



Town of Hopkinton Planning Department

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HOPKINTON PLANNING BOARD PUBLIC NOTICE JANUARY 25, 2022

The Hopkinton Planning Board will hold a public hearing on Tuesday, January 25, 2022, at 6:00 PM in the Hopkinton Town Hall, 330 Main Street, Hopkinton, to receive public comments on the following proposed zoning amendments:

- a) Amend Section II, Definitions, to correctly define the term "Bed and Breakfast Inn" by adding the word "not," which was inadvertently omitted from the previous year's amendment.

"Bed and Breakfast Inn: Any Dwelling Unit, together with any accessory buildings thereto, located on one (1) Lot of Record, containing **not** more than seven (7) Lodging Units offered to the public for compensation for transient or semi-transient accommodations, provided that such Dwelling Unit and accessory building are owned and operated by an individual person or persons, and that all such owner(s) shall occupy the Dwelling Unit. A bed and Breakfast Inn shall be subject to the provisions of Section III, paragraph 3.7.2 and 3.7.5 of this Ordinance."

- b) Amend Section IV striking "4.4.7 Maximum Number of Dwelling Units: The maximum number of dwelling units permitted in any multi-family dwelling shall be eight (8)." The paragraph conflicts with previous amendments that changed the maximum number of dwelling units allowed in any multi-family dwelling from eight (8) to twelve (12) or twenty-four (24), depending upon the zoning district.
- c) Amend Section VIII, Conservation Subdivisions, adding undefined terms, and a procedure to review phased developments and regional impacts. The amendment includes striking the formula approach, associated exceptions, and the requirement that multi-family buildings have ground-level living space. It also increases the density bonuses, incentives, and the maximum height allowed for multi-family buildings, and clarifies the review process, plan requirements, and related provisions found elsewhere, such as in the Subdivision Regulations.

Copies of the full text are available for public viewing in the Town Hall offices during regular business hours and can be found at www.hopkinton-nh.gov.

TOWN OF HOPKINTON, NH PROPOSED ZONING AMENDMENTS

Public Hearing: January 25, 2022

Bold text represents additions.
~~Strick through~~ represents omissions.



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SECTION II DEFINITIONS

Bed and Breakfast Inn: Any Dwelling Unit, together with any accessory buildings thereto, located on one (1) Lot of Record, containing **not** more than seven (7) Lodging Units offered to the public for compensation for transient or semi-transient accommodations, provided that such Dwelling Unit and accessory building are owned and operated by an individual person or persons, and that all such owner(s) shall occupy the Dwelling Unit. A Bed and Breakfast Inn shall be subject to the provisions of Section III, Paragraph 3.7.2 and 3.7.5 of this Ordinance.

SECTION IV DIMENSIONAL AND DENSITY REQUIREMENTS

4.4.7 Maximum Number of Dwelling Units: ~~The maximum number of dwelling units permitted in any multi-family dwelling shall be eight (8).~~

SECTION VIII CONSERVATION SUBDIVISIONS

8.1 AUTHORITY This Section is enacted in accordance with the provisions of RSA 674:21 in addition to the provisions of RSA 674:16-20.

8.2 PURPOSE The purpose of this Conservation Subdivision section is to provide flexibility in the design and development of land to conserve open space, retain and protect important natural and cultural features, provide for more efficient use of Town services, and promote the development of balanced residential communities in harmony with the natural landscape.

8.3 OBJECTIVES The objectives of this section are to:

- (a) Permanently preserve natural topography and features and provide open space and recreation opportunities in close proximity to dwelling units.
- (b) 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.
- (c) Encourage a less sprawling form of development that makes more efficient use of land, requires shorter networks of streets and utilities, and fosters more economical development and less consumption of rural land.
- (d) Provide an efficient procedure that can ensure appropriate, high-quality design and site planning and a high level of environmental amenity.
- (e) Avoid development of portions of sites that contain important natural and/or cultural features, including, for example, scenic views, wildlife habitat (e.g., large un-fragmented blocks of undeveloped land, areas of highest quality habitat identified by NH Fish and Game's Wildlife Action Plan), water resources (e.g., drinking water supply areas and watersheds, wetlands, streams and rivers), and historic structure; and
- (f) Avoid development of portions of sites that are ill-suited for development, including, for example, areas with poor soil conditions, a high-water table, that are subject to flooding, or that have excessively steep slopes.

8.4 DEFINITIONS The following definitions apply specifically to the Conservation Subdivision ordinance.

- (a) **Buffer:** A setback within which adequate vegetation is maintained or provided to visually screen one use from another, to minimize potentially negative impacts on surrounding areas of natural resources, e.g., shield or block noise, light, or other nuisances, and protect water quality and reduce water pollution, or to maintain wildlife habitat. Specific buffer types include wetland buffer and perimeter buffer.
- (b) **Building Envelope:** The area of a building lot identified on a subdivision plan indicating the allowed limits of clearing and grading and within which all structures and the well and septic system, including the tank and leach field, shall be located. No portion of the building envelope may be located within a building or yard setback, wetland buffer or perimeter buffer. The applicant shall show a contiguous building envelope on the plan that depicts a plot of buildable land sufficiently large for the proposed building, well, septic, and related improvements.

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Future construction on the lot is encouraged but not required to be located within the identified building envelope; however, construction outside of the building envelope shall comply with setback requirements for a conventional subdivision development as specified in Section IV Dimensional and Density Requirements. The building envelope is intended to ensure that the lot provides enough buildable land for a house, septic, garage, and accessory structures without the need to disrupt environmentally sensitive lands and wetland buffers and to meet the requirements of this Ordinance.

- (c) **Conservation Subdivision:** An alternative form of a residential subdivision where, instead of subdividing an entire tract into lots of conventional sizes, the same number of housing units are arranged on lots with reduced dimensions. The remaining area of the parcel is permanently protected as open space by way of a legal agreement between the landowner(s) and a land trust or government agency that permanently limits the use of the remaining area to protect its conservation values.
- (d) **Yield Plan:** A design acceptable to the Planning Board, showing the number of lots that could be approvable and buildable following the requirements of conventional zoning and subdivision standards.

8.4 8.5 APPLICABILITY AND PROCEDURES

8.4.1 8.5.1 Applicability. To facilitate implementation of the goals of the Hopkinton Master Plan, all subdivisions for residential use in R-4, R-3, R-2, R-1, M-1, VM-1, and VR-1 districts shall be developed as a Conservation Subdivision in accordance with the standards specified in this section and in the Subdivision Regulations, unless exempted under Section 8.4.2 8.5.2 or issued a Special Use Permit under Section 8.4.3 8.5.3.

8.4.2 8.5.2 Exemptions. Subdivisions meeting any one of the following criteria shall be exempt from the requirements of this section (unless a landowner elects to follow the standards of this section).

- (a) The subdivision is in the R-4, R-3, or R-2 district and creates lots that are, on average, equal to or greater than 435,600 square feet (10 acres) in size and provided the deed for each lot created contains a restriction prohibiting the further subdivision of the lot.
- (b) The parent parcel is nine (9) acres or less in total size, and the subdivision does not require a new road; or
- (c) The subdivision creates five (5) or fewer dwelling units and does not require a new road.

8.4.3 8.5.3 Authorization to Issue a Special Use Permit. Notwithstanding other provisions of Hopkinton's zoning Ordinance, authority is hereby granted to the Planning Board, as allowed under RSA 674:21 II, to issue a Special Use Permit to modify the requirements of this section as follows:

- (a) The Planning Board may issue a Special Use Permit for the parcel to be developed as a conventional subdivision in accordance with Section IV, Dimensional and Density Requirements when it finds that:
 - (1) The parcel is ill-suited for development using Conservation Subdivision design, or a conventional design provides greater or equal benefits to the community.
 - (2) The parcel has no area with **four** (4) or more "points" on the Town of Hopkinton's Natural Resource Inventory co-occurrence map; and

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- (3) The conventional subdivision design protects important natural and/or cultural features identified by the Planning Board.
- (b) The Planning Board may issue a Special Use Permit for a modified Conservation Subdivision design to allow for variations from certain requirements of this section as specified herein. Such modifications shall be consistent with the purposes and standards of this section, fall within the guidelines contained herein, and shall not be detrimental to public health, safety, or welfare.

8.4.5 8.5.4 Review Process. A subdivision application under this section shall comply with the standard application and review process specified in **Section II** of the Subdivision Regulations. ~~and the following procedures:~~

- ~~(a) The applicant shall submit a detailed site inventory and preliminary conceptual for consultation with the Planning Board prior to submitting a formal application for subdivision.~~
- ~~(b) The site inventory and preliminary conceptual **Yield Plan** shall be reviewed at a public meeting of the Planning Board against the standards and goals of this section with input provided by the Planning Board and other interested parties on how to satisfy the requirements of this section.~~
- ~~(c) Sections of the Subdivision Regulations that are clearly not applicable to a Conservation Subdivision design shall not be imposed on the applicant by the Planning Board.~~

8.4.6 8.5.5 Legal Review. Prior to final approval by the Planning Board, the applicant shall submit for review by the Town Counsel any restrictive covenants, condominium or cooperative agreements, conservation easement, or other legal agreements proposed for use in the Conservation Subdivision. The Town Counsel shall advise the Planning Board of the adequacy of such legal provisions.

8.6 DEVELOPMENT DENSITY

8.6.1 Base Number of Buildings and Dwelling Units. The base number of buildings and dwelling units allowed within a Conservation Subdivision shall be determined by **use of a Yield Plan**. ~~one of the following approaches. Except as provided below, the applicant may elect to use either the Formula or the Yield Plan approach to determine the base number of buildings and dwelling units allowed within the Conservation Subdivision.~~

The applicant presents a Yield Plan to the Planning Board to determine the number of allowable buildings and dwelling units **reasonably achievable on the property, based on a conventional subdivision design that meets or exceeds the minimum dimensions required for lots in conventional subdivisions** permitted within the Conservation Subdivision. ~~The Yield Plan is a rough sketch of conventional subdivision development plan that fully complies with the requirements for a conventional subdivision, including the dimensional standards specified in Section IV, Dimensional and Density Requirements.~~ **The Yield Plan does not have to meet formal requirements for a site design plan and is not intended to involve significant engineering or surveying costs, and the design must be realistic and economically capable of being constructed, given site features and all applicable regulations. Potential building lots and streets must not be shown in areas that would not ordinarily be permitted in a conventional plan. For example, Yield Plans would include, at minimum, basic topography, wetland locations, 100-year floodplains, and slopes exceeding 25 percent in defining areas unsuited for development.**

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- (a) ~~Formula Approach.~~ Under the Formula Approach, the base number of allowable residential buildings is determined by the following formula: $[(\text{Net Area}) \times (\text{Factor})] \div \text{Conventional Minimum Lot Size}$

~~Where Net Area = Total Area of Parcel (sq. ft.) - Wetlands on the Parcel (sq. ft.) - [Total area (sq. ft.)/1,089,000*100,000]~~

~~Conventional Minimum Lot Size = Lot size determined from Table 4.3 for a Single-Family Building, Two-Family Building, or Multi-Family Building (or combination of the above as permitted)~~

~~Factor = Number determined by the following:~~

Percentage of Parcel that is Wetlands	Factor
0-10%	0.85
10-20%	0.8
20-30%	0.75
30% or more	Use Yield Plan Approach

~~Where the result is rounded down to the next whole number for buildings containing more than one dwelling unit the total number of dwelling units is calculated by adding up the number of dwelling units per building for all buildings.~~

~~If more than 15 percent of the total area of the parcel consists of steep slopes (i.e., areas with slope greater than 15 percent), then 65 percent of the steep area shall be subtracted from the total parcel area in the top line of the formula (in the same way that wetland area is subtracted).~~

- (b) ~~Yield Plan Approach.~~ Under this approach, the applicant presents a Yield Plan to the Planning Board to determine the number of allowable buildings and dwelling units permitted within the Conservation Subdivision. The Yield Plan is a rough sketch of conventional subdivision development plan that fully complies with the requirements for a conventional subdivision, including the dimensional standards specified in Section IV, Dimensional and Density Requirements.

- (c) Exceptions:

- (1) If more than 30 percent of the area of the parcel consists of wetlands or steep slopes, then the applicant shall use the Yield Plan Approach to determine the allowable number of buildings and dwelling units.
- (2) The Planning Board may require the preparation of a Yield Plan if the subdivision creates 20 or more dwelling units as determined by the Formula Approach. The Planning Board may require the use of the Yield Plan for determining the permitted number of buildings and dwelling units to be developed if it finds, upon review of the Yield Plan, that the characteristics of the site permit fewer than 90% of the number of dwelling units determined using the Formula Approach to be created.

8.6.2 Incentive Units Density Incentives The Planning Board may award the development a density bonus that increases the maximum number of dwelling units beyond the number of units identified in the Yield Plan. Bonuses may be awarded from any combination of the following, but in no case shall the bonus result in more than a 25% increase in dwelling units unless stated otherwise. All fractional numbers of 0.5 or greater shall be rounded up to the nearest whole number. ~~Additional dwelling units (rounded to the nearest whole number of units), not to exceed twenty percent (20%) over and above the base number of dwelling units as determined under 8.6.1, may be awarded at the discretion of the Planning Board for the following:~~

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- (a) **Senior and/or Affordable Housing** according to Section XVI, Affordable Housing Innovative Land Use Control: Where the development parcel incorporates not less than 20% of senior or affordable housing established and maintained in compliance with HUD/NHHFA guidelines, a 25% increase in the number of allowable dwelling units is available. Where the development includes a combination of senior and affordable housing units, a 30% increase in the number of allowable dwelling units is available.
- (b) **Designated Open Space:** Conservation of greater than the minimum required area of the parcel as Designated Open Space shall receive a **10% bonus where the proposed development shows 60% or more of the tract as open space, protected as such in perpetuity, OR 20% where the proposed development shows 70% or more of the tract as open space, protected as such in perpetuity.** ~~five percent (5%) increase in the allowable number of dwelling units for every additional ten percent (10%) of the parcel that is included in the Designated Open Space; and/or~~
- (c) **Public Access:** Allowing all residents of Hopkinton access to the Designated Open Space, including access to active recreation areas and/or facilities, shall be eligible for a five percent (5%) increase in the number of allowable dwelling units. ~~and/or~~
- (d) **Conservation Easement:** Providing a permanent conservation easement, acceptable to the Planning Board and Conservation Commission and held by a recognized conservation organization or land trust, shall be eligible for a five percent (5%) increase in the number of allowable dwelling units.
- (e) **Trails:** If there is a linking of existing/proposed trails or open space networks with trail corridors through the site, and the public is granted access to these trails in perpetuity, then a 10% increase in the number of allowable dwelling units is available.
- (f) **Agricultural Land:** If the development protects agricultural land and provides permission or their use as such in perpetuity, a 10% increase in the number of allowable units is available. If the portion preserved for agricultural use is equal to 25% or more of the tract, the full bonus may be awarded. In approving the density bonus, the Planning Board may restrict the farming type and intensity to prevent nuisances. This provision only requires that permission is available. The fact that agricultural uses are not pursued at any particular time does not affect the validity of the bonus; however, at a minimum, fields should not be allowed to become overgrown; instead, they must be kept open by mowing.
- (g) **Viewshed:** If the development protects in perpetuity viewsheds and associated viewpoints, which are lands or corridors of land that contribute to the visual landscape of the Town, including items such as open fields containing stone walls and forested hillsides, then a 5% increase in the number of allowable dwelling units is available.
- (h) **Forest Management:** If the open space to be preserved is mostly mature forest (70% or greater), where 30% or less of the basal area will be cut, and where cutting is well distributed and will be based on a management plan developed by a NH Licensed Forester and approved by the Planning Board, a 10% increase in the number of allowable dwelling units is available.
- (i) **Historical Features:** If the development protects in perpetuity historically significant buildings and landscapes, identified as such in the Master Plan, including buildings and associated uses that are maintained and visually separated from the developed portion of

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the development, a 5% increase in the number of allowable dwelling units is available. Structures and landscapes not identified as such through the Master Plan may be determined by sufficient evidence presented to the Planning Board during a review of the development. Such evidence may include comments from the Heritage Commission or Historical Society, listing or eligibility for listing on the National Register of Historic Landmarks, or other qualified statements of historical value.

8.7 LOT AND DIMENSIONAL REQUIREMENTS

8.7.1 Ownership. Buildings in a Conservation Subdivision may be located on individual residential lots or on common lots with more than one building on a lot or a combination thereof. If more than one dwelling unit will be located on a lot, the ownership and management arrangements for that lot and the units thereon, shall be detailed as part of the subdivision application, and those arrangements shall be subject to approval by the Planning Board in accordance with the Subdivision Regulations.

8.7.2 Lot Sizes. The following minimum lot sizes shall apply for the specified districts and the specified conditions, except as provided for under 8.7.3, Alternative Lot Sizing, and 8.7.4, Design Specifications for Lots:

District	Minimum Lot Size
R-4	60,000 sq. ft. for each building (containing one or two dwelling units).
R-3	45,000 sq. ft. for each building containing a single dwelling unit. For buildings containing more than one attached dwelling unit, 45,000 sq. ft. for the first dwelling unit and 10,000 sq. ft. for each additional attached dwelling unit.
R-2	The number of square feet specified below for each building containing a single dwelling unit. For buildings containing more than one attached dwelling unit, the lot must include an additional 8,000 sq. ft. per building for each additional dwelling unit. 45,000 sq. ft. – No public water or sewer 40,000 sq. ft. – If public water, but no public sewer 35,000 sq. ft. – Public water and public sewer
R-1	The number of square feet specified below for each building containing a single dwelling unit. For buildings containing more than one attached dwelling unit, the lot must include an additional 8,000 sq. ft. per building for each additional dwelling unit. 40,000 sq. ft. – No public water or sewer 35,000 sq. ft. – If public water, but no public sewer 30,000 sq. ft. – Public water and public sewer
VR-1	7,500 sq. ft. for each building containing a single dwelling unit and an additional 2,000 sq. ft. per building for each additional attached unit.
M-1	55,000 sq. ft. for each building (containing one or two dwelling units).
VM-1	25,000 sq. ft. for each building (containing one or two dwelling units).

8.7.3 Alternative Lot Sizing. The Planning Board may authorize variations from the minimum lot sizes specified under 8.7.2 by Special Use permit issued pursuant to Section 8.4.3 **8.5.3**, provided the Planning Board determines that the following conditions are met:

- (a) Each lot has a minimum of 20,000 square feet of contiguous dry land (except in the VR-1 district).
- (b) Minimum lot sizes comply with the New Hampshire Department of Environmental Services requirements for wastewater management under a standard or *cluster subdivision*, using an individual, joint, or community septic system(s) and an individual, joint or community well(s); and

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- (c) The goals and design specifications of this section are otherwise achieved.

8.7.4 Design Specifications for Lots. Lots created as part of a Conservation Subdivision shall conform to the following design specifications:

- (a) Except as provided below, Conservation Subdivisions developed pursuant to this section are exempt from the dimensional requirements specified in Table 4.3 and shall, instead, comply with the following minimum dimensional requirements when delineating lots and building envelopes. Other provisions of Section IV, Dimensional and Density Requirements, of this Ordinance, shall continue to apply.

District	Frontage	Minimum Front/Rear Setback	Minimum Side Setback
R-4	100 ft.	60 ft.	25 ft.
R-3	75 ft. or 30 ft. per unit whichever is greater	50 ft.	25 ft.
R-2	50 ft. or 25 ft. per unit whichever is greater	30 ft.	20 ft.
R-1	40 ft. or 20 ft. per unit whichever is greater	30 ft.	15 ft.
VR-1	40 ft. or 20 ft. per unit whichever is greater	30 ft.	15 ft.
M-1	100 ft.	50 ft.	25 ft.
VM-1	50 ft.	25 ft.	20 ft.

- (b) The size of the lots shall be shown on the subdivision plan and shall be subject to Planning Board approval. ~~Lots may be required by the Planning Board~~ **The Planning Board may require lots** to be larger than the minimums above to meet the stated objectives or ~~to~~ satisfy other requirements ~~of this section~~, particularly the dimensional and design standards of this section, ~~to support~~ the goals ~~stated~~ in the Master Plan, or to comply with other elements of Hopkinton's Zoning Ordinance **which includes** ~~to protecting human the~~ health, welfare and public safety **of the residents of the Town of Hopkinton.**
- (c) Any building utilizing access from an existing Town road may be required to comply with some or all of the conventional dimensional requirements specified in Section IV, Table 4.3.
- (d) Except in the VR-1 and R-1 districts, lots created may be required to maintain up to a ~~100~~**150**-foot vegetated buffer between any new structure and an existing public road. The buffer area shall remain free of buildings, parking, or other structures as well as lawns, leach fields, and detention basins and shall be maintained in mature, forested cover. If inadequate vegetation is present, the Planning Board may require additional plantings. This buffer shall be protected by deed restrictions ~~on the subject properties.~~
- (e) **The Planning Board may require the designation of an undisturbed, naturally vegetated buffer strips of at least 25-feet in width around water resource features, (e.g., lakes, ponds, streams, wetlands) or other natural features that may be adversely affected by erosion or stormwater runoff. Such areas may be required to be revegetated if they were cleared prior to subdivision approval or cleared during construction.**
- (f) Building envelopes indicating the anticipated location of the well, septic tank and field, and any structures on the lot shall be identified for each lot subject to the dimensional specifications provided herein. Future construction on the lot is encouraged, but not required, to be located within the identified building envelope for each lot; however, construction outside of the designated building envelope shall comply with the setback requirements for a conventional development as specified in Section IV, Dimensional and Density Requirements.

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District	Minimum Separation Distance of Building Envelopes for New Lots From Existing Structures on Adjacent Parcels	Minimum Average Separation Distance Between Building Envelopes for New Lots
R-4, R-3	200'	120'
R-2	125'	80'
R-1	*50'	*50'
VR-1	*30'	*25'
M-1	*60'	*40'
VM-1	*50'	*30'
The minimum separation distance may be reduced to the average separation between structures on adjacent or neighboring properties.		

- (g) Building envelopes for each new lot shall ensure an adequate separation between new primary structures and ~~between new primary structures and existing structures on adjacent lots according to the scale below.~~ For building envelopes for new lots, the standard is applied to the average distance between building envelopes on adjacent new lots (i.e., the actual distance of separation may vary and be less than the minimum specified for some lots, provided that, on average, the minimum distance of separation is achieved across all new lots created). Where there is more than one building containing one or more dwelling units on a common lot, the minimum distance between such structures shall be ~~fifty (50)-feet.~~
- (h) Building height shall not exceed ~~35 feet, in all districts~~ **the height for the district as specified in Section IV, Dimensional and Density Requirements, except for multi-family attached dwelling units, which shall not exceed 50 feet.**
- (i) Applicants are encouraged to vary lot sizes, lot dimensions, and the location of building envelopes and structures from the access road from lot to lot within the subdivision to retain significant, natural vegetation along the road; provide increased privacy for residents on adjacent lots; and increase the visual variety provided by the arrangement of homes within the subdivision.
- (j) Lots may be irregular in shape provided they conform to the natural topography and features of the parcel (e.g., the lot lines follow an existing stone wall, stream, or other natural dividing feature).
- (k) The Planning Board may authorize variations from the above standards by up to fifty percent (50%) by Special Use Permit issued pursuant to ~~Section 8.4.3~~ **8.5.3, Authorization to Issue a** Special Use Permit, to allow flexibility in the design of the subdivision to meet the objectives of this section or to support the creation or continuation of a traditional village-style development pattern.

8.7.5 Streets and Utilities. The installation of streets and utilities shall comply with applicable sections found elsewhere in this Ordinance and requirements specified in the Subdivision Regulations, including the posting of bonds. **New streets shall only be permitted for a subdivision creating a minimum of four (4) lots. The total number of lots may include any lot containing an existing residence that is to utilize the new street.**

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

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8-5 8.8 PERMITTED USES

8-5-1 8.8.1 Uses. All uses permitted in the district within which the Conservation Subdivision lies, as specified in Section 3.6, Use Regulations (Table of Uses), shall be allowed.

8-5-2 8.8.2 Additional Uses Permitted within a Conservation Subdivision. The following uses are permitted within a Conservation Subdivision development (without a special exception) in addition to those specified in Section 3.6.

District	Additional Permitted Uses
R-3	Multi-family buildings with up to four (4) attached dwelling units per building.; provided that all units have direct access (not through a common corridor) to the ground and will have some living area at ground level.
R-2, VR-1	Multi-family buildings with up to eight (8) attached dwelling units per building.; provided that all units have direct access (not through a common corridor) to the ground and will have some living area at ground level.

8-5-3 8.8.3 Ownership of Units. Units built as part of a Conservation Subdivision may be of condominium or cooperative form of ownership.

8-8 8.9 DESIGNATED OPEN SPACE

8-8-1 8.9.1 Area of Designated Open Space. At least fifty percent (50%) of the total area of the parcel shall be permanently protected as Designated Open Space subject to the additional conditions below. No more than fifty percent (50%) of the Designated Open Space may consist of wetlands or water bodies. The Planning Board may authorize a slight reduction in the area of Designated Open Space by special use permit issued pursuant to Section 8-4-3 **8.5.3**, Authorization to Issue a Special Use Permit when it finds that (1) the reduction is necessary to enable the use of the Conservation Subdivision approach based on the characteristics of the parcel, and (2) the proposed subdivision adequately meets all other requirements of this Ordinance. In no case, shall the Designated Open Space represent less than forty percent (40%) of the total area of the parcel.

8-8-2 8.9.2 Areas Excluded from the Calculation of the Required Area of Designated Open Space. Portions of the parcel that comprise part of an individual house lot, roadway, driveway, access road, roadway right-of-way, existing utility easement (e.g., power line easement), other new or existing right-of-way, buffer between any new structure and an existing right-of-way, or that are less than 100 feet wide shall not count toward the calculation of the designated open space.

8-8-3 8.9.3 Priorities for Inclusion in Designated Open Space. Areas containing the following shall be considered a high priority for inclusion in the designated open space:

- (a) Riparian areas, wetlands, streams, and other water resources and buffers for those resources.
- (b) Critical or high-quality habitat areas, including areas identified as the highest statewide or eco-region importance by the NH Fish and Game's Wildlife Action Plan, and buffers or supporting landscapes to these areas.
- (c) Significant stands of trees or significant individual trees.
- (d) High-quality soil resources (forest or agricultural soils).

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- (e) Cultural and historic resources (e.g., stone walls, historic structures).
- (f) Existing trails.
- (g) Areas that connect to undeveloped open space on adjacent properties.
- (h) Ridgelines, particularly those that continue through the parcel.
- (i) Viewshed areas; and
- (j) Water supply protection areas.

8.8.4 8.9.4 Design Standards for Designated Open Space. The location and layout of the open space shall conform to the standards and process set forth in the Subdivision Regulations.

8.8.5 8.9.5 Allowable Uses in Designated Open Space.

- (a) Any use of the Designated Open Space is subject to approval of the Planning Board and ~~conservation commission~~ and shall demonstrate that such uses shall not negatively impact the natural and/or cultural amenities preserved through the Conservation Subdivision design.
- (b) The following uses generally are permitted in the designated open space, unless specifically prohibited or restricted as a condition of subdivision approval for the purposes of protecting important natural features or characteristics of the parcel:
 - (1) Forest management. **It is recommended that these activities be conducted in accordance with Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire, as published by the NH Division of Natural and Cultural Resources.**
 - (2) Agricultural cultivation. **It is recommended that these activities be conducted in accordance with the manual of Best Management Practices for Agriculture in New Hampshire, published by the NH Department of Agriculture.**
 - (3) Passive (~~non-motorized~~) trails and recreational uses; and
 - (4) Snowmobile trails.
- (c) Up to fifteen percent (15%) of the Designated Open Space may be used by Special Use Permit issued by the Planning Board under Section 8.4.3 for the following provided that the goals and provisions of this section are otherwise met. The Planning Board may impose specific criteria or restrictions on such uses as deemed necessary to support the goals of this section.
 - (1) Agriculture involving animal husbandry.
 - (2) Active outdoor recreation uses, including formal playgrounds and fields.
 - (3) Parking areas for access to the designated open space.
 - (4) Support facilities necessary for the subdivision including community wells, storm water management facilities, underground utility lines and related facilities such as sewer pump stations; and

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- (5) Individual or group wells and/or transmission pipes for a storm water or wastewater disposal system, provided that this use was approved as part of the subdivision plan and that appropriate legal arrangements are established and approved by the Planning Board for the maintenance and operation of these facilities.
- (d) The Designated Open Space shall not be used as the location for dwelling units, roadways, other access, recreational structures/play equipment, or other accessory structures associated with an individual dwelling unit, or other non-residential buildings or parking except as provided above.
- (e) The Designated Open Space shall not be disturbed during construction of the dwelling units or other structures or facilities on site, except in areas identified for permitted uses **or uses approved by Special Use Permit** as provided above.
- (f) The Designated Open Space shall be retained in a natural, undisturbed state, except for those activities permitted as provided above or managed according to a plan written by a qualified natural resource professional.

~~8.8.6~~ 8.9.6 Protection and Management of Open Space

- (a) Area Boundaries of the Designated Open Space shall be clearly identified:
 - (1) Boundaries shall be clearly delineated on plans, including plats.
 - (2) Boundaries shall be clearly marked prior to commencing construction activities (temporary markings are acceptable, temporary fencing may be required in sensitive areas to prevent disturbance during construction).
 - (3) Boundaries shall be clearly and permanently marked in the field with tree blazes and signage approved by the Planning Board to identify the area as **a** protected open space.
- (b) Future development in and/or subdivision of the Designated Open Space shall be prohibited and shall be so noted on the approved subdivision plan/plat.
- (c) Prior to the sale of any lots, the Designated Open Space shall be protected and controlled by one or more of the following methods subject to Planning Board approval:
 - (1) Transfer, with permanent deed restrictions or conservation easement, to a land trust or other recognized conservation organization (subject to acceptance by the organization).
 - (2) Ownership by one or more private individuals (separately or in common) or by an association of the owners of the dwelling units within the subdivision (i.e., homeowner's association) with a conservation easement granted to the municipality and/or recognized conservation or land trust organization.
 - (3) For Designated Open Space areas of 30 acres or less, ownership by one or more private individuals (separately or in common) or by an association of the owners of the dwelling units within the subdivision (i.e., homeowner's association) with a deed restriction on the Designated Open Space that is enforceable by any landowner within the association, any owner of a separate land parcel adjacent to the open space, or the municipality; or

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- (4) Transfer to the municipality as open space, with permanent deed restrictions or conservation easement (subject to acceptance by the municipality).
- (d) Said deed restrictions and/or conservation easement documents shall be placed on file with the Town Clerk upon receipt of Planning Board subdivision approval and duly recorded at the County Registry of Deeds, ~~where appropriate~~. Such documents shall clearly indicate whether the property is open to all residents of the municipality or open only to residents of the subdivision.
- (e) A management plan for the Designated Open Space and facilities shall be prepared and approved by the Planning Board ~~and Conservation Commission~~, which includes the following:
 - (1) Identifies the entity assuming responsibility for stewardship and management of the Designated Open Space, including regular inspections to confirm continued compliance with the terms of the subdivision approval and conservation easement or deed restrictions.
 - (2) Includes detailed standards and schedules for maintenance of the Designated Open Space, including maintenance of vegetation.
 - (3) Allows for municipal maintenance in the event that the maintenance specified under the agreement is not completed and recovery of costs incurred from the designated management entity or the owners of the Designated Open Space within the subdivision; and
 - (4) Provides that any amendments to the plan shall be reviewed and approved by the Conservation Commission and the Planning Board.
- (f) For properties containing Designated Open Space protected under a conservation easement to be held and enforced by the Town or a third-party, a one-time stewardship fee, as determined by the Town or third-party easement holder, shall be collected and provided to the Town or third-party to be held in a separate trust account and used to support the monitoring and enforcement of the conservation easement.
- (g) A brochure identifying the development as a Conservation Subdivision and detailing the location and use restrictions of the Designated Open Space shall be prepared by the applicant, subject to approval of the Planning Board, and provided to all purchasers of property within the subdivision. Additional copies of the brochure shall be provided to the municipality to be distributed to future property owners after any change of ownership.

8.10 PHASED DEVELOPMENT The review and approval procedure for phased developments shall be as follows:

- (a) For purposes of these Regulations, “phased development” shall mean a project which the applicant intends to construct in phases over a period of time. Phased development may also include a project for which the Planning Board has imposed a phasing requirement pursuant to Section XIII of the Zoning Ordinance, or otherwise, in order to mitigate the impact of a development on community facilities, services, or utilities.
- (b) Where development of the site will be phased, the following information, in addition to the requirements of Section XIII, shall be provided:
 - (1) The methods to be used during construction to control erosion and sedimentation through use of sediment basins, mulching, matting, temporary vegetation, or covering of soil stockpiles.

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- (2) The approximate size and location of portion(s) of the parcel to be cleared at any given time and length of time of exposure.
 - (3) The required public improvements, if any, and how such improvements to be integrated into the phased construction; and
 - (4) The proposed total period of time over which full build-out of the development shall occur.
- (c) The Planning Board may waive and/or modify the phasing schedule after considering the totality of the circumstances, including but not limited to the following factors.
 - (1) The extent to which review of the development in its totality is logical and reasonable due to the degree to which the proposed phases are well integrated, both as to their use and development scheme, and as to common infrastructure and other improvements.
 - (2) The extent to which phasing will benefit the Town by mitigating and making more predictable the impacts of the complete development upon community facilities, services, utilities, and other Town goals as set forth in the Master Plan.
 - (3) The degree to which the integration of the phases, as described above, would make private investment in such improvements unlikely.
 - (4) The extent to which the proposed phasing schedule represents a realistic timeline for active and substantial development progressing at a steady pace, in light of the type and complexity of the project as a whole; and
 - (5) The total length of time proposed, and the degree of unpredictability or Board uncertainty involved, with respect to whether a later phase or phases will continue to meet current regulations, at the time of construction, and in light of potential changed conditions which might occur in the meantime within the neighborhood or the Town as a whole.
- (d) If the development is proceeding in accordance with the approved phasing schedule, the later phase(s) shall normally be presumed to be “vested” against changes in the Town’s land use ordinances and regulations, except as otherwise specified by the Board as part of its approval. However, the Planning Director may determine that, due to specific circumstances, including but not limited to non-compliance with applicable regulations or conditions of approval, a later phase or phases should not be considered “vested” under RSA 674:39 or the New Hampshire common law of vested rights. In such a case, the Planning Director may forward to the Planning Board a recommendation to initiate proceedings, using the procedures of RSA 676:4-a as applicable, to revoke approval of an unbuilt phase or phases.
- (e) If the applicant anticipates being unable to meet any time deadline(s) set forth in the approved phasing schedule with respect to any phase, he or she may apply to the Planning Board for an extension of up to two years for the particular phase. The request for an extension shall be submitted prior to the expiration of the deadline(s) involved.

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- (f) If the applicant fails to meet any such deadline or extension thereof, then the approval of that phase and all subsequent phases shall be considered void, and such phase(s) shall no longer be presumed “vested.” However, the applicant may resubmit the application for such phase(s) to the Planning Board for further review and re-approval in light of changes in ordinances, regulations, or other material circumstances which have occurred in the Town since the original approval.

8.11 DETERMINATION OF POTENTIAL REGIONAL IMPACT Upon receipt of an application for development, the Planning Board shall review the application and determine whether or not the development, if approved, reasonably could be construed as having the potential for regional impact, pursuant to RSA 36:54, et seq. The Planning Board may, in its discretion, determine that any project has the potential for regional impact, whether or not the project meets or exceeds the criteria in RSA 36:54, et seq.

8.4.4 8.12 SEQUENTIAL SUBDIVISIONS. The provisions of this Ordinance shall apply to the sequenced development of a parent parcel over time through separate successive applications. When a subdivision is proposed that involves part of a larger parcel or includes lots that are capable of further subdivision, the Planning Board may require that a site inventory and a conceptual (non-binding) long-range plan be submitted for the entire parcel and used to evaluate the proposed subdivision.