall mean a tract of land to be developed as an entity by a Landowner with residential buildings comprising two (2) to four (4) dwelling units per building and having an exterior entrance serving no more than two (2) dwelling units.

c. Basic Requirements - A proposed planned Open Space Development shall meet the following basic requirements:

i. The minimum tract size shall be ten (10) acres.

ii. All dwelling units shall be served by municipal water and sewerage which shall be installed at the expense of the developer.

iii. No building shall contain more than four (4) dwelling units.

iv. No dwelling shall be closer than three hundred (300) feet from a lake or pond and one hundred (100) feet from a running, natural stream or river.

d. Number of Dwelling Units Permitted - The number of dwelling units in a tract shall not exceed three (3) dwelling units per acre inclusive of open space.

e. Design Requirements

i. A minimum distance of sixty (60) feet shall be maintained between structures. Setbacks for structures from private and public roads shall be a minimum of forty (40) feet.

ii. All land designated as developed area shall be considered open space except paved roads, parking areas, areas in which structures have been built and areas included in "e,i" above.

iii. A minimum of forty percent (40%) of the total tract size shall be set aside, not built upon or paved, but shall be landscaped and/or left in its natural state with an acceptable balance of trees, shrubs and grass and shall be considered open space.

iv. A landscaped buffer area of at least one hundred (100) feet in width shall be provided adjacent to each neighboring property line of the tract. All buffer areas shall be planted or preserved in their natural state with a mixture of coniferous and deciduous trees and shrubs and shall be maintained so as to protect adjacent properties with a natural visual barrier. Buffer area shall be considered part of open space.

v. Each tract shall include usable recreation areas (ie: tennis, play, swimming, etc.) easily accessible to building complexes of size equal to seven hundred fifty (750) square feet per dwelling unit. Such areas shall not be included in the buffer area.

vi. All utilities shall be placed underground.

vii. Open space provided in "v" above shall be used for conservation, outdoor recreation or park purposes and shall be of a size and shape appropriate for its intended use as determined by the Planning Board. Such open space land shall be conveyed to all home-owners within such tract jointly or to a trust, the beneficiaries of which shall be the home-owners within such tract. Each trust shall have as one of its purposes the maintenance of such land for conservation, recreation or park purposes.

f. Relationship to other Town Regulations

Nothing contained herein shall in any way exempt a proposed Open Space Development from compliance with the Subdivision rules and Regulations of the Planning Board and the Department of Public Works nor shall it in any way affect the right of the Board of Health and the Planning Board and the Department of Public Works to approve with or without conditions and modifications, or disapprove a subdivision plan in accordance with the provisions of such Rules and Regulations and of the Subdivision Control Law.

g. The Planning Board is the issuing authority for Open Space Development. It shall not issue approval for an Open Space Development if it appears that, because of soil, drainage, traffic or other conditions, the issuing of such approval would be detrimental to the neighborhood or to the Town or inconsistent with the purpose of Open Space Development. In issuing approval the Planning Board shall impose such additional conditions and safe-guards as public safety, welfare and convenience may require.

h. Construction

All construction within Open Space Development areas are to comply with the Zoning By-Laws.

i. Parking Requirements

Minimum of two (2) paved off-street parking spaces shall be provided for each dwelling unit. Each parking area shall be conveniently located to those dwelling units for which they are intended but shall not be located within the designated buffer area.

j. Height Requirements

The maximum height of any structure shall not exceed thirty-five (35) feet.

k. Site Plan Review

General - The application of a planned Open Space Development shall be accompanied by a site plan. The contents of such plan for an Open Space Development shall conform with Section III, paragraph B, sub-paragraph 2 of existing Rules and Regulations governing the contents and preparation of Definitive Plans under subdivision control and shall also include the following:

i. Soil culture of land such as wooded pasture, rock outcrops or swampy.

ii. Proposed landscaping and use of land which is to be reserved for conservation, recreation or park use including any proposed structures. Provided additionally that Open Space Development will only be permitted in the Residence A Zone.

b. RESIDENCE B: In those portions of the Town so indicated on the accompanying zoning by-law map as RESIDENCE B districts, no building, structure, or premises shall be constructed, altered or used for any industry, trade, manufacturing or commercial purpose except one or more of the following uses:

1. Any use permitted in RESIDENCE A district except: Apartments, Rooming Houses, Lodging Houses, Boarding Houses.

2. Such Accessory purposes as are proper and usual with the foregoing and that are not injurious to the neighborhood as a place of residence.

3. Any use determined to be of like character, said determination to be made by the Board of Appeals following petition of the land-

owner or owners.

f. AGRICULTURAL: In those portions of the Town so indicated on the accompanying zoning by-law map as AGRICULTURAL districts, the following uses of land, buildings and structures shall be permitted:

11. Any of the following uses may be authorized by special permit of the Board of Appeals only if it finds that the use will not be injurious or detrimental to the neighborhood, and subject to appropriate conditions and safeguards imposed by the Board of Appeals:

12. Conservation Design Development

Definitions

(1) CONSERVATION DESIGN DEVELOPMENT - a detached single-family residential development in which the house lots are clustered together into one or more groups, and each group shall be separated from one another and adjacent properties by permanently protected open space.

(2) APPLICANT - Individuals, partnerships, corporations, trusts and other legal entities, in which the applicant of record holds a legal or beneficial ownership of greater than one percent (1 %).

(3) DEVELOPMENT SITE - Parcels of land which were at any time after the date of adoption of this conservation design development by-law, part of contiguous property under common ownership (or in different ownerships each involving one or more of the same principals).

(4) MAJOR DEVELOPMENT - the division of a Development Site located in the Agricultural District into eight or more lots for single-family detached houses.

Purpose

The purpose of this Section is to encourage the preservation of open land, to enhance agricultural, open space, forestry and recreational uses; to protect community water supplies, to preserve historical and archaeological resources; to protect the natural environment; to protect the value of real property; to promote more sensitive siting of buildings and better overall site planning; to perpetuate the appearance of Uxbridge's traditional New England landscape; to facilitate the construction and maintenance of streets, utilities and public services in a more economical and efficient manner; and for its scenic beauty and to promote the development of affordable housing.

Special permit required After the effective date of this Section, no Major Development is permitted except in accordance with a special permit for Conservation Design issued by the Planning Board under this Section. In determining the applicability of this Section, the number of lots constituting a Major Development shall be deemed to include all lots created or proposed to be created from the Development Site after the effective date of this Section, within any five year period.

Pre-application Conference The applicant is encouraged to schedule a pre-application conference with the Planning Director who may involve other departments as necessary.

Procedures Applicants for a Conservation Design Development shall file with the Planning Board six copies of each of the following:

(1) A plan showing existing site conditions including the following: topography at 2 foot contours, general description of forest cover (i.e. dominant tree species, average stem diameter, etc.), stone walls, streams and ponds, permanently protected open space, wetlands, including vernal pools, floodplains, the view shed, buildings, rock ridges and outcroppings over 100 square feet, right of ways and easements.

(2) A development plan conforming to the requirements for a preliminary subdivision plan showing a conventional development of the site. This plan shall be the basis of the Planning Board's determination for the maximum number of dwelling units to be allowed in the subdivision. In addition to the requirements for a preliminary subdivision plan, such plan shall also indicate slopes over 20%, the results of deep soil test pits and percolation tests at reasonable intervals, but in no case fewer than 10 % of the proposed lots in the conservation design development. Where wetland delineation is in doubt or dispute, the Planning Board shall require the applicant to submit to the Conservation Commission a request for a determination of applicability for concurrence of the wetland boundary.

(3) Any additional information required by the Planning Board to make the determination and assessments cited herein.

Determination of Density

The basic number of lots for single family detached houses in a Conservation Design Major Development shall be that number of lots which could be developed on the Development Site in full conformance with all zoning, subdivision, and other state and local regulations normally applicable to the creation and development of lots for single-family detached houses in the Agricultural District, and without the need for extraordinary engineering measures. The Applicant for a Conservation Design Special Permit shall submit to the Planning Board a density plan, meeting the requirements for a preliminary subdivision plan as provided in the Planning Board's Rules and Regulations for the Subdivision of Land as may be in effect at the time of the submission of the Conservation Design special permit application, and shall be required to demonstrate to the Planning Board's satisfaction that the lots shown on the density plan may be developed without reliance on any waivers from the Rules and Regulations for the Subdivision of Land, without any variances from the Zoning Bylaws or from any other applicable local or state regulation, and without extraordinary engineering measures. The Planning Board's determination of the basic number of lots shall be conclusive, and shall be the maximum number of lots permitted under the Conservation Design special permit unless the Planning Board specifically authorizes an increase in that number as provided below.

Increase in Number of Lots

The Planning Board may permit up to a 10% increase in the density of a Conservation Design development if the applicant makes a dedication of land for a public purpose or proposes an access easement to open space, if either, in the opinion of the Board, warrants such an increase. In addition, for land Development Sites in income producing agricultural use at the time of the filing of the Application, and where a significant portion of the Open Space land in the development is proposed to remain in agricultural use, the Planning Board may permit up to a 20% increase in the density of the Conservation Design development.

Modification of lot requirements

In granting a Conservation Design Special Permit, the Planning Board may authorize the modification of frontage, lot size, lot shape, yard, and lot coverage requirements otherwise applicable in the Agricultural District, subject to the following limitations:

- (1) Each lot shall contain not less than 30,000 square feet in area and shall have frontage of not less than 100 feet, except on a cul-de-sac where each lot shall have frontage of not less than 50 feet.
- (2) Each lot shall have not less than 50% of the required yard and setback areas. v
- (3) Each lot shall have a maximum coverage by buildings of 25%, and by buildings and other impervious surfaces of 40%.

Open space requirements

A minimum of 50% of the Development Site shall be preserved as permanent open space. At least 40% of said parcel shall be contiguous open space, excluding required yards. No more than 25% of the required open space shall consist of wetlands, as defined in M.G.L.c. 131 §40, slopes over 20%, or drainage structures.

- (1) The required open space shall be used for conservation, agriculture, horticulture, forestry, historic preservation and education, outdoor education, recreation and park purposes, or for a combination of such purposes, as determined by the Planning Board, and shall be provided with suitable access for such purposes.
- (2) The required open space shall remain un-built upon, provided that 10% of such open space may be paved or built upon for structures accessory to the dedicated use or uses of such open space, including pedestrian walks and bike paths.
- (3) Underground utilities and drainage structures to serve the Conservation Design Development site may be located within the required open space, subject to the limitations on drainage structures as set forth above.
- (4) The required open space shall, at the owner's election and with the concurrence of the Town, be conveyed to:
 - a. The Town of Uxbridge or its Conservation Commission;
 - b. A nonprofit organization, the principal purpose of which is the conservation of open space and any of the purposes for such open

space as set forth above;

c. A corporation or trust owned jointly or in common by the owners of lots within the Conservation Design Development. If such corporation or trust is utilized, ownership thereof shall pass with conveyance of the lots in perpetuity. Maintenance of the open space and facilities shall be permanently guaranteed by such corporation or trust which shall provide for mandatory assessments for maintenance expenses to each lot. Each such trust or corporation shall be deemed to have assented to allow the Town of Uxbridge to perform maintenance of the open space and facilities, if the trust or corporation fails to provide adequate maintenance and shall grant the town an easement for this purpose. In such event, the town shall first provide 14 days' written notice to the trust or corporation as to the inadequate maintenance and, if the trust or corporation fails to complete such maintenance, the town may perform it. The owner of each lot shall be deemed to have assented to the town filing a lien against each lot in the development for the full cost of such maintenance, which liens shall be released upon payment to the town of same. Each individual deed and the deed or trust or articles of incorporation shall include provisions designed to effect these provisions. Documents creating such trust or corporation shall be submitted to the Planning Board for approval, and shall thereafter be recorded in the Registry of Deeds.

(5) The required open space shall be made subject to a permanent conservation restriction, enforceable by the Town and providing that such land shall be perpetually retained and maintained in its natural, scenic and open condition, in agricultural or forest use, and/or for recreational purposes, as required by the Conservation Design Special Permit.

Decision

The Planning Board may grant a special permit for a Conservation Design development only if it determines that the proposed development conforms to the requirements of this Conservation Design Section of the Zoning By-law, and meets the purposes of this Section.

Relation to other requirements

Approval by the Planning Board of a Special Permit under this Section of the Zoning By-Law shall not substitute for compliance with M.G.L.c. 41, §§81K et seq, nor obligate the Planning Board to approve a Definitive Plan for subdivision, nor reduce any time periods for Planning Board consideration under that law. A Definitive Plan designed under an approved Special Permit for Conservation Design Development shall be in substantial conformity with the terms and conditions of said Special Permit, including the Conservation Design plans on which the Special Permit is based.

The submittals and permits of this section shall be in addition to any other requirements of the Subdivision Control Law or any other provisions of this Zoning By-law.

****Webmasters Note:** The previous subsection, f.12, has been added as per an update approved at a town meeting held on 5/11/04.

Which entity is the special permit granting authority for cluster/flexible zoning?

Combination Planning Board for Conservation Design and Board of Appeals for Open Space Development

Town of Uxbridge Zoning Bylaws (Revised 2004)

SECTION VII Permitted Uses in Various Zones

a. ☐ RESIDENCE A: 8. Any of the following uses, provided that they are not injurious or offensive to the neighborhood, and subject to appropriate conditions and safeguards, and only if approved by the Board of Appeals:

12. Open Space Development

Special permit required After the effective date of this Section, no Major Development is permitted except in accordance with a special permit for Conservation Design issued by the Planning Board under this Section. In determining the applicability of this Section, the number of lots constituting a Major Development shall be deemed to include all lots created or proposed to be created from the Development Site after the effective date of this Section, within any five year period.

Has any housing been built under the cluster/flexible provisions?

Wakefield

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Wakefield Zoning Bylaw, Article VI, Section 190-33, as follows:

A. Cluster development may be allowed by special permit by the Planning Board only in Special Single Residence (SSR) and Single Residence (SR) Districts. Procedures to be followed in obtaining a special permit for a cluster development shall be the same as specified for all other special permits (see Article VIII). It is the intent of this section to provide benefits to the residents of cluster developments and the town as a whole by preserving as much open space land as is practicable and feasible and by reducing initial construction costs and permanent maintenance costs.

B. In order to grant a special permit for a cluster development the Planning Board must find that the developer has met all of the general requirements for a special permit. In addition, the following specific requirements shall be met:

- (1) The proposed subdivision shall contain a minimum of ten (10) acres of land.
- (2) There shall be a maximum density of one (1) dwelling unit per twenty thousand (20,000) square feet of parcel area in an SSR District and one (1) dwelling unit per twelve thousand (12,000) square feet of parcel area in an SR District. Fifty percent (50%) of any land classified as wetlands or floodplain shall be excluded from gross area before calculating maximum density.
- (3) Within a cluster development, the minimum required lot area shall be twelve thousand (12,000) square feet in an SSR District and eight thousand (8,000) square feet in an SR District.
- (4) Dimensional controls.
 - (a) The minimum dimensional controls for single-family homes in a cluster development shall be the following:
 - (b) No building in a cluster development shall be closer to the property line delineating the overall cluster development area than thirty (30) feet.
 - (5) Applications for both subdivision approval and special permit approval may be submitted concurrently, and the cluster development may not proceed until both subdivision approval and special permit approval have been obtained.
 - (6) The proposed development shall be served by public water supply and sewage disposal systems satisfactory to the Board of Health.
 - (7) A cluster development in an SSR District shall reserve a minimum of thirty percent (30%) of its gross area for open space land, as defined in Section 190-4 hereof, Definitions and word usage. In an SR District, a cluster development shall reserve a minimum of twenty-five percent (25%) of its gross area for open space land. At least forty percent (40%) of required open space land shall be usable open space, as defined in Section 190-4 hereof.
 - (a) The open space land resulting from the cluster development shall be set aside as land covenanted to be maintained as permanent open space in private or public ownership.
 - (b) The form of covenant covering such open space land shall provide for its permanent maintenance and shall be subject to the approval of the Planning Board and the Town Counsel. With the consent of the Town Meeting, this open space land may be deeded to the town, but only if ownership by the town is deemed to serve a public purpose.
 - (8) Any open space land proposed to be deeded to the town shall be so indicated on the definitive subdivision plan.
 - (9) Any open space land proposed to be deeded to the town shall be restricted to active or passive open space recreation or conservation areas open to town residents and shall not include areas exclusively for the use of cluster residents.
 - (10) Any open space land proposed to be deeded to the town shall have not less than fifty (50) feet of frontage along a public way.

LAND DEVELOPMENT ORDINANCE

Ver 3.0.43 The Land Use Ordinance of Wakefield
MIDDLESEX COUNTY, MASSACHUSETTS (amended 4/5/04)
www.ordinance.com

There shall be a maximum density of one (1) dwelling unit per twenty thousand (20,000) square feet of parcel area in an SSR District and one (1) dwelling unit per twelve thousand (12,000) square feet of parcel area in an SR District

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board A. Cluster development may be allowed by special permit by the Planning Board only in Special Single Residence (SSR) and Single Residence (SR) Districts.

Has any housing been built under the cluster/flexible provisions?

Walpole

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Town of Walpole Zoning Bylaw, Section 11 (Last Amended 2003)

SECTION 11 OPEN SPACE RESIDENTIAL DEVELOPMENT

An "Open Space Residential Development" shall mean a detached single-family residential development in which the house lots are clustered together into one or more groups, and each C group separated from one another and adjacent properties by permanently protected open space.

Open Space Residential Developments shall be permitted in the Rural and Residence A Districts only upon issuance of a Special Permit by the Planning Board, with subsequent Subdivision Approval from the Planning Board, as specified in M.G.L. Chapter 40A, Section 9. Open Space Residential Developments shall not be permitted in Areas 1 and 2 of the Water Resource Protection Overlay District.

11-A Purpose and Intent

The purpose of Open Space Residential Development is to permit greater flexibility and creativity in the design of residential subdivisions, provided that the overall density of the development is no greater than what is normally allowed in the district in which it may be located, ultimately resulting in:

- (1) the permanent preservation of open space for the protection of the Town of Walpole's existing character of the landscape, scenic views, groundwater supply, floodwater storage capacity, woodlands, wetlands, agricultural lands, wildlife habitat, conservation and recreational opportunities;
- (2) more economical, efficient, and environmentally-sensitive use of residential land than may be accomplished through conventional subdivision development; and
- (3) the maintenance of the traditional New England rural character and land use pattern in which small villages contrast with open space and agricultural lands.

11-B Applicability and Requirements

Any provision of the Walpole Zoning By-Law to the contrary notwithstanding, the following standards shall be used as additional requirements in the Special Permit process for all Open Space Residential Developments:

- (1) The development shall include detached single-family dwellings only.
- (2) The minimum land required for Open Space Residential Development shall be twenty (20) contiguous acres held in single ownership or control at the time of application.
- (3) Each lot shall have adequate access on a public or private way.
- (4) There shall be an adequate, safe, and convenient arrangement of pedestrian circulation facilities, roadways, driveways, and parking.
- (5) On-site septic systems shall not be permitted in the development. All lots shall be serviced by common sewer.
- (6) Each lot shall contain a building site which will be in harmony with the natural terrain and other features of the land.
- (7) The site design shall preserve and, where possible, enhance the natural features of the property, including scenic views, by adapting the location and placement of structures and ways to the existing topography in order to minimize the amount of soil removal, tree cutting, and general disturbance to the landscape and surrounding properties.
- (8) The plan shall identify the location and extent of all wetlands on the site as determined by the Conservation Commission under M.G.L. Chapter 131, Section 40, and the Town of Walpole Wetland Protection By-Law.

11-C Dimensional and Density Requirements

Any provision of Section 4 of the Walpole Zoning By-Law to the contrary notwithstanding, the following standards shall be used as additional requirements in the Special Permit process for all Open Space Residential Developments:

(1) A detached single-family dwelling, or lawful accessory building may be constructed on a lot within an Open Space Residential Development although such lot has less area and frontage than normally required, as herein specified.

(2) The maximum number of dwelling units permitted in an Open Space Residential Development shall not exceed the number of dwelling units that can be reasonably expected under conventional development of the same parcel(s). To substantiate the number of dwelling units contemplated in the development, the applicant shall submit a plan designed under conventional development, conforming to all dimensional requirements of the Zoning By-Law and Subdivision Rules and Regulations of the Town of Walpole.

(3) Minimum lot size shall be 20,000 square feet in the Rural District, and 15,000 square feet in the Residence A District, with the following minimum requirements: frontage of 80 feet at the street line, setback of 30 feet, side yard of 15 feet, and rear yard of 30 feet. Each lot shall have an area in which a circle may be located, the diameter of which is 80 feet, tangent to the street line from which the frontage and setback are derived and within all other lot lines. The following maximum requirements shall also apply: building height of 35 feet, lot coverage by structures of 25%, and lot coverage by structures and other impervious surfaces of 40%.

(4) There shall be a buffer strip of at least 50 feet in width surrounding the perimeter of the development. Except for public utility and access easements, the buffer strip shall not be an easement across individual lots but shall be part of the common open space. The area within the buffer strip shall include trees and shall be kept in a naturally-landscaped condition. No trees shall be cut within the buffer strip without the permission of the Planning Board. No residential structures or accessory uses shall be permitted within the buffer. Only roadway intersections and land set aside for future road connections shall be allowed within the buffer strip. This paragraph shall be noted on the deed to the common open space and on individual deeds, for those lots which abut the buffer strip.

11-D Open Space Requirements

(1) All land not devoted to dwellings, accessory uses, roadways, or other development shall be set aside in perpetuity as common land for recreation, conservation, or agricultural uses which preserve the land in essentially its natural condition. Such land shall be maintained and improved in accordance with sound conservation standards, practices, and procedures.

(2) The total area of common open space shall equal or exceed the area by which all detached single-family dwelling lots are reduced below the minimum lot area normally required for zoning compliance in the zoning district in which they are located, but in no instance shall the amount of land to be set aside as open space be less than 40% of the total land area included in the development, excluding land area of roadways.

(3) The total area of common open space shall not be comprised of more than 50% wetlands as defined under M.G.L. Chapter 131, Section 40, and the Town of Walpole Wetland Protection By-Law.

(4) Open space parcels shall be planned as large, continuous units wherever possible. Strips of common open space having a minimum width of 50 feet shall be permitted only when necessary for access or as vegetated buffers along the site's perimeter. Parcels of lesser width may be permitted at roadway or lot corners at the discretion of the Planning Board. Common open space may be comprised of more than one parcel provided that the size, shape, and location of such parcels are suitable for their designated uses in the opinion of the Planning Board.

(5) Further subdivision of common open space or its use for other than recreation, conservation, or agriculture, except for easements for underground utilities, shall be prohibited, and a notation to this effect shall be shown upon the subdivision plans recorded with the Registry of Deeds. Structures or buildings accessory to recreation, conservation, or agricultural uses may be erected, but shall not exceed 5% coverage of such open space.

11-E Open Space Ownership

All common open space shall either be:

(1) Conveyed to a non-profit, incorporated community association owned, or to be owned, by the owners of lots within the development. If such a community association is utilized, ownership thereof shall pass with conveyances of the lots in perpetuity;

(2) Conveyed to a non-profit organization, the principal purpose of which is the conservation or preservation of open space; or

(3) Conveyed to the Town of Walpole, at no cost, and be accepted by it for park or open space use, subject to the approval of the Board of Selectmen.

In any case where such land is not conveyed to the Town, a restriction in perpetuity as defined under M.G.L. Chapter 184, enforceable by the Town, shall be recorded to ensure that such land shall be kept in an open or natural state and not be built upon for residential use or developed for accessory uses such as parking or roadways. Said perpetual restriction shall be in a form approved by the Conservation Commission, Planning Board, and Board of Selectmen. The applicant shall provide satisfactory assurance that such perpetual restriction, following approvals, has been properly recorded in the Registry of Deeds, and the interest in land thereby created is not subject to any mortgage, security, interest, lien, or other monetary encumbrance of any kind other than the aforesaid perpetual restriction.

11-F Procedures and Application Review

(1) To promote better communication and to avoid misunderstandings, applicants are strongly encouraged to submit preliminary

proposals for informal review by the Town Planner, Town Engineer, Conservation Agent, Health Agent, Building Inspector, and the Superintendent of Sewer and Water prior to formal application.

(2) The applicant shall file a copy of the Open Space Residential Development Special Permit application with all accompanying plans, including a plan of the proposed subdivision designed under this section of the Zoning By-Law and a conventionally-designed plan as required under Subsection C, with the Planning Board. Said plans shall also be filed with the Board of Health, the Sewer and Water Commission, the Engineering Department, and the Conservation Commission. Said boards and departments shall, within 35 days from the date of receipt of the application materials, file their written recommendations on the proposal with the Planning Board. If no such recommendations are filed within 35 days by any such board or department, the Planning Board shall deem such board or department to have no recommendations on the plans.

(3) The Planning Board shall hold a public hearing and shall render a decision on an application in accordance with the provisions of M.G.L. Chapter 40A, Section 9 and Section 11. Approval of an Open Space Residential Development Special Permit shall be granted by the Planning Board only upon determination that the plan is in harmony with the general purpose of this section of the Zoning By-Law and that it is designed in such a manner as to make it sufficiently advantageous for the Town of Walpole to depart from the requirements of this By-Law otherwise applicable to the residential districts in which the Open Space Residential Development is to be located.

(4) The approval by the Planning Board of a Special Permit under this section of the Zoning By-Law shall not substitute for compliance with M.G.L. Chapter 41 nor oblige the Planning Board to approve a related Definitive Plan for subdivision, nor reduce any time periods for Planning Board consideration under that law. A Definitive Plan designed under an approved Special Permit for Open Space Residential Development shall be in substantial conformity with all plans under which such approval was based.

(5) The Planning Board shall, insofar as practical under law, adopt regulations establishing procedures for the submission and approval of an Open Space Residential Development Special Permit application.

Survey received from Walpole on 4/25/05:

What year was the first provision for flexible zoning adopted?

"1989"

What was the last year that the municipality amended the flexible provisions?

"1996"

Has any housing been built under the cluster/flexible provisions? (none, 1-8 projects, more than 8)

"Yes, more than 8 units"

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board Open Space Residential Developments shall be permitted in the Rural and Residence A Districts only upon issuance of a Special Permit by the Planning Board, with subsequent Subdivision Approval from the Planning Board, as specified in M.G.L. Chapter 40A, Section 9. Open Space Residential Developments shall not be permitted in Areas 1 and 2 of the Water Resource Protection Overlay District.

Has any housing been built under the cluster/flexible provisions?

Yes Survey received from Walpole on 4/25/05:

Has any housing been built under the cluster/flexible provisions? (none, 1-8 projects, more than 8)

"Yes, more than 8 units"

Waltham

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes The City of Waltham offers planned residential special permits and planned unit development special permits. The planned residential special permits, as listed in the General Ordinances of the City of Waltham, Article VIII, Section 8.2, is designed to, among other things, "permit greater flexibility and more attractive, efficient and economical design of residential and commercial developments."

These permits are allowed for parcels of land in the Residence A-1 and Residence A-2 districts. The City Council is the Special Permit Granting Authority.

The purpose of the Planned Unit Development Special Permit areas, according to the General Ordinances of the City of Waltham, Article VIII, Section 8.3, is "to provide for developments with a mix of residential and commercial uses, provided that the resulting use can be shown to be in the public good." Planned Unit Developments are only allowed in the Business B District. If the PUD is located within the geographical boundaries of the Riverfront Overlay District (ROD), any conflict in the provisions of the PUD and the provisions of the ROD shall be resolved in favor of the ROD.

Notes:

Planned Residential (minimum parcel size of at least 5 acres, the individual lot size shall not be less than 1/2 the minimum lot size in the zoning district in which they are located--A1 (), A2 ())
Planned Unit Residential (parcel must be at least 50,000 sq. ft.)

ARTICLE VIII. Incentive Zoning

Sec 8.1. Purpose.

The intent of this Article is to provide incentive zoning techniques that will assist in the revitalization of specific areas of the community and to allow for more environmentally sensitive growth.

Sec 8.2. Special permit in planned residential.

8.21.Purposes.

8.211.To promote the more efficient use of land in harmony with its natural features.

8.212.To encourage the preservation of open space.

8.213.To permit greater flexibility and more attractive, efficient and economical design of residential and commercial developments.

8.214.To facilitate economical and efficient provision of utilities.

8.22.Applicability. An application for a planned residential special permit (PR) shall be allowed for parcels of land in the Residence A-1 and A-2 Districts in accordance with the standards set forth in this Article.

8.23.Permit authority. The City Council shall be designated as the special permit granting authority and shall grant special permits for PR's consistent with the procedures as set forth in MGLA c. 40A, Section 9, and the conditions set forth in this Article; said special permit shall be considered as a special permit for use.

8.24.Procedure for approval.

8.241.Application. Any person who desires a special permit for a single-family or multifamily PR shall submit an application consistent with Sections 3.51 (Procedures), 3.52 (Development prospectus comments) and 3.53 (Determinations), as applicable.

8.242.Preapplication meeting. The City Council shall follow all the rules and regulations set forth in this chapter for the granting of a special permit. However, the applicant is encouraged to submit a preliminary plan and to schedule a preapplication conference to discuss the proposed PR with the Board of Planning and Survey before the submission of the special permit application and supporting documents.

8.25.Development standards.

8.251.Allowable parcel size. For each application for a special permit, the applicant must have a parcel, in single or consolidated ownership at the time of application, which is at least five acres in the Residence A-1 and/or Residence A-2 Districts and which has a minimum frontage of at least 100 feet.

8.252.Allowable uses. The following principal uses are allowed in a planned residential development: single-family detached houses and residential structures with up to four dwelling units per structure, utilizing common wall construction; church or other religious purposes; agriculture on parcels greater than five acres; public parks; conservation area and preserved open space; and membership clubs for the exclusive use of the residents of the development.

8.253.Dimensional regulations for single-family detached planned residential development.

8.2531.Minimum parcel size: five acres.

8.2532.Individual lot size. Individual lot sizes shall not be less than one-half (1/2) the minimum lot size in the zoning district where the PR is to be located.

8.2533.Lot frontage: 80 feet in the Residence A-1 District; 70 feet in the Residence A-2 District.

8.2534.Side yard setback: 20 feet in the Residence A-1 District; 15 feet in the Residence A-2 District.

8.2535.Rear yard setback: 30 feet in the Residence A-1 District; 30 feet in the Residence A-2 District.

8.2536.Front yard setback: 20 feet in the Residence A-1 District; 20 feet in the Residence A-2 District.

8.2537.Height limitation: 35 feet and 2.5 stories.

8.254.Dimensional regulations for multifamily planned residential development.

8.2541.Minimum parcel size: five acres. (See Section 8.251.)

8.2542.Individual lot size: not required.

8.2543.Individual lot frontage: not required.

8.2544.Setbacks. Each multifamily structure shall be at least 50 feet from any adjacent multifamily structure. Further, each multifamily structure shall have a front yard setback of at least 30 feet from any public or private right-of-way; and in no instance shall structures in a multifamily PR be within 30 feet of any portion of the rear and side boundaries of the parcel, parking areas, roads or driveways.

8.2545.Height limitation: 35 feet and 2.5 stories

8.255.Parking requirements. For all planned residential developments, off-street parking shall be required at a rate of two parking spaces per dwelling unit.

8.256.Usable open space. Usable open space shall be defined as the part or parts of land within the PR which are reserved for permanent open space. This space shall exclude parking areas, but include required setbacks and walkways. The usable open space shall be open and unobstructed to the sky; however, trees, plantings, arbors, flagpoles, sculptures, fountains, swimming pools, gazebos, atriiums, outdoor recreational facilities and similar objects shall not be considered obstructions.

8.2561.Usable open space for single-family PR's. The minimum usable open space requirement shall be 35% of the total parcel area; and no more than 25% of the total required usable open space shall be wetland.

8.2562.Usable open space for multifamily PR's. The minimum usable open space requirement shall be 60% of the total parcel area; and no more than 25% of the total required usable open space shall be wetland.

8.2563.Open space restrictions. For all PR's, the usable open space shall be owned in common by and readily accessible to the owners of all the units in the PR or by a nonprofit organization or trust whose members are all the owners and occupants of the units or by private organizations such as the Trustees of Reservations whose primary function is the preservation of open space or by the city or otherwise as the City Council may direct. Further, a perpetual restriction of the type described in MGLA c. 184, Section 31 (including future amendments thereto and corresponding provisions to future laws), running to or enforceable by the city shall be recorded in respect to such land. Such restriction shall provide that the usable open space shall be retained in perpetuity for one or more of the following uses: conservation, agriculture or recreation. Such restriction shall be in such form and substance as the City Council shall prescribe and may contain such additional restrictions on development and use of the usable open space as the City Council may deem appropriate.

8.257.Calculation of allowable residential density for single-family and multifamily residential projects. The allowable number of dwelling units for any planned residential project shall be no more than the number of dwelling units that can be attained by dividing the minimum required lot size of the underlying zone by the total parcel size.

Sec 8.3. Special permit for planned unit development.

8.31.Purpose: to provide for developments with a mix of residential and commercial uses, provided that the resulting use can be shown to be in the public good.

8.32.Applicability. An application for a planned unit development special permit (PUD) shall be allowed for parcels of land in the

Business B District in accordance with the standards set forth in this section; provided, however, that whenever the PUD is to be located within the geographical boundaries of the Riverfront Overlay District (ROD), any conflict between the provisions of the PUD (Sections 8.3 through 8.357) and the provisions of the ROD (Sections 8.4 through 8.5) shall be resolved in favor of the provisions of the Riverfront Overlay District. [Amended 6-10-1991 by Ord. No. 27156]

8.33. Permit authority. The City Council shall be designated as the special permit granting authority and shall grant special permits for PUD's consistent with the procedures set forth in MGLA c. 40A, Section 9, and additional conditions set forth in this chapter; said special permit shall be considered an intensity of use special permit.

8.34. Procedure for approval. Any person who desires a special permit for a PUD shall submit an application consistent with Sections 3.51 (Procedures), 3.52 (Development prospectus comments) and 3.53 (Determinations), as applicable.

8.35. Development standards.

8.351. Parcel size. For each application for a special permit, the applicant must have a parcel, in single or consolidated ownership, which is at least 50,000 square feet in the Business B Zone.

8.352. Dimensional regulations: consistent with the dimensional requirements for the Business B District as provided in this chapter, and further, that all residential uses be set back 10 feet from the exterior of any portion of the structure used for commercial purposes (not including balconies).

8.353. Allowable uses: residential and commercial uses as allowed in the Business B Zone, excluding drive-in retail or service businesses.

8.3531. Specific residential use requirements. All residential uses shall have separate and distinct entrances from all commercial uses; in no instance shall residential uses share the same floor or story with commercial uses, and in no instance shall commercial uses be located above residential uses.

8.3532. Location of residential uses. In no instance shall residential uses be permitted on the ground floor, i.e., the first floor or story. Residential uses shall only be allowed from the second through eighth stories.

8.3533. Location of commercial uses. Commercial uses can be located on any floor up to and including the third floor or story.

8.354. Relation to the Traffic Safety and Infrastructure Maintenance Fund ("fund"). Consistent with this chapter, application for a PUD shall be subject to the requirements of the "fund" for all floor area ratios above five-tenths (0.5) (the as-of-right FAR in the Business B District).

8.355. Parking requirements. For all PUD's, off-street parking shall be required at a rate consistent with the individual uses listed in Section 5.2 of this chapter.

8.356. Open space requirements. Open space requirements shall be provided at a rate consistent with Section 3.537 of this chapter and shall also be defined by said section. However, to provide reasonable incentives for PUD development, balcony space attached to residential units, landscaped roof areas and all internal recreation facilities (pools, exercise rooms, courtyards, atriums, health clubs, meeting rooms and similar facilities) shall be allowed to be calculated as part of the required open space.

8.357. Calculation of allowable density and density of uses. The maximum development density shall not exceed an FAR of 2.5 for all uses; and the calculation of FAR shall not include balcony and other space provided as open space. See Section 8.356 above. There shall be no regulation of the commercial/residential mix beyond the requirements of Sections 8.3532 and 8.3533.

Sec 8.4. Riverfront Overlay District special permit (RF).

8.41. Establishment of Riverfront Overlay District. A Riverfront Overlay District is hereby established and is bounded as described on the Riverfront Overlay District Map prepared by the City Engineering Department and dated June 25, 1990, and in the written description accompanying said map, both of which are on file with the City Clerk, the Planning Department, the Public Works Department, Engineering Division, and with the Inspector of Buildings. The map and the written description are incorporated herein by reference. Said Riverfront Overlay District boundaries shall be superimposed on the Zoning District Map of Waltham so as to indicate the extent of the Riverfront Overlay District.

8.411. District boundary determination. In the event of a conflict between the written boundary description and the Riverfront Overlay District Map, the provisions of the written description shall control. Where the written description is not clear, the provisions of Sections 3.142 through 3.145 shall govern.

8.42. Purpose and objectives. To assist in accomplishing the purpose and intent of this chapter, the City Council has established a Riverfront Overlay District with the following objectives in order to guide the redevelopment of certain tracts of land or neighborhoods generally associated with the Charles River ("river") and, in so doing, to increase the opportunity for public holdings, public viewing and public access to the river:

8.421. To permit the orderly redevelopment of the riverfront area and associated neighborhoods regardless of the various underlying zoning districts.

8.422.To provide the opportunity for residential and mixed-use developments that will allow for more efficient and sensitive use of land generally associated with the Charles River riverfront.

8.423.To provide for greater flexibility in site planning and design than would be permitted by the underlying zoning districts.

8.424.To promote development that is compatible with a riverfront setting and all surrounding neighborhoods.

8.425.To promote increased public access, public views and public holdings along the banks of the Charles River.

8.426.To promote the development of a continuous riverfront walkway along the Charles River.

8.427.To promote the production of housing that is affordable to low and moderate income households in the City of Waltham.

8.428.To promote redevelopment of specific portions of the community consistent with adopted land use and master plans.

8.43.Applicability; authority and procedure.

8.431.Applicability. An application for a Riverfront Overlay District special permit may be allowed for parcels of land that are within the Riverfront Overlay District as designated on the City of Waltham Zoning Map.

8.432.Permit authority and procedure. The City Council shall be designated as the special permit granting authority and shall grant special permits consistent with the procedures set forth in MGLA c. 40A, Section 9, and the conditions set forth in Section 3.5 of this chapter for special permits related to an increase in intensity of use. An applicant is encouraged to request a preapplication conference with the Planning Department to review the proposed project and the requirements of this section. An applicant for a Riverfront Overlay District special permit shall file a development prospectus as required in Section 3.5 and, further, shall submit a copy of the proposed site plan and plan for signs to the Waltham Planning Department at the time the application is filed with the City Clerk. The Planning Department shall have 35 days from the date of filing with the City Clerk to forward any comments and recommendations in writing to the applicant and City Council. The failure of the Planning Department to make comments or recommendations within said 35 days shall be deemed to be lack of opposition to the application.

8.433.Traffic Safety and Infrastructure Maintenance Fund ("fund"). The City of Waltham is willing to waive certain special permit requirements, as specified elsewhere in this section and in Section 8.435, in order to create incentives for redevelopment in portions of the Riverfront Overlay District, for which the underlying zoning is Business B. Therefore, applications for a Riverfront Overlay District special permit on parcels whose underlying zoning is Business B shall not be subject to those requirements of Section 3.5 pertaining to the Traffic Safety and Infrastructure Maintenance Fund ("fund") fees. For all other areas within the overlay district, the "fund" requirements shall apply except as provided in Section 8.435.

8.434.Affordable housing criteria. As part of the conditions of a special permit, the City Council shall require the applicant to meet affordable housing requirements in accordance with the provisions of Article IX of this chapter. [Amended 9-25-1991 by Ord. No. 27224]

8.435.Relationship of the Traffic Safety and Infrastructure Maintenance Fund ("fund") and the affordable housing criteria. In instances where an application would be subject to both the "fund" and affordable housing requirements, the City Council may waive the requirements of the Traffic Safety and Infrastructure Maintenance Fund if it finds that the need for affordable housing outweighs the need to require the applicant to make a payment into the "fund".

8.44.Permitted uses. The following uses shall be permitted within the Riverfront Overlay District (overlay):

8.441.Uses in underlying districts. Any use permitted in the underlying district shall continue to be permitted consistent with the regulations of the underlying district. The Riverfront Overlay District shall in no manner infringe upon the zoning rights or requirements inherent in the underlying district unless and until the owner of the property elects to and receives a Riverfront Overlay District special permit.

8.442.Reversion to prior zoning status. Once a special permit has been granted and the project constructed, the site shall be subject to the requirements of the special permit. In the event of a lapse, abandonment, discontinuance or revocation of an overlay special permit, the property would once again become subject to the requirements of the underlying district.

8.443.Residential uses. Owners of property within the Riverfront Overlay District may apply for a special permit to construct up to the maximum FAR allowed, as defined in Section 8.451, single, two-family and multifamily developments without any requirements for nonresidential use.

8.444.Mixed use. Owners of property within the Riverfront Overlay District may apply for a special permit to allow mixed-use development. Said development shall permit retail stores, restaurants, business offices, personal service establishments and all residential uses permitted by this chapter, except that drive-in customer services (Section 3.225), fast-food establishments (Section 3.229), used car lots (Section 3.240), new car dealerships, retail gasoline stations (Section 3.227) and autobody shops (Section 3.253) are prohibited. Further, the total square feet devoted to nonresidential uses shall not exceed 20% of the total gross floor area of the project, excluding basement parking areas. However, in order to promote commercial redevelopment in the downtown area, projects shall be permitted to include the nonresidential uses allowed in the underlying business district; except that retail gasoline stations and used car lots shall be prohibited. Further, projects whose underlying zoning district is Business B or Business C shall not be subject to the twenty-percent nonresidential development limitation noted above. [Amended 12-9-1991 by Ord. No. 27265]

8.445.Rehabilitation of existing structures. For the purpose of the Riverfront Overlay District, "existing structures" shall mean structures in existence as of the date of adoption of this Riverfront Overlay District. Owners of existing structures may apply for a special permit to rehabilitate said structures as either mixed-use or residential projects consistent with Sections 8.443 and 8.444 above.

8.45.General dimensional criteria applicable to all Riverfront Overlay District projects. All projects developed under a Riverfront Overlay District special permit (RF) shall conform to the conditions of the special permit and to the dimensional criteria of the Riverfront Overlay District ordinance provisions; and provided further, that where a conflict exists between the provisions of Section 4.11 and the provisions of the Riverfront Overlay District ordinance, the provisions of the Riverfront Overlay District ordinance shall control. [Amended 6-10-1991 by Ord. No. 27156]

8.451.Maximum floor area ratio (FAR). Projects developed using a Riverfront Overlay District special permit shall be subject to the following FAR criteria: projects with a lot area between 25,000 and 40,000 square feet shall have a maximum floor area ratio of 1.0; projects with a lot area over 40,000 square feet but less than 80,000 square feet shall have a maximum floor area ratio of one and five-tenths (1.5); projects with a lot area of 80,000 square feet or more shall have a maximum floor area ratio of 2.0. However, existing structures whose FAR exceeds the FAR criteria listed in this section may be rehabilitated and re-used for residential or mixed-use purposes, upon approval of the City Council, if the Council determines that rehabilitation of said structure will not adversely affect the surrounding neighborhood.

8.452.Maximum height. No structure built as a result of a Riverfront Overlay District special permit shall be higher than 65 feet or six stories, whichever is less. However, existing structures rehabilitated and re-used for residential or mixed-use purposes, whose existing height exceeds 65 feet, may be permitted upon approval of the City Council, if the Council determines that rehabilitation of said structure will not adversely affect the surrounding neighborhood.

8.453.Lot coverage. The structure or structures of any new development shall not exceed a total lot coverage of 40%; parking areas, parking structures and recreational structures, including but not limited to swimming pools and tennis courts, shall not be included in the calculation of the permitted lot coverage. Lot coverage requirements shall not apply to existing structures proposed for rehabilitation and re-use.

8.454.Minimum lot size: 25,000 square feet.

8.455.Minimum lot frontage: 50 feet.

8.456.Minimum setbacks: 10 feet from all public and private rights-of-way for new construction. This requirement shall not be applicable to existing structures if existing building footprints are within 10 feet of the right-of-way. However, this requirement shall be applicable to existing structures if the required setback is in existence as of the date of the filing for a Riverfront Overlay District special permit.

8.4561.Setback from the Charles River or public lands abutting the Charles River. Projects that abut the Charles River or public land abutting the Charles River shall be set back to the maximum extent possible without precluding the economic viability of the project, but in no instance less than 35 feet from public land abutting the Charles River and in no instance less than 50 feet from the Charles River or public lands abutting the Charles River, except in instances where existing structures preclude this possibility. The setbacks noted above shall be calculated as part of the minimum open space requirement and may be subject to riverfront design criteria as noted in Section 8.48.

8.457.Minimum open space.

(a)For all new construction in accordance with a Riverfront Overlay District special permit, the minimum required open space, as defined in Section 2.344, shall be as follows: for structures that have three stories or fewer, the minimum open space requirement shall be 30% of the total lot area; for structures that have more than three stories or measure more than 35 feet in height, the minimum open space requirement shall be 40% of the total lot area.

(b)Open space requirements for existing structures shall be as follows for projects up to FAR seventy-five hundredths (0.75), the open space requirement shall be 20%; for projects between FAR seventy-six hundredths (0.76) and 1.5, the open spaces requirement shall be 30%; for projects over FAR 1.5, the open space requirement shall be 40%. The open space requirements noted above shall apply to all existing structures except in instances where the location of existing buildings, particular types of construction or preservation of historic structures preclude the possibility of meeting the open space requirements; in this instance, the open space requirements for existing structures shall be determined by the City Council. [Amended 6-10-1991 by Ord. No. 27156]

8.458.Parking requirements.

(a)The parking requirements for development pursuant to a Riverfront Overlay District special permit shall conform to the parking requirements set forth in Section 5.2 of this chapter. Further, all at-grade parking lots shall be screened on all sides by a strip of land at least four feet wide, densely planted with evergreen shrubs or trees forming an opaque screen. At planting, said screen shall have a height of at least three feet and shall be maintained after one year at a minimum height of four feet, but not more than six feet. Where appropriate for reasons of safe sight lines or access, the screening requirements may be reduced.

[...]

Which entity is the special permit granting authority for cluster/flexible zoning?

Selectmen/Council 8.23. Permit authority. The City Council shall be designated as the special permit granting authority and shall grant special permits for PR's consistent with the procedures as set forth in MGLA c. 40A, Section 9, and the conditions set forth in this Article; said special permit shall be considered as a special permit for use.

Has any housing been built under the cluster/flexible provisions?

Watertown

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No Watertown has a residential district called "Cluster Residential" which has single-family and multi-family uses by right as listed in the Table of Use Regulations. A definition of "Cluster Residential" is not given in the zoning bylaws.

ARTICLE V
SECTION 5.01 TABLE OF USE REGULATIONS

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Watertown has created the Revitalization Overlay Special Permit (R0) which has a goal of "to provide greater flexibility in planning and design".

ZONING ORDINANCE
Watertown Planning Board
Watertown, Massachusetts
ARTICLE V
SECTION 5.08 REVITALIZATION OVERLAY SPECIAL PERMIT (R0)

(a) Intent and Purpose: To assist in accomplishing the purposes of this Zoning Ordinance the Town Council may from time to time apply a Revitalization Overlay District to specific portions of the Zoning Map in order to guide the redevelopment of certain tracts of land in a manner that is beneficial to the Town.

(b) Objectives: The establishment and application of the revitalization overlay special permit is intended to accomplish the following objectives:

- (1) To permit by special permit the orderly redevelopment of a specific area regardless of the various underlying zoning districts;
- (2) To provide for greater flexibility in planning and design;
- (3) To provide the opportunity for mixed use developments that will allow for more efficient and sensitive use of land;
- (4) To promote compatibility between adjoining areas and the proposed development site; and
- (5) To promote redevelopment of specific portions of the community consistent with adopted land use plans and policies.

From ordinance.com:

SECTION 5.08 REVITALIZATION OVERLAY SPECIAL PERMIT (R0)

(a) Intent and Purpose: To assist in accomplishing the purposes of this Zoning Ordinance the Town Council may from time to time apply a Revitalization Overlay District to specific portions of the Zoning Map in order to guide the redevelopment of certain tracts of land in a manner that is beneficial to the Town.

(b) Objectives: The establishment and application of the revitalization overlay special permit is intended to accomplish the following objectives:

- (1) To permit by special permit the orderly redevelopment of a specific area regardless of the various underlying zoning districts;

- (2) To provide for greater flexibility in planning and design;
- (3) To provide the opportunity for mixed use developments that will allow for more efficient and sensitive use of land;
- (4) To promote compatibility between adjoining areas and the proposed development site; and
- (5) To promote redevelopment of specific portions of the community consistent with adopted land use plans and policies.

(c) Permitted Uses: The following uses are permitted within a revitalization overlay special permit:

(1) Any use permitted in the S-10, S-6, T, R.75 and R1.2 districts, given the site plan requirements of subsection (e)2 of this Section 5.08;

(2) Retail establishments, business offices, consumer services, excluding drive-in retail and service facilities;

(3) Any use permitted by right or special permit in any of the underlying zones.

(d) Dimensional Criteria: The uses noted in subsection (c) above shall be subject to the following criteria:

(1) Maximum Floor Area Ratio: No project developed by a Revitalization Overlay special permit shall exceed a Floor Area Ratio of 1.5;

(2) Maximum Height: No structure built or reconstructed as a result of revitalization overlay special permit shall be more than forty three (43) feet or four (4) stories;

(3) Lot Coverage: The structure or structures of any development within a revitalization overlay district shall not exceed a total lot coverage of sixty-five percent (65%), excluding parking areas and parking garages, recreation facilities such as swimming pools and tennis courts, and internal roadways or walkways;

The Board of Appeals shall require that a landscape plan for screening and buffering purposes be prepared for some or all the required set back areas.

(5) Minimum Lot Size: Ten Thousand (10,000) square feet

(6) Minimum Frontage: Fifty (50) feet

(7) Minimum Open Space: All projects within the Revitalization Overlay District shall have at least fifteen percent (15%) of the total site area devoted to Open Space; required Setbacks shall be considered as part of the total area required for Open Space. The required Open Space shall not be used for parking or loading purposes and shall be open and unobstructed to the sky, items such as benches, walkways, planters, landscaping, swimming pools, kiosks, gazebos, and similar structures shall not be considered as obstructions;

(8) Bonus Density: A project developed by a Revitalization Overlay special permit which provides that ten percent (10%) of its residential units be made affordable to low and moderate income persons as defined by Executive Office of Communities and Development (EOCD), subject to the criteria set forth in Section 5.07(d), may increase its Floor Area Ratio to a maximum of 2.0.

(e) Minimum Site Plan Requirements

(1) Commercial Developments: Developments that are exclusively commercial in character may be permitted by special permit given the conditions of the above subsection (d) of this Section 5.08.

(2) Residential Projects: No developments that are exclusively residential in character shall be allowed except as provided below. Residential uses shall only be allowed as part of a mixed use project and shall be subject to the following conditions:

(A) Entrances and exits for residential uses shall be separate and distinct from commercial entrances and exits.

(B) The Board of Appeals may grant a special permit for entirely residential structures in the instance where the proposed mixed used development would create both wholly but separate residential and commercial structures on one lot given the following conditions; structures used wholly for residential purposes shall be at least fifty (50) feet from structures (within the same lot) used for wholly commercial purposes and the open space between the residential and commercial structures shall be consistent with the open space requirements of this section; and that the total FAR for all structures on the lot does not exceed 1.5, except as allowed by Section 5.08(d)(8) above; and further, that all other dimensional requirements are met in accordance with the standards of this section.

(3) All Projects:

(A) The exterior building line of the fourth story shall be setback a minimum of twenty-five (25) feet from any street line.

(B) For any building that contains a fourth story, the front exterior building line shall be a minimum distance of twelve (12) feet from the front lot line.

(f) Parking Requirements: ...

(g) Signs:...

(h) Procedure: Consistent with the procedural requirements provided in Section 9.04 of this Zoning Ordinance, the Board of Appeals may grant a special permit for development within a Revitalization Overlay District if it finds that the conditions for approval for special permits set forth in Section 9.05(b) of this Zoning Ordinance have been met.

ZONING ORDINANCE

Watertown Planning Board

Watertown, Massachusetts

ARTICLE V

SECTION 5.04 TABLE OF DIMENSIONAL REGULATIONS

SECTION 5.08 REVITALIZATION OVERLAY SPECIAL PERMIT (RO)

Cluster Residential:

40,000 sq ft - Min lot size

100 ft - Min frontage

10,000 lot area per d.u.

Revitalization Overlay (RO):

Minimum Lot Size: Ten Thousand (10,000) square feet

Minimum Frontage: Fifty (50) feet

Minimum Open Space: All projects within the Revitalization Overlay District shall have at least fifteen percent (15%) of the total site area devoted to Open Space; required Setbacks shall be considered as part of the total area required for Open Space. The required Open Space shall not be used for parking or loading purposes and shall be open and unobstructed to the sky, items such as benches, walkways, planters, landscaping, swimming pools, kiosks, gazebos, and similar structures shall not be considered as obstructions.

Bonus Density: A project developed by a Revitalization Overlay special permit which provides that ten percent (10%) of its residential units be made affordable to low and moderate income persons as defined by Executive Office of Communities and Development (EOCD), subject to the criteria set forth in Section 5.07(d), may increase its Floor Area Ratio to a maximum of 2.0.

Survey received from Watertown on 6/10/05:

What types of structure are allowed under cluster/flexible zoning?

"Singles, two, three + multis"

Which entity is the special permit granting authority for cluster/flexible zoning?

Board of Appeals (h) Procedure: Consistent with the procedural requirements provided in Section 9.04 of this Zoning Ordinance, the Board of Appeals may grant a special permit for development within a Revitalization Overlay District if it finds that the conditions for approval for special permits set forth in Section 9.05(b) of this Zoning Ordinance have been met.

Has any housing been built under the cluster/flexible provisions?

Wayland

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by

special permit?

Yes Code of the Town of Wayland, Massachusetts, Section 1801, 1901, 2001, and 2101 (June 25, 2004)

ARTICLE 18, Conservation Cluster Development District [Amended 5-2-1983 ATM by Art. 12]
§ 198-1801. Purpose; special permit required.
1801.1. For the purpose of promoting the more efficient use of land in harmony with its natural features; encouraging the preservation of open land for conservation, agriculture, open space and recreational use; preserving historical and archaeological resources; and protecting existing or potential municipal water supplies, all in accordance with the general intent of this Zoning Bylaw to protect and promote the health, safety, convenience and general welfare of the inhabitants of the Town of Wayland, an owner or owners of a tract of land within a Single Residence District, or an authorized agent or agents of such owner or owners, may submit an application for a special permit exempting such land from the lot area and frontage, yard, setback and width of lot requirements of Article 7.

1801.2. The Planning Board is hereby designated as the special permit granting authority for all purposes under this article and shall adopt rules and regulations with respect to the administration of applications for special permits under this article. EN

ARTICLE 19, Planned Development District [Amended 10-30-1974 STM by Art. 7]
§ 198-1901. Statutory authority; objectives. [Amended 5-4-1982 ATM by Art. 18]
1901.1. In accordance with the provisions of MGL c. 40A, MGL c. 41, § 81I, the Home Rule Amendment (Article 89) to the Constitution of the Commonwealth of Massachusetts and every other power that the Town of Wayland may exercise, the Zoning Board of Appeals (ZBA) may grant special permits exempting planned developments that satisfy the terms and conditions that may properly be imposed pursuant to this article from certain regulations and restrictions contained in this Zoning Bylaw for the purposes set forth in Chapter 808 of the Acts of 1975, Sections 2A and 6, and to achieve the following objectives:
1901.1.1. Development that conserves environmental features, woodlands, wetlands, productive farms and areas of scenic beauty and that preserves sites and structures of historical importance.
1901.1.2. Development that encourages the construction and location of multiresidence dwellings in certain sites, to preserve open space in Wayland for all its inhabitants.
1901.1.3. Development that provides for a variety of housing in Wayland.
1901.1.4. Development that will permit the Town to continue to provide the same quality of municipal services without imposing an increased financial burden on its citizens.

ARTICLE 20, Southeast Wayland-Cochituate Planning District [Amended 6-16-1987 STM by Art. 3; 6-16-1987 STM by Art. 4]
§ 198-2001. Statutory authority; objectives.
2001.1. In accordance with the provisions of MGL c. 40A, MGL c. 41, § 81I, the Home Rule Amendment (Article 89) to the Constitution of the Commonwealth of Massachusetts and every other power that the Town of Wayland may exercise, the Planning Board may grant special permits exempting developments that satisfy the terms and conditions that may properly be imposed pursuant to this article from certain regulations and restrictions contained in this Zoning Bylaw for the purposes set forth in Chapter 808 of the Acts of 1975, Sections 2A and 6, and to achieve the following objectives:
2001.1.1. Development that conserves environmental features, woodlands, wetlands and areas of scenic beauty and preserves sites and structures of historical importance.
2001.1.2. Development that encourages the construction and location of attached single-family dwellings, or multifamily condominium dwellings, in certain sites, to preserve the residential characteristics of Wayland for all its inhabitants.
2001.1.3. Development that provides for a variety of housing in Wayland.
2001.1.4. Development that will permit the Town to continue to provide the same quality of municipal services without imposing an increased financial burden on its citizens.
2001.1.5. Development that will provide at least 10% of the dwellings constructed to be made available for sale at affordable prices.
2001.1.6. Development that will protect the environment and preserve open spaces by granting conservation and recreation restrictions to the Conservation Commission for certain buffer areas and wet areas.

ARTICLE 21, Senior and Family Housing Overlay District [Added 4-28-1997 STM by Art. 5]
§ 198-2101. Purpose.
2101.1. The purpose of the Senior and Family Housing Overlay District (SFHOD) is to:
2101.1.1. Provide a residential environment that offers supportive services to individuals 55 years of age or older who are unable to live independently in the community by offering supervision and/or assistance with basic activities of daily life, such as dressing, bathing, toileting and nutrition;
2101.1.2. Provide multifamily condominium dwellings and/or apartments for occupancy by individuals 55 years of age or older;
2101.1.3. Provide for mixed and diverse varieties of housing, including (a) affordable housing, (b) single-family housing without regard to age limitation, (c) assisted living residences and (d) independent living residences, in combination and in close proximity to one another; and
2101.1.4. Provide for residential development in a manner that conserves environmental features, woodlands, wet areas, open space, areas of scenic beauty, views and vistas.

From ordinance.com:

ARTICLE 18 Conservation Cluster Development District

[Amended 5-2-1983 ATM by Art. 12]

Section 198-1801. Purpose; special permit required.

1801.1. For the purpose of promoting the more efficient use of land in harmony with its natural features; encouraging the preservation of open land for conservation, agriculture, open space and recreational use; preserving historical and archaeological resources; and protecting existing or potential municipal water supplies, all in accordance with the general intent of this Zoning Bylaw to protect and promote the health, safety, convenience and general welfare of the inhabitants of the Town of Wayland, an owner or owners of a tract of land within a Single Residence District, or an authorized agent or agents of such owner or owners, may submit an application for a special permit exempting such land from the lot area and frontage, yard, setback and width of lot requirements of Article 7.

1801.2. The Planning Board is hereby designated as the special permit granting authority for all purposes under this article and shall adopt rules and regulations with respect to the administration of applications for special permits under this article. [14]

Section 198-1802. Site plan.

1802.1. In addition to any other documents or information required by the Planning Board pursuant to its rules and regulations adopted hereunder, application for a special permit pursuant to this article shall be accompanied by a site plan (the "plan"), which plan shall show all of the information required for a definitive subdivision plan as specified in the Planning Board Subdivision Regulations, is such additional information required by Section 198-601 through 605 of this Zoning Bylaw, as the Planning Board deems necessary, and, to the extent applicable, all proposed instruments to be recorded with the plan.

Section 198-1803. Public hearing; general requirements.

1803.1. After notice and public hearing in accordance with law, which public hearing shall be held within 65 days after the filing of the application with the Planning Board, the Planning Board may, after due consideration of the reports and recommendations of the Conservation Commission and the Board of Health, grant such a special permit, provided that:

1803.1.1. It finds that the proposed plan is in harmony with the purposes and intent of this Zoning Bylaw and this article.

1803.1.2. The area of the tract of land is not less than 10 acres.

1803.1.3. The number of lots on which there is to be a single dwelling unit does not exceed the larger of the following:

1803.1.3.1. The number of building lots that could be created in the tract shown on such plan without a special permit hereunder, plus one lot for each 10 of such building lots that could otherwise be created; or

1803.1.3.2. The number of building lots obtained by dividing 90% of the total area of the tract, exclusive of land situated within the floodplain or designated as wetlands by the Conservation Commission, by the minimum lot size permitted in the district within which the tract is located, plus one lot for each 10 lots so arrived at from such division.

1803.1.4. Each of the building lots shown on the plan has adequate frontage, but no less than 50 feet, on a public or private way.

1803.1.5. Each of the building lots shown on the plan is of a size and shape as shall provide a building site that shall be in harmony with the natural terrain and other features of the tract, but no such lot shall have an area of less than 20,000 square feet as shown on the plan.

1803.1.6. The front side and rear yards of each lot shall be shown on the plan by dashed lines indicating the area within which a building may be built, provided that all dwellings and accessory buildings shall be set back at least 15 feet from the perimeter of the tract and 15 feet from any open land.

1803.1.7. At least 35% of the land area of the tract, exclusive of land set aside for road area, shall be open land, and the open land shall include all land not dedicated to roads or building lots. For the purpose of this article, "open land" is defined as a parcel or parcels of land, or an area of water, or a combination of land and water, not including roads or ways, whether public or private, to be used for open space, conservation, agriculture, outdoor recreation, park purposes or some combination of the foregoing.

<http://www.wayland.ma.us/planning/Documents/Comprehensive%20Housing%20Plan%20-%20Final%20-%20January%204,%202005.pdf>

From Wayland's Comprehensive Housing Plan, 2005:

Cluster Zoning Provision

The Conservation Cluster Development Bylaw offers an alternative development method in any of the Single Residence District. The district seeks to promote more efficient use of land in harmony with its natural features by allowing residential development to be "clustered" on one Town of Wayland Page 24 of 40 January 4, 2005
Housing Plan

portion of a tract in exchange for setting aside open space on the remainder of the tract. A Conservation Cluster Development requires a special permit from the Planning Board. Allowed density in a Conservation Cluster Development equals the maximum allowed density of a conventional subdivision in the underlying district, plus a 10 percent density bonus. A minimum tract size of 10 acres is required for a Conservation Cluster Development. Within the development, however, the minimum lot area and frontage requirements are reduced to 20,000 square feet and 50 feet, respectively. The minimum building setback is 15 feet. At least 35 percent of the site must be set aside as open space. Until recently Wayland's Conservation Cluster Development Bylaw has been little used with the only completed development being the six-lot Lincoln View Estates located on Concord Road.

Planned Residential Development District

The Planned Residential Development District is located on both sides of Rice Road in the southeastern section of Wayland. The Town has issued permits for planned developments for all the land in this district, and most of it has been built and is currently occupied. Allowed and special permit uses are the same as in the Single Residence District. In addition, the district gives the Zoning Board of Appeals the authority to grant a special permit for multi-residence and detached unit condominium developments. The district also includes provisions for convenience retail and service establishments up to 2,000 square feet. To apply for a Planned Development special permit, at least 40 contiguous acres are required. At least 70% of the area of a planned development site must consist of public land and private open space, and at least 35% of the area of a planned development site must be public land. The provisions also limit the amount of land that can be occupied by structures, parking, roadways, patios and storage areas. Maximum density is based on the acreage of the development tract, less any wetlands, times a predetermined density factor. The bylaw also limits the number of detached dwelling units to 20 percent of the total units. Finally, the Planned Development special permit includes a provision requiring 10 percent of the units be set-aside for low-income families and 5 percent for moderate-income families. However, this affordable housing provision is relatively new and does not apply to the existing and already permitted developments.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board 1801.2. The Planning Board is hereby designated as the special permit granting authority for all purposes under this article and shall adopt rules and regulations with respect to the administration of applications for special permits under this article. EN

Has any housing been built under the cluster/flexible provisions?

Yes From Wayland's 2005 Comprehensive Housing Plan, page 25:

"Until recently Wayland's Conservation Cluster Development Bylaw has been little used with the only completed development being the six-lot Lincoln View Estates located on Concord Road."

"The Planned Residential Development District is located on both sides of Rice Road in the southeastern section of Wayland. The Town has issued permits for planned developments for all the land in this district, and most of it has been built and is currently occupied."

Wellesley

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Zoning Bylaws of the Town of Wellesley, Massachusetts, Section IXA (Amended 2003)

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SECTION IXA. PLANNED DEVELOPMENT DISTRICTS.
A. In Planned Development Districts, no new building or structure shall be constructed or used, in whole or in part, and no building or structure, or part thereof, shall be altered,

enlarged, reconstructed or used, and no land shall be used, for any purpose except as follows:

1. USES PERMITTED

a. Residential

- (1) Town houses;
- (2) Apartment houses.

b. Commercial Entertainment

- (1) Hotel, motel or inn;
- (2) Restaurant, tea room or other eating place;
- (3) Theater, hall, club, or other indoor places of amusement or assembly.

c. Commercial Retail/Office

- (1) Store, sales room, or showroom for the conduct of retail business, excluding facilities for the sales of motor vehicles, mobile homes, house trailers, or recreational trailers or vehicles;
- (2) Personal services;
- (3) Bank or other financial institution;
- (4) Business or professional offices.

d. Parking

- (1) Public or private parking lots, garages or structures for the temporary parking of motor vehicles.

e. Such accessory uses as are customary in connection with the uses enumerated in subparagraphs a., b., and c. above.

f. Any of the following uses upon the granting of a special permit in accordance with SECTION XXV. provided, however, that the use requested was in existence within the Planned Development District when this Zoning Bylaw took effect, and provided 35

that parking is provided in accordance with the provisions of SECTION XXI.:

- (1) Gasoline filling station;
- (2) Printing Plant.

2. MINIMUM LOT OR DEVELOPMENT SITE AREA

No building or group of buildings shall be erected on a lot or development site area containing less than ten (10) acres.

3. DENSITY AND DESIGN STANDARDS

a. Mix of land uses

- (1) A maximum of fifty percent (50%) of the total lot or development site area shall be devoted to residential use.
- (2) A maximum of twenty-five percent (25%) of the total lot or development site area shall be devoted to commercial entertainment use.
- (3) A maximum of fifty percent (50%) of the total lot or development site area shall be devoted to commercial retail and/or office use.
- (4) A maximum of ten percent (10%) of the total lot or development site area shall be devoted to uses permitted in accordance with Paragraph 1., Subparagraph f. above.

Parking required to serve each of the uses specified above shall be considered within that portion of the lot or development site devoted to that particular use.

Uses permitted in accordance with Paragraph 1. Subparagraph c., clauses (1), (2), and (3) shall be restricted to ground floor locations provided that the Special Permit Granting Authority may, subject to a determination that adequate provisions are made for pedestrian circulation, grant a special permit for other locations of such use.

b. Residential Density

The density of residential development within that

portion of the site devoted to residential use shall not exceed the following:

- (1) Town Houses 1/4,000 square feet
- (2) Apartments 1/1,800 square feet

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c. Minimum Open Space: There shall be provided for each lot or development site area a minimum open space of not less than the following:

- (1) 60 percent of the area devoted to residential use.
- (2) 30 percent of the area devoted to commercial entertainment, commercial retail or office use.

Should residential and non-residential uses be contained within a single structure, the percentage of gross floor area associated with each use shall be used for the purpose of determining said minimum open space.

d. Elevation of Buildings or Structures

- (1) No exterior wall of any building shall exceed a height of forty-five (45) feet measured from the finished grade elevation of the land adjoining said wall, exclusive of parapets or cornices, provided, however, that where the Planned Development District abuts land zoned for residential purposes or a street, the area opposite which is zoned for residential purposes, the maximum height of any building shall not exceed that of any structure within one hundred (100) feet of the boundary of the Planned Development District for a depth of eighty (80) feet within the Planned Development District.
- (2) Vertical projections not designed or used for human occupancy constructed above the main roof elevation shall be permitted but shall not occupy a total number of square feet of the roof which shall exceed an aggregate of fifteen percent (15%) of the total ground coverage of the building and shall not extend more than fifteen (15) feet above the main roof elevation of the building.
- (3) For the purpose of this Bylaw, the finished grade shall mean the elevation of the completed surface of the land, such as lawns, walks, or paving, as determined by field survey or as shown on official plans.

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- (4) No building shall contain more than four (4) stories. As used herein, the term story shall mean a building level designed or used for human occupancy, but shall not include a level designed or used for occupancy only by custodial personnel.

e. Yards and Setbacks

No buildings or structures shall be erected or placed above ground level nearer to any street or Zoning District boundary line than the following:

Zoning Boundary Zoning (1)

Single Residence (1) Boundary

or Other Than

Use: General Residence S.R. or G.R.

Residential:

Town Houses 30' 60'

Apartments 40' 60'

Commercial Entertainment:

Hotel, etc. 50' 30'

Restaurant, etc. 50' 0'

Theater, etc. 50' 0'

Commercial Retail/Office:

Store, etc. 50' 0'

Bank, etc. 50' 0'

Business/Professional

Office 50' 0'

Personal Service 50' 0'

(1) Measurement shall be made from the zoning district boundary or from the street line where the land opposite the Planned Development District but having frontage on the same street as the Planned Development is not within a Planned Development District.

f. Parking

(1) Off-street parking shall be provided in accordance with the following:

Use Number of Spaces

(a) Residential 1.5 per one or two bedroom unit

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2.0 per three bedroom unit

(b) Commercial Entertainment

(i) Hotel, etc. 1 per 1 guest room

(ii) Restaurant, etc. 1 per 100 square feet of area in which food is served

(iii) Theater, etc. 1 per each 4 seats

(c) Commercial Retail

(i) Store, etc. 1 per 150 square feet of floor area

(ii) Personal Services 1 per 300 square feet of floor area

(iii) Bank, etc. 1 per 300 square feet of floor area

(iv) Offices 1 per 300 square feet of floor area

(2) The design, construction and screening of offstreet parking, except that provided within underground garages or elevated parking structures, shall be in accordance with the provisions of SECTION XXI.

(3) All parking required to serve a building or use shall be located within a walking distance of six hundred (600) feet of that building or use.

(4) In any Planned Development District the required number of parking spaces shall be reduced by ten percent (10%) when at least some portion of the lot or development site area is devoted to each of the following uses:

(i) Residential

(ii) Theater, or other use which, in the opinion of the Board of Appeals, would require off-street parking at times different from the other uses included within the lot or development site area.

(iii) Commercial Retail or Office.

g. Lighting

All artificial lighting used to illuminate a parking or storage area, maneuvering space, driveway, walkway, or pedestrian plaza or mall shall be arranged and shielded so as to prevent direct glare from the light source into any public street or private way or onto adjacent property.

h. Location of Activities

All commercial entertainment, commercial retail and/or office activities, with the exception of those accessory to uses permitted by Paragraph 1., Subparagraph b., items 1 and 2, shall be carried on within a building or structure.

4. SITE PLAN APPROVAL

The provisions of SECTION XVIA. SITE PLAN APPROVAL. shall apply.

Zoning Bylaws of the Town of Wellesley, Massachusetts, Section XVIII (B) (Amended 2003)

B. Alternative Area Regulations in Subdivisions of Ten Acres or More (Cluster Residential Developments.)

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The minimum lot size for a one-family dwelling in a Single Residence District in a tract constituting a residential subdivision approved by the Planning Board after the effective date of this amendment may be 20,000 square feet in a Forty Thousand Foot Single Residence District, 15,000 square feet in a Thirty Thousand Foot Single Residence District, 10,000 square feet in a Twenty Thousand Foot Single Residence District, provided all of the following conditions are met: All the land in the tract is in one or more of the Single Residence Forty Thousand, Thirty Thousand, or Twenty Thousand Square Foot Districts.

The tract of land contains a minimum of ten acres.

The total number of lots in a tract upon which dwellings may be built does not exceed the number upon which dwellings could, under all laws and regulations applicable thereto, be built if the tract were subdivided in compliance with the area regulation applicable without reference to this paragraph B.

Land is set aside within the subdivisions as permanent open space in an aggregate area not less than two acres nor less than the difference between the total area in the subdivision plotted into lots that may be built upon and laid out as roads, and the total area of the tract.

Land so set aside is held and maintained as open space by the developer of the subdivision until it is conveyed to, accepted by, and owned by one or more of the following:

1. An association, trust, or corporation of all the owners of lots within the subdivision.
2. A non-profit trust or corporation having as its primary purpose the maintenance of open space.
3. The Town of Wellesley for park or open space use.
4. Town of Wellesley Conservation Commission. Any owner of land so set aside is under a legal duty, enforceable severally by the Town, and any owner of a lot within or abutting the subdivision, to limit use of such land to recreation and open space uses, not to permit the erection thereon of any buildings or structures other than buildings or structures which are necessary for the storage of recreational and maintenance equipment used in connection with such land but which have an aggregate floor area of less than one-half percent (1/2%) of the area of

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such land; to maintain such land, and to exclude motor vehicles therefrom.

C. Ratio of Building to Lot Area.

In Single Residence and General Residence Districts, Single Residence Districts A, and General Residence Districts A, no building or addition to any building shall hereafter be placed on any lot of land which will result in the covering by buildings of more than the following specified maximum percentages of the area of such lot or maximum building coverage expressed in square feet:

For lots containing less than 10,000 square feet - 25 percent;

For lots containing at least 10,000 square feet but less than 20,000 square feet – the greater of 20 percent or 2,500 square feet;

For lots containing at least 20,000 square feet but less than 40,000 square feet – the greater of 18 percent or 4,000 square feet – but not more than 6,000 square feet; and

For lots containing at least 40,000 square feet - 15 percent;
In Educational Districts B, Limited Residence Districts, Limited Business Districts and Administrative and Professional Districts no building or addition to any building shall be placed on any lot of land which will result in the covering by buildings of more than (20%) of the area of such lot, provided, however, that if the only buildings at any time on a lot in any such district are those permitted by SECTION VI.1., SECTION VIIIA.1., SECTION IX.1., or SECTION X.1, then the limitations aforesaid shall be (25%) in lieu of (20%). In Educational, Business or Industrial Districts or in Educational Districts A, Educational Districts B, Business Districts A, or Industrial Districts A, no dwelling (including apartment houses and apartment hotels) or club house shall hereafter be erected or placed on any lot of land which will result in the covering by buildings of more than (25%) of the area of such lot.

D. Ratio of Families to Lot Area.

1. In General Residence Districts and General Residence Districts A there shall be provided for each dwelling hereafter constructed or placed therein a lot containing not less than 5,000 square feet for each family for whose habitation such building is designed or adapted or the minimum area required for lots in the area regulation district in which the building is located, whichever is greater.

Except that town houses may be constructed at a ratio in accordance with and subject to the provisions of SECTION IV. GENERAL RESIDENCE DISTRICTS. A. 3.

2. In Educational, Business and Industrial Districts and in Educational Districts A, Educational Districts B, Lower Falls Village Commercial Districts, Business Districts A and Industrial Districts A there shall be provided for each apartment house, apartment hotel, hotel, inn or town house, hereafter constructed or placed therein a lot containing not less than 2,500 square feet for each family for whose habitation such building is designed or adapted or the minimum area required for lots in the area regulation district whichever is greater.

For cluster zoning:

Minimum parcel size of 10 acres.

20,000 sf lot in the 40,000 sf zone;

15,000 sf lot in the 30,000 sf zone;

10,000 sf lot in the 20,000 sf zone.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board B. Alternative Area Regulations in Subdivisions of Ten Acres or More (Cluster Residential Developments.)

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The minimum lot size for a one-family dwelling in a Single Residence District in a tract constituting a residential subdivision approved by the Planning Board after the effective date of this amendment may be 20,000 square feet in a Forty Thousand Foot Single Residence District, 15,000 square feet in a Thirty Thousand Foot Single Residence District, 10,000 square feet in a Twenty Thousand Foot Single Residence District, provided all of the following conditions are met: All the land in the tract is in one or more of the Single Residence Forty Thousand, Thirty Thousand, or Twenty Thousand Square Foot Districts.

Has any housing been built under the cluster/flexible provisions?

No Meghan Conlon, Planner, said that no developments have come through the Planned Development Districts.

Wenham

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Town of Wenham Zoning Bylaw, Section XVIII, (Adopted 1974, Last Amended 2000).

Section XVIII - Residential Open Space Communities
(As adopted 11/13/90)

A. General Description

A."Residential Open Space Community" (ROSC) shall mean a residential development in which the building or buildings are clustered together into one or more groups. The land not included in building lots and roads shall be permanently preserved as open space.

B. Purpose

The purposes of ROSC development are to promote and encourage:

1. The permanent preservation of open space, including but not limited to wetlands, aquifer recharge areas, flood-plains, agricultural lands, woodlands and fields, and other natural resources.
2. The preservation of the rural character of the Town.
3. The construction and maintenance of streets and utilities in a more economical and efficient manner.
4. The efficient use of land to increase the options for affordable housing.
5. Use of the land in harmony with its natural features through flexible design.
6. Land development that protects the value of real property and ensures that landowners retain beneficial uses of their land.

C. Definitions

1. UNDERLYING ZONING : The zoning regulations which apply to the development project, with the exception of those contained in the ROSC bylaw.
2. WETLANDS : As defined in M.G.L., Chapter 131, Section 40 and the bylaws of the Town of Wenham.

D. General Requirements

1. A development in the R-40 zone (Underlying Zoning) involving the creation of three (3) or more lots, where at least three (3) of the lots are less than ten (10) acres (exclusive of wetlands and land in the Flood Plain District), within any (5) year period, shall constitute a ROSC and shall comply with the provisions of this subsection of the bylaw (XVIII.D.1) unless:
 - a. Each of the lots in the development is at least ten (10) acres (exclusive of wetlands and floodplains); or
 - b. Each of the lots in the development is at least two (2) acres (exclusive of wetlands and land in the Flood Plain District) and the developer provides assurances deemed satisfactory by the Planning Board that the lots will not be further divided; or
 - c. The applicant shows, to the satisfaction of the Planning Board:
 - i. that the proposed project if developed in accordance with the provisions of the underlying zoning, would not obstruct the attainment of the purposes set forth in subsection B of this bylaw, or
 - ii. that because of unusual topography or soil conditions, it would not be feasible to develop the site as a ROSC.

2. If the project is not a ROSC because it comes within the exceptions set forth in subsections 1.a-c above, and it includes more than ten (10) lots, it shall comply with the provisions set forth in subsection F (which at the option of the developer may include the density increases provided for in subsection E.2).

3. ROSC's shall require special permits in accordance with the provisions of this section of the bylaw. A planning Board grant of a ROSC special permit shall not be deemed to constitute subdivision approval, nor does it imply that subdivision approval will be granted.

4. Notwithstanding subsection D.1, applicants seeking to develop land, where the development does not constitute a ROSC, may apply for a special permit for a ROSC and the Planning Board may grant such a permit provided the proposed project complies with the provisions of this section of the bylaw.

5. The applicant shall make available to the Planning Board funds sufficient to cover any expenses connected with a public hearing and review of the plans for the ROSC, including but not limited to the costs of any engineering or planning consulting services necessary for technical review purposes.

E. Use and Dimensional Requirements

1. A maximum of one single-family detached dwelling and lawful accessory buildings may be on a lot in a ROSC.

Attached dwellings may be allowed in a ROSC provided the attached unit is an affordable unit.

2. The Planning Board shall determine what constitutes standard subdivision density after it reviews the Conventional Layout Concept Plan referenced in sub-section K.2. The maximum density of a ROSC is the allowed density for a standard subdivision in the Underlying Zoning plus:

a. Fifteen percent (15%) if at least ten percent (10%) of the units in the ROSC are affordable.

b. Thirty-three and a third percent (33 1/3%) if at least fifteen percent (15%) of the units in the ROSC are affordable.

3. The Planning Board may require frontage for particular lots; however, there is no minimum frontage requirement for lots in ROSC'S.

4. All residential and accessory structures shall be set back from the boundaries of the ROSC by a buffer strip of at least thirty-five feet (35') in width which shall be kept in a natural or landscaped condition.

5. The Planning Board may allow structures accessory to recreational, conservation or agricultural uses to be erected on the common open space but the footprint of such structures shall in no event exceed five percent (5%) of the common open space.

6. Applicants shall demonstrate to the Planning Board that (a) the public way (or ways) to which the ROSC has access are to be designed and built as to be adequate to handle existing and projected traffic volumes and (b) the utilities in the public way are to be designed and built to meet the needs of the proposed ROSC.

7. In the event of a conflict between these regulations and those that apply to the Underlying Zoning, the provisions of this section shall govern. The dimensional requirements of the Underlying Zoning shall not apply to ROSC'S.

8. Structures in a ROSC shall be no more than thirty-five (35) feet in height or three stories, whichever is higher, except as set forth in Section IX.B.

9. There shall be a minimum of two (2) off street parking spaces for each dwelling unit.

10. Streets and/or common driveways in a ROSC that are wholly or partially within the Town of Wenham shall be connected directly to a public way or ways within the Town of Wenham.

F. Inclusionary Housing Standards

1. Applicants seeking to develop ROSC's with ten (10) or more lots shall provide Affordable Units (defined in subsection F.2 below), the number of which shall be a minimum equal to ten percent (10%) of the lots in the ROSC.

a. In determining the required number of Affordable Units, a fraction of 0.5 or more shall be regarded as a whole unit; a fraction of less than 0.5 shall not be regarded as a unit.

b. The Affordable Units shall be provided on site unless the applicant demonstrates to the satisfaction of the Planning Board that the provision of Affordable Units off site will further the public interest in that the proposed Affordable Units will help meet the housing needs of the Town.

2. Affordable Units are those units which may be purchased or rented by persons or households earning less than on average eighty percent (80%), but in no event more than one hundred ten percent (110%) of the regional median household income.

a. The Affordable Units shall comply with the Regulations concerning M.G.L. Chapter 40B (760 CMR 45.00) as they may be amended from time to time, unless the applicant demonstrates to the Planning Board that it is not feasible to do so.

3. The applicant shall subject the property to restrictions necessary to ensure that the Affordable Units will remain affordable, the form and substance of the restriction to be subject to approval by the Planning Board.

G. Open Space Requirements

1. At least twenty percent (20%) of the land (exclusive of wetlands, land in the Flood Plain District, driveways and roads) in a ROSC shall constitute open space held in common ownership, available for recreation, conservation or agriculture uses.

2. Further subdivision of common open land for use other than recreation, agriculture or conservation shall be prohibited.

3. The location and size of the open space shall be subject to the approval of the Planning Board.

4. The open space shall remain as such in perpetuity.

H. Common Open Space Ownership

All open space in common ownership shall be either:

1. Conveyed to a community association the members of which shall be the owners of lots within the ROSC.

2. Conveyed to a non-profit organization which the Planning Board has determined is an entity that will adequately maintain the land for open space and conservation uses, and which has as its principal purpose the preservation of open space.

3. Conveyed to the Town, at no cost, and be accepted by it for a park or other open space use, Acceptance of such conveyance shall be at the option of the Town.

4. Conveyed to a private non-profit or a public entity to be used for farming purposes, with a restriction that ensures that the land will be actively farmed or kept in its natural open space state.

If the common open space is not conveyed to the Town it shall be protected by legal arrangements, such as conservation restrictions, satisfactory in form and substance to the Planning Board, to ensure its maintenance and preservation for open space or agricultural purposes, but public access to such common open space shall not be required.

I. Standards and Criteria For Special Permit Review

The following standards and criteria are to be used by the Planning Board in determining whether to approve, approve with conditions, or deny a special permit for ROSC, in addition to the special permit standards set forth in subsection XIII.C.4.b:

1. Individual lots, building envelopes, streets and parking areas shall be designed and located to minimize alteration of the natural site features to be preserved.

2. Diversity and originality in site layout shall be encouraged, to achieve a harmonious relationship between the buildings and the land. To the extent feasible, building envelopes should be located in the woodlands as opposed to agricultural lands, open areas and meadows; they should be set back from roads and the edge of water resources.

3. Individual lots and building envelopes shall be arranged to relate to surrounding properties and to minimize the amount of land area devoted to motor vehicle traffic.

4. Individual lots, building envelopes and parking areas shall be situated to minimize the adverse impacts of shadows, outside lighting, noise and traffic on the residents of the site.

5. Each of the lots shall be of a size and shape to accommodate a building envelope, within which the principal and accessory structures may be built, and shall be in harmony with the natural terrain and other features of the site.

6. ROSC's shall incorporate measures that are adequate to prevent pollution of surface or groundwater, to minimize erosion and sedimentation, and to prevent changes in groundwater levels and increased rates of run-off and minimize potential for flooding. Drainage shall be designed so that groundwater recharge is maximized, and at the project boundaries the run-off shall not be increased in amount or velocity.

7. ROSC's shall provide for safe vehicular and pedestrian movement within the site and to adjacent ways, including sidewalks, crosswalks, and the like.

8. ROSC's shall include convenient and safe emergency vehicular access to all buildings and structures at all times.

9. Each dwelling unit shall be supplied with an adequate water supply system approved by the Board of Health and the Water Department.

10. Each dwelling unit shall be served by an on-site sewage disposal system approved by the Board of Health. The Planning Board may permit the open land to be used for subsurface waste disposal where it finds that such use would not be detrimental to the open land.

J. Community Associations

1. A non-profit incorporated community association shall be established requiring membership of each owner in the ROSC. The community association shall be responsible for the permanent maintenance of common open space if it owns such space, recreational facilities and roads and driveways. The legal documents establishing the community association shall be submitted to the Planning Board for its review and approval with the special permit application. These documents shall ensure the continuing maintenance of such common utilities, land and facilities

2. Such documents shall provide that in the event the association fails to maintain the common open space in accordance with standards set forth therein, the town may, after notice to the association and public hearing, enter upon such land and maintain it. The documents shall also provide that the cost of such maintenance by the Town shall be assessed on a pro rata basis against the properties within the development.

K. Procedures

1. The Planning Board shall be the special permit granting authority for special permits for ROSC'S, and the general implementation of this section of the bylaw, including subsections F and D.1.c. The Special Permit procedures and standards (in addition to the standards set forth in subsection I above) in Section XIII apply to the review of ROSC's with the exception of subsection D.4.d. in that special permits for ROSC's shall not be made personal to the applicant and shall, instead, run with the land.

2. Applicants shall submit a Conventional Layout Concept Plan (CLCP) which shall be of sufficient detail to show the number of building lots reasonably attainable under a conventional plot plan that is in accordance with the requirements of the Underlying Zone. The Planning Board shall require percolation tests to be performed in compliance with Title 5, 310 C.M.R. 15.00, et seq. The CLCP will be used by the Board to determine the permissible density for the ROSC, The CLCP also will be referred to in the event the applicant seeks to develop in accordance with the requirements of the Underlying Zoning (pursuant to subsection D.1.c.) in which case the Board will compare the CLCP (for which the Board may request any additional data it determines to be necessary to make its decision) and the ROSC plan.

3. Applicants shall also submit a ROSC plan which shall comply with Submission Requirements to be set forth in Rules and Regulations.

L. Conditions

1. The Planning Board may impose conditions on a special permit to further the purposes set forth in subsection B and to ensure compliance with the standards and criteria set forth in subsection H of this section of the bylaw.

M. Lapse of Permit if Not Used

1. Notwithstanding other provisions in the zoning bylaw, special permits issued under this section XVIII shall lapse within two (2) years (not including the duration of an appeal made under M.G.L., Chapter 40A from the grant thereof), if substantial use has not commenced sooner, except for good cause, or in the case of a permit for construction, if construction has not begun by such date except for good cause.

For purposes of this section XVIII, the Planning Board may find that "substantial use" will have commenced upon the recording of a permanent conservation of agricultural restriction that complies with the terms of the Special Permit issued under this section. (Amended 5/2/92)

N. Rules and Regulations

1. The Planning Board may enact Rules and Regulations to implement the provisions of this section of the bylaw. At a minimum, the Rules and Regulations shall provide for a process by which the selection of a consultant to review a project may be appealed and submission requirements for ROSC plans.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board 3. ROSC's shall require special permits in accordance with the provisions of this section of the bylaw. A planning Board grant of a ROSC special permit shall not be deemed to constitute subdivision approval, nor does it imply that subdivision approval will be granted.

Has any housing been built under the cluster/flexible provisions?

Yes According to Kathy Tuell, permitting coordinator in Wenham, (7/14/04) units have been built under the flexible program.

West Boylston

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Continuing Care Retirement Communities emphasizes open space and cluster design models for 55+ residences. On 1/4/05, the Planning Board Secretary said that the Board is very much in favor of cluster zoning and it is presently under discussion.

"3.8 CONTINUING CARE RETIREMENT COMMUNITY

A. Purpose This by-law is established by the Town of West Boylston in order to achieve the following Purposes:

1. The provisions of a variety of housing choices for elderly persons.
2. The provisions of professional services routinely used by elderly persons.
3. The design of site plans and structures adapted to the needs of the elderly population.

B. Applicability

A. Continuing Care Retirement Community (CCRC), as defined herein, may be allowed upon a grant of a Special Permit by the Planning Board upon any parcel of land situated within a General Residence District or in the Single Residence District located southeasterly of Hartwell Street and westerly of Shrewsbury Street along the Worcester city line or in so much of the Industrial District located southeasterly of Hartwell Street and westerly of Shrewsbury Street as is located southeasterly of a line parallel to and 900 feet southeasterly of Hartwell Street.

****Webmasters Note:** The previous subsection has been amended as per an update approved at a town meeting held on 5/20/02.

C. Definitions

For the purpose of this section of the by-law the following definitions shall apply:

ELDERLY PERSON : any person having reached the age of 55 years.

ELDERLY HOUSEHOLD : any household having at least one person 55 years or older.

CONTINUING CARE RETIREMENT COMMUNITY (CCRC) : a development comprised of a dwelling or dwellings with residential services operated or sponsored as a coordinated unit by a corporation or organization, having among its principal purposes the provision of housing and associated services for persons 55 years or older.

COORDINATED UNITS : a building or group of buildings under common management which provide housing and associated services which assist the elderly in maintaining an independent lifestyle.

ASSOCIATED SERVICES : a program of resident services primarily for the benefit of the residents of the CCRC.

D. Types of Dwellings, Uses And Associated Services Permitted

1. A CCRC may contain any or all of the following housing types, attached or detached, in any combination:

- a. Detached single family;
- b. Multi-family;

c. Congregate: a structure which provides a range of housing and support services. The structure may contain, but is not limited to, the following uses: dwelling units with kitchen facilities; bedrooms with a bathroom and sitting area or without kitchen facilities; common, social and recreational areas such as dining rooms, libraries, an indoor and outdoor recreation facilities and gardening areas;

d. Assisted or Catered Living; buildings or structures other than a hospital or nursing home/institution designed to accommodate assistance with one or more activities of daily living, such as dressing, eating, bathing, walking or toileting;

e. Nursing care: a facility which must be licensed by the Department of Public Health;

f. Living quarters for support staff.

A.CCRC may contain any or all of the following uses and associated services, individually or in any combination, as part of dwellings or as separate structures, including, but not limited to

a. Dining rooms, coffee shops and related kitchen areas and facilities

b. Living rooms, libraries, music rooms, auditoriums, greenhouses;

c. Lounges, card rooms, meeting rooms, and other social and recreational areas;

d. Administrative offices, social service offices, educational uses;

e. Mail rooms, gift shops, convenience stores;

f. Medical offices, diagnostic and treatment centers, wellness centers, exercise areas, home health care centers;

g. Professional offices;

h. Barbers, hairdressers, beauty salons; Banks and ATM banking machines;

j. Home health care;

k. Adult and child care services;

l. Cleaning services

m. Other uses, services and activities incident to the operation of a CCRC.

E. Design Objectives

1. Structure and site designs which blend the scale of residential units, institutional structures and professional office space;

2. Minimization of traffic impacts and safe design of all ways, vehicular and pedestrian;

3. Maximization of preservation of natural feeders and the protection of wetlands, scenic vistas and open spaces;

4. Structure and site designs which meet the specific needs of the elderly;

5. Site plan design which visually emphasizes building design and landscaped areas and minimizes the visual impact of parking areas;

6. Site plan design which creates open space by using cluster principals. At least 25% of the site shall be preserved as open space and maintained as natural vegetation or landscaped areas. Use of open space, except for passive recreation, plantings, footpaths, and agriculture shall be prohibited. Easements may be granted for the installation of underground utilities, provided all disturbed areas be restored to a natural state after construction. A restriction, enforceable by the Town of West Boylston, shall be recorded to ensure that such land shall be kept in an open, natural or landscaped state and not built upon for residential use or developed for accessory use such as parking or roadways. A landscape management plan shall be developed with restrictions to provide for maintenance of the open areas in a manner which will ensure its suitability for its function, appearance, cleanliness, and for proper maintenance of drainage, utilities and the like.

7. Site and structure design shall provide suitable means of access and egress to dwellings for handicapped persons. Enclosed walkways and/or in enclosed walkways connecting all buildings shall be permitted.

8. Structures shall be located on the site so as to provide for the privacy of residents adjacent to the CCRC.

F. Site Requirements

1. Minimum Lot Size: No CCRC shall be allowed on a parcel of land containing less than 10 acres.

2. Maximum number of units allowed shall be calculated by the following formula:

Detached single-family: 5,500 square feet per/DU Multi-family (4 units or less): 5,500 square feet per/DU Multi-family (more than 4 units): 4,000 square feet per/DU

3. Notwithstanding the provisions of Section 4.3, the number of habitable buildings on a lot and the maximum number of dwelling units permitted per habitable building shall be determined by the Planning Board on a case by case basis.

4. Non-residential uses: the total area devoted to non-residential uses located in the buildings may not exceed twenty-five percent (25%) of the total area of the living areas.

5. The open space requirement is substituted for the more conventional rear and side yard requirements in order to provide flexibility in the protection of natural features; to maintain significant open space areas for the enjoyment of the residents; and to promote a variety of site plans tailored to the needs of the elderly.

. While there are no yard requirements between buildings within the CCRC, all structures must conform to the Massachusetts Building Code with respect to building separation and fire walls.

7. Location and design of all structures shall be reviewed by the West Boylston Fire Chief with regard to accessibility of fire and other emergency vehicles.

8. No structure shall be more than thirty-five feet (35') in height measured from the average grade at the base of the building to the eave line.

9. Disposal areas shall be located in screened areas according to law standards contained in this zoning by-law.

G. Roadway and Parking Requirements

1. The following minimum parking standards shall apply to CCRC facilities approved under this section of the by-law. The Planning Board may waive the construction of parking until it is demonstrated that it is actually needed. Parking areas shall be designated as either to be constructed at the time of building construction or at a future date when it is demonstrated that it is needed. Where there is a mix of uses, the total parking area for the CCRC must equal or exceed the sum of the minimum requirements required by the following:

a. There shall be provided one parking space for each dwelling except as follows:

i. Congregate housing and assisted or catered living facilities: One (1) parking space for every five (5) beds and one (1) parking space for each employee on the largest shift.

ii. Nursing care facility: One (1) parking space for every twenty (20) beds and one (1) parking space for every employee on the largest shift.

iii. Congregate housing and assisted or catered living facilities: One (1) parking space for every five (5) beds and one (1) parking space for each employee on the largest shift.

2. All other parking and screening provisions of the West Boylston Zoning By-laws shall apply unless changed by this section.

3. Roads and utilities shall be designed and constructed in conformance with the Town of West Boylston Site Plan review standards. The Planning Board may modify said standards if it determines that such action will more acceptably meet the purposes of this section.

H. Sewage Disposal

1. No special permit for a CCRC may be granted unless the proposed developer is or is to be connected to a municipal sewer system. No on site subsurface sewage disposal system shall be allowed.

I. Signs

1. Signs will be regulated by Section 5.6 of the Zoning By-law.

J. Procedure

1. Application, submission requirements, and procedures contained in Section 3.6 Site Plan Review shall be followed before a Special Permit for a Continuing Care Retirement Community may be granted.

2. Plans submitted in connection with this section may be drawn as may be appropriate to the size of the site, with the consent of the Planning Board." From the Town of West Boylston's Zoning Bylaw, Section 3.8 (Last Amended 2003).

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board J. Procedure

1. Application, submission requirements, and procedures contained in Section 3.6 Site Plan Review shall be followed before a Special Permit for a Continuing Care Retirement Community may be granted.
2. Plans submitted in connection with this section may be drawn as may be appropriate to the size of the site, with the consent of the Planning Board."

Has any housing been built under the cluster/flexible provisions?

Yes West Boylston 2004 Draft Master Plan:

"Several larger developments have occurred in recent years, including: Lancaster Commons, a 17-unit single-family development between Sterling and Lancaster Streets approved as a comprehensive permit project; Hillside Village, a 118-unit continuing care retirement community off Hartwell Street; and an expansion of 34 units at Briarwood, another continuing care retirement community. Lancaster Commons was authorized as a comprehensive permit under M.G.L. c. 40B, which provides for waivers from local zoning standards."

West Bridgewater

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

No

Which entity is the special permit granting authority for cluster/flexible zoning?

Has any housing been built under the cluster/flexible provisions?

West Newbury

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes West Newbury Zoning Bylaw (Revised 2003)

6.B.1 Purpose and Intent.

The primary purposes for Open Space Preservation Development (OSPD) are the following:

- a. To allow for greater flexibility and creativity in the design of residential developments.
- b. To encourage the permanent preservation of open space agricultural land, forestry land, wildlife habitat, other natural resources including aquifers, waterbodies, wetlands, scenic vistas, slopes and hillsides, and historical and archeological resources in a manner that is consistent with the West Newbury Comprehensive and Open Space Plans.

c. To encourage a less sprawling and more efficient form of development that consumes less open land and conforms to existing topography and natural features better than a conventional or grid subdivision.

d. To minimize the total amount of disturbance on the site.

e. To further the goals and policies of the West Newbury Comprehensive Plan and the West Newbury Open Space Plan.

f. To facilitate the construction and maintenance of housing, streets, utilities and public service in a more economical and efficient manner.

6.B.2. The Secondary Purposes for the OSPD are the following:

- a. To preserve and enhance the community character .
- b. To preserve and protect agriculturally significant land
- c. To protect the value of real property.
- d. To protect community and regional water supplies
- e. To provide for a diversified housing stock

6.B.3. Eligibility

a. There is no minimum tract size for OSPD. The Open Space Preservation Development By-law is an option for any proposed subdivision.

b. Any proposed residential development on a parcel or contiguous parcels under common ownership of more than ten acres or that creates five or more lots, whichever is fewer; shall SUBMIT an Open Space Preservation Development application to the Planning Board. After submittal, the developer maintains the option of proceeding with either an Open Space Preservation Development or the conventional subdivision.

c. Zoning Classification. Only those tracts located in Residential Districts A, B, or C shall be eligible for consideration as an OSPD.

d. Contiguous Parcels. To be eligible for consideration as an OSPD, the tract shall consist of a parcel or set of contiguous parcels held under common ownership or site control.

e. Land Division. To be eligible for consideration as an OSPD, the tract may be a subdivision or a division of land pursuant to G.L. c.41, s. 81P, provided, however, that OSPD may also be permitted where intended as a condominium on land not so divided or subdivided.

6.B.4. Special Permit Required.

The Planning Board may authorize an OSPD pursuant to the grant of a Special Permit. Such special permits shall be acted upon in accordance with the following provisions.

6.B.5. Pre-Application.

a. Conference. The applicant is very strongly encouraged to request a preapplication review at a regular business meeting of the Planning Board. If one is requested, the Planning Board shall invite the Conservation Commission, Board of Health, Open Space Committee, Inspector of Buildings and Water Department. The purpose of a pre-application review is to minimize the applicant's cost of engineering and other technical experts, and to commence negotiations with the Planning Board at the earliest possible stage of development. At the pre-application review, the applicant may outline the proposed OSPD, seek preliminary feedback from the Planning Board and/or its technical experts, and set a timetable for submittal of a formal application. At the request of the applicant, and at the expense of the applicant the Planning Board may engage in technical experts to review the informal plans of the applicant and to facilitate submittal of a _ formal application for a OSPD Special Permit.

b. The plan submitted will accord with the rules and regulations relative to the size, form, number and contents of the plans to be submitted for a preapplication review.

6.B.6. Design Process.

At the time of the application for a special permit for the OSPD in conformance with Section 6.B.7.a, applicants are required to demonstrate to the Planning Board that the following Design Process was performed by a registered Landscape Architect and considered in determining the layout of proposed streets, house lots and open space.

a. Step One: Identifying Conservation Areas. Identify preservation land by two steps. First, Primary Conservation Areas (such as wetlands, riverfront areas, and floodplains regulated by state or federal law) and Secondary Conservation Areas (including unprotected elements of the natural landscape such as steep slopes mature woodlands, prime farmland meadows, wildlife habitats and cultural features such as historic and archeological sites as well as scenic views and stone walls) shall be identified and delineated. Second, the Potentially Developable Area will be identified and delineated. To the maximum extent feasible, the Potentially Developable Area shall consist of land outside identified Primary and Secondary Conservation Areas.

b. Step Two: Locating House Sites. Locate the approximate sites of individual houses within the Potentially Developable Area and include the delineation of private yards and shared amenities, so as to reflect an integrated community, with emphasis on consistency with West Newbury's historical development patterns. The number of homes enjoying the amenities of the development should be maximized.

c. Step Three: Aligning the Streets and Trails. Align streets in order to access the house lots. Additionally, new trails should be laid out to create internal and external connections to existing and/or potential future streets, sidewalks and trails.

d. Step Four: Lot Lines. Draw in the lot lines.

6.B.7. Procedures.

a. Application. An application for a Special Permit for an OSPD shall include a Concept Plan. The Concept Plan consists of a Sketch Plan and a Yield Plan (See Section 6.B.8). The Planning Board shall adopt rules and regulations relative to the size, form, number and contents of the sketch plan and yield plan.

i) Sketch Plan. The Sketch Plan shall be prepared by a registered Landscape Architect, or by a multi-disciplinary team of which one member must be a registered Landscape Architect, and shall address the general features of the land, give approximate configurations of the lots, open space and roadways, and include the information listed under Section B of the Subdivision-Rules and Regulations; The Sketch Plan shall incorporate the Four-Step Design Process; according to Section 6.B.6. above, and the Design Standards according to Section 6 B.11 below, when determining a proposed design for the development.

ii) Relationship Between the Concept Plan and OSPD Subdivision Plan. The issuance of a Concept Plan Special Permit allows the applicant to submit an Open Space Definitive Subdivision Plan to the Planning Board for approval under the Subdivision Control Law. Any Concept Plan Special Permit issued by the Planning Board shall specifically state the Open Space Definitive Subdivision Plan shall substantially comply with the Concept Plan.

iii) An Open Space Definitive Subdivision Plan will be considered not to substantially comply with the Concept Plan if the Planning Board determines that any of the following conditions exist:

- a) an increase in the number of building lots
- b) a significant decrease in open space acreage
- c) a significant change in the lot layout
- d) a significant change in the general development pattern which adversely affects natural landscape features and open space preservation.
- e) significant changes to the stormwater management facilities and/or
- f) significant changes in the wastewater management systems.

iv) If the Planning Board determines that the Open Space Definitive Subdivision Plan does not substantially comply with the Concept Plan, the Board may disapprove the definitive subdivision plan for failure to comply with the condition of the Special Permit requiring that the Open Space Definitive Plan substantially comply with the Concept Plan.

v) The Planning Board may conditionally approve an Open Space Definitive Subdivision Plan that does not substantially comply with the Concept Plan Special Permit. However, such conditional approval must identify where the plan does not substantially comply with the Concept Plan Special Permit and shall require that the Concept Plan Special Permit be amended to be in compliance with the significant changes identified by the Planning Board. The Planning Board shall also require that the applicant file an application to amend the Concept Plan Special Permit within a specified time period.

vi) The public hearing on the application to amend the Concept Plan Special Permit shall be limited to the significant changes identified by the Planning Board in their conditional approval of the Open Space definitive Subdivision Plan. These are the only considerations that the Planning Board may take into account in deciding whether to amend the Concept Plan Special Permit.

b. General Procedures. Whenever an application for a OSPD Special-Permit is filed with the Planning Board, the applicant shall also file, within five (5) working days of the filing of the completed application, copies of the application, accompanying development plan, and other documentation to the Board of Health, Conservation Commission, Inspector of Buildings, Water Department, Police Chief, Fire Chief and Superintendent of Roads for their consideration, review, and report. The applicant shall furnish the copies necessary to fulfill this requirement. Reports from other boards and officials shall be submitted to the Planning Board within thirty (30) days of receipt of the reviewing parties of all of the required materials; failure of these reviewing parties to make recommendations after having received copies of all such required materials shall be deemed a lack of opposition thereto. In the event that the public hearing by the Planning Board is held prior to the expiration of the (30) day period, the Planning Board shall continue the public hearing to permit the formal submission of reports and recommendations within that (30) day period. The Decision/Findings of the Planning Board shall contain, in writing, an explanation for any departures from the recommendations of any reviewing party.

c. Site Visit. Whether or not conducted during the pre-application stage, the Planning Board may conduct a site visit during the public hearing. At the site visit, the Planning Board and/or its agents shall be accompanied by the applicant and/or its agents.

d. Other Information. The submittals and permits of this section shall be in addition to any other requirements of the Subdivision Control Law or any other provisions of this Zoning By-law. To the extent permitted by law, the Planning Board shall coordinate the public hearing required for any application for a special permit for an OSPD with the public hearing required for approval of a Definitive Subdivision Plan.

6.B.8. Basic Maximum Number of Lots - Determination of Yield via Sketch Plan.

The Basic Maximum Number shall be derived from a Yield Plan. The Yield Plan shall show the maximum number of lots (or dwelling units) that could be placed upon the site under a conventional subdivision. The Yield Plan shall contain the information required for

a Sketch Plan, as set forth in Section 6.11.7. The proponent shall have the burden of proof with regard to the Basic Maximum Number of Lots (or dwelling units) resulting from the design and engineering specifications shown on the Yield Plan. For a parcel located in more than one zone, each zone shall be calculated separately considering those requirements of each zone. Each zone yield will be totaled and the lots may be sited without regard of zone boundaries.

6.B.9. Reduction of Dimensional Requirements. The Planning Board encourages applicants to modify lot size, shape, and other dimensional requirements for lots within an OSPD, subject to the following limitations:

a. Lots having reduced area or frontage shall not have frontage on a street other than a street created by the-OSPD; provided, however, that the Planning Board may waive this requirement where it is determined that such reduced lot(s) will further the goals of this By-law.

b. At least 50% of the required setbacks for the district shall be maintained in the OSPD unless a reduction is otherwise authorized by the Planning Board, except that no building may be built within 20' of the front yard lot line.

6.B.10. Open Space Requirements.

a. Open Space. A minimum of fifty percent (50 %) of the tract shown on the development plan shall be open space. Any proposed open space, unless conveyed to the Town or its Conservation Commission, shall be subject to a recorded restriction enforceable by the Town, providing that such land shall be perpetually kept in an open state, that it shall be preserved exclusively for the purposes set forth herein, and that it shall be maintained in a manner which will ensure its suitability for its intended purposes.

i) The percentage of the open space that is wetlands shall not normally exceed the percentage of the tract which is wetlands; provided, however, that the applicant may include a greater percentage of wetlands in such open space upon a demonstration that such inclusion promotes the purposes of this By-law.

ii) The open space shall be contiguous. Contiguous shall be defined as being connected. Open Space will still be considered connected if it is separated by a roadway or an accessory amenity. The Planning Board may waive this requirement for all or part of the required open space where it is determined that allowing non-contiguous open space will promote the goals of this By-law and/or protect identified primary and secondary conservation areas.

iii) The open space shall be used for wildlife habitat and conservation and the following additional purposes: historic preservation, education, outdoor education, recreation, park purposes, agriculture, horticulture, forestry, a combination of these uses and shall be served by suitable access for such purposes. The Planning Board may permit a small portion of the open space to be paved or built upon for structures accessory to the dedicated use or uses of such open space (i.e., pedestrian walks and bike paths).

iv) Wastewater and stormwater management systems serving the OSPD may be located within the open space. Surface systems, such as retention and detention ponds, shall not qualify towards the minimum open space required. Wastewater and stormwater management systems serving the OSPD, that offer a natural and aesthetic appearance and are constructed to be a natural feature such as a wetland or pond with ecological qualities and/or assets may qualify towards the minimum open space required.

b. Ownership of the Open Space. The open space shall; at-the Planning Board's election, be conveyed to:

i). The Town or its Conservation Commission;

ii) a nonprofit organization, the principal purpose of which is the conservation of open space and any of the purposes for such open space set forth above;

iii) a corporation or trust owned jointly or in common by the owners of lots within the OSPD. If such corporation or trust is utilized, ownership thereof shall pass with conveyance of the lots in perpetuity. Maintenance of such open space and facilities shall be permanently guaranteed by such corporation or trust which shall provide for mandatory assessments for maintenance expenses to each lot. Each such trust or corporation shall be deemed to have assented to allow the Town to perform maintenance of such open space and facilities, if the trust or corporation fails to provide adequate maintenance, and shall grant the town on easement this In such event, the town shall first provide fourteen (14) days written notice to the trust or corporation as to the inadequate maintenance, and, if the trust or corporation fails to complete such maintenance, the town may perform it at the expense of the corporation or trust. Each individual deed, and the deed or trust or articles of incorporation, shall include provisions designed to effect these provisions. Documents creating such trust or corporation shall be submitted to the Planning Board for approval, and shall thereafter be recorded.

6.B.11. Design Standards.

The following Generic and Site Specific Design Standards shall apply to all OSPDs and shall govern the development and design process.

a. Generic Design Standards.

i) The landscape shall be preserved in its natural state, insofar as practicable, by minimizing tree and soil removal: The grade changes shall be in keeping with the general appearance of the neighboring developed areas. The orientation of individual building sites shall be such as to maintain maximum natural topography and cover. Topography, tree cover, and natural drainage ways shall be treated as fixed determinants of road and lot configuration rather than as malleable elements that can be changed to follow a preferred development scheme.

ii) Streets shall be designed and located in such a manner as to maintain and preserve natural topography, significant landmarks and trees; to minimize cut and fill; and to preserve and enhance views and vistas on or off the subject property.

iii) Mixed-use development shall be related harmoniously to the terrain and the use, scale, and architecture of existing buildings in the vicinity that have functional or visual relationship to the proposed buildings. Proposed buildings shall be related to their surrounds.

iv) All open space (landscape and useable) shall be designed to the visual amenities of the area by maximizing its visibility for persons passing the site or overlooking it from nearby properties.

v) The removal or disruption of historic, traditional or significant uses, structures, or architectural elements shall be minimized insofar as practicable, whether these exist on the site or an adjacent properties.

b. Site Specific Design Standards.

i) Mix of Housing Types. The ORD may consist of any combination of single-family and two-family residential structures. A multifamily structure of not more than four, two-bedroom units may be allowed for developments for those 55 years old and over. Residential structures should be oriented toward the street serving the premises and not the required parking space.

ii) Parking. Each dwelling unit shall be served by two (2) off-street parking spaces. Parking spaces in front of garages may count in the computation. All parking areas with greater than four spaces shall be screened from view.

iii) Buffer Areas. A buffer area of 20' may be provided at the following locations:

a) perimeter of the property where it abuts residentially zoned and occupied properties

b) certain resource areas on or adjacent to the tract like ponds, wetlands, streams and riverfront areas, rock outcrops, ledge, agricultural or recreational fields, and land held for conservation purposes

Driveways necessary for access and egress to and from the tract may cross such buffer areas. No vegetation in this buffer area will be disturbed, destroyed or removed, except for normal maintenance of structures and landscapes approved as part of the project. The Planning Board may waive the buffer requirement in these locations when it determines that a small buffer (or no buffer) will suffice to accomplish the objective set forth herein.

iv) Drainage. The Planning Board shall encourage the use of "soft" (non structural) stormwater management techniques (such as swales) and other drainage techniques that reduce impervious surface and enable infiltration where appropriate.

v) Common/Shared Driveway. A common or shared driveway may serve a maximum of three dwelling units.

vi) Screening and Landscaping. All structural surface stormwater management facilities shall be accompanied by a conceptual landscape plan.

vii). On-site Pedestrian and Bicycle. Circulation Walkways and bicycle paths shall be provided to link residences with parking areas, recreation facilities (including park-land and open space) and adjacent land uses where appropriate.

6.B.12. Decision of the Planning Board.

The Planning Board may grant a special permit for An OSPD if it determines that the proposed OSPD has less detrimental impact on the tract than a conventional development proposed for the tract, after considering the following factors: a: Whether the OSPD achieves greater flexibility and creativity in the design of residential developments than a conventional plan;

b. Whether the OSPD promotes permanent preservation of open space, agriculturally and forestry land, other natural resources including waterbodies and wetlands and historical and archeological resources;

c. Whether the OSPD promotes a less sprawling and more efficient form of development that consumes less open land and conforms to existing topography and natural features better than a conventional subdivision;

d. Whether the OSPD reduces the total amount of disturbance on the site;

e. Whether the OSPD furthers the goals and policies of the Open Space Plan and/or the Comprehensive Plan;

f. Whether the OSPD facilitates the construction and maintenance of streets, utilities and public service in a more economical and efficient manner;

e. Whether the Concept Plan and its supporting narrative documentation complies with all sections of this Zoning By-law.

6.B.13. Increases in Permissible Density.

The Planning Board may award a density bonus to increase the number of dwelling units beyond the Basic Maximum Number. The density bonus for the OSPD shall not, in the aggregate, exceed fifty percent (50%) of the Basic Maximum Number. Computations shall be rounded to the lowest number. A density bonus may be awarded in the following circumstances:

a. For each additional ten percent (10%) of the site (over and above the required 50%) set aside as open space, a bonus of five percent (5%) of the Basic Maximum Number may be awarded; provided, however, that this density bonus shall not exceed 10% of

the Basic Maximum Number.

b. For every two (2) dwelling units restricted to occupancy by person over the age of fifty-five, one (1) dwelling unit may be added as a density bonus; provided, however, that this density bonus shall not exceed 10% of the Basic Maximum Number.

c. For every two (2) dwelling units restricted to occupancy for a period of not less than fifteen (15) years by persons or families who qualify as low or moderate income, as those terms are defined for the area by the Commonwealth's Department of Housing and Community Development, one (1) dwelling unit may be added as a density bonus; provided, however, that this density bonus shall not exceed 10% of the Basic Maximum Number.

****Webmasters Note:** The previous section 6.B has been added as per Case No. 1860 approved at special town meeting 10/29/01.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board West Newbury Zoning Bylaw (Revised 2003)

6.B.4. Special Permit Required.

The Planning Board may authorize an OSPD pursuant to the grant of a Special Permit. Such special permits shall be acted upon in accordance with the following provisions.

Has any housing been built under the cluster/flexible provisions?

Westborough

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Westborough Zoning Bylaw (2004)

4300. OPEN SPACE COMMUNITIES

4310. Purpose. Provide for the public interest by the preservation of open space and natural landscape features in perpetuity, and ensure that residential development, to the maximum possible extent, respects the natural features of the land.

Promote housing patterns which are designed to be sensitive to and accommodate a site's physical characteristics. Such features include wetlands and water bodies, topography, vegetation, wildlife habitats, scenic views & vistas, the integrity of ancient ways, historic sites, and the remaining rural character of the community which is exemplified by its farmlands, open field and orchards.

4315. Applicability. Open Space Communities shall be allowed within the Residential Zoning District subject to the requirements of this Bylaw for that District and in accordance with the additional requirements specified herein and in the Subdivision Rules and Regulations.

4320. General Requirements.

1. Any parcel of land located within the residential zone containing ten (10) or more acres shall be considered for open community development.

2A. For major residential development, that is, the potential creation of more than six (6) residential house lots on a property or set of contiguous properties in common ownership, an open space community development is allowed only by Special Permit issued by the Planning Board.

2B. For minor residential development, or a parcel of at least five (5) acres but less than ten (10) acres in size, at the owners option, an application can be made for an Open Space Community Special Permit in preference to filing a conventional development plan.

4330. Minimum Requirements.

1. Size. The total area of the tract or parcel proposed for the Open Space Community shall be at least ten (10) acres, and have a minimum of fifty (50) feet of frontage on an existing Town way.

2. Density. The total number of lots shall not exceed the number of lots which could reasonably be expected to be developed under a conventional plan in full conformance with zoning, subdivision regulations, and health codes.

3. Intensity Regulations. The Planning Board may grant a reduction of all intensity regulations of the underlying zone regulations for all portions of an open space development if the Board finds that the reduction will result in better design, improved protection of natural and scenic resources, and will otherwise comply with these regulations, provided that in no instance shall any lot deviate from the following table of requirements:

Table of Requirements

Maximum Lot Size 15,000 square feet

Minimum Lot Size 8,000 square feet

Minimum Frontage 50 feet

Minimum lot width, at building line 80 feet

Minimum Front Yard Setback 30 feet

Minimum Side Yard 15 feet

Minimum Rear Yard 15 feet

4. The minimum front yard setback requirement contained in this Bylaw may be waived by the Board in order to achieve the purpose of this Bylaw.

4350. Common Open Space Ownership and Management. 4360. Application and Review Process.

4365. Duration of Approval, dedication of Open Space and Recording. Notwithstanding anything to the contrary within/without this Bylaw, any Special Permit granted by the Planning Board for an Open Space Community, shall have a life span equal to that of conventional subdivisions.

4370. Subsequent to Approval. Subsequent to approval of such Open Space Community, no land therein shall be sold and no lot line shall be changed in such a way as to increase the number of lots or the extent of non-conformity with the provisions of section 2600 of this Bylaw.

4600. PLANNED PARCEL DEVELOPMENT

4610. Purpose. The intent of this Planned Parcel Development section is to permit greater flexibility and more creative and imaginative design for the development of light industrial and mixed use areas than is generally possible under conventional zoning provisions. It is further intended to promote more economical and efficient use of the land while providing a harmonious variety of housing choices, a higher level of amenities, a stimulus to the economic development of the community while preserving the natural environment and scenic qualities of open spaces which otherwise might be lost.

Planned Parcel Developments solely for residential use shall not be permitted. Single family residential development shall not be permitted.

4611. Definition of Planned Parcel Development. A Planned Parcel Development is a development of structures and uses on a tract of land twenty (20) acres or more containing one (1) or more parcels which are contiguous but for their separation by an existing private way or by a public street. The development shall include all land within the tract which can be used for residences, businesses, light industry, recreation, education, open space, parking and interior streets.

4620. Permit Granting Authority. The Planning Board shall be the Special Permit Granting Authority for Planned Parcel Developments in the Town of Westborough, and is authorized to hear and decide upon applications for Special Permits for Planned Parcel Developments in accordance with law and the provisions of this Bylaw.

4630. Applicability of Zone. A Planned Parcel Development shall only apply to a tract of land to be developed of not less than twenty (20) contiguous acres within an existing Planned Parcel Development zone established by Town Meeting. Such zones shall be established by Town Meeting vote as overlying Mixed Use Development zones or as overlying Industrial Planned Parcel Development zones in Industrial zones. Public or private ways shall not be deemed to provide acreage to meeting the twenty (20) acre requirement.

4631. Municipal Services Requirement. Planned Parcel Developments shall not be permitted when municipal services such as water, sewer or other services are not adequate or will not be adequate at the time of completion of the Development. Proof of adequacy of municipal services shall be the burden of the developer. The Planning Board shall determine, based on all evidence submitted to it, what constitutes adequate Town services.

4640. Permitted Uses. Each Planned Parcel Development shall be designated either Mixed Use or Industrial by the developer. In any Planned Parcel Development, no building or other structure shall be erected, altered or used and no land shall be used or occupied for any purpose except one or more of the following:

a. In Mixed Use Planned Parcel Developments:

Those uses permitted in Section 2300 for single Residential (R) and,

1. Multi-family dwelling for three or more families, including town houses, row houses, garden apartments and high-rise apartment buildings;

2. Club, lodge, social and community center building, church, school or recreational center, except those conducted as a business;

3. Building or structure for the display and storage of goods for sale at retail on the premises, or to furnish a service, except motor vehicle service station; provided that such building or structure is for the use of the residents of the Planned Parcel Development. The burden shall be on the applicant to show that any proposed commercial facility can be supported solely by residents of the development. Failure to prove sole support from the development shall be sufficient basis for the Planning Board to deny commercial uses in the development.

4. Accessory use customarily incidental to any use permitted herein, provided such use shall not be deemed by the Planning Board to be hazardous, harmful, offensive or to otherwise adversely affect the environment or the character of the neighborhood or the community.

4650. Density Requirements.

4651. Lot Coverage. Within the Planned Parcel Development (PPD), building lots shall be established by the applicant subject to approval of the Planning Board. The total area of the building lots shall not exceed twenty percent (20%) of the entire parcel for a Mixed Use PPD, nor shall the total area of building lots exceed thirty percent (30%) of the entire parcel for an Industrial PPD. Areas of wetlands, private and public ways and existing easements shall be excluded in calculating the total parcel area. Parking lots and parking areas must be included within the defined building lots.

4652. Lot Size. No lot shall have a frontage less than seventy-five (75) feet on a street, nor an area less than fifteen thousand (15,000) square feet.

Planned Parcel Developments shall be exempt from dimensional requirements as may be required in other sections of this Bylaw and shall be as determined by the Planning Board in accordance with the purposes and intent of this section. The Planning Board may establish, at its discretion, the various dimensional standards, including but not limited to, lot area, frontage, yard, height and building separation, to achieve the purposes and intent of this section and may require modifications or conditions in the plan for the purpose of this section.

4653 Unit Density Ratio. The maximum number of dwelling units in a Mixed Use Planned Parcel Development shall be one (1) for each twenty-five thousand (25,000) square feet of the total parcel area as defined in Section 4651. The Planning Board may authorize a limited increase in the unit density ratio according to the following:

a. For an increase in open space in excess of the required minimum open space, or a decrease in the computational area requirement from twenty-five thousand (25,000) square feet to fifteen thousand (15,000) square feet.

b. For distinctiveness and excellence in design and landscaping, a maximum decrease in the computational area requirement from twenty-five thousand (25,000) square feet to twenty-two thousand five hundred (22,500) square feet.

Industrial Planned Parcel Development unit density ratio shall be one (1) facility for each fifteen thousand (15,000) square feet of the total parcel area as defined in Section 4651. The Planning Board may not reduce the minimum unit density ratio below this amount.

4660. Design Standards. A Planned Parcel Development shall meet the following design standards:

4661. Open Space. A minimum area of fifteen percent (15%) of the total parcel area as defined in Section 4651 shall be set aside as open space.

4662. Open Space - Mixed Use. Open space area in a Mixed Use Planned Parcel Development shall be developed such that a minimum of one half of the open space area is dedicated to the active recreational use of the residents therein. Recreational facilities which qualify for the intent of this paragraph are parks, golf courses, playgrounds, ballfields, swimming facilities or other facilities acceptable to the Planning Board. Land areas which are excluded for building purposes under other sections of the Town Bylaw (such as the Flood Plain) will be considered as open space but not for the active recreation portion therein.

4670. Use of Unspecified Planned Parcel Development Land. Land which has not been set aside as private or public ways, building lots or open space use may be held in private ownership of the building lot owner and shall have a covenant which runs with the land.

4680. Site Plan Approval of a Planned Parcel Development. A Planned Parcel Development, as herein permitted, shall be made only pursuant to a site plan submitted to, and approved by, the Planning Board.

4690. Access Ways. All access ways within a Planned Parcel Development shall be required to be equivalent to the specifications of the Town of Westborough Planning Board for ways requiring approval under the Subdivision Control Law, whether or not the Planned Parcel Development is deemed to constitute a "subdivision" under said law.

4695. Application. Every developer shall submit an application for a Special Permit to the Planning Board for a Planned Parcel Development in accordance with the provisions and requirements of this Section and the Rules and Regulations of the Planning Board issued under this Section.

No Planned Parcel Development shall be implemented or carried out unless a Special Permit, issued in accordance with this Bylaw,

is granted by the Planning Board.

4696. Rules and Regulations.

4697. Public Hearing and Approval.

According to the table of uses, "open space communities" are allowed by special permit from the planning board in R and DPOD.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board Westborough Zoning Bylaw (2004)

2A. For major residential development, that is, the potential creation of more than six (6) residential house lots on a property or set of contiguous properties in common ownership, an open space community development is allowed only by Special Permit issued by the Planning Board.

Has any housing been built under the cluster/flexible provisions?

Yes Westborough Master Plan 2003, Inventory and Analysis, Page 18:

2.2.3 Other Zoning Bylaw Provisions

Open Space Communities

An Open Space Community is a type of residential subdivision that creates permanently protected open space by clustering development on a portion of a development tract. Westborough's Open Space Communities Bylaw—widely regarded as one of the most successful in Massachusetts—allows open space communities to be developed on lots of at least ten acres. Dimensional requirements include a minimum lot size of 8,000 square feet, maximum lot size of 15,000 square feet, and minimum frontage of 50 feet. There is no density bonus for open space communities. However, the Town has encouraged developers to use this development method by requiring the submittal of an Open Space Community concept plan for any tract that exceeds 10 acres in size. After review of the concept plan, the Planning Board can recommend either the conventional or the open space subdivision. As a result of the Open Space Communities Bylaw, the Town has protected about 250 acres of open space as part of new residential development projects.

Planned Parcel Development

The Town's Planned Parcel Development Bylaw (Section 4600 of the Zoning Bylaw) allows the issuance of a special permit for a mixed-use planned parcel development or an industrial planned parcel development. In order to create such a development, the developer must have a tract of land at least 20 acres in size, and Town Meeting must vote to establish a zone to allow the planned development. The mixed use planned development allows multi-family housing, accessory social or community facilities, and retail uses intended to serve only the residents of the project. No more than 20% of the lot may be covered by buildings and parking, and the maximum overall density is one unit per 25,000 square feet, although some density bonuses are available. In the industrial planned parcel development, multi-family housing is allowed as well as light manufacturing, offices, research facilities, and other commercial uses. Lot coverage is limited to 30%. While this bylaw does allow some options for creative development, the 20-acre minimum lot size and the requirement for a Town Meeting vote are both significant impediments to its widespread use. In addition, because the density allowance is fairly low, developers in the past that were looking to build multi-family housing were often more inclined to use the state's Comprehensive Permit law (Chapter 40B).

Survey received from Westborough on 5/5/05:

Has any housing been built under the cluster/flexible provisions? (none, 1-8 projects, more than 8)

"more than 8"

Westford

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Town of Westford Zoning Bylaw

SECTION 7.0 SPECIAL RESIDENTIAL REGULATIONS
7.1 OPEN SPACE RESIDENTIAL DEVELOPMENT

7.1.1 Purpose The purpose of Open Space Residential Development (OSRD) is to provide an acceptable alternative design to the development in residential districts located within the town OSRD will serve the public by

- 1 Encouraging better overall site planning,
- 2 Preserving the natural and scenic amenities of the property,
- 3 Providing open-space areas for both active and passive recreations,
- 4 Providing more efficient natural drainage systems,
- 5- Providing natural aquifer recharge systems,
- 6 Providing visual screening between the new construction and existing roads by means of trees and other natural vegetation,

7.1.2 Applicability. All projects involving the construction of single family residential units subject to regulation and approval by the Planning Board pursuant to an applicable section of the Subdivision Control Law, G L c 41, ss 81K through 81GG and meeting the minimum requirements of this section may seek approval through the provisions of this section

1 All projects involving the construction of single family detached dwellings subject to regulation and approval by the Planning Board pursuant to the Subdivision Control Law and involving the subdivision of ten (10) acres or more of land and/or the construction of one thousand (1,000) feet or more of roadway and located in the RA District shall submit an application for Open Space Residential Development and conform to the requirements of this section, unless waived by vote of the Planning Board in consideration of the submittal of a special permit application for Flexible Development pursuant to this Bylaw Discontinuance of this alternative application shall render all related approvals null and void Dimensional controls shall be those provided in the Table of Dimensional and Density Regulations, except as provided herein

7.1.3 Planning Board Determination. The Planning Board shall make a determination for all projects involving the subdivision of ten (10) acres or more of roadway and/or the construction of one thousand (1,000) feet or more of roadway and located in the RA District following a review of materials presented pursuant to this section The Planning Board may, in turn, require the application of this section generally or may waive the application to allow conventional subdivision

7.1.4 Minimum Dimensional Requirements. Open space residential development, as defined above, shall be allowed on parcels of land having a minimum contiguous area of ten (10) acres and which are located within a residential district These proposals shall be permitted only within a subdivision as defined in Chapter 41 of the Massachusetts General Laws The total number of residential lots allowable within an Open Space Residential Development shall not exceed the number of lots allowed in the zoning district in which the property is located (i a conventional subdivision) The burden of proof shall be upon the applicant to submit such evidence as necessary to support the calculation of the allowable number of lots; based upon accepted standards of soil testing for sewage disposal systems on the individual lots, limitations due to wetlands, flood plains and steep slopes, and requirements. of the Planning Board's "Rules and Regulations Governing Subdivisions " If an Open Space Residential Development is situated in more than one zoning district, once the total number of residential lots allowed within the development is established, as aforesaid, the location of the OSRD lots shall be allowed without regard to the location of such multiple zoning districts Dimensional controls shall be provided in the Table of Dimensional and Density Regulations, except as provided herein

7.1.5 Minimum Yard Requirements. The minimum yard requirements shall be those as set forth in the Table of Dimensional Regulations) provided, however, that with the approval of the Planning Board pursuant to the definitive subdivision plan approval process, the yard requirements may be reduced or increased as shown by dashed lines identified as "building location boundaries" on each such affected lot on the definitive subdivision plan to be recorded at the Registry of Deeds, except that the front yard shall not be less than fifteen (15) feet

7.1.6 Common Land. The common land shall contain no less than ten thousand (10,000) square feet of dry land (non-wet land) for each building lot or dwelling unit, and for each twenty-five (25) lots or twenty-five (25) dwelling units, or fraction thereof, one (1) acre of the common land shall be level, dry land suitable for baseball or other similar recreational purposes In developments of twenty-five (25) lots or more, said land must not be designated open space, excepting, however, that in an Industrial A District, the total common land shall not be less than thirty percent (30%) of the parcel which is the subject of the subdivision All land within one hundred (100) feet of any building lot shown on an open-space residential development plan shall be designated as open space

1 Common land other than designated open space may contain accessory structures for educational, recreational, cultural or community utility service for the development

2 All common land must have access to a roadway within the subdivision The minimum width shall be twenty-five (25) feet

7.1.7 Other Design Requirements.

1 Open Space Residential Developments shall be served by a water system approved by the Planning Board under the special permit process with the recommendation of the Conservation Commission and the Board of Health of the Town of Westford This provision shall not apply in an Industrial A District

2 Natural surface drainage channels shall be either incorporated into the overall design or preserved as part of the common land The developed areas shall be served by storm sewers

7.1.8 Legal Requirements for Common Land Ownership and Maintenance. The common land and other facilities which may be held in common shall be conveyed to the mandatory homes' association, whose membership includes the owners of all lots or units contained in the tract, or if the development is a cooperative, then the owners of the shares in the cooperative association

1 The developer shall include in the deed to the owners of individual lots beneficial rights in said common land and shall grant a conservation restriction to the Town of Westford over such land pursuant to G L c 184, ss 31-33, to ensure that such land shall be kept in an open or natural state and not be built upon for residential use or developed for accessory uses such as parking or roadways This restriction shall be enforceable by the Town through its Conservation Commission in any proceeding authorized by G L c 184, s 33 In addition, the developer shall be responsible for the maintenance of the common land until such time as the homes' association is capable of assuming said responsibility or, in the case of a trust, for the benefit of the tenant upon the execution of the trust

2 In order to ensure that the homeowners' association will properly maintain the land deeded to it under this section, the developer shall prepare a declaration of covenants and restrictions, which shall at a minimum provide the following

a Mandatory membership in an established homes' association as a requirement of residence or ownership of any lot in the tract

b Provisions for maintenance and tax assessment of all lots in order to ensure that the common land is maintained in a condition suitable for the uses approved by the homes' association Failure to pay such assessment shall create a lien on the property assessed, enforceable by either the homeowners' association or the owner of any lot

c Provisions which, so far as possible under the existing law, will ensure that the restrictions placed on the use of the common land will not terminate by operation of law

d This declaration of covenants and restrictions shall be reviewed and approved by the Planning Board and then shall be recorded with the Middlesex Registry of Deeds A copy of said declaration or trust shall also be filed with the Town Clerk Prior to the Building Inspector's issuance of a building permit for any lot, the developer shall provide satisfactory assurance of the conveyance and recording as required above, in the form of copies of the recorded instruments bearing the recording stamps

3 As an alternative to the procedures outlined in paragraphs 7 1 8 1 and 7 1 8 2, with the vote of the Planning Board, some or all of the common land open space may be conveyed to the Town of Westford to be administered by the Conservation Commission

7.1.9 Special Regulations. In an Industrial A District, or in an Industrial C District, notwithstanding anything above to the contrary or act in relation thereto

1 A developer may convey all of the common land designated on the plan to the Town of Westford, to be held and used for purposes set forth in this section, without the necessity for compliance with other provisions or paragraph E above stated If the Town fails to vote to accept all of said common land within one (1) year from the date of delivery of the deed, the developer shall place on such land not accepted, a conservation restriction to the Town of Westford over such land pursuant to G L c 184, ss 31-33, to ensure that such land shall be kept in an open or natural state and not be built upon for residential use or developed for accessory uses such as parking or roadways --This restriction shall-be enforceable by the Town through its Conservation Commission in any proceeding authorized by G L c 184,

2 The common land may be designated in relation to phases within a subdivision If all lots within a phase are withdrawn from a subdivision, or not built, then the common land associated with that phase will not be subject to this Section 7.1.10 Procedures for Approval.

1 Filing of Application Any application for the granting of a special permit by the Planning Board to approve an open space residential development shall be filed with the Board, with a copy filed forthwith with the Town Clerk, and shall be accompanied by six copies of a preliminary plan for the entire tract under consideration, prepared by a registered professional architect, engineer or landscape architect

2 Contents of Application Said application and plan shall be prepared in accordance with requirements for a preliminary subdivision plan in the rules and regulations of the Planning Board governing subdivision of land and shall include proposed location, bulk and height of all proposed buildings In addition, the applicant shall provide the following information

a An analysis of the site, including wetlands, slopes, soil conditions, areas within the one-hundred year flood zone, trees over six (6) inches and other natural features as the Planning Board may request

b A summary of the environmental concerns relating to the proposed plan

c A description of the neighborhood in which the tract lies, including utilities and other public facilities and the impact of the proposed plan upon them

d Evaluation of the open land proposed within the cluster with respect to size, shape, location, natural resource value, and accessibility by residents of the Town or of the cluster.

7.1.11 Review by Other Boards. Before acting upon the application, the Board shall submit it with the plan to the following boards, which may review it jointly or separately the Board of Health, the Superintendent of Streets and the Conservation Commission Any such board or agency to which petitions are referred for review shall submit such recommendations as it deems appropriate to the Planning Board and the applicant Failure to make recommendations within thirty-five (35) days of receipt shall be deemed lack of opposition

7.1.12 Public Hearing. After the opportunity for review by other boards has taken place, the Planning Board shall hold a hearing under this section in conformity with the provisions of G L c 40A, s 9, and this Zoning Bylaw

7.1.13 Relation to Subdivision Control Act. Planning Board approval of a special permit hereunder shall not substitute for compliance with the Subdivision Control Act nor oblige the Planning Board to approve any related definitive plan for subdivision nor reduce any time periods for Board consideration under the law However, in order to facilitate processing, the Planning Board shall, insofar as practical under existing law, accept regulations establishing procedures for submission of a combined plan and application which shall satisfy this section and the Board's regulations under the Subdivision Control Act

7.1.14 Findings of Board. The Board may grant a special permit under this section only if it finds that the applicant has demonstrated the following

1 That the OSRD will be in harmony with the general purposes of this chapter and the requirements of Chapter 40A of the General Laws and the long-range plan of the town (if any),

2 That the OSRD will not have a detrimental impact on the neighborhood,

3 That the OSRD will be designed with due consideration for health and safety,

4 That the OSRD is superior to a conventional plan in preserving open space, minimizing environmental disruption, allowing for more efficient provision of services,

5 That the OSRD allows for greater variety in prices or types of housing,

6 That the OSRD meets the specific requirements identified above

7.2 FLEXIBLE DEVELOPMENT

7.2.1 Purpose. The purpose of this section, Flexible Development, are

1 To encourage the preservation of open land for its scenic beauty and to enhance agricultural, open space, forestry, and recreational use,

2 To promote the development of housing for affordable low, moderate, and median income families,

3 To preserve historical and archeological resources, to protect the natural environment, including Westford's varied landscapes and water resources,

4 To protect the value of real property,

5 To promote more sensitive siting of buildings and better overall site planning,

6 To perpetuate the appearance of Westford's traditional New England landscape,

7 To facilitate the construction and maintenance of streets, utilities, and public services in a more economical and efficient manner,

8 To offer an alternative to standard subdivision development, and

9 To promote the development of housing for persons over the age of fifty-five

7.2.2 Applicability. Upon the issuance of a special permit by the Planning Board, and in accordance with the following provisions, a Flexible Development project may be created, whether a subdivision or not, from any parcel or set of contiguous parcels held in common ownership and located entirely within the Town of Westford Notwithstanding the provisions of Section 7 1, all projects meeting the threshold set forth therein shall submit a plan for a Flexible Development, and, if such special permit is granted, shall conform with the requirements set forth in this Section 7 2

7.2.3 Procedures. Applicants for the Flexible Development shall file with the Planning Board seven (7) copies of the following

1 A development plan conforming to the requirements for a preliminary plan as set forth in the Subdivision Rules and Regulations of the Planning Board

2 Where wetland delineation is in doubt or dispute, the Planning Board may require appropriate documentation

3 Data on proposed wastewater disposal, which shall be referred to a consulting engineer for review and recommendation

4 The Planning Board may also require as part of the development plan any additional information necessary to make the determinations and assessments cited herein

5 As part of the Application and Design Process, the Planning Board shall obtain and receive input from all Land Use Boards, Departments, and Commissions

7.2.4 Design Process. Each development plan shall follow the design process outlined below When the development plan is submitted, applications shall be prepared to demonstrate to the Planning Board that this Design Process was considered in determining the layout of proposed , streets, house lots, and contiguous open space

1 Understanding the Site The first step is to inventory existing site features, taking care to identify sensitive and noteworthy natural, scenic, and cultural resources on the site, and to determine the connection of these important features to each other

2 Evaluating Site Context The second step is to evaluate the site in its larger context by identifying physical (e g stream corridors, wetlands), transportation (e g road and bicycle networks), and cultural (e g recreational opportunities) connections to surrounding land uses and activities

3 Designating the Contiguous Open Space The third step is to identify the contiguous open space to be preserved on the site Such open space should include the most sensitive and noteworthy resources of the site, and, where appropriate, areas that serve to extend neighborhood open-space networks

4 Location of Development Area The fourth step is to locate building sites, streets, parking areas, paths, and other built features of the development The design should include a delineation of private yards, public streets and other areas, and shared amenities, so as to reflect an integrated community, with emphasis on consistency with Westford's historical development patterns

5 Lot Lines The final step is simply to draw in the lot lines (if applicable)

7.2.5 Modification of Lot Requirements. The Planning Board encourages applicants for Flexible Development to modify lot size, shape, and other dimensional requirements for lots within a Flexible Development, subject to the following limitation

1 Lots having reduced area or frontage shall not have frontage on a street other than a street created by the Flexible Development, provided, however, that the Planning Board may waive this requirement where it is determined that such reduced lot(s) are consistent with existing development patterns in the neighborhoods

2 At least 50% of the required side and rear yards in the district shall be maintained in the Flexible Development

7.2.6 Basic Maximum Number of Dwelling Units. The Basic Maximum Number of dwelling units allowed in a Flexible Development shall not exceed the number of lots allowed in the zoning district in which the property is located (i e conventional subdivision) The burden of proof shall be upon the Applicant to submit such evidence as necessary to support the calculation of the allowable number of lots, based upon accepted standards of soil testing for sewage disposal systems on the individual lots, limitation due to wetlands, flood plains, and steep slopes, and requirements of the Planning Board's Subdivision Rules and Regulations

7.2.7 Density Bonus. The Planning Board may award a density bonus to increase the number of dwelling units beyond the Basic Maximum Number The density bonus for the Flexible Development shall not, in the aggregate, exceed fifty (50) percent of the Basic Maximum Number All dwelling units awarded-as-a density bonus shall be limited to not more than two bedrooms Computations shall be rounded to the next lower integer A density bonus may be awarded in the following circumstances

1 Open Space For each additional ten (10) percent of the site (over and above the required ten (10) percent) set aside as contiguous open space, a bonus of five (5) percent of the Basic Maximum Number may be awarded, provided, however, that this density bonus shall not exceed twenty-five (25) percent of the Basic Maximum Number (A maximum density bonus for this provision would require a minimum of sixty (60) percent open space)

2 Age Restricted For every two (2) dwelling units restricted to occupancy by persons over the age of fifty-five, one (1) dwelling unit may be added as a density bonus, provided, however, that this density bonus shall not exceed ten (10) percent of the Basic Maximum Number

3 Design Where the Planning Board determines that the development is in substantial conformance with design standards that shall be promulgated by the Planning Board, a bonus of up to fifteen (15) percent of the Basic Maximum Number may be awarded

7.2.8 Affordable Component. As a condition of the grant of any special permit for a Flexible Development, a minimum of fifteen (15) percent of the total number of dwelling units shall be restricted for a period not less than thirty (30) years to people/persons with families who meet or qualify under this Bylaw's definition of low, moderate, or median income The thirty (30) year restriction shall be approved as to form by legal counsel to the Planning Board, and a right of first refusal upon the transfer of such restricted units shall be granted to the Westford Housing Authority for a period not less than 120 days after notice thereof The affordable component shall be divided as follows

1 Five (5) percent of the units shall be affordable to persons or families qualifying as low income,

2 Five (5) percent of the units shall be affordable to persons or families qualifying as moderate income, and

3 Five (5) percent of the units shall be affordable to persons or families qualifying as median income

When computing the number of affordable units; the number will be rounded to the next lowest integer.

7.2.9 Standards. The following standards shall apply in a Flexible Development

1 Types of Buildings The Flexible Development may consist of any combinations of single-family, two-family, and multifamily residential structures A multifamily structure shall not contain more than five (5) dwelling units The architecture of all multifamily buildings shall be residential in character, particularly providing gabled roofs, predominately wood siding, an articulated footprint, and varied facades Residential structures shall be oriented toward the street serving premises and not the required parking area

2 Roads The principal roadway(s) serving the site may be designed to conform with the standards of the Planning Board where the roadway is or may be ultimately intended for dedication and acceptance by the Town of Westford Private ways shall be adequate for the intended use and vehicular traffic and shall be maintained by an association of unit owners or by the Applicant

3 Parking Each dwelling unit shall be served by two (2) off-street parking spaces Parking spaces in front of garages may count in this computation

4 Buffer Areas A buffer area of one hundred (100) feet shall be provided at the perimeter of the property where it abuts residentially zoned or occupied properties, except for driveways necessary for access and egress to and from the site No vegetation in this buffer area will be disturbed, destroyed, or removed, except for normal maintenance The Planning Board may waive the buffer requirement

a where the land abutting the site is the subject of a permanent restriction for conservation or recreation so long as a buffer is established of at least fifty (50) feet in depth which may include such restricted land area within such buffer area calculation,

b where the land abutting the site is held by the Town for conservation or recreation purpose, or

c the Planning Board determines that a smaller buffer will suffice to accomplish the objectives set forth herein

5 Drainage Stormwater management shall be consistent with the requirements for subdivisions set forth in the Rules and Regulations of the Planning Board

7.2.10 Contiguous Open Space. A minimum of ten (10) percent of the parcel shown on the development plan shall be contiguous open space Any proposed contiguous open space, unless conveyed to the Town and administered by the Conservation Commission, shall be subject to a -recorded-restriction pursuant to G L c 184 enforceable by the Town, providing that such land shall be perpetually kept in an open state, that it shall be preserved for exclusively agricultural, horticultural, educational, or recreational purposes, and that it shall be maintained in a manner which will ensure its suitability for its intended purpose

1 The percentage of the contiguous open space which is wetlands shall not normally exceed the percentage of the tract which is wetlands, provided, however, that the applicant may include a greater percentage of wetlands in such open space upon a demonstration that such inclusion promotes the purpose set forth in Section 7 2 1, above In no case shall the percentages of contiguous open space which is wetlands exceed fifty (50) percent of the tract

2 The contiguous open space shall be used for conservation, historic preservation and education, outdoor education, recreation, park purposes, agriculture, horticulture, forestry, or for a combination of these uses, and shall be served by suitable access for such purposes

3 The contiguous open space shall remain unbuilt upon, provided that the Planning Board may permit up to twenty (20) percent of such open space to be paved or built upon for structures accessory to the dedicated use or uses of such open space, pedestrian walks, and bike paths

4 Underground utilities to serve the Flexible Development site may be located within the contiguous open space

7.2.11 Ownership of the Contiguous Open Space. The contiguous open space shall, at the Planning Board's election, be conveyed to

1 The Town of Westford and administered by the Conservation Commission,

2 A nonprofit organization, the principle purpose of which is the conservation of open space and any of the purposes for such open space set forth above, and

3 A corporation or trust owned jointly or in common by the owners of lots within the Flexible Development If such corporation or trust is utilized, ownership thereof shall pass with conveyance of the lots in perpetuity Maintenance of such open space and facilities shall be permanently guaranteed by such corporation or trust which shall provide for mandatory assessments for maintenance expenses to each lot Each such trust or corporation shall be deemed to have assented to allow the Town of Westford to perform maintenance of such open space and facilities, if the trust or corporation fails to provide adequate maintenance, and shall grant the Town an easement for this purpose In such an event, the Town shall first provide fourteen (14) days written notice to the trust or corporation as to the inadequate maintenance, and, if the trust or corporation fails to complete such maintenance, the Town may perform it Each individual deed, and the deed or trust or articles of incorporation, shall include provisions designed to effect these provisions Documents: -eating such trust or corporation shall be submitted to the Planning

Board for approval, and shall thereafter be recorded

7.2.12 Decision. The Planning Board may approve, approve with conditions, or deny a special permit for a Flexible Development after determining whether the Flexible Development better promotes the purposes of Section A of this Flexible Development Bylaw than would a ,conventional subdivision development of the same locus

7.2.13 Relation to Other Requirements. The submittals and permits of this Section shall be in addition to any other requirements of the Subdivision Control Law or any other provisions of this Zoning Bylaw

According to survey received from Westford on 3/21/05, the cluster provisions were last amended on 7/17/2000.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board 7.1.3 Planning Board Determination. The Planning Board shall make a determination for all projects involving the subdivision of ten (10) acres or more of roadway and/or the construction of one thousand (1,000) feet or more of roadway and located in the RA District following a review of materials presented pursuant to this section The Planning Board may, in turn, require the application of this section generally or may waive the application to allow conventional subdivision

Has any housing been built under the cluster/flexible provisions?

Yes According to survey received from Westford on 3/21/05, six cluster developments have been built.

Weston

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Town of Weston Zoning By-Law and Map Section VI (H) (Adopted 1928, Amended 2003)

H. FLEXIBLE DEVELOPMENT REQUIREMENTS AND PROCEDURES

1. Applicability. An owner or owners of land in a Single Family Residence District may apply to the Planning Board for a Special Permit for Flexible Development under this Section VI.H. This will exempt such land from the lot area, frontage, setback and other applicable dimensional requirements set forth in the Table of Conventional Dimensional Requirements of this Zoning By-Law in order to fulfill the purposes of Flexible Development. The Planning Board shall be the Special Permit Granting Authority for any Special Permit for Flexible Development issued under this Section.

4. Procedure.

A landowner seeking to create a Flexible Development of land may file with the Planning

Board an Application for a Special Permit for Flexible Development. The Application shall conform to the applicable requirements for a Definitive Subdivision Plan as set forth in the Planning Board's Rules and Regulations for the Subdivision of Land, as well as the Flexible Development requirements contained herein and all other requirements in the Special Permit Rules for Flexible Development.

The Planning Board shall give notice, hold a public hearing and file its decision regarding a Flexible Development Application, in accordance with the procedures governing special permits contained in Sections 9, 11 and 15 of M.G.L. c.40A, the Zoning Act.

From ordinance.com:

H. FLEXIBLE DEVELOPMENT REQUIREMENTS AND PROCEDURES

1. Applicability. An owner or owners of land in a Single Family Residence District may apply to the Planning Board for a Special Permit for Flexible Development under this Section VI.H. This will exempt such land from the lot area, frontage, setback and other applicable dimensional requirements set forth in the Table of Conventional Dimensional Requirements of this Zoning By-Law in order to fulfill the purposes of Flexible Development. The Planning Board shall be the Special Permit Granting Authority for any Special Permit for Flexible Development issued under this Section. Nothing in this section shall be interpreted as conflicting with the right of a landowner to proceed under the Subdivision Control Law with an application for a preliminary or definitive subdivision plan pursuant to G.L. c.41, Sections 81S and 81T, or with an application for endorsement of a plan of land division as "approval not required" pursuant to G.L. c.41, Section 81P.

2. Purpose.

The general purpose of Flexible Development is to allow greater flexibility and creativity in the design and layout of single family residential development, without any increase in permitted density, in order to:

- a. minimize alteration of or damage to the natural and cultural features and topography of the land;
- b. avoid undue adverse impacts of new development on existing homes and neighborhoods,
- c. preserve wooded areas and other undeveloped open land particularly along Town roads;
- d. preserve the existing semi-rural appearance of the Town.

3. Fees.

An Applicant for a Special Permit for Flexible Development shall pay a filing fee and review fees as the Planning Board shall deem reasonably necessary, which fees shall be set forth in the Planning Board Special Permit Rules for Flexible Development.

4. Procedure.

A landowner seeking to create a Flexible Development of land may file with the Planning Board an Application for a Special Permit for Flexible Development. The Application shall conform to the applicable requirements for a Definitive Subdivision Plan as set forth in the Planning Board's Rules and Regulations for the Subdivision of Land, as well as the Flexible Development requirements contained herein and all other requirements in the Special Permit Rules for Flexible Development. The Planning Board shall give notice, hold a public hearing and file its decision regarding a Flexible Development Application, in accordance with the procedures governing special permits contained in Sections 9, 11 and 15 of M.G.L. c.40A, the Zoning Act.

5. Dimensional Requirements.

A Special Permit for Flexible Development may authorize the creation and use of lots meeting the following dimensional requirements in lieu of the conventional dimensional requirements contained in Section VI.B.2. and VI.B.3.

- a. Lot Area. Each lot shall be at least of a size capable of supporting the construction of a single-family dwelling and its accessory structures in accordance with all applicable state and local regulatory requirements and the purposes of Flexible Development.
- b. Frontage. The frontage of each lot for a building site created in a Flexible Development shall be that necessary, in the opinion of the Planning Board, to provide for adequate access to the lot. Where shared driveways or other circumstances provide adequate access to an individual lot, frontage may not be required.
- c. Setbacks. All structures shall be set back a minimum of twenty (20) feet from all lot lines, provided, however, that with respect to lot lines which abut an existing street or which otherwise abut land outside the Flexible Development, setbacks from said lot lines shall conform to the Section VI.B.2. setback requirements applicable to conventional development in the underlying zoning district.
- d. Building Height. The height of all buildings or other structures within a Flexible Development shall conform to the requirements of Section VI.E.

6. Other Requirements.

- a. **Buildable Lot.** Buildable lot shall be defined for purposes of determining the density of a Flexible Development as an area of contiguous land, having sufficient area and dimensions to meet the applicable requirements of this Zoning By-Law for use as the site of one single family detached dwelling, and conforming to all relevant state and local laws and regulations.
- b. **Developed Areas.** The boundaries of the area(s) within each lot that will contain all principal and accessory structures shall be shown on the plan and designated as the "Developed Areas." The areas so designated shall be of a size and location to satisfy the stated purposes and standards set forth herein.
- c. **Single Dwelling.** Not more than one single family dwelling and its accessory structures and uses may be located on a lot created under Flexible Development pursuant to Section VI.F.2.
- d. **Density.** The maximum number of lots for building sites in a Flexible Development shall not exceed the number of buildable lots which could be created through conventional development of the site. The allowable maximum density shall be based upon the maximum number of buildable lots which may be created through conventional development of the land without substantial waivers from the Planning Board's Rules and Regulations for the Subdivision of Land and in conformance with the conventional dimensional requirements for the underlying zoning district. The Planning Board shall make the final determination of density, provided, however, that for the limited purpose of showing conformance with said conventional dimensional requirements, the applicable minimum frontage and lot width requirements shall be 200 ft. in the Single family Residence District A, 150 ft in the Single Family Residence District B, 125 ft. in the Single Family Residence District C, and 100 ft. in the Single Family Residence District D.
- e. **Restrictions Against Further Development.** No Flexible Development for which a Special Permit has been issued under this Section may be further subdivided. A notation to that effect shall be made on the Lotting Plan as defined in the Planning Board Rules and Regulations to be endorsed by the Planning Board and recorded in the Registry of Deeds or the Land Court.

In addition, a perpetual restriction, running with the land, and enforceable by the Town of Weston, shall be recorded with respect to the land within the Flexible Development. Such restriction shall provide that no lot in the Flexible Development may be further subdivided into additional building lots. Said restriction shall be in such form and substance as the Planning Board shall prescribe and may contain such additional restrictions on development and use of the lots as the Planning Board may deem appropriate.

7. Allowed Uses.

The land in a Flexible Development may be used for any use otherwise allowable in the Single Family Residence District in which it is located, pursuant to the provisions of Section V. Use Regulations.

8. Standards.

In reviewing an Application for a Special Permit for Flexible Development, the Planning Board shall consider the extent to which the Application meets the purposes of Flexible Development by satisfying the following standards:

- a. The laying out of Developed Areas, roads, storm drains, sewage disposal systems, and utilities shall be in conformance with the natural features of the parcel, minimizing changes to the topography and maximizing the amount of preserved wooded areas and other open space.
- b. The amount of land to be disturbed for the construction of buildings, driveways, septic systems, utilities, storm drainage systems and roads shall be minimized.
- c. Important natural and historic features of the land, as determined by the Planning Board, shall be protected.
- d. The Flexible Development shall be in keeping with and enhance the overall semi-rural appearance of Weston by:
 - (i) preserving views from existing roads;
 - (ii) avoiding undue adverse impacts on neighborhoods;
 - (iii) conserving natural and historic resources, including but not limited to those linked to off-site protected resource areas.
- e. The impacts of road and utility installations for each dwelling unit served shall be less than those generated by a conventional development of the same land.
- f. The design, number and location of curb cuts shall be such that any conflict with existing traffic flow is minimized, and the semi-rural appearance of existing streets is maintained or enhanced.
- g. Provision, satisfactory to the Planning Board, shall be made with regard to the ownership and maintenance of any and all private roads, common driveways, common land, or other common facilities within the Flexible Development.
- h. The design shall minimize the size of Developed Areas.

The Planning Board shall not grant a Special Permit for Flexible Development unless the Application is consistent with the above standards and conforms to the dimensional and use requirements for Flexible Development set forth herein and in the Planning Board Special Permit Rules for Flexible Development.

According to survey received from Weston on 3/22/05, the first provision for flexible zoning was adopted in 1994.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board H. FLEXIBLE DEVELOPMENT REQUIREMENTS AND PROCEDURES
1. Applicability. An owner or owners of land in a Single Family Residence District may apply to the Planning Board for a Special Permit for Flexible Development under this Section VI.H.

Has any housing been built under the cluster/flexible provisions?

Yes Survey received from Weston on 3/22/05:

Has any housing been built under the cluster/flexible provisions? (none, 1-8 projects, more than 8)

"> 8"

Westwood

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes 8.3 FLEXIBLE DEVELOPMENT
8.3.1 Purpose. The purpose of this Section is as follows:
8.3.1.1 to encourage the preservation of open space and promote the more efficient use of land in harmony with its natural features;
8.3.1.2 to preserve and protect historical and archeological resources and the natural environment, including varied landscapes and water resources;
8.3.1.3 to promote more sensitive siting of buildings and better overall site planning;
8.3.1.4 to facilitate the construction and maintenance of streets, utilities and public services in a more economical and efficient manner;
8.3.1.5 to offer an alternative to standard subdivision development; and
8.3.1.6 to protect and promote the health, safety, convenience and general welfare of the inhabitants of the Town.
8.3.2 Applicability. A Flexible Development may be authorized by special permit by the Board of Appeals for any parcel or set of contiguous parcels held in common or separate ownership containing ten (10) acres or more and located in a Single Residence E or Single Residence C District. If the application for a Flexible Development involves more than one ownership, each owner of land included on the plan shall be a party to the application and upon approval of the application, subject to its provisions.
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8.3.3 Special Permit Required. A Flexible Development shall require the issuance of a special permit by the Board of Appeals in compliance with the provisions of this Section. Consistent with the general purposes of the Zoning Bylaw and the specific purposes of this Section, said special permit may authorize exceptions from the requirements of this Bylaw.
8.3.4 Procedures. An application for Flexible Development shall be filed in accordance with the rules and regulations of the Board of Appeals and shall be accompanied by seven (7) copies of a plan substantially in the form which the Applicant proposes to submit to the Planning Board (if the special permit is granted) as a Definitive Plan pursuant to the

Subdivision Control Law.

8.3.5 Submission of Preliminary Plan to Planning Board. Prior to the submission of an application for a Flexible Development special permit, the Applicant shall have submitted to the Planning Board for approval under the Subdivision Control Law a preliminary subdivision plan of the parcel of land which is the subject matter of such application.

8.3.5.1 The preliminary plan and any plan for which a special permit is granted hereunder shall show which lots are to remain Open Land (as hereinafter defined) and a building envelope for each building lot.

8.3.5.2 The preliminary plan shall contain, or be accompanied by, or the Applicant shall furnish at the Planning Board's request, such studies, data and additional plans as shall be sufficient to enable the Planning Board to make a determination as to the number of lots which could be created on said parcel, without a special permit hereunder, giving due consideration to the factors referred to herein.

8.3.5.3 No application for a special permit shall be submitted to the Board of Appeals until the Planning Board shall have acted upon the preliminary plan required herein or until the period provided for in the Subdivision Control Law for such action by the Planning Board shall have expired.

8.3.6 Referral of Application to Planning Board. Within ten (10) days after receipt of a Flexible Development special permit application, the Board of Appeals shall forward a complete copy thereof to the Planning Board which may conduct such investigation as it deems to be appropriate, and on the basis of such investigation, and also on the basis of such information as shall have been brought to its attention during consideration of the preliminary plan, the Planning Board shall submit a written report to the Board of Appeals setting forth its findings as to the conditions required and also setting forth its recommendations with respect to said application. The Board of Appeals shall not take final action on such application until it has received a report thereon from the Planning Board, or until the Planning Board has allowed thirty-five (35) days to elapse after receipt of such application without submission of a report. The Board of Appeals shall give due consideration in its written decision to the report of the Planning Board.

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8.3.7 Number of Building Lots. The number of building lots provided for on a plan for which a special permit is granted hereunder shall not exceed the number of lots which could be created on said parcel without such a special permit. There shall be excluded from the number of lots which could be created without a special permit within the meaning of the foregoing sentence all lots which the Planning Board finds are not buildable, whether by reason of excessive development and site preparation costs, sanitary disposal, drainage or water supply problems, or a combination of the foregoing. In considering the foregoing, the Planning Board may rely upon findings and recommendations of the Board of Health, Sewer Commission and Conservation Commission.

8.3.8 Determination of Building Lots. In determining the number of lots which could be built upon on a particular parcel without a special permit hereunder, the Planning Board and the Board of Appeals shall give due consideration to all pertinent studies, plans and other data submitted by the Applicant, or obtained through the Planning Board's investigation thereof, and to the character and suitability of such land for residential construction and sanitary disposal, and to applicable rules and regulations of the Planning Board and the Board of Health and other applicable statutes, regulations and laws.

8.3.9 Lot Requirements. The building lots shown on a plan for which a special permit is granted hereunder shall meet the following requirements:

8.3.9.1 Each such lot lying in a Single Residence E District shall contain a minimum of thirty thousand (30,000) square feet, and each such lot lying in a Single Residence C District shall contain a minimum of twenty thousand (20,000) square feet.

8.3.9.2 The average area of all such lots lying in a Single Residence E District shall be at least thirty-five thousand (35,000) square feet, and the average area of all such lots lying in a Single Residence C District shall be at least twenty-five thousand (25,000) square feet.

8.3.9.3 If the land shown on the plan includes land located in two or more Residential Districts the land shall be considered as lying entirely within the district having the largest area and frontage requirements, provided, however, that if eighty percent (80%) or more of the total area shown as building lots lies within one Residential District, all of the land shall be considered as lying within that district.

8.3.9.4 Each such lot shall have a width of not less than one hundred twenty-five (125) feet.

8.3.9.5 Each lot shall have a frontage of not less than forty (40) feet on any street line.

8.3.9.6 Each building lot shall contain a building envelope which is in harmony with the general intent of the Bylaw.

8.3.9.7 Each building lot shall contain a site which, subject to approval of the Board of Health, may be suitable for a septic disposal system, or which has adequate provision for public sewer.

8.3.10 Open Land Requirements. There shall be included as Open Land in a plan for which a special permit is granted an area or areas having an aggregate size equal to or greater than the total area by which lots shown on said plan have been reduced to less than the minimum lot size otherwise required by this Bylaw.

8.3.11 Additional Open Land Requirements in Single Residence E District. In addition to the requirements set forth in Section 8.3.10, in a Single Residence E District, such Open Land shall include an area at least equal to the aggregate of one-half ($\frac{1}{2}$) of the excess over eighty thousand (80,000) square feet of each lot which is greater in area than eighty thousand (80,000) square feet but less than one hundred twenty thousand (120,000) square feet plus all of the excess over eighty thousand (80,000) square feet of each lot which is one hundred twenty thousand (120,000) square feet or greater in area.

8.3.12 Additional Open Land Requirements in Single Residence C District. In addition to the requirements set forth in Section 8.3.10, in a Single Residence C District, such Open Land shall include an area at least equal to the aggregate of one-half ($\frac{1}{2}$) of the excess over forty thousand (40,000) square feet of each lot which is greater in area than forty thousand (40,000) square feet but less than eighty thousand (80,000) square feet plus all of the excess over forty thousand (40,000) square feet of each lot which is eighty thousand (80,000) square feet or greater in area.

8.3.13 Open Land Restrictions. Provision shall be made by agreement, duly executed in form suitable for recording by the owner of such Open Land that in the event that a special permit is granted such Open Land shall:

8.3.13.1 Be owned either (a) by the Town for park or open space use; or (b) by a non-profit organization the principle purpose of which is the conservation of open space, which organization the Planning Board finds to be a suitable entity to carry out the purposes of this Section; or (c) by a corporation or trust owned or to be owned by the owners of the building lots as provided by M.G.L. Chapter 40A, Section 9. The manner of ownership of such Open Land (or of various parcels thereof) shall be determined by the Applicant after consultation with the Planning Board.

8.3.13.2 Be subject to restrictions unlimited as to time that such Open Land shall be used only for (a) conservancy in its natural state; (b) grazing and agriculture; (c) walking; (d) horseback riding and/or bicycle riding; (e) playing fields and courts; (f) swimming pools and other recreational facilities and structures; or (g) any combination of the foregoing. The type of restrictions on such Open Land (or on various parcels thereof) shall be determined by the Planning Board after consultation with the Applicant.

8.3.13.3 At least eighty percent (80%) of the Open Land shall be retained in its natural state.

8.3.13.4 Playing fields and courts and swimming pools and other recreational facilities and structures shall be confined to that portion of the Open Land not required to be retained in its natural state.

8.3.14 Enforcement of Open Land Restrictions. Such restrictions shall be for the benefit of and enforceable by the Town, and if the Applicant so requests, shall also be enforceable by the Applicant and/or by the owners of the building lots shown on such plan. The Applicant may specify that such restrictions be established for the benefit of the Town by a trust enforceable by the Board of Selectmen, Planning Board and/or Conservation Commission.

8.3.15 Discretionary Conditions. The Board of Appeals may recommend and may impose as conditions of a special permit hereunder such provisions as to parking, road construction, sidewalks, location of Open Land (as herein defined), lot configuration, relationship of dwelling units to one another, recreational facilities, screening and care and maintenance of the Open Land as may be deemed advisable for the protection and well-being of the occupants of the dwelling units and the residents of the Town.

8.3.16 Required Conditions. No special permit shall be granted hereunder unless the following conditions are met:

8.3.16.1 The Applicant shall have submitted a restrictive agreement as provided herein.

8.3.16.2 The proposed ownership of and restrictions to be applied to the Open Land as set forth in the restrictive agreement provided for herein shall be in harmony with the general intent of the Bylaw and appropriate to the particular development.

8.3.17 Further Restrictions. The Board of Appeals may, in appropriate cases, impose further restrictions upon the parcel, or parts thereof, as a condition to the grant of the special

permit.

8.3.18 Recording of Restrictive Agreement. No building or structure shall be erected pursuant to a special permit granted until and unless the restrictive agreement provided for herein shall have been duly recorded. The restrictive agreement shall be in such form and contain such facts and provisions that, so far as possible under then existing law, the restrictions will not terminate by operation of law.

8.4 FIFTY PERCENT DENSITY BONUS

8.4.1 Provision for and Conditions of Special Permit. If a special permit shall have been granted under Section 8.3, Flexible Development, the Board of Appeals may grant, in lieu of any other special permit providing for a density bonus under this Bylaw and Page 8-6

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notwithstanding the other provisions of Section 8.3 limiting the number of building lots in a Flexible Development, a special permit authorizing an increase in density so that the maximum number of building lots permitted within such Flexible Development is equal to one hundred fifty percent (150%) of the number of building lots that could be created therein without a special permit thereunder, provided that the following conditions are satisfied. For purposes of this Section, fractions of one-half ($\frac{1}{2}$) or greater shall be rounded to the next higher whole number, and fractions of less than one-half ($\frac{1}{2}$) shall be rounded to the next lower whole number.

8.4.1.1 At least twenty percent (20%) of the total land area of the Flexible Development, of a configuration and at a location approved by the Board of Appeals, shall consist of Open Land that conforms with the requirements of Section 8.3, Flexible Development.

8.4.1.2 The configuration of the Open Land shall be such as to preserve, to the maximum extent reasonably practicable, the visual beauty of the land within the Flexible Development as seen from streets and ways bordering upon the Flexible Development or located nearby. To the extent reasonably practicable and consistent with this objective, the number of noncontiguous pieces of land comprising the Open Land shall be kept to a minimum, and the roads and ways in a Flexible Development shall not be located within the Open Land.

8.4.1.3 There shall be conveyed to the Town at least fifty percent (50%) of the number of building lots within the Flexible Development in excess of the number of building lots that could be created therein without a special permit.

8.4.2 Land Conveyed to Town for Affordable Housing. Land conveyed to the Town pursuant to Section 8.4.1.3 shall be used or made available for use for the purpose of providing, through public and/or private development, low or moderate income housing within the meaning of M.G.L. Chapter 40B, as may be amended from time to time. Such land shall be in the care, custody, management and control of the Board of Selectmen. To the extent permitted by applicable law, such land or any part thereof or interest therein may be held, leased, conveyed or otherwise dealt with or disposed of in any manner which the Board of Selectmen shall determine to be in furtherance of the objectives hereof. The rate at which and the manner in which such land shall be developed or made available for development, and the type and configuration of each building or group of buildings constructed on such land, shall rest solely in the discretion of the Board of Selectmen, but in the exercise of its discretion the Board of Selectmen shall give due consideration to the recommendations of the Planning Board and any housing authority that may be established in the Town.

8.4.3 Development Restrictions. Notwithstanding anything to the contrary contained in this Zoning Bylaw, the following shall apply to such land:

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8.4.3.1 housing accommodations on any lot may consist of one or more detached buildings containing not more than four (4) dwelling units per building;

8.4.3.2 any lot or combination of lots may be developed to a density not exceeding eight (8) dwelling units per acre in the aggregate;

8.4.3.3 the minimum distance between buildings on any lot or combination of lots shall be twenty (20) feet;

8.4.3.4 the minimum distance between any building and any lot line of a lot not so conveyed to the Town shall be twenty (20) feet; except as aforesaid there shall be no minimum distance between any building and any lot line of a lot so conveyed to the Town;

8.4.3.5 the maximum building height shall be thirty-five (35) feet;

8.4.3.6 a maximum of thirty-five percent (35%) of any lot or combination of lots may in the aggregate be covered by the aggregate of the building, roads and parking areas thereon; and the aggregate minimum number of offstreet parking spaces on any lot or combination of lots shall be two (2) for each dwelling unit.

8.4.4 Board of Health Approval. No construction shall be commenced on any building site on such land until the Board of Health shall have determined that such site is suitable for a septic disposal system or until adequate provision shall have been made for public sewer.

8.4.5 Coordination with Section 8.3, Flexible Development. If an Applicant is applying for a special permit pursuant to Section 8.3, Flexible Development and also a special permit pursuant to this Section, the plan shall identify the lots proposed to be conveyed to the Town pursuant to this Section.

8.5 MAJOR RESIDENTIAL DEVELOPMENT (MRD)

8.5.1 Purpose. The purpose of this Section is to allow greater flexibility and creativity in residential development and to assure a public voice and public authority in consideration of development in order to gain:

8.5.1.1 location of development on sites best suited for building, and protection of land not suited for development, reflecting such considerations as:

permanent preservation of open space for conservation or recreational use, especially in large contiguous areas within the site linked to off-site protected areas;

protection of water bodies, streams, wetlands, wildlife habitats and other conservation resources;

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protection of the character of the community through preserving open space within view from public roadways, preservation of stone walls and other historic landscape features, preservation of scenic vistas and through siting of dwellings at low-visibility locations;

protection of street appearance and capacity by avoiding development close to or having egress directly onto such streets;

8.5.1.2 efficient patterns for construction and maintenance of public facilities and services such as streets and utilities;

8.5.1.3 continuation of the community's social and economic diversity;

8.5.1.4 privacy for residents of individual lots; and

8.5.1.5 avoidance of unnecessary development cost.

8.5.2 Definition. Major Residential Development shall mean the division or subdivision for residential purposes of any parcel of land or a set of contiguous parcels of land which were in common ownership as of July 1, 1998, which would cumulatively result in one or more of the following, unless each resulting lot has lot area, lot frontage and lot width at least fifty (50) percent greater than that required by Section 5.2, Table of Dimensional Requirements:

8.5.2.1 Development of four (4) or more dwelling units on a single lot, except as may otherwise be provided herein;

8.5.2.2 An increase by ten (10) or more lots (excluding any restricted from residential use) above the number existing there two (2) years earlier;

8.5.2.3 Creation of four (4) or more lots with individual driveway egress onto a street existing at the time of lot creation unless, through lot configurations or restrictions to be recorded on the plan creating the lots, no lot has a driveway location within six hundred (600) feet of the driveway location of another lot being created in the same division or subdivision of land;

8.5.2.4 Creation of four (4) or more lots unless, through lot locations or restrictions to be recorded on the plan creating the lots, no more than three (3) of the lots contain a potential site for construction of a dwelling any part of which would be less than two hundred (200) feet from a street existing at the time of the creation of such lot.

8.5.3 Special Permit Required. A Major Residential Development shall require the issuance of a special permit by the Planning Board in compliance with the provisions of this Section.

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8.5.4 Mandatory Applicability. A MRD may be authorized by special permit by the Planning Board for any parcel or set of parcels held in common or separate ownership that are defined as a MRD pursuant to Section 8.5.2. If the mandatory application for a MRD involves more than one ownership, each owner of land included on the plan shall be a party to the application and upon approval of the application, subject to its provisions.

8.5.5 Optional Applicability. The owner of any parcel or set of parcels held in common or separate ownership that total five (5) acres or more and are not defined as a MRD pursuant to Section 8.5.2, may choose to submit them for regulation as if being a MRD. If the optional application for a MRD involves more than one ownership, each owner of land included on the plan shall be a party to the application and upon approval of the application, subject to its provisions.

8.5.6 Noncontiguous Parcels. A single MRD plan may include non-contiguous parcels, whether or not in the same ownership.

8.5.7 Procedures. An application for a MRD shall be filed in accordance with the rules and regulations of the Planning Board, except for any submittal items which the Planning Board may have waived in writing prior to application submittal, based on its determination that the waived information would not be germane to the decision, or would be unjustified in light of the scale, location or other attributes of the project.

8.5.8 Submittals. An Applicant for a MRD special permit shall file with the Planning Board both of the following plans. The information that is required to be shown on the plans shall be in accordance with the rules and regulations of the Planning Board.

8.5.8.1 Conventional Plan. A conventional plan in full conformance with all zoning and subdivision regulations and to the extent possible at the time of application, health regulations, wetlands regulations and other applicable federal, state and local requirements. This Conventional Plan shall be prepared in conformance with the requirements for a preliminary subdivision plan as set forth in the Planning Board's Subdivision Rules and Regulations; provided, however, that in simple cases, such requirements may be waived by the Planning Board

8.5.8.2 Alternative Plan. An alternative plan that differs substantially from the aforementioned Conventional Plan. Examples of plans that would be 'substantially different' from a Conventional Plan includes the use of the alternative dimensional regulations set forth herein, or a plan of the same type but having major differences in the number of lots created, road pattern or open space configuration.

8.5.9 Additional Submittals. The Planning Board may require additional information necessary to make the determinations and assessments cited herein.

8.5.10 Referral of Application to Other Boards. Within ten (10) days after receipt of a MRD special permit application, the Planning Board shall forward a complete copy thereof to

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the Board of Health and Conservation Commission which may conduct such investigation as they deem to be appropriate. The Board of Health and Conservation Commission shall submit written reports to the Planning Board setting forth their findings as to the conditions required and also setting forth their recommendations with respect to said application. The Planning Board shall not take final action on such application until it has received reports thereon from the Board of Health and Conservation Commission, or until these Boards have allowed thirty-five (35) days to elapse after receipt of such application without submission of a report.

8.5.11 Maximum Number of Dwelling Units. The maximum number of dwelling units allowed within a MRD shall equal the maximum number of buildable lots that could reasonably be expected to be created through conventional development of the land without bonuses pursuant to this Section or substantial waivers or variances from applicable regulations. This determination shall be made by the Planning Board, which shall take into consideration any graphic or analytic materials provided by the Applicant.

8.5.12 Calculation Requirements. Where a MRD includes more than one ownership, lies in more than one zoning district, or includes two or more noncontiguous areas, the maximum number of dwelling units allowed shall be determined for each zoning district, ownership and non-contiguous area and summed to give an overall allowable total maximum number of dwelling units. The dwelling units may be located on the plan without respect to allowable subtotals by district, ownership, or non-contiguous areas, except that the portion of any development within a Water Resource Protection Overlay District shall meet the requirements of that district.

8.5.13 Incentive Units. The Planning Board may approve a MRD containing more than the maximum number of dwelling units based upon the following. The percentage increase over the maximum number of dwelling units allowed shall be equal to the total of the incentives earned under Section 8.5.13.1 and Section 8.5.13.2. An Applicant seeking any of these incentives shall submit calculations and any other documentation necessary to demonstrate qualification for the incentive. In no event shall the Planning Board allow an increase to the extent that the nonwetland lot area in the entire development is reduced below the following:

SRC District: 27,000 square feet per dwelling unit;

SRE District: 45,000 square feet per dwelling unit;

WRPOD: 40,000 square feet per dwelling unit;

Other locations: 10,000 square feet per dwelling unit.

8.5.13.1 Objective: Encourage diversity of dwelling type

Incentive equals 0.5 times the percentage of all dwelling units legally reserved for persons over the age of fifty-five (55).

8.5.13.2 Objective: Facilitate economic diversity

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Incentive equals 1.5 times the percentage of all dwelling units legally reserved as Affordable Housing and 1.0 times the percentage of all

dwelling units legally reserved as Moderate Income Housing, if complying with special permit stipulations regarding permanence of affordability, resident selection, timing of provision of affordable and moderate income units and location of affordable and moderate income units within the MRD.

8.5.14 Alternative Dimensional Regulations. The following alternative dimensional regulations may be used for individual lots (but not for determining the maximum number of dwelling units), rather than the dimensional regulations as provided in Section 5.2, Table of Dimensional Requirements:

8.5.14.1 Lot Area. Minimum lot area shall be that necessary to meet requirements for setbacks and for Board of Health requirements, and to assure that lot area exclusive of wetlands will equal at least five (5) times the habitable floor area of any dwelling subsequently erected thereon. The maximum allowable floor area of each lot shall be annotated on the plan for recording the lots.

8.5.14.2 Frontage and Lot Width. The lot frontage and lot width shall be that necessary to meet requirements for yards and setbacks and to provide for adequate access to the building site. Where shared driveways or other circumstances render frontage on a street to be of no importance none shall be required.

8.5.14.3 Existing Street Protection. Lots having frontage on a street other than one created by a MRD may not have less lot area or lot frontage than conventionally required in that zoning district.

8.5.15 Building Envelope. Proposed principal and accessory buildings and structures shall be located within a designated building envelope, but are not otherwise subject to yard or setback requirements. The building envelope shall not exceed forty percent (40%) of lot area or twenty thousand (20,000) square feet, whichever is larger, and shall be located consistent with the following:

8.5.15.1 It shall include no land within any setback required by Section 5.2, Table of Dimensional Requirements at any boundary line at the perimeter of a MRD, including the existing street line.

8.5.15.2 It shall include no land within any wetland, floodplain or slope in excess of twenty-five percent (25%).

8.5.15.3 Where possible, it shall avoid areas of critical environmental importance, such as habitats of species listed as endangered, threatened or of special concern by the Massachusetts Natural Heritage Program.

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8.5.15.4 Where possible, it shall avoid damage to areas of visual importance, such as ridge lines, open fields or dense vegetation buffering development from existing roadways.

8.5.16 Other Requirements.

8.5.16.1 Improvements. Access, drainage, utilities and grading shall meet functional standards equivalent to those established in the Planning Board's Subdivision Rules and Regulations. Prior to issuance of building permits within a MRD, the Planning Board shall certify to the Building Inspector that a detailed site plan has been submitted and meets those standards, and before occupancy permits for any structure are issued, the Planning Board shall certify to the Building Inspector that improvements to meet such standards have either been completed to serve such structure, or security for their completion has been received.

8.5.16.2 Common Open Land. Any proposed common open land within a MRD shall be conveyed to either (a) the Town for park or open space use; or (b) to a non-profit organization the principle purpose of which is the conservation of open space, which organization the Planning Board finds to be a suitable entity to carry out the purposes of this Section; or (c) to a corporation or trust owned or to be owned by the owners of lots or residential units within a MRD, as provided by M.G.L. Chapter 40A, Section 9. In any case where such land is not conveyed to the Town, a restriction enforceable by the Town shall be recorded providing that such land shall be kept in an open or natural state and not be built upon or developed for accessory uses such as parking or roadways. Building coverage shall not exceed five percent (5%) in such conservation or recreation areas.

8.5.17 Decision. The Planning Board may approve or approve with conditions a special permit for a MRD, whichever plan, the Conventional Plan or Alternative Plan, best promotes the objectives of the following, in addition to any specific factors that may be set forth in the Bylaw:

8.5.17.1 Section 1.0, Purpose and Authority;

8.5.17.2 Section 8.5.1, Major Residential Development purpose;

8.5.17.3 Section 7.3.7, Environmental Impact and Design Standards, so far as applicable.

8.5.18 Relationship to Subdivision Plan. Planning Board approval of a MRD special permit shall neither oblige the Planning Board to approve any related definitive subdivision plan nor substitute for such approval. The Applicant is encouraged to submit a MRD special permit application concurrently with a preliminary subdivision plan application. The combined special permit and preliminary subdivision plan applications shall conform to Page 8-13

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all requirements of this Section and the preliminary subdivision plan requirements of the Planning Board's Subdivision Rules and Regulations. Following the grant of a MRD special permit and approval of a preliminary subdivision plan, the Applicant shall submit a definitive subdivision plan consistent with the Subdivision Rules and Regulations.

8.5.19 Long-Term Compliance. Subsequent to approval of a MRD special permit, no land therein shall be sold and no lot line or structure altered from that shown on the approved plan so as to increase the extent of nonconformity with the standard dimensional regulations of this Bylaw. Prior to sale of any lot within a MRD, or issuance of a building permit for construction therein, such lots shall be shown on a plan recorded in the Registry of Deeds or registered with the Land Court, which plan shall make reference to the recorded land agreements. Unless the Planning Board has specifically approved staged development, such plan shall show all lots to be included in a MRD.

8.5.20 Reimbursement for Consultants. It is contemplated that in some cases it will be necessary for the Planning Board to hire consultants in connection with the review and evaluation of applications for special permits under this Section. The Planning Board will be reimbursed by the Applicant for the reasonable fees and expenses of such consultants, and each application for a special permit hereunder shall contain an agreement by the Applicant to that effect

8.6 SENIOR RESIDENTIAL DEVELOPMENT (SRD)

[...]

Which entity is the special permit granting authority for cluster/flexible zoning?

Board of Appeals 8.3.2 Applicability. A Flexible Development may be authorized by special permit by the Board of Appeals for any parcel or set of contiguous parcels held in common or separate ownership containing ten (10) acres or more and located in a Single Residence E or Single Residence C District.

Has any housing been built under the cluster/flexible provisions?

Yes According to Diane Beecham, Town Planner, cluster development is not used very often. The last time it was used was in the 1980s and it was only used twice.

Currently, according to Beecham, Westwood uses the major residential development district (MRDD), which applies when 4 or more lots are being built. The MRDD allows density for senior housing and empty nesters.

Weymouth

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes According to the Weymouth Zoning Ordinance (adopted 1969), the City of Weymouth allows Planned Unit Development by special permit. The special permit granting authority is the Planning Board. Planned Unit Development is allowed by special permit in the following districts:

Resident District R-1
Resident District R-3

Resident District R-4

From ordinance.com, in the definitions section:

PLANNED UNIT DEVELOPMENT : A form of development which is usually characterized by a unified site design for a number of homing units. clustering of buildings, providing for common open space and a mix of building types and land uses. [Added June 1978 STM by Art. 2, approved 11-2-78]

~ 120-63. Planned unit developments. [Added June 1978 STM by Art. 2, approved 11-2-1978; amended May 1995 ATM by Art. 74, approved 7-1-1995]

If a special permit is sought pursuant to ~ 120-13, 120-18 and 120-22, the following minimum regulations shall be required.

A. In addition to the requirements of Article XXV, the Planning Board will have to make a finding that the planned unit development plan is superior to a conventional plan for that zoning district in minimizing the environmental impacts, providing for protection of natural resources and allowing for more efficient provision of services and use of the land.

B. Minimum land area shall be 25 acres in the R-1 Zone and five acres in the R-3 and R-4 Zones.

C. The use of the land shall be a mixture of residential with open space and recreational uses and may include uses customarily accessory thereto.

D. In a R-1 District, within a PUD, no structure shall be erected, altered or moved, except in conformity with Table 1, Schedule of District Regulations, as applicable to the R-1 District, with the following exceptions:

(1) The special permit granting authority shall approve all lot area, lot width and lot setback dimensions.

(2) All lots within a PUD shall conform to ~ 120-53.1, 120-54 and 120-56.

(3) A twenty-foot setback for all buildings, parking and loading shall be provided around the outside perimeter of a PUD.

E. In R-3 and R-4 Districts, within a PUD, no structure shall be erected, altered or moved, except in conformity with Table 1, Schedule of District Regulations, as applicable to the R-1 District, with the following exceptions:

(1) The special permit granting authority shall approve all lot area, lot width and lot setback dimensions.

(2) All lots within a PUD shall conform to ~ 120-53.1, 120-54, 120-56 and 120-57.

(3) A twenty-foot setback for all buildings, parking and loading shall be provided around the outside perimeter of a PUD.

F. The number of dwelling units shall not exceed the number of dwelling units permitted under the zoning classification of the tract if the tract were developed pursuant to the Zoning Bylaw, the Subdivision Control Law, Massachusetts General Laws Chapter 131, Weymouth Code Chapter 119 and other applicable laws and regulations.

G. More than one building for residential purposes may be permitted on a lot in a PUD.

H. More than one dwelling unit may be permitted in a building in a PUD.

ARTICLE XII Open Space District

Section 120-37.1. Reuse of surplus public and quasi-public property . [Added November 1981 STM by Art.12, approved 3-3-1982]

A. Intent. The special permit use process allows for the reuse of surplus public and quasi-public properties. It is intended to allow for innovative designs that will permit a practical reuse of these properties as well as result in a balanced development of high standards. It is farther intended to provide safeguards that will prevent detrimental effects and impacts on the neighboring properties, especially on abutting residential districts. The following uses, uses customarily accessory thereto, dimensional requirements, signs and parking may be granted as a special permit by the Planning Board subject to the conditions and requirements of Article XXV in so far as they comply with the intent expressed herein.

B. Uses.

(1) A building or group of buildings for occupancy by two or more families in separate dwelling units and any accessory uses and structures customarily associated herewith, including swimming pools, recreation facilities, garages and the like.(12)

(2) Clinic or office of business, professional or financial organizations.

(3) Trade, professional or other school conducted as a gainful business.

(4) Retail sales and services such as convenience grocery stores, newsstands, barbers, hairdressers, drugstores and like facilities

primarily for the use of on-site residents, tenants or patrons, provided that retail uses and services do not constitute more than 25% of the floor area of the building.

(5) Light assembly or packaging of components or merchandise associated with office uses. [Added October 1985 STM by Art. 21, approved 1-27-1986]

C. Dimensional requirements.

(1) A minimum lot size: 20,000 square feet for newly constructed lots.

(2) A minimum lot area (square feet per dwelling unit): all buildings for multiple-family residential use based on a floor area ratio of 0.25. See Section 120-6.

(3) Front yard depth: minimum of 20 feet for buildings and five feet of landscaped space for paved areas excluding entrance drives.

(4) Side and rear yards depth: minimum of 25 feet for buildings and five feet of landscaped space for paved areas.

(5) Lot coverage: maximum of 80% of lot area for buildings and paved areas (parking, drives and loading areas).

(6) Height: maximum of 35 feet for new construction.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board ~ 120-63. Planned unit developments. [Added June 1978 STM by Art. 2, approved 11-2-1978; amended May 1995 ATM by Art. 74, approved 7-1-1995]
If a special permit is sought pursuant to ~ 120-13, 120-18 and 120-22, the following minimum regulations shall be required.
A. In addition to the requirements of Article XXV, the Planning Board will have to make a finding that the planned unit development plan is superior to a conventional plan for that zoning district in minimizing the environmental impacts, providing for protection of natural resources and allowing for more efficient provision of services and use of the land.

Has any housing been built under the cluster/flexible provisions?

Whitman

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

No The Whitman Zoning Bylaws provide a definition of "PLANNED CLUSTER DEVELOPMENT", but it is not listed as allowed on the use table.

Town of Whitman Zoning Bylaw

SECTION V Use Regulations
5-4 Table of Use Regulations

SECTION II Definitions
PLANNED CLUSTER DEVELOPMENT : An area of land, designed and developed as a unit, with common open spaces as an integral characteristic which departs from the zoning regulations conventionally required in the district concerning lot size and dimensional requirements.

Which entity is the special permit granting authority for cluster/flexible zoning?

Has any housing been built under the cluster/flexible provisions?

Wilmington

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Wilmington has Planned Residential Development (PRD) and Conservation Subdivision Design by special permit.

From ordinance.com:

SECTION 7. PLANNED RESIDENTIAL DEVELOPMENT DISTRICT 7.1 Purpose

The Planned Residential Development (PRD) District allows by special permit from the Planning Board a pattern of land development intended: to encourage the preservation of significant land and water resources; to encourage more environmentally sensitive and cost effective/energy-efficient residential land uses; and to enable the community to require adherence to a comprehensive set of development plans in the rezoning of land and in the granting of a special permit.

7.2 Planned Residential Development Standards

7.2.1 Permitted Uses - Single family detached and attached dwelling units and accessory uses related thereto.

7.2.2 Minimum Tract Size - Planned Residential Developments shall be located upon a tract of land which has an area of not less than 8 acres.

7.2.3 Number of Units - The maximum number of dwelling units permitted within any Planned Residential Development shall not exceed three units per acre exclusive of land situated in the Flood Plain District and exclusive of wetlands as defined in G.L. Ch. 131, Section 40, "The Wetlands Protection Act".

7.2.4 Dimensional Regulations

7.2.4.1 Lot Area, Frontage, Width and Yard Requirements - There shall be no minimum lot area, frontage, lot width or yard requirements within a Planned Residential Development. However, no building or parking or other paved area shall be located within 50 feet of a public way or boundary line of the Planned Residential Development. Such area except for road, walkway or utility crossings shall provide a continuous landscaped buffer.

7.2.4.2 Other Regulations - To minimize departure from existing patterns of residential development, there shall be (1) no more than six attached dwelling units and no more than six parking spaces in any single structure; (2) the overall length of any residential structure including attached garages shall not exceed 150 feet; (3) no more than one unit shall be served by each building entrance; and (4) the maximum height of any structure shall not exceed two and one-half stories or 35 feet.

7.2.5 Streets and Utilities - All streets, sewers, drainage facilities and utilities shall be designed and constructed in compliance with the Town of Wilmington Subdivision Rules and Regulations. Special exceptions to the subdivision standards may be authorized by the Planning Board in granting a special permit hereunder provided the Board determines such exceptions are in the public interest and are not inconsistent with the purposes of Subsection 7.1.

7.2.6 Common Open Space

7.2.6.1 Minimum Common Open Space - The minimum common open space shall be 50 percent of the total area of the Residential Development. No more than half the required common open space may be situated in the Flood Plain District or classified or classified as wetlands as defined in G.L. Ch. 131, Section 40, "The Wetlands Protection Act".

7.2.6.2 Use and Shape of Common Open Space - The Common Open Space shall be used for open space, conservation, agriculture, recreation or park purposes. The Common Open Space shall be one or more parcels of a size, shape and location

appropriate for its intended use. Each parcel of Common Open Space shall have adequate access, as determined by the Planning Board, for all residents of the Planned Residential Development and no structure shall be constructed thereon in excess of 20 feet in height nor shall the maximum lot coverage including paved areas exceed 10 percent without a special permit for such coverage from the Planning Board.

7.2.6.3 Ownership of Common Open Space

(a) Provisions shall be made so that the Common Open Space and other common property shall be owned in common by the owners of all units in the Planned Residential Development or by a corporation, non-profit organization or trust whose members are all the owners of the units. In all cases, a perpetual restriction of the type described in G.L. Ch. 184, Section 31 running to and enforceable by the Town of Wilmington shall be recorded in respect to the Common Open Space. Such restriction shall provide that the Common Open Space shall be retained in perpetuity for one or more of the following uses: conservation, open space, agriculture, recreation or park. Such restriction shall be in such form and substance as the Planning Board may prescribe and deem appropriate.

(b) In order to ensure that the corporation, non-profit organization or trust will properly maintain the Common Open Space and other common property an instrument(s) shall be recorded at the Middlesex North District Registry of Deeds which shall as a minimum provide:

- A legal description of the Common Open Space,

- A statement of the purpose for which the Common Open Space is intended to be used and the restrictions on its use and alienation.

- The type and name of the corporation, non-profit organization, or trust which will own, manage and maintain the Common Open Space.

- The ownership or beneficial interest in the corporation, non-profit organization or trust of each owner of a dwelling in the Planned Residential Development and a provision that such ownership or beneficial interest shall be appurtenant to the dwelling to which, it relates and may not be conveyed or encumbered separately therefrom.

- Provisions for the number, term of office, and the manner of election to office, removal from office and the filling of vacancies in the office-of directors and/or officers of the corporation or non-profit organization or trustees of the trust.

- Procedures for the conduct of the affairs and business of the corporation, non-profit organization or trust including provision for the calling and holding of meetings of members and directors and/or officers of the corporation or non-profit organization or beneficiaries and trustees of the trust and provisions for quorum and voting requirements for action to be taken. Each owner of a dwelling shall have voting rights proportional to his ownership or beneficial interest in the corporation, non-profit organization or trust.

- Provision for the management, maintenance, operation, improvement and repair of the Common Open Space and facilities thereon, including provisions for obtaining and maintaining adequate insurance and levying and collecting from the dwelling owners common charges to pay for expenses associated with the Common Open Space, including real estate taxes. It shall be provided that common charges are to be allocated among the dwelling owners in proportion to their ownership or beneficial interests in the corporation, non-profit organization or trust, and that each dwelling owner's share of the common charge shall be a lien against his real estate in the Planned Residential Development, which shall have priority over all other liens with the exception of municipal liens and first mortgages of record, and

- The method by which such instrument or instruments may be amended.

7.2.7 Limitation of Subdivision - No lot shown on a plan for which a Planned Residential Development permit is granted may be further subdivided, and a notation to this effect shall be placed on the plan of record which shall be recorded with the special permit.

7.3 Town Meeting Presentation and Rezoning

7.3.1 Proposal for Rezoning - Any person who desires to have a tract of land rezoned to Planned Residential Development District shall submit a written proposal to the Planning Board accompanied by the following plans:

7.3.1.1 Overall Concept Plan (at a scale of not less than 1"= 100') for the entire Planned Residential Development tract and showing all surrounding land within 150 feet of the boundaries of the tract, all man-made features, lot lines, zoning boundaries, vegetative cover, wetlands, soil characteristics and existing topography together with the layout of the proposed development concept (buildings, parking, drives, landscaped areas, common open space and improvements thereto and in tabular form the total area of the tract, the extent of Common Open Space, the extent of wetlands as defined by the Wetland Protection Act, Chapter 131, Section 40 of the General Laws, the extent of any land zoned Flood Plain, the proposed number of dwelling units and the number of bedrooms/dens in each unit and anticipated development phases).

7.3.1.2 Architectural Plan(s) - Typical floor plans and architectural elevations (at a scale not less than 1/8" = 1'-0") of the proposed dwelling units.

7.3.1.3 Landscaping Plan(s) - Typical landscape plan for all disturbed areas and a detailed planing plan for at least one group of three or more residential buildings.

7.3.2 Submission to Other Town Boards - The Planning Board shall, within ten days of receipt of a submission hereunder, refer the application to the Board of Health, Conservation Commission, Water and Sewer Commission, Town Engineer and Inspector of Buildings for written reports and preliminary recommendations which shall be returned within 35 days.

7.3.3 Planning Board Town Meeting Report - The Planning Board shall report to Town Meeting if it finds: (1) that the Planned Residential Development is consistent with the purposes of Subsection 7.1; (2) that the Planned Residential Development contains a mix of residential, open spaces, and other uses sufficiently advantageous to the Town to render it appropriate to depart from the requirement of this By-Law otherwise applicable to the land and (3) that sufficient data is included in the applicant's presentation to the Town Meeting to give reasonable assurance that the development will conform to all the Planned Residential Development standards.

7.3.4 Town Meeting Motion - Any motion presented to Town Meeting for rezoning a tract of land to Planned Residential Development District shall incorporate by reference the written proposal and plans required under Subsection 7.3.1. In addition, the maximum number of bedrooms/dens as shown on said plans shall be incorporated into the motion presented to Town meeting and shall not be increased after the Town Meeting has acted favorably on the motion to rezone.

7.4 Procedure for Special Permit from the Planning Board

7.4.1 Application - After approval by Town Meeting of a Planned Residential Development District, any person who desires a special permit for a Planned Residential Development shall submit a written application to the Planning Board. Each such application shall be accompanied by the following information:

7.4.1.1 The written proposal and the Overall Concept Plan, Architectural Plan(s) and Landscaping Plan(s) presented to Town Meeting.

7.4.1.2 Planned Residential Development Plan(s) meeting the requirements set forth for a Definitive Plan in the Town of Wilmington Subdivision Rules and Regulations and including the following information: The existing and proposed topography; the soil associations as delineated by the U.S. Soil Conservation Service; the extent of any wetlands as defined by the Wetlands Protection Act, Chapter 131, Section 40 of the General Laws; the extent of any land zoned Flood Plain District; all existing and proposed location of residential buildings and any other structures; all streets, private ways, common drives, parking spaces, sewers, drainage facilities and utilities; the limit of each construction phase and a tabular summary of the total area of the tract, the percent of Common Open Space, the number, type and gross floor area of the residential buildings and including the number of bedrooms/dens, the building coverage and coverage of all impervious surfaces.

7.4.1.3 Definitive Subdivision Plan(s) and Application of Approval under the Town of Wilmington Subdivision Rules and Regulations (if the Planned Residential Community Development requires approval under the Subdivision Control Law) which to the extent permitted by law shall be reviewed and considered by the Planning Board at the same time as the application for a special permit.

7.4.1.4 Architectural Plan(s) and Elevation(s) (at a scale of not less than 1/8"=1'0") showing the elevation of the proposed buildings, their height and the layout of each floor.

7.4.1.5 Landscape Plan(s) (at a scale of not less than 1"= 40') showing the existing and proposed tree line, the landscaping and proposed improvements for the Common Open Space and planting plans for disturbed areas and buffer areas.

7.4.1.6 Order of Conditions issued pursuant to G.L. Ch. 131, Sec. 40, "The Wetlands Protection Act" for the proposed Planned Residential Development or written determination by the Conservation Commission that a notice of intent is not required for the proposed development.

7.4.1.7 Copies of all instruments to be recorded with the Planned Residential Development special permit in including the proposed deed(s) for the Common Open Space, the articles of organization and by-laws of any corporation or trust to be established for the ownership of the Common Open Space and the perpetual restriction to be imposed on the Common Open Space.

7.4.2 Submission to Other Town Boards - The Planning Board shall, within ten days of its receipt of an application for a special permit for a Planned Residential Development, refer the application to the Board of Health, Conservation Commission, Water and Sewer Commission, Town Engineer and Inspector of Buildings for written reports and recommendations and no decision shall be made until such reports are returned or 35 days have elapsed following such referral without receipt of such reports.

7.4.3 Decision of the Planning Board

7.4.3.1 The Planning Board may grant a special permit hereunder only if it finds that:

(a) The application and all accompanying plans for the Planned Residential Development are consistent with plans submitted to the Town Meeting under Subsection 7.3.4. Town Meeting Motion;

(b) The Planned Residential Development plans comply with the requirements of Subsection 7.2 Planned Residential Development Standards; and

(c) The Planned Residential Development is consistent with the purposes of Subsection 7.1.

7.4.3.2 As a condition of approval hereunder, the Planning Board may require such changes in the proposed development plans and may impose such additional conditions, limitations and safeguards as it may deem appropriate to ensure compliance with the terms of this By-Law. In addition the Planning Board may impose as a condition that the installation of municipal services and construction of ways shall comply with the requirements of the Town of Wilmington Subdivision Rules and Regulations and may further require sufficient security to ensure such compliance and the completion of planned recreational facilities and site amenities.

Section 8 Conservation Subdivision Design

8.1 Purpose and Intent

8.1.1. Primary purposes:

- a) To allow for greater flexibility and creativity in the design of residential developments;
- b) To encourage the permanent preservation of open space; forest, wildlife habitat, and historical resources;
- c) To encourage a less sprawling and more efficient form of development that consumes less open land and conforms to existing topography and natural features better than a conventional subdivision;
- d) To protect wetlands, aquifers, the Ipswich River, and other waterbodies through water conserving landscapes, reduction of impervious surfaces, and promotion of on-site wastewater treatment;
- e) To minimize overall environmental disturbance on a site;
- f) To facilitate the construction and maintenance of housing, streets, utilities, and public services in a more economical and efficient manner;

**Webmasters Note: There is a page missing from the original document and will be inserted upon receipt.

8.3 Special Permit Required

The Wilmington Planning Board may authorize a Conservation Subdivision Design project pursuant to the granting of a Special Permit. Special Permits shall be acted upon in accordance with all provisions below.

8.4 Pre-Application

8.4.1 Conference: The applicant is very strongly encouraged to request a pre-application review at a regular business meeting of the Wilmington Planning Board. If such a review is requested, the Planning Board shall invite the Conservation Commission, Board of Health, Historical Commission, and other bodies as appropriate. The purpose of a pre-application meeting is to minimize the applicants cost of engineering and other technical experts, and to commence negotiations with the Planning Board at the earliest possible stage in the development. At the pre-application review, the applicant may outline the proposed CSD, seek preliminary feedback from the Planning Board, other Boards and Commissions, or other experts. The applicant may also set a timetable for submittal of a formal application. At the request of the applicant, and at the expense of the applicant, the Planning Board may engage technical experts to review the informal plans of the applicant and to facilitate submittal of a formal application for a CSD permit.

8.4.2 Submittals: In order to facilitate review of the proposed CSD at the pre-application stage, applicants are encouraged to submit the following information.

8.4.2.1 Site Context Map. This map illustrates the parcel in connection to its surrounding neighborhood. Based upon existing data sources and field inspections, it should show various kinds of major natural resource areas or features that cross parcel lines or that are located on adjoining lands. This map enables the Planning Board to understand the site in relation to what- is occurring on adjacent properties.

8.4.2.2 Existing Conditions/Site Analysis Map. This map familiarizes officials with existing conditions on the property. Based upon existing data sources and field inspections, this base map locates and describes noteworthy resources that should be left protected through sensitive subdivision layouts. Resources depicted on the existing conditions maps should include wetlands, riverfront areas, floodplains and steep slopes, but may also include mature un-degraded woodlands, hedgerows, farmland, unique or special wildlife habitats, historic or cultural features (such as old structures or stone walls), unusual geologic formations and scenic views into and out from the property- By overlaying this plan onto a development plan the parties involved can clearly see where conservation priorities and desired development overlap/conflict.

**Webmasters Note: There is a page missing from the original document and will be inserted upon receipt.

8.6 Procedures

8.6.1 Application. An Application for a special Permit for a Conservation Subdivision Design project shall be submitted on the form(s) provided by the Planning Board in accordance with the rules and regulations of the Board. Applicants for a CSD special permit shall also submit to the Planning Board 16 copies of a Concept Plan:

8.6.2 The Concept Plan shall include a Sketch Plan and a Yield Plan (see section 8.7). The applicant shall submit both the Site Context Map and Existing Conditions / Site Analysis Map prepared according to Section 8.4.2 above. Additional information reasonably necessary to make the determinations and assessments cited herein shall be provided, including existing site contour maps and existing soil maps.

8.6.2.1 Sketch Plan: The Sketch Plan shall be prepared by a registered Landscape Architect, or by a multi-disciplinary team of which one member must be a registered Landscape Architect. The Sketch Plan shall identify Primary and Secondary Conservation Areas, and shall address the general features of the land, and give approximate configurations of the lots, open space, roadways, and trails. The Sketch Plan shall demonstrate the four-step design process described in Section 8.5 above, and the Design Standards outlined in Section 8.10 below. The Sketch Plan shall include the following:

- a) The Subdivision Name, boundaries, north point, date, legend, title "Concept Plan," and scale.
- b) The names of the record owner, the applicant, and the name of the registered landscape architect who prepared the plan.
- c) The names, approximate location, and widths of adjacent streets.
- d) The proposed topography of the land shown at a contour interval no greater than 2 feet in areas proposed for development, and no greater than ten feet in areas that will not be developed or altered. Elevations shall be referred to mean sea level.
- e) The location of existing landscape features, including wetlands; forests; fields; meadows; riverfront areas; waterbodies; archaeological and historic structures or features; rock outcrops; stone walls; high points; views; major tree groupings; noteworthy tree specimens; rare habitats; and habitats of rare, endangered, or threatened wildlife. Proposals for all features to be preserved, demolished, removed, or relocated shall be noted on the Sketch Plan.

****Webmasters Note:** There is a page missing from the original document and will be inserted upon receipt.

standards. The development must also meet any applicable local stormwater management bylaws in effect at the time of application.

- m) A narrative explanation prepared by a certified Professional Engineer detailing the proposed drinking water supply system.
- n) A narrative explanation of the proposed quality, quantity, use, and ownership of the open space. Open Space parcels shall be clearly shown on the plan.
- o) All proposed landscaped and buffer areas shall be noted on the plan and generally explained in a narrative.
- p) A list of all legal documents necessary for implementation of the proposed development, including any Conservation Restrictions, land transfers, and Master Deeds, with an accompanying narrative explaining their general purpose.
- q) A narrative indicating all requested waivers, reduction, and modifications as permitted within the requirements of this bylaw.

8.6.2.2 Yield Plan: Applicant shall submit a narrative explanation detailing the results of the determination of any proposed allocation of yield determined according to Section 8.7, Basic Maximum Number, below.

8.6.3 Relation between Concept Plan and Definitive Subdivision Plan: The Concept Plan special permit shall be reconsidered if there is substantial variation between the Definitive Subdivision Plan and the Concept Plan, as determined by the Planning Board. If the Planning Board finds that a substantial variation exists, it shall hold a public hearing on the modifications to the Concept Plan. A substantial variation shall be any of the following:

- 8.6.3.1 Any increase in the number of building lots or the number of housing units;
- 8.6.3.2 A significant (>100) decrease in the open space acreage;
- 8.6.3.3 A significant change in the lot layout;
- 8.6.3.4 A significant change in the general development pattern which adversely affects natural landscape features and open space preservation, including a significant increase in the amount of land proposed to be cleared of trees (either temporarily or permanently);
- 8.6.3.5 Significant changes to the stormwater management facilities;
- 8.6.3.6 Significant changes in the wastewater management systems; or

8.7 Basic Maximum Number of Housing Units

****Webmasters Note:** There is a page missing from the original document and will be inserted upon receipt.

8.9.1.1 The percentage of the open space that is wetland shall not significantly exceed the percentage of the entire tract which is

wetland; provided, however, that the applicant may include a greater percentage of wetlands in such open space upon a demonstration that such inclusion promotes the purposes of this bylaw.

8.9.1.2 The open space shall be contiguous. Contiguous shall be defined as being connected. Open Space will still be considered connected if it is separated by a roadway, driveway, pathway, or accessory amenity. The Planning Board may waive this requirement for all or part of the required open space where it is determined that allowing non-contiguous open space will promote the goals of this bylaw and/or protect identified primary and secondary conservation areas.

8.9.1.3 The bulk of the open space shall not be in buffer strips, undeveloped fingers' between house lots, or other narrow linear forms.

8.9.1.4 The open space shall be used primarily for wildlife habitat, conservation, and passive recreation. The Planning Board shall also permit where appropriate the following uses: historic preservation, outdoor education, active recreation, parks, agriculture, horticulture, or a combination of these uses. The open space shall be served by suitable access for all stated purposes. If the open space is conveyed to the town, Conservation Commission, or a local or regional land trust, provisions for public access shall be made, including signage. The Planning Board may permit up to 10% of the open space to be paved or built upon for structures accessory to the dedicated use or uses of such open space (i.e., pedestrian walks, bike paths, and parking for public visitors to the open space).

8.9.1.5 Wastewater disposal facilities and stormwater management systems serving the CSD may be located within the open space. Surface systems, such as retention and detention ponds, and buildings housing wastewater disposal facilities shall not qualify towards the minimum open space required. Land upon which wastewater disposal facilities (including leach fields) are located shall remain under the possession of a homeowners association or similar entity dedicated to the maintenance of such facilities.

8.9.2. Ownership-of the Open Space. The open space shall, at the Planning Boards election, be conveyed to:

8.9.2.1 The Town or its Conservation Commission;

8.9.2.2 A nonprofit organization, the principal purpose of which is the conservation of open space and any of the purposes for such open space set forth above;

****Webmasters Note:** There is a page missing from the original document and will be inserted upon receipt.

8.10.1.5 The removal or disruption of historic, traditional or significant uses, structures, or architectural elements shall be minimized insofar as practicable, whether these exist on the site or on adjacent properties.

8.10.2 Site Specific Design Standards

8.10.2.1 Mix of Housing Types. The CSD may consist of single-family (attached or detached), two-family and multifamily residential structures, or a combination of these housing types. A multifamily structure shall not contain more than 6 dwelling units.

8.10.2.2 Where the CSD development will include a mix of housing types, the developer shall seek to place single family houses towards the perimeter of the site, especially where it abuts residentially zoned and occupied properties. Within the site, residential structures shall be oriented toward the street serving the premises and not the required parking area.

8.10.2.3 Multifamily structures shall be consistent in scale, size, and height with nearby single-family structures, both on and off site.

8.10.2.4 Parking. Each dwelling unit shall be served by two (2) off-street parking spaces, except where the development is located within 1/2 mile of an MBTA commuter rail station, in which case each dwelling unit shall be served by no less than 1.5 off-street parking spaces. Parking spaces in front of garages may count in this computation. Resident parking for multifamily structures shall be placed to the side or rear of the building, and the primary pedestrian / visitor entrance shall face the street. All parking areas with greater than 6 spaces shall be screened from view.

8.10.2.5 Developers are encouraged to provide outdoor living spaces, such as porches, on the front of residential structures, facing the street.

8.10.2.6 Buffer Areas. A vegetated buffer area of 30 feet shall be provided at the following locations:

(a) the perimeter of the property where it abuts residentially zoned and occupied properties;

(b) Conservation Areas, including ponds, wetlands, streams and riverfront areas, agricultural or recreational fields, and land held for conservation purposes; and

(c) existing public ways. Driveways necessary for access and egress to and from the tract may cross such buffer areas. No vegetation in this buffer area will be disturbed, destroyed or removed, except for normal maintenance of structures and landscapes approved as part of the project. The Planning Board may modify or waive the buffer requirement in these locations when it determines that a smaller buffer (or no buffer) will suffice to accomplish the objectives set forth herein.

****Webmasters Note:** The previous section has been added and the following section renumbered as per an ordinance approved at a town meeting held on 4/28/01.

Survey received from Wilmington on 4/11/05:

What year was the first provision for flexible zoning adopted?

"2001"

Can more units be built under cluster/flexible zoning than would be allowed through conventional zoning?

"No"

Has any housing been built under the cluster/flexible provisions? (none, 1-8 projects, more than 8)

"1-8 so far"

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board 7.3 Town Meeting Presentation and Rezoning

7.3.1 Proposal for Rezoning - Any person who desires to have a tract of land rezoned to Planned Residential Development District shall submit a written proposal to the Planning Board accompanied by the following plans:

8.3 Special Permit Required

The Wilmington Planning Board may authorize a Conservation Subdivision Design project pursuant to the granting of a Special Permit. Special Permits shall be acted upon in accordance with all provisions below.

Has any housing been built under the cluster/flexible provisions?

Yes Survey received from Wilmington on 4/11/05:

Has any housing been built under the cluster/flexible provisions? (none, 1-8 projects, more than 8)

"1-8 so far"

Winchester

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Winchester Zoning Bylaw (2003)

SECTION 1 ESTABLISHMENT OF DISTRICTS

1.13 Planned Residential Districts (PRD) are intended as districts where single family homes, Town Houses and Garden Apartments may be developed to meet the needs of various age groups and are developed on large tracts as an integrated residential complex with design criteria regulated and controlled by special permit.

1.14 Residential Districts A (RDA-20) are primarily intended as districts of one-family dwellings in sections of the town having low density or being currently relatively undeveloped for residential purposes, where topography generally is of such nature that comparatively large lots are required for proper siting of buildings and where comparatively spacious types of development are ensured, or districts of Cluster Residential Housing designed to protect the natural landscape and increase open space on sites of 20 Acres or more with design criteria regulated and controlled by special permit.

1.16 Residential Districts B (RDB-10) are intended primarily as districts of one-family dwellings in developed sections of town having medium density and smaller lots than those found in RDA districts, or districts of Cluster Residential Housing designed to protect the natural landscape and increase open space on sites of 10 Acres or more with design criteria regulated and controlled by Special Permit.

Section 9: Definitions

CLUSTER DEVELOPMENT . A division of land into lots used, or available for use, as building sites where said lots are clustered together into one or more groups, separated from adjacent property and other groups of lots by intervening "common land" as described in Section 6.26.

6.26 Cluster Residential Housing - Special Permit

In order to permit maximum flexibility for developing land for single-family homes; open space; private recreational facilities for the exclusive use of the occupants of the Cluster Residential Housing and their guests; and related off-street parking and landscaping, tracts of land consisting of 20 acres or more in the RDA-20 district and 10 acres or more in the RDB-10 district may be developed as Cluster Residential Housing provided the number of dwelling units shall approximate the number permitted in the district, and maximum density shall be determined as provided in paragraph (e) of Section 6.2 1.

To afford the Town of Winchester ample assurance that such developments will not tend to degrade the amenities of the neighborhoods in which they occur, or of the Town as a whole, and to insure that objectionable congestion of traffic is not created, Cluster Residential Housing may only be constructed under a special permit granted by the Board of Appeals as hereinafter defined and limited, within such districts as are established with the vote of Town Meeting.

6.261 Procedure

The owner or owners of a parcel of land in the RDA-20 or RDB-10 district which is of sufficient size to allow cluster residential housing, as defined in 6.26, shall submit to the Board of Appeals an application for a special permit, together with plans and a filling fee, in accordance with the provisions for Site Plan Review in Subsection 8.7 of this by-law and in accordance with the additional provisions of this section 6.26.

6.262 Standards for Reviewing and Approving Cluster Residential Housing

The Planning Board shall review all Cluster Residential Housing applications submitted to it by the Board of Appeals. The Planning Board shall report its recommendations for approval or disapproval, together with reasons therefor and any additional requirements, to the Board of Appeals within 30 days of receipt of the application and plan. Reasonable requirements may be recommended to the Board of Appeals by the Planning Board for the protection of adjoining residential property.

The Planning Board shall recommend approval of the Cluster Residential Housing application and plan only if it finds the Cluster Residential Housing satisfies all of the following standards:

(a) Uses

The permitted uses in the Cluster Residential Housing may include single-family homes, open space, private recreational facilities for the exclusive use of the occupants of the Cluster Residential Housing and their guests and related off-street parking and landscaping.

(b) General Standards

The Cluster Residential Housing shall provide for an effective and unified treatment of the development possibilities on the project site making appropriate provision for the preservation of scenic features and amenities of the site and the surrounding areas. The Cluster Residential Housing shall be planned and developed to harmonize with any existing or proposed development in the area surrounding the project site. More than one building is permitted on tracts of lots held by one owner or in common ownership. The uniqueness of each proposal for a Cluster Residential Housing requires that the specifications for the width and surfaces of streets ways for public utilities, for curbs, gutters, sidewalks, street lights, storm water drainage, water supply and distribution, sanitary sewers and sewage collection and treatment shall be subject to modification from the specifications established in the Rules and Regulations Governing the Subdivision of Land in the Town of Winchester, Massachusetts and as amended from time to time. The Planning Board may recommend that the specifications otherwise applicable for a particular public facility may be waived or modified (provided that such modification shall not apply to the materials of said construction and shall not produce construction of inferior quality to that required in the Rules and Regulations Governing Subdivision) when such waiver or modification is not inconsistent with generally approved design standards. The Planning Board shall recommend the installation or the furnishing of a performance guarantee in lieu thereof, of all or any of the following improvements it may deem to be necessary or appropriate: street grading, pavement, gutters, curbs, sidewalks, street lighting, shade trees, landscaping, surveyor's monuments, water mains, culverts, bridges, storm sewers, sanitary sewers or other means of sewage disposal, drainage facilities or structures and other improvements as the Planning Board require or deem necessary in the public interest. The Planning Board may recommend phases for the completion of improvements in sections of the Planned Residential Development and recommend minimum improvement completion requirements necessary for the issuance of Certificates of Zoning Compliance in any section.

(c) Design Standards

All buildings in the layout and design shall be an integral part of the development and have convenient access to and from

adjacent uses and roadways,

Except to the extent regulated by the provisions of the state building code, individual buildings shall be related to each other in design, mass, materials, placement and connections to provide a visually and physically integrated development.

Buildings shall be separated by a minimum of 20 feet or 0.75 percent of the building height times its length measured in feet, whichever is greater.

Treatment of the sides and rear of all buildings within the Cluster Residential Housing shall be comparable in amenities and appearance to the treatment given to street frontages of these same buildings.

All buildings walls shall be so oriented as to insure adequate light and air exposures to the rooms within.

All buildings shall be arranged so as to avoid undue exposure to concentrated loading or parking facilities wherever possible, and shall be oriented so as to preserve visual and audible privacy between adjacent buildings.

All buildings shall be arranged as to be accessible to emergency vehicles.

All utilities shall be placed underground.

(d) Landscape Design Standards

Landscape treatment for plaza, road, paths, service and parking areas shall be designed as an integral part of a coordinated landscape design for the entire project area. Primary landscape treatment shall consist of shrubs, ground cover and trees, and shall be combined with appropriate walks and street surfaces to provide an attractive development pattern. Landscape materials selected should be appropriate to the local growing conditions. Whenever appropriate, existing trees shall be preserved and integrated into the landscape design plan. All streets contained within and bordering the project area shall be planted at appropriate intervals with street trees. Whenever possible the existing terrain shall be preserved and land moving shall be kept to a minimum.

(e) Circulation System Design Standards

There shall be an adequate, safe and convenient arrangement of pedestrian circulation facilities, roadways, driveways, off-street parking and loading spaces. Roads, pedestrian walks and open space shall be designed as an integral part of the overall site design. They shall be properly related to existing and proposed buildings and appropriately landscaped. There shall be an adequate amount, in a suitable location, of pedestrian walks, malls and landscaped spaces in order to discourage pedestrian use of vehicular ways and parking and loading spaces; and to separate pedestrian walks, malls and public transportation loading spaces from general vehicular circulation facilities. Buildings and vehicular circulation open spaces shall be arranged so that pedestrians moving between buildings are not unnecessarily exposed to vehicular traffic. Landscaped, paved and comfortably graded pedestrian walks shall be provided along the lines of the most intense use, particularly from building entrances to streets, parking areas and adjacent buildings. The location and design of pedestrian walks should emphasize desirable views of new and existing developments in the area. The maximum separation of private automobiles and services vehicles shall be provided through the use of separate service lanes. Materials and design of paving, lighting fixtures, retaining walls, bulkheads, fences, curbs, benches, etc., shall be of good appearance easily maintained and indicative of their function.

(f) Parking and Loading Design Standards

Off-street parking and loading facilities shall conform to the provisions of Section 7 of this by-law. Parking facilities shall be landscaped and screened from public view to the extent necessary to eliminate unsightliness and to the monotony of parked vehicles. Pedestrian connections between parking areas and buildings shall be via special pedestrian walkways and or elevators. Parking facilities shall be designed with careful regard to arrangement, topography, landscaping, ease of access and shall be developed as an integral part of an overall site design. Any above grade loading facility should be screened from public view to the extent necessary to eliminate unsightliness.

(g) Common Open Space

A minimum of 25 percent of a Cluster Residential Housing site area shall be developed as open space, including walkways, plazas, landscaped areas, recreation areas, tennis courts, pools and fountains. Parking areas and vehicle access facilities shall not be considered in calculating open space. A maximum of 40 percent of the Cluster Residential Housing site area shall be covered by impervious waterproof surface.

(1) Common open space must be suitably improved for its intended use, but common open space containing natural features worthy of preservation may be left unimproved. The buildings, structures and improvements in the common open space must be

appropriate to the uses which are authorized for the common open space.

(2) The development schedule must coordinate the improvement of the common open space and the construction of residential dwellings.

(3) All land shown on that site plan as common open space shall be subject to covenants approved by the Board of Appeals, which covenants shall include, without limitation, restrictions prohibiting

(A) the use of the common open space for uses other than those specified on the site plan and (B) the development of the common open space for residential use or accessory uses such as parking or roads, such portion to be kept in an open or natural state. The restrictions contained in subsection

(B) shall be enforceable by and be for the sole benefit of the Town of Winchester and may be modified or released by Town Meeting. Further, in addition to requiring the imposition of such covenants, title to the common open space shall be conveyed either to a non-profit organization, the principal purpose of which is the conservation of open space or to a corporation or trust owned or to be owned by the owners of the lots within the Cluster Residential Housing Development, provided the interest of the individual lot owner in such corporation or trust is appurtenant to the owner's interest in the lot and passes with title to the individual lot. In lieu of a conveyance to such a non-profit organization or such a corporation or trust, title to the common open space may be conveyed to the Town of Winchester, provided the Board of Appeals recommends the acceptance of such conveyance and the same is accepted by Town Meeting, in which event the restrictions otherwise mandated by this section shall not be applicable.

(h) Buffer Zone Requirements

A buffer zone within fifty (50) feet of all external lot lines of a designated Cluster Residential Housing shall be provided except that portion which fronts upon an existing external street or roadway. Said buffer zone shall be kept in its natural state where wooded, and, when its natural vegetation is sparse or nonexistent, the landowner may be required to provide a year-round visual screen as recommended by the Planning Board. Within said buffer zone, no principal or accessory structure, nor any off-street parking or loading areas or other use shall be permitted. Within said buffer zone, utility easements and streets may be provided if necessary to insure continuity with adjoining properties, subject to the recommendations of the Planning Board. Said buffer zone area may be utilized for the purpose of computing the Cluster Residential Housing open space requirements of this Ordinance. The requirements of this paragraph may be modified or eliminated where two Cluster Residential Housing developments abut or adjoin one another.

(i) Setbacks

A minimum setback from all external lot lines of a Cluster Residential Housing from all existing streets and thoroughfares for all buildings, structures and uses of no less than seventy-five (75) feet or a distance equal to twice the height of any structure or building within the development, whichever is greater, shall be provided.

6.27 Planned Residential District - Special Permit

In order to permit maximum flexibility in employing the latest techniques for developing land for multiple family dwelling units, tracts of land consisting of 20 acres or more within the RDA-20 district and 10 acres or more in the RDB-10 district may be rezoned by the Winchester Town Meeting for a Planned Residential District. To afford the Town of Winchester ample assurance that such developments will not tend to degrade the amenities of the neighborhoods in which they occur, or of the town as a whole, and to insure that objectionable congestion and density of traffic is not created, a Planned Residential Development may only be constructed after rezoning and under a special permit granted by the Board of Appeals as hereinafter defined and limited.

6.271 Procedure

The owner or owners of a parcel of land which has been zoned for a Planned Residential District shall submit to the Board of Appeals an application for a special permit, together with Plans and a filing fee in accordance with the provisions for Site Plan Review in Subsection 8.7 of this by-law and in accordance with the additional provisions of this section 6.27.

6.272 Standards for Reviewing and Approving Planned Residential Developments

The Planning Board shall review all Planned Residential Development applications submitted to it by the Board of Appeals. The Planning Board shall report its recommendations for approval or disapproval, together with reasons therefor and any additional requirements, to the Board of Appeals within 30 days of receipt of the application and plan. Reasonable requirements may be recommended to the Board of Appeals by the Planning Board for the protection of adjoining residential property.

The Planning Board shall recommend approval of the Planned Residential Development application and plan only if it finds the Planned Residential Development satisfies all of the following standards:

(a) Uses

The permitted uses in the Planned Residential Development may include single-family homes, garden apartments and town houses, of three stories (40 feet) or less, open space, private recreational facilities for the exclusive use of the occupants of the Planned Residential Development and their guests, and related off-street parking and landscaping.

(b) General Standards

The Planned Residential Development shall provide for an effective and unified treatment of the development possibilities on the project site making appropriate provision for the preservation of scenic features and amenities of the site and the surrounding areas. The Planned Residential Development shall be planned and developed to harmonize with any existing or proposed development in the area surrounding the project site. More than one building is permitted on tracts of lots held by one owner or in common ownership. The uniqueness of each proposal for a Planned Residential Development requires that the specifications for the width and surfaces of streets, ways for public utilities, for curbs gutters, sidewalks, street lights, storm water drainage, water supply and distribution, sanitary sewers and sewage collection and treatment shall be subject to modification from the specifications established in the Rules and Regulations Governing the Subdivision of Land in the Town of Winchester, Massachusetts and as amended from time to time. The Planning Board may recommend that the specifications otherwise applicable for a particular public facility may be waived or modified (provided that such modification shall not apply to the material of said construction and shall not produce construction of inferior quality to that required in the Rules and Regulations Governing Subdivision) when such waiver or modification is not inconsistent with generally approved design standards. The Planning Board shall recommend the installation or the finishing of a performance guarantee in lieu thereof, of all or any of the following improvements it may deem to be necessary or appropriate: street grading, pavement, gutters, curbs, sidewalks, street lighting, shade trees, landscaping, surveyor's monuments, water mains, culverts, bridges, storm sewers, sanitary sewers or other means of sewage disposal, drainage facilities or structures and other improvements as the Planning Board may require or deem necessary in the public interest. The Planning Board may recommend phases for the completion of improvements in sections of the Planned Residential Development and recommend minimum improvement completion requirements necessary for the issuance of Certificates of Zoning Compliance in any section.

(c) Design Standards

All buildings in the layout and design shall be in integral part of the development and have convenient access to and from adjacent uses and roadways. Except to the extent regulated by the provisions of the state building code, individual buildings shall be related to each other in design, mass, materials, placement and connections to provide a visually and physically integrated development. Buildings shall be separated by a minimum of 20 feet or 0.75 percent of the building height times its length whichever is greater. Treatment of the sides and rear of all buildings within the Planned Residential Development shall be comparable in amenities and appearance to the treatment given to street frontages of these same, buildings. All buildings walls shall be so oriented as to insure adequate light and air exposures to the rooms within. All buildings shall be arranged so as to avoid undue exposure to concentrated loading or parking facilities wherever possible, and shall be oriented so as to preserve visual and audible privacy between adjacent buildings. All buildings shall be arranged as to be accessible to emergency vehicles. All utilities shall be placed underground.

(d) Landscape Design Standards

Landscape treatment for plaza, roads, paths, service and parking areas shall be designed as an integral part of a coordinated landscape design for the entire project area. Primary landscape treatment shall consist of shrubs, ground cover and trees, and shall be combined with appropriate walks and street surfaces to provide an attractive development pattern. Landscape materials selected should be appropriate to the local growing conditions. Whenever appropriate, existing trees shall be preserved and integrated into the landscape design plan. All streets contained within and bordering the project area shall be planted at appropriate intervals with street trees. Whenever possible the existing terrain shall be preserved and land moving shall be kept to a minimum.

(e) Circulation System Design Standards

There shall be an adequate, safe and convenient arrangement of pedestrian circulation facilities, driveways, roadways, off-street parking and loading spaces. Roads, pedestrian walks and open space shall be designed as an integral part of the overall site design. They shall be properly related to existing and proposed buildings and appropriately landscaped. There shall be an adequate amount, in a suitable location, of pedestrian walks, malls, and landscaped spaces in order to discourage pedestrian use of vehicular ways and parking and loading spaces; and to separate pedestrian walks, malls and public transportation loading spaces from general vehicular circulation facilities. Buildings and vehicular circulation open spaces shall be arranged so that pedestrians moving between buildings are not unnecessarily exposed to vehicular traffic. Landscaped, paved and comfortably graded pedestrian walks shall be provided along the lines of the most intense use, particularly from building entrances to streets, parking areas and adjacent buildings. The location and design of pedestrian walks should emphasize desirable views of new and existing development in the area. The maximum separation of private automobiles and service vehicles shall be provided through the use of separate service lanes. Materials and design of paving, lighting fixtures, retaining walls, bulkheads, fences, curbs, benches, etc., shall be of good appearance easily maintained and indicative of their function.

(f) Parking and Loading Design Standards

Off-street parking and loading facilities shall conform to the provisions of Section 7 of this by-law. Parking facilities shall be landscaped and screened from public view to the extent necessary to eliminate unsightliness and the monotony of parked vehicles. Pedestrian connection between parking areas and buildings shall be via special pedestrian walkways and/or elevators. Parking facilities shall be designed with careful regard to arrangement, topography, landscaping, ease of access, and shall be developed as an integral part of an overall site design. Any above grade loading facility should be screened from public view to the extent necessary to eliminate unsightliness.

(g) Common Open Space

A minimum of 25 percent of a Planned Residential Development site area shall be developed as open space, including walkways, plazas, landscaped areas, recreation areas, tennis courts, pools and fountains. Parking areas and vehicle access facilities shall not be considered in calculating open space. A maximum of 40 percent of the Planned Residential Development site area shall be

covered by impervious waterproof surface.

(1) Common open space must be suitably improved for its intended use, but common open space containing natural features worthy of preservation may be left unimproved. The buildings, structures and improvements in the common open space must be appropriate to the uses which are authorized for the common open space.

(2) The development schedule must coordinate the improvement of the common open space and the construction of residential dwellings.

(3) All land shown on that site plan as common open space shall be subject to covenants approved by the Board of Appeals, which covenants shall include, without limitation, restrictions prohibiting

(A) the use of the common open space for uses other than those specified on the site plan and

(B) the development of the common open space for residential use or accessory uses such as parking or roads, such portion to be kept in an open or natural state. The restrictions contained in subsection (B) shall be enforceable by and be for the sole benefit of the Town of Winchester and may be modified or released by Town Meeting. Further, in addition to requiring the imposition of such covenants, title to the common open space shall be conveyed either to a non-profit organization, the principal purpose of which is the conservation of open space or to a corporation or trust owned or to be owned by the owners of the lots within the Planned Residential Development, provided the interest of the individual lot owner in such corporation or trust is appurtenant to the owner's interest in the lot and passes with title to the individual lot. In lieu of a conveyance to such a non-profit organization or such a corporation or trust, title to the common open space may be conveyed to the Town of Winchester, provided the Board of Appeals recommends the acceptance of such conveyance and the same is accepted by Town Meeting, in which event the restrictions otherwise mandated by this section shall not be applicable.

(h) Buffer Zone Requirements

A buffer zone within fifty (50) feet of all external lot lines of a designated Planned Residential Development shall be provided except that portion which fronts upon an existing external street or roadway. Said buffer zone shall be kept in its natural state where wooded, and, when its natural vegetation is sparse or non-existent, the landowner may be required to provide a year-round visual screen as recommended by the Planning Board. Within said buffer zone, no principal or accessory structure, nor any off-street parking or loading areas or other use shall be permitted. Within said buffer zone, utility easements and streets may be provided if necessary to insure continuity with adjoining properties, subject to the recommendations of the Planning Board. Said buffer zone area may be utilized for the purpose of computing the planned residential development open space requirements of this Ordinance. The requirements of this paragraph may be modified or eliminated where two planned residential unit developments abut or adjoin one another.

(i) Setbacks

A minimum setback from all external lot lines of a planned residential development from all existing streets and thoroughfares for all buildings, structures and uses of no less than seventy-five (75) feet or a distance equal to twice the height of any structure or building within the development, whichever is greater, shall be provided.

Which entity is the special permit granting authority for cluster/flexible zoning?

Board of Appeals Winchester Zoning Bylaw (2003)

To afford the Town of Winchester ample assurance that such developments will not tend to degrade the amenities of the neighborhoods in which they occur, or of the Town as a whole, and to insure that objectionable congestion of traffic is not created, Cluster Residential Housing may only be constructed under a special permit granted by the Board of Appeals as hereinafter defined and limited, within such districts as are established with the vote of Town Meeting.

Has any housing been built under the cluster/flexible provisions?

Winthrop

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

No

Which entity is the special permit granting authority for cluster/flexible zoning?

Has any housing been built under the cluster/flexible provisions?

Woburn

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes According to the City of Woburn 1985 Zoning Ordinances, Section 5.1(amendments through 2004), cluster developments are allowed by special permit in Districts R-1, R-2, R-3, and R-4.

Cluster Development is defined in the City of Woburn 1985 Zoning Ordinances, Section 2 (amendments through 2004) as, "A residential development in which the buildings and accessory uses are clustered together into one or more groups separated from adjacent property by open land, and in which provision has been made by conveyance or restriction that the land be kept in an open or natural state. "

From ordinance.com:

SECTION 10 CLUSTER DEVELOPMENT 10.1 Purpose

The purpose of cluster development is to provide for residential development which:

1. Results in the permanent preservation of open space which is of use and value to the City and which would not normally be preserved under development undertaken according to other sections of the ordinance.
2. Encourages creative site planning which is sensitive to the natural characteristics of the land.
3. Provides for economical development, efficient provision of public services and minimizes road and driveway construction and paving.
4. Promotes aesthetics and other amenities.
5. Uses less land per dwelling unit than permitted under normal zoning requirements.

10.2 Procedures

1. Any person who submits to the Planning Board, for approval under the Subdivision Control Law, a plan of land in one or more residential districts, may make application to the City Council for a special permit excepting the building lots for dwelling units shown on such plan in said districts from specific dimensional requirements of the zoning ordinance as specified hereunder, but not any other requirements of the zoning ordinance.
2. The applicant shall simultaneously file the application for special permit described above, with the Preliminary Subdivision Plan as described in the Subdivision Rules and in accordance with G.L., Chapter 41, Section 81-S, or, at the applicant's option, the

application may be filed with the definitive plan as described in the Subdivision Rules and Regulations.

3. The application for special permit shall be filed as specified in Section 11 of this ordinance. The procedures for special permit granting authority review, review by other boards, hearings and findings in that section will apply.

4. Relating to the subdivision control law, City Council approval of a special permit shall not substitute for compliance with the subdivision control law, nor oblige the Planning Board to approve any related definitive plan for subdivision, nor reduce any time periods for Board consideration under the law.

10.3 Content of the Application

In addition to the requirements for a special permit application contained in Section 11 of this ordinance, the application for a permit for cluster development shall include narrative descriptions as follows, and plans prepared in accordance with the subdivision rules and regulations of the City of Woburn, containing:

1. The size of the tract-in acres.
2. The number of the proposed dwelling units and the net living area of each in square feet. - _
3. The proposed location and height of all proposed structures.
4. Topographic plan, including a clear and accurate disclosure of the grades of the existing terrain. Large trees, ledge outcrops, natural water courses, and existing buildings together with fences and walls, shall be shown. Approximate proposed grades shall also be shown.
5. The acreage of the proposed permanent open space and location and acreage of any wetlands on the tract as defined by M.G.L., Chapter 131, Section 40.
6. A description of the intended uses of the proposed open space, and an evaluation of its value to the City with respect to natural resource preservation, environmental protection, and accessibility by residents of the City or of the proposed development.
7. A description of the proposed ownership and maintenance of the proposed open space.
8. A description of all dwelling units on properties abutting the tract.
9. A description of the neighborhood in which the tract lies, including utilities and other public facilities, and the impact of the proposed plan upon them.

10.4 General Requirements

1. The minimum acreage of a cluster development shall be 5 acres.
2. Except when utilizing the provisions of Section 10.4.3 below, the number of dwelling units in the cluster development shall be equal to the number of building lots which the Planning Board finds, in its review of the proposed subdivision of the tract under its Subdivision Rules and Regulations, would be permitted by normal zoning requirements in the district. Wetlands, water bodies, and land prohibited from development by reason of legally enforceable restrictions, easements or covenants shall be excluded from the calculation of permissible building lots.
3. The applicant may apply for inclusion of additional units in the cluster development, not to exceed an increase of fifteen (15) percent over the number of units established under Section 10.4.2, when an amenity such as the following is offered to the community: public access to open land for passive recreation; granting of land to City of Woburn for conservation purposes, public availability of recreational and/or daycare facilities; a matching of extra market rate units with an equal number of units to be available at construction cost to the City of Woburn Housing Authority; variation of cost or size of dwelling to permit purchase by broader market; planning to include units especially suited to elders, etc. Approval for the additional units shall be based upon the conditions set forth in Section 10.6.8.
4. In parcels located partly in more than one district, no more than the total number of lots which would be permitted by normal zoning requirements in the combined districts and complying with Subdivision Rules and Regulations shall be permitted.
5. The frontage of each lot on a street within the cluster development shall not be less than 30 feet.
6. Any lot with frontage on a street not within the cluster development shall meet the frontage requirement of the district in which the lot is located.
7. No dwelling shall exceed two and one half stories nor be greater than thirty-five feet in height.
8. No dwelling shall be located less than twenty-five feet from a boundary of the cluster development.
9. Each unit shall have separate entries and off street parking or garage.

10. Minimum lot size shall be 10,000 (ten thousand) square feet. (added 06/21/88) .

10.5 Requirements for Open Space

1. All land shown on a plan for which a special permit is granted under this section which is not included in building lots, streets or easements shall be established by conservation restriction or conservation easement as open space for conservation and/or recreation purposes, or by conveyance to the City of Woburn for conservation purposes.
2. The total area of the open space parcel(s) shall comprise at least 30% of the total area of the tract.
3. At least eighty (80%) percent of the open space shall be preserved by easement or restriction for conservation purposes only.
4. Construction and use of vegetable gardens or floral gardens on not more than twenty percent (20%) of the total open space land shall be permitted.
5. Each dwelling in the tract shall have direct access to one or more portions of the open space, unless the Special Permit Granting Authority finds that, due to topography or other conditions, this requirement can be modified, and further finds that the lack of direct access will be offset by other mitigating factors.
6. All land areas used to meet the open space requirement shall be so configured as to accommodate within a circle having a diameter of not less than seventy-five (75) feet.
7. The open space land area required shall be contained in no more than two (2) noncontiguous parcels or, if more than two (2) parcels are to be utilized for this requirement, no parcel shall contain less than fifteen thousand square feet (15,000 sq. ft.)
8. The open land, and such other facilities as may be held in common shall be conveyed, as determined by the Special Permit Granting Authority, subject to the following guidelines:

In general, valuable natural resource land such as wetlands not suitable for any public use, or suitable for extensive public recreational use, should be conveyed to the City or to a trust; whereas land which will be principally used by the residents of the cluster, should be conveyed to a homes association. Conveyance shall be to one of the following:

1. To a corporation or trust comprising a home owner's association whose membership includes the owners of all lots or units contained in the tract. The developer shall include in the deed to owners of individual lots beneficial rights in said open land, and shall grant a conservation restriction to the City of Woburn over such land pursuant to M.G.L. Chapter 184, s. 31-33, to insure that such land be kept in an open or natural state and not be built upon for residential use or developed for accessory uses such as parking or roadways. This restriction shall be enforceable by the City through its Conservation Commission in any proceeding authorized by s.33 of Ch. 184 of M.G.L. In addition, the be responsible for the maintenance of the common land and any other facilities to be held in common until such time as the homes association is capable of assuming said responsibility. In order to ensure that the association will properly maintain the land deeded to it under this section, the developer shall cause to be recorded at the Middlesex County Registry of Deeds, a Declaration of Covenants and Restrictions which shall, at a minimum, provide for the following:

I) Mandatory membership in an established homes association; as a requirement of ownership of any lot in the tract;

II) Provisions for maintenance assessments of all lots in order to ensure that the open land is maintained in a condition suitable for the uses approved by the homes, association. Failure to pay such assessment shall create a lien on the property assessed, enforceable by either the homes association or the owner of any lot;

III) Provision which, so far as possible under the existing law, will ensure that the restrictions placed on the use of the open land will not terminate by operation of law.

2. The conservation restriction or easement shall be granted to a nonprofit organization, the principal purpose of which is the conservation of open space, and to the Conservation Commission for park or open space use, with a trust clause insuring that it be maintained as open space. Both the non-profit organization and the Conservation Commission shall, under the terms of the restriction or easement, have concurrent powers of enforcement.

9. Some interim protection of open land must be provided by recorded covenant of the landowner, where a large cluster will be developed in phases.

10. The covenant must be submitted to the Special Permit Granting Authority for review and approval prior to recording.

10.6 Conditions

No special permit for a cluster development shall be issued unless the requirements enumerated in this section, and other sections of this ordinance, are met, and the special permit granting authority finds:

1. Preservation of the open space will be beneficial to the City and/or the residents of the tract, by virtue of the creation of usable open space for passive recreation, preservation of scenic areas or views, preservation of natural resources, contribution to a network of open space as part of an overall City Conservation Plan, or other.

2. The cluster development will result in a development superior to the proposed conventional subdivision of the tract, from the standpoint of location of units, topography of the site, efficient provision of public services, and reduction in the amount of roadway and driveway construction.
3. The cluster development will have no more adverse impact on nearby developed neighborhoods, by virtue of increased traffic, impairment of privacy and views, than would conventional subdivision of the tract.
4. The cluster development will have no adverse impact on the quality or supply of groundwater.
5. Proper arrangements have been made for access to the open space by residents of the tract, emergency vehicles of the City, and, if the open space is to be held by the City, by the public.
6. The conservation easement or conservation restriction shall be acceptable as to both content and form. At the minimum, the instrument must comply with the provision of M.G.L. Ch. 184, Sect. 31-33, or Internal Revenue Code Section 170 (h) as may be amended.
7. Suitable arrangements for management and maintenance of the open space have been made.
8. Where application has been made for the inclusion of additional units in exchange for provision of an amenity as provided in Section 10.4.3, the amenity to be provided is sufficiently beneficial to the City of Woburn, and the additional units are appropriate to the neighborhood.

Which entity is the special permit granting authority for cluster/flexible zoning?

Selectmen/Council 10.2 Procedures

1. Any person who submits to the Planning Board, for approval under the Subdivision Control Law, a plan of land in one or more residential districts, may make application to the City Council for a special permit excepting the building lots for dwelling units shown on such plan in said districts from specific dimensional requirements of the zoning ordinance as specified hereunder, but not any other requirements of the zoning ordinance.

Has any housing been built under the cluster/flexible provisions?

Worcester

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes Cluster Zoning - by Special Permit (1991)
Mixed Use Overlay zone - by Special Permit (1991)
Continuing Care Retirement Community - by Special Permit (1991)
Adaptive Reuse Overlay District - by Special Permit (enacted 2002, amended April 6, 2004)

City of Worcester Zoning Ordinance (Adopted 1991, Amended 2004)

ARTICLE VIII CLUSTER ZONING
Section 1 Purpose

1. The purpose of this section is to provide for cluster subdivision developments and cluster developments of designed groups of single family dwellings as a means for more efficient and effective development of Worcester while also protecting its sensitive natural environment and providing for preservation of open space in both natural and improved states.

Section 2 Cluster Subdivisions

In lieu of a subdivision under conventional dimensional controls as provided in Articles III and IV, a cluster subdivision may be

developed upon the granting of both a special permit and site plan approval by the Planning Board using the following standards:

1. The number of lots may not exceed the number permitted on the parcel determined by dividing the parcel size minus land subject to Wetlands Protection Act and minus twenty-five (25) percent of the lot, by the minimum lot size.

Gross Sq. Footage Land 250% of site

Minimum Lot Size

2. The cluster lots may be no less than fifty (50) percent of the minimum lot size in the zone.

3. Frontage, setback and side and rear yard dimensions shall be guided by the characteristics of the site, proposed structures and nature of the existing built environment in the area of the proposed cluster subdivision. Zero lot line development is permitted.

4. A maximum of forty (40) percent of each developed lot may be impervious surface.

5. At least twenty-five (25) percent of the net site (calculated as the gross area minus the area dedicated to road right of way) must be permanently committed as open space. The designated open space must be accessible and capable of being used. It cannot be constituted only of "unbuildable land". Where density bonuses are given, the open space requirement may be proportionally decreased to twenty (20) percent of the net site. Such open land shall either be conveyed to the City and accepted by it for park or open space use, or be conveyed to a non-profit organization the principal purpose of which is the conservation of open space or be conveyed to a corporation or trust owned or to be owned by the owners of lots or residential units within the subdivision. If such a corporation or trust is utilized, ownership thereof shall pass with conveyances of the lots or residential units. In any case where such land is not conveyed to the City, a restriction enforceable by the City shall be recorded providing that such land shall be kept in an open or natural state and not be built for residential use or developed for accessory uses such as parking or roadway.

6. The submittal requirements and review standards including administration, application, submission requirements, fees, powers, hearings and time limits, shall be those as provided in Article II and Article V. In addition, such subdivision rules and regulations as may be in force are applicable relative to standards for roadways, utilities, drainage and other aspects of site development and submittal format.

Section 3 Cluster Groups of Single Family Dwellings

In lieu of a subdivision under conventional dimensional controls as provided in Articles III and IV, a cluster group of single family dwellings may be developed upon the granting of a special permit and site plan approval by the Planning Board under the following standards:

1. The number of dwellings may not exceed the number permitted on the parcel determined by dividing the parcel size minus land subject to the Wetlands Protection Act and minus twenty-five (25) percent of the lot, by the minimum lot size.

Gross Sq. Footage Ch. 131 Land 25% of site

Minimum Lot Size

2. The single family units may be attached, detached or a combination of both as permitted in the underlying zone. Each unit must have private/direct entries and yard areas immediately adjacent to the unit for the private use of the unit occupants.

3. The entire site shall be designed to and shall remain in one ownership and shall be developed and maintained as a unit, excepting for units, private yards and other similarly designated spaces for private use and/or ownership. The Planning Board shall determine that the design and ownership scheme assures unified control and maintenance of all land not so individually owned.

4. Unit placement and configuration shall be guided by the characteristics of the site, proposed structures and nature of the existing built environment in the area of the proposed cluster subdivision.

5. A maximum of forty (40%) of the site may be impervious surface.

6. At least (40) forty percent of the net site (calculated as the gross area minus the area dedicated to roadway) must be permanently committed as open space. The designated open space must be accessible and capable of being used. It cannot be constituted only of "unbuildable land". Where density bonuses are given, the open space requirement may be proportionally decreased to thirty-five (35) percent of the net site. Such open land shall either be conveyed to the City and accepted by it for park or open space use or be conveyed to a non-profit organization the principal purpose of which is the conservation of open space or to be conveyed to a corporation or trust owned or to be owned by the owners of lots or residential units within the development. If such a corporation or trust is utilized, ownership thereof shall pass with conveyances of the lots or residential units. In any case where such land is not conveyed to the City, a restriction enforceable by the City shall be recorded provided that such land shall be kept in an open or natural state and not be built for residential use or developed for accessory uses such as parking or roadway.

7. The submittal requirements and review standards including administration, application and submission requirements, fees, powers, hearings and time limits, shall be those as provided in Article II and Article V. In addition, such subdivision rules and regulations as may be in force are applicable relative to standards for roadways, utilities, drainage and other aspects of site development and submittal format.

Section 4 Other objectives

The following objectives are important in the development of a cluster:

1. It is desirable to decrease municipal costs and environmental impacts through reduction in the length of streets, utilities and drainage systems per dwelling unit served.
2. It is desirable to increase the scale of contiguous area assured of preservation in a natural state, off street pathways and trails, recreation areas open at least to all residents of the cluster and wilderness areas.
3. It is desirable that all existing scenic vistas be respected and preserved and that new scenic vistas be created.
4. It is desirable to increase vehicular safety by having fewer, better located and designed egresses onto existing streets.
5. It is desirable to preserve environmental quality by reduction of the total area over which vegetation is disturbed by cut or fill or displacement: by reduction in critical lands (slopes in excess of fifteen percent (15%), land within 100 feet of a water body, wetlands or streams having outstanding or rare vegetation) disturbed by construction; reduction of the extent of waterways altered or relocated; reduction in the volume of cut and fill for roads and construction sites.
6. It is desirable to have the design and location and materials of the structures on the site be sensitive to the natural environmental conditions, vistas and abutting properties.
7. There should be positive benefit to the City in some important respects, such as reduction of environmental damage, better controlled traffic, and preservation of current character through location of reserved open space.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board City of Worcester Zoning Ordinance (Adopted 1991, Amended 2004)
Section 2 Cluster Subdivisions

In lieu of a subdivision under conventional dimensional controls as provided in Articles III and IV, a cluster subdivision may be developed upon the granting of both a special permit and site plan approval by the Planning Board using the following standards:

Has any housing been built under the cluster/flexible provisions?

Wrentham

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by right?

No

Is cluster development, planned unit development, open space residential design, or another type of flexible zoning allowed by special permit?

Yes ARTICLE 17 OPEN SPACE PRESERVATION DEVELOPMENT (OSPD)
17.1 Purpose

In order to provide for the PUBLIC interest by the preservation of OPEN SPACE in perpetuity, variations in residential housing DEVELOPMENT patterns which allow for DEVELOPMENT more harmonious with natural features and town growth policies than traditional residential DEVELOPMENT, to promote the maximum possible protection of OPEN SPACE, visual quality and AQUIFER and other natural resource protection, and to encourage efficient provision of necessary utilities and community services, the following regulations are established for OSPD within the Town of Wrentham. In making any and all determinations under this bylaw the Planning Board shall always compare the impact of an OPEN SPACE DEVELOPMENT with potential conventional DEVELOPMENT, and may approve OPEN SPACE DEVELOPMENT only if the proposal is superior to a conventional

DEVELOPMENT.

17.2 Applicability

OPEN SPACE Preservation DEVELOPMENT shall be allowed in all DISTRICTS, subject to the requirements of this bylaw for such DISTRICT, and in accordance with the additional requirements specified herein.

17.3 General Requirements

- a. Any parcel of land located within a ZONE permitting OSPD containing eight (8) acres or more may be considered for an OSPD subject to a SPECIAL PERMIT Issued by the Planning Board.
- b. After an OSPD application has been submitted, no utility installations, no ditching, no GRADING of land or LOTS, no excavation except for purposes of soil testing, no dredging or filling, and no construction of BUILDINGS or STRUCTURES shall be done on any part of the DEVELOPMENT site until the application has been reviewed and approved as provided by these regulations.
- c. No OSPD will be approved within an established single-family residential neighborhood if the Planning Board determines that such land would have a detrimental effect upon the surrounding property.
- d. It shall be the responsibility of the applicant for an OSPD SPECIAL PERMIT to demonstrate to the Planning Board that this form of land DEVELOPMENT conventional patterns of residential subdivision DEVELOPMENT for the particular site being considered.
- e. All DWELLINGS to be built on the site shall be located at least five hundred (500) feet from any PUBLIC WAYS in the OSPD proposal to the Planning Board. This distance may be reduced by the Planning Board.

17.4 Permitted USES

- a. Detached single-family DWELLINGS, including any ACCESSORY USES, as permitted in the ZONING bylaw for the DISTRICT in which the land lies.
- b. Uses permitted within the COMMON OPEN SPACE as described in these regulations.

17.5 Minimum Requirements

a. Density: The total area of the tract proposed for OSPD shall be at least eight (8) acres. The total number of LOTS that would be normally allowed under a conventional subdivision for the ZONING DISTRICT in which the site is located. The maximum number of LOTS possible shall be determined by the layout of a preliminary sketch plan showing the total number of LOTS which could be obtained by utilizing a conventional grid subdivision. The burden of proof shall be upon the applicant. The required minimum tract area, as well as the calculation of the number of LOTS allowed by a conventional grid subdivision, as specified above shall be exclusive of:

1. Land within the WATERSHED Protection DISTRICT.
2. Land otherwise prohibited from residential DEVELOPMENT by local or state law, regulation, statute, or by a prior CONSERVATION EASEMENT or restriction recorded in the Norfolk County Registry of Deeds.

b. Reduction of Dimensional Requirements: The Planning Board may grant a reduction in the dimensional requirements of the underlying ZONING regulations for all portions of an OSPD, if the Planning Board finds that such reduction will result in better design, improved protection of natural and scenic resources, and will otherwise comply with these regulations, provided that the percentage of the reduction in minimum LOT size and STREET FRONTAGE requirements allowed under this Bylaw shall not be greater than an amount equal to the percentage of the total OSPD which is to be set aside for COMMON OPEN SPACE times 1.1. (Explanation: If 30% of the land area is to be set aside for COMMON OPEN SPACE, the Planning Board may grant up to a 33% reduction in the minimum LOT size and STREET FRONTAGE requirements). In no instance shall any LOT deviate from the following Table of Minimum Requirements:

TABLE OF MINIMUM REQUIREMENTS

Minimum Area * 22,000 s.f.

Minimum FRONTAGE 55 ft.

Minimum FRONT YARD SETBACK ** 25 ft.

Minimum SIDE YARD SETBACK ** 15 ft..

Minimum REAR YARD SETBACK ** 8 ft.

* Exclusive of any land within the WATERSHED Protection DISTRICT.

** Reduction in the COMMON OPEN SPACE SETBACK requirement set forth in Article 17.7 (b, 6) shall not be permitted.

c. DEVELOPMENT Standards: Prior to the issuance of a SPECIAL PERMIT for an OSPD the Planning Board shall find, and the applicant shall submit the information necessary to demonstrate that the following standards have been met.

1. The DEVELOPMENT will not cause unreasonable traffic congestion or unsafe conditions both within and outside of the DEVELOPMENT and will comply with town standards for parking, access, road design and construction.

2. The DEVELOPMENT will provide for and maintain convenient and safe emergency vehicle access to all BUILDINGS and STRUCTURES at all times.

3. The nature of the soils and sub-soils shall be suited for the intended purposes. This determination shall focus upon, but shall not be limited to the locations, design and construction of roadways, BUILDINGS, septic systems, and SURFACE WATER drainage systems. Soil borings or test pits shall be made to provide information on soil texture, color, percolation rates and depth to the ground water table at its maximum ELEVATION.

4. Anticipated storm water runoff from the site shall not exceed peak runoff from the site prior to DEVELOPMENT. The applicant shall submit formal drainage calculations by a registered professional engineer for this purpose.

5. Proper soil erosion and sedimentation control measures shall be employed to minimize sedimentation and siltation of existing SURFACE WATER bodies and wetlands. In areas where the land SLOPES downward towards any SURFACE WATER body, or fresh water wetland, proposed filling, cutting, clearing or GRADING shall be minimized and all such DEVELOPMENT activities shall be carried out in such a way as to retain the natural vegetation and TOPOGRAPHY wherever possible. The Planning Board may require that an erosion and sedimentation control plan be submitted if significant erosion is anticipated in SLOPE areas.

6. The site design shall preserve and, where possible, enhance the natural features of the property, including scenic views, by adapting the location and placement of STRUCTURES and ways to the existing TOPOGRAPHY in order to minimize the amount of soil removal, tree cutting and general disturbance to the landscape and surrounding properties.

7. All STREETS, sewers, water lines, drainage facilities and utilities shall be designed and constructed in compliance with the Rules and Regulations Governing the Subdivision of Land in Wrentham, Massachusetts, and any other land USE regulations of Wrentham in effect at the time of application, insofar as they are apt. Special exceptions to the subdivision regulations may be authorized by the Planning Board in granting a SPECIAL PERMIT hereunder provided the Board determines such exceptions are in the PUBLIC interest and are not inconsistent with the purposes of s.17.1.

17.6 OPEN SPACE USE and Design Standards

a. Within an OSPD, no less than five (5) acres, nor less than thirty (30%) percent of the total land area shall be devoted to COMMON OPEN SPACE. The COMMON OPEN SPACE shall not include land set aside for roads and/or parking USES. No more than fifty (50%) percent of the COMMON OPEN SPACE may contain land considered as wetland resource areas, other than Isolated Lands Subject to Flooding as defined in any regulations promulgated by the Department of Environmental Protection pursuant to M.G.L. ch.131, s.40, as such regulations or statute may from time-to-time be amended.

b. The COMMON OPEN SPACE shall be designed and maintained in accordance with the following standards:

1. Naturally-existing woods, fields, meadows and wetlands shall be maintained and improved.

2. COMMON OPEN SPACE shall be planned as large, contiguous parcels when ever possible. Strips or narrow parcels of COMMON OPEN SPACE shall be permitted only when necessary for access or as vegetated buffers along the site's perimeter.

3. COMMON OPEN SPACE may be in more than One parcel provided that the size, shape and location of such parcels are suitable for the designated USES.

4. No more than ten (10%) percent of the COMMON OPEN SPACE shall be covered by man-made IMPERVIOUS SURFACES.

5. COMMON OPEN SPACE may be used for passive recreation, conservation, forestry, AGRICULTURE, natural buffers, STRUCTURES necessary to approved USES, utilities and other facilities necessary for the convenience and enjoyment of the residents, subject to approval by the Planning Board. Up to twenty-five (25%) percent of the COMMON OPEN SPACE may be developed for active recreation.

6. There shall be a minimum SETBACK of fifty (50) feet between any COMMON OPEN SPACE and all STRUCTURE and/or property lines of the site.

17.7 COMMON OPEN SPACE Ownership and management

a. COMMON OPEN SPACE in an OSPD shall be conveyed to: 1) the Town of Wrentham for PARK or OPEN SPACE USE; 2) a non-profit corporation, the principal purpose of which is the conservation of OPEN SPACE; or 3) to a corporation or trust owned or to be owned by the owners of LOTS within the DEVELOPMENT. It shall be the Planning Board's decision as to which of the above ownership options shall be used. If a corporation or trust owned by the owners of LOTS is utilized, ownership thereof shall pass with the conveyance of the LOTS. In any case, where such land is not conveyed to the Town, a perpetual restriction, running to and enforceable by the Town, shall be recorded providing that such land shall be retained in perpetuity in an open and natural state and

shall not be built upon for residential USE or developed for ACCESSORY USES such as parking or roadways.

b. If the COMMON OPEN SPACE is not to be conveyed to the Town, then the applicant shall include as part of the road covenant a provision that the COMMON OPEN SPACE will be deeded as approved by the Planning Board. In addition, the LOTS shall not be released until proof of transfer of ownership has been provided to the Planning Board.

c. If the COMMON OPEN SPACE is not to be conveyed to the Town, the application for an OSPD SPECIAL PERMIT must include a description of how and when the COMMON OPEN SPACE will be preserved in perpetuity. The applicant shall also provide as part of the OPEN SPACE proposal an agreement empowering the Town to perform maintenance of the COMMON OPEN SPACE in the event of failure to comply with the program included in the application pursuant to the preceding sentence, providing that, if the Town is required to perform any maintenance work, the owners of LOTS within the OSPD shall pay the cost thereof and that the cost shall constitute a lien upon their properties until such cost has been paid. The Conservation Commission shall act as the Town's land manager in overseeing the management of the COMMON OPEN SPACE land.

d. Forms of all documents necessary to convey or restrict the COMMON OPEN SPACE shall be submitted to the Planning Board for approval prior to the close of the PUBLIC hearing. Failure to provide forms satisfactory to the Planning Board and Town Counsel shall be grounds for denial of the permit.

17.8 Review Procedures

All applications for OSPD shall be submitted with the following plans:

a. Overall DEVELOPMENT Plan for the entire OSPD and showing all surrounding land within 150 feet of the boundaries of the tract, all man-made features, LOT lines, ZONING boundaries, vegetative cover, wetlands, soil characteristics and existing TOPOGRAPHY, together with the layout of the proposed DEVELOPMENT concept. Including BUILDINGS, parking areas, roadways, landscaping, COMMON OPEN SPACE, wetland resource areas as defined by the regulations (310 CMR 10.00) promulgated pursuant to the Wetlands Protection Act (M.G.L. ch.131, s.40) and Article 5 of this ZONING Bylaw, the extent of land located in ZONE A of the Flood Insurance Rate Maps (FIRM) of the Town of Wrentham, the proposed number of DWELLING UNITS and the number of bedroom/dens in each unit, and anticipated DEVELOPMENT phases.

b. Architectural Plan(s) - Typical floor plans and architectural ELEVATIONS of the proposed DWELLING UNITS and artists rendering of the proposed STRUCTURES.

c. Landscaping Plan(s) - Typical landscaping plans for all buffer areas and disturbed areas and a detailed planting plan for the site.

d. Plans equivalent to conventional preliminary subdivision in conformity with the requirements and procedures for submission and review under the Rules and Regulations Governing the Subdivision of Land in Wrentham, and as required by M.G.L. ch.40A, s.9 for SPECIAL PERMIT applications.

All applications for a SPECIAL PERMIT under this section shall be referred by the Planning Board to the Board of Health, Department of PUBLIC Works and Conservation Commission for their review and comments within fourteen (14) days after its submission to the Planning Board. Such departments and boards shall make their recommendations and send copies thereof to the Planning Board and the applicant within thirty-five (35) days of receipt of the referral request by the Planning Board or there shall be deemed no opposition or desire to comment. The Planning Board shall not act upon said SPECIAL PERMIT until either comments from the referred departments and boards have been received, or said thirty-five (35) days have elapsed, whichever is sooner.

Which entity is the special permit granting authority for cluster/flexible zoning?

Planning Board a. Any parcel of land located within a ZONE permitting OSPD containing eight (8) acres or more may be considered for an OSPD subject to a SPECIAL PERMIT Issued by the Planning Board.

Has any housing been built under the cluster/flexible provisions?