

ARTICLE IX - CLUSTER DEVELOPMENT

- A. PURPOSE AND INTENT:** The purpose of this cluster provision is to encourage the preservation of open space, to promote more efficient use of land in harmony with its natural features and limitations, and to provide for flexibility and variety in residential development within prescribed limits so as to enhance and protect the health, safety, convenience, and general welfare of the inhabitants of the Town of Sutton. This Article is intended to promote the arrangement of dwellings to enhance privacy for residents; safety for children, pedestrians, and bicyclists; and to enhance aesthetic enjoyment through interrelating open spaces with residential areas, providing views of natural features, and by permitting potential recreational amenities.
- B. LAND USE DESIGNATIONS:** For the purposes of this Article IX, land use within a cluster subdivision shall fall into one of three designations:
- 1. Residential Lots:** Residential lots shall be the lots designated for one or more residential dwelling units as permitted by this Article IX together with all yards and accessory structures intended to be used solely by the residents of the dwelling units situated on those lots.
 - 2. Common Land:** Common Land as used in this Article IX shall consist of the total of any Common Land for Recreation (as defined in Section E.3.), all roads and streets and their respective rights of way, sidewalks parking areas, vehicle access facilities, and utility service areas as well as any of the Perimeter Buffer Land (as defined in Section E.2.) that is not included within Open Space.
 - 3. Open Space:** Open Space as used in this Article IX shall remain undeveloped in perpetuity and shall consist of all land not used for Residential Lots or Common Land. Pathways and trails constructed of permeable surface materials for non-motorized recreation may be constructed within the Open Space. The owner of the Open Space may, in its sole discretion, permit the use of snowmobiles on any such trails that the owner determines appropriate.
- C. SPECIAL EXCEPTION AND REQUIREMENTS:**
- 1. Special Exception:** A cluster development is permitted upon the issuance of a Special Exception by the Zoning Board of Adjustment and approval of the Subdivision Plan (and/or Site Plan if there are residential structures other than detached single family dwelling units or duplexes) by the Planning Board.
 - a. Development Plan:** An applicant shall submit to the Zoning Board of Adjustment three copies of plans for the proposed development, including a Conceptual Cluster Development Plan at a scale of at least 1" equals 100', as well as

all additional documents specified in this Article IX and any other applicable documents required pursuant to the Zoning Ordinance and the Subdivision Regulations.

b. Feasibility for a Cluster:

- 1) In determining whether to grant a Special Exception for a cluster development, the Zoning Board of Adjustment shall determine the feasibility of a cluster development based on an Existing Site Analysis Plan at a scale of at least 1" equals 100' that shall be submitted in conjunction with any application for a Special Exception with respect to a cluster development showing:
 - i A conceptual conventional subdivision plan that demonstrates conceptual conformance with the Zoning Ordinance and the Subdivision Regulations to determine the maximum number of permissible single-residence dwelling units for a cluster subdivision permitted pursuant to this Article IX of the Zoning Ordinance.
 - ii Contours at no greater than 5' intervals for land with 20% or less slopes.
 - iii Contours at no less than 20' intervals for land with slopes greater than 20%.
 - iv Wetlands using, as a minimum, the town's GIS mapping of Wetlands & Town designated hydric soils. (See Town Master Plan)
 - v Aquifer recharge areas as shown on the Town Master Plan.
 - vi Existing structures & land uses of all abutters.
 - vi Existing historic structures, building or sites. (i.e. stone walls, designated historic buildings & places).
- 2) No cluster development may be approved unless the applicant can demonstrate appropriate and direct access to the cluster development from an existing Class IV or Class V public road of at least 3 rods of right-of-way.
- 3) Notwithstanding any determination by the Zoning Board of Adjustment that the proposed cluster development is feasible, the Planning Board shall make its own determination of whether to approve or deny the application for the proposed cluster development based on the entirety of the submissions required pursuant to the Zoning Ordinance and the Subdivision Regulations, including those set forth herein

c. Coordination With Other Boards: As part of the special exception process, the applicant may, and is encouraged to, request that a joint meeting of the Planning Board, Zoning Board of Adjustment, and the Conservation Commission be held

to discuss the proposed development to obtain the benefit of input from the Planning Board and/or the Conservation Commission and to address during the special exception process any suggestions or concerns the Planning Board and/or the Conservation Commission may have.

- d. Issuance of Special Exception: The Zoning Board of Adjustment shall review the submission as provided in Article VI. If the applicant satisfies the requirements of the Zoning Board of Adjustment, a Special Exception may be issued.
- e. Application to Planning Board: Upon the granting of a Special Exception by the Zoning Board of Adjustment, the applicant shall apply to the Planning Board which shall review the application for conformity with pertinent portions of the Subdivision Regulations and of the Zoning Ordinance.

2. Location and Size Requirements:

- a. Where Permitted: A cluster development may be permitted in both Residential and Rural-Agricultural districts.
- b. Minimum Area: The total acreage of land included in the cluster development shall be no less than 10 acres in Residential Districts, and no less than 25 acres in Rural Agricultural Districts. Public roads that traverse or separate any lot or lots proposed to be included in a cluster subdivision shall not be deemed to affect the total of the acreage included in that cluster subdivision.
- c. Mixed Zones: A cluster development situated in both a Residential and Rural Agricultural District shall be deemed a cluster development in a Rural Agricultural District for all purposes with respect to this Article IX.

3. Permitted Uses:

- a. Attached and detached single-residence dwelling units. No structure shall contain more than 6 attached dwelling units.
- b. Accessory uses and structures allowed in the applicable zoning district.
- c. Buildings, structures, and facilities located within, and incidental to the use of, Common Land for conservation of land, preservation of natural features, or for recreation and other facilities open to at least the owners and occupants of the residential dwelling units in the cluster development.

4. Open Space:

- a. The amount of Open Space in the cluster development shall be as follows:
 - i) At least 25 % of the acreage of a cluster development in any Residential District shall be a combination of Open Space and all of the Common Land

that has not been set aside for roads and streets and their respective rights of way, sidewalks, vehicle access facilities, utility service areas and common parking areas, and

- ii) At least 50 % of the acreage of a cluster development in any Rural Agricultural District shall be a combination of Open Space and all of the Common Land that has not been set aside for roads and streets and their respective rights of way, sidewalks, vehicle access facilities, utility service areas and common parking areas.
- b. The configuration, shape, and character of the Open Space and Common Land shall conform to the requirements of Section E of this Ordinance.
- c. **Number of Lots - Overall Density:** Dwelling units permissible shall be the same number as for a conventional subdivision of the tract.

5. Minimum Lot Size:

- a. There shall be no minimum lot size or frontage requirements specified for structures erected in the cluster development except as specified in this Article IX of the Zoning Ordinance or as required to meet the requirement of this Ordinance.
- b. No building shall be closer than its height to any other building or to any street or road constructed within the cluster subdivision.
- c. No building shall be closer than 25 feet to a perimeter buffer land strip along the boundary of a cluster development.
- d. Subject to the requirements of this Section C.5 of the Ordinance, more than one residential structure may be constructed on any residential lot within the cluster development.
- e. Nothing in this Section C.5 shall be construed to exempt any of the residential lots in a cluster subdivision from the minimum setbacks specified in the Zoning Ordinance for the Residential and Rural Agricultural Districts, as applicable.

6. Maximum Height of Structures: The maximum height limit within the zone or the zoning districts in which the cluster is located shall be the maximum height of all structures within the cluster development.

7. Required Exits: All dwelling-units, whether attached or detached, shall have 2 easily accessible exits to the outdoors. There shall be no interior space common to any dwelling units.

8. Yard and Parking Requirements:

- a. All residential buildings shall have a usable back yard area adjacent to and immediately accessible from the interior of each dwelling-unit with a total width of at least the same width as the building and a depth of at least 35 feet from the rear of the building.
- b. There shall be at least 2 off-street parking spaces for each dwelling-unit.

D. TRAVEL WAYS.

1. Access to lots: Each residential lot and any Common Land for Recreation, parking areas, vehicle access facilities or utility service areas shall be accessed only by on-site internal roads and there shall be no direct access from those lots and areas to any existing public roads.

2. Access to Existing Roads:

- a. At least one road within a minimum 50-foot right-of-way shall be provided from a cluster development to an existing public road of at least 3 rods of right-of-way.
- b. If two or more accesses are provided from a cluster development to an existing public road, then the distance between the public accesses and their other design features shall conform to the design and sight-line standards set forth for State highways in "Policy and Procedures for Driveway and Other Access to the State Highway System," New Hampshire Department of Public Works and Highways, June 1972, or its updates.

3. Internal Roads:

- a. Internal roads shall be 50 feet wide unless reduced in width by the Planning Board to 40 feet.
 - b. Internal travel ways providing direct access from an internal road to more than one detached single-family Residential Dwelling Unit or to any residential building or buildings containing two or more Residential Dwelling Units shall be 40 feet wide unless reduced in width at the sole discretion of the Planning Board to a minimum of 20 feet.
- 4. Driveways:** Driveways may only be used to provide access from an internal road to a single detached single-family Residential Dwelling Unit. Unless determined by the Planning Board to be more protective of the natural features and safety of residential site, driveways may be no more than 100 feet long from the intersection with an internal road to the parking area for that residence, and the actual travel way shall

be a minimum of 12 feet wide for its entire distance, however, driveways must be capable of providing access for police, firefighting, snow removal, sanitation, and road maintenance equipment. Driveway design standards shall conform to those described in the Subdivision Regulations.

5. **Protecting Natural Features:** At the discretion of the Planning Board, internal roads and driveways shall be laid out to maximize preservation of natural features, aesthetic views, and privacy for property owners and safety for children, pedestrians and bicyclists.
6. **Cul-de-sac Roads:** In a cluster development, the length of permanent cul-de-sac roads may be permitted by the Planning Board to be longer than specified in the Subdivision Regulations, but shall not be longer than 1,000 feet and the Planning Board shall consider the need for one or more turn-arounds between the origin and end points of the cul-de-sac road.
7. **Dead-end Roads:**
 - a. If, in the judgment of the Planning Board, continuation of one principal internal road in a cluster development is necessary to maintain access to an adjacent property that would otherwise be permanently denied the possibility for any other normal means of surface access, and when such continuation is necessary to maintain the possibility for future convenient movement of traffic, effective police, emergency and firefighting access, efficient provision of utilities, and where such continuation is in accord with the Town's Master Plan and/or Official Map, then the Planning Board may require the applicant to design and construct said principal road -- or dedicate a right-of-way to the boundary of the cluster development to the adjacent property.
 - b. A notation to this effect shall be shown upon the plan, and referenced to each abutting lot, and be included as part of the plan submitted to the Zoning Board of Adjustment and signed by the Planning Board and recorded at the Merrimack County Registry of Deeds. When the Planning Board makes such a decision, it shall be made in consideration of maintaining the purposes and intent of the cluster development.

E. COMMON LAND AND OPEN SPACE:

1. **Configuration, Shape, and Character:** The cluster development shall be adapted to the site to preserve and reflect the topography, vegetation, and other natural features of the land.
 - a. All areas within which there is an elevation change of 20 feet or more and the slope is 20% or greater, and all Wetland Buffers shall be left undeveloped and undisturbed. Unique or outstanding natural features shall be retained. Streams, drainage swales, wetlands and ponds shall be preserved.

- b. Within the cluster development, land determined to be in a flood hazard area by the National Flood Insurance Program or in wetlands, shall be regarded as non-buildable land.
- c. No Common Land, including Common Land for Recreation, shall include steep slopes, wetland buffers, wetlands or designated flood plains.
- d. No more than 10% of any on-site designated aquifer recharge area(s) shall be used for construction or be disturbed.

2. Perimeter Buffer Land - Around the perimeter of the cluster development there shall be a strip of open space at least 100 feet wide which shall be free of structures except for existing stone or other walls, new walls or fences approved by the Planning Board; and which shall be undisturbed or planted as a vegetative screen or buffer, at the discretion of the Planning Board. The total area of the perimeter buffer may be used to satisfy the minimum acreage requirement for Open Space as set forth in Section C.4.a.

3. Common Land for Recreation:

- a. If a Cluster Subdivision Plan includes Common Land For Recreation set aside for outdoor recreation such as a commons, playgrounds, a swimming pool or areas for field sports, the Common Land For Recreation shall include a total area of not more than the greater of:
 - i. 20 percent of the total of land designated as individual residential lots, or
 - ii. 20 percent of the total size of the land used for residential dwelling units and adjacent yards and patios if the residential dwelling units are not situated on individual lots, or
 - iii. one acre.
- b. Roads and streets and their respective rights of way, sidewalks, parking areas, vehicle access facilities, utility service areas and perimeter buffer strips shall not be considered a part of the Common Land for Recreation.

4. Permitted Uses of Common Land: In the event the cluster development contains Common Land totaling an area of one acre or more, regardless of the form of ownership of the dwelling units, the following provisions shall apply:

- a. In addition to any applicable provisions of RSA 479A:1-20, inclusive, Common Land shall be designed and intended for the benefit and enjoyment of the residents of the cluster development.

- b. Areas devoted to streets, rights-of-way and vehicle parking shall not be considered as Open Space or Common Land for Recreation. Utility easements may be included in Open Space subject to the provisions of this Ordinance and approved by the Planning Board, excepting that no utility easement shall be permitted on or under Common Land for Recreation.
- c. Common Land for Recreation may be used for amenity or recreational purposes, and if used must be suitably landscaped, except that areas containing natural features worthy of preservation shall remain unimproved unless the Planning Board determines otherwise.
- d. Common Land for Recreation may contain accessory structures and improvements necessary and appropriate for educational, recreational, cultural or social uses. Facilities devoted to such uses may be operated on a membership basis whereby membership is open only to residents of the cluster.

5. Access to Common Land for Recreation and Open Space:

- a. Common Land for Recreation and Open Space shall be distributed in a manner that provides access to all residential sections of the cluster development except that such access shall not be defined as being situated within the perimeter buffer required by Section E.2.
- b. The visibility of Open Space is intended to be maximized for residential lots.
- c. Common Land may provide separate pedestrian/bicyclist access apart from roadways to interconnect all the residential lots and Common Land for Recreation portions of the cluster development.
- d. Pedestrian/bicyclist pathways shall be constructed of permeable surface materials and shall be at least 8 feet wide.
- e. Open Space in excess of 25 acres (not counting the total area of the Perimeter Buffer Land required pursuant to Section E.2) is to be made accessible to the public with access pathways and parking that does not infringe on the rights of cluster development residents to privacy and safety.
- f. The appropriate number and location of public parking spaces will be determined by the Planning Board with consideration of the size, location and physical features of the Open Space.
- g. At the discretion of the Planning Board, access to parking for public use of the Open Space may be directly from an existing public road separate and apart from any access road to the cluster development.

6. Common Land and Open Space:

- a. shall be preserved in perpetuity by restrictive covenant which shall be enforceable by the Town of Sutton in its sole discretion.
- b. shall be held, managed, and maintained by the applicant until completion of all improvements, including trails, recreation facilities, roads and other improvements, and/or at least 60% of the Residential Dwelling Units in the cluster have been completed and either leased or sold, whereupon the applicant (or any entity other than an entity as defined in subsections i. ii. iii. or iv. of this Section E.6.b to which the applicant has conveyed its interest in the Open Space or Common Land) shall transfer the ownership, management and maintenance responsibilities to one or a combination of the following which will ensure that the Open Space and Common Land areas will be held in perpetuity as Open Space and Common Land, respectively:
 - i. With respect to any Common Land, including Common Land for Recreation, to a Homeowners or Condominium Association or similar form of common ownership set up by the developer and made a part of the deed for each Lot or Dwelling Unit with a Declaration of Covenants to be reviewed and approved by the Planning Board as consistent with the purpose and intent of this Cluster Development Ordinance.
 - ii. With respect to the Open Space, to a Conservation Trust or Private Nonprofit Organization such as the Ausbon Sargent Land Preservation Trust, the Society for the Protection of New Hampshire Forests or the Audubon Society; and/or
 - iii. By an accepted conveyance to a public body (for example, the Town) which shall maintain the Open Space for the benefit of the public of Sutton; or
 - iv. If not accepted by a Conservation Trust or Private Nonprofit Organization or the Town, the Open Space shall be held in perpetuity by a Homeowners or Condominium Association or similar form of common ownership set up by the developer and made a part of the deed for each Lot or Dwelling Unit with a Declaration of Covenants to be reviewed and approved by the Planning Board.

7. Responsibilities of Owner:

- a. The owners of the Common Land and/or Open Space shall maintain that land in such a manner as to protect the health, safety, and general welfare of users; to preserve the aesthetic features of the Open Space; and to protect the community from disturbances dangerous to the comfort, peace, health, or safety of the community.
- b. The Open Space shall remain undisturbed except for the construction of

pathways as defined in Section B.3, and shall be maintained in such a manner that it will be acceptable for preservation through conveyance and/or by conservation easement to a Conservation Trust, Private Nonprofit Organization or public body.

F. OTHER REQUIREMENTS.

- 1. Performance Bond and Plot Plan:** All pertinent portions of the Subdivision Regulations shall be complied with, including, but not limited to, the filing of a performance bond for improvements and landscaping, and the filing of the preliminary and final plats.
- 2. Plot Plan:** In the event that the cluster development is designed in such a fashion that individual structures and the land upon which they are sited could be sold separately, a plot plan shall be drawn up demonstrating a logical method of doing so which would provide the yards and setbacks of structures as required herein, in addition to driveway access to an internal road as defined and specified in this Article IX, no portion of which shall lie in a required yard.
- 3. General Improvements:** Improvements serving more than one dwelling unit, regardless if dedication to the Town is intended, shall be constructed to the Town's then current road specifications, regardless of whether those standards are found in this Ordinance, the subdivision regulations, or some other regulation adopted by the town. Such improvements include, but are not limited to, streets, sidewalks and storm drainage systems.
- 4. Electrical and Telephone Lines:** All electrical and telephone transmission lines shall be located underground except with prior approval of Planning Board.
- 5. Community Systems:** Unless the New Hampshire Department of Environmental Services (DES) approves a proposed community water system and/or septic or sewage treatment system, all lots shall meet the state requirements for an approved on-site septic system and potable water supply where the required wellhead protection radius is wholly within the lot.
- 6. Water Supply:**
 - a. Water supply shall be always provided with a minimum pressure of 40 pounds per square inch, with a sustained yield of at least three gallons per minute per dwelling unit.
 - b. If central water is supplied, hydrants must be installed. If individual wells are used and there is no natural water source available, accessible at all times and reliable for fire protection in the judgment of the Planning Board in consultation with the Town Fire Department, then a fire pond shall be supplied.

- c. The minimum size of the fire pond must be 35,000 gallons in the fall season per each dwelling structure existing and approved to be constructed.
- d. For purposes of this Ordinance, a dwelling structure shall be defined as: one detached single- family house, or one attached row of dwelling-units with six or less individual dwelling-units.

7. Sewage Disposal:

- a. Sewage disposal plans must have been approved by the New Hampshire Department of Environmental Services (DES) Subsurface Systems Bureau.
- b. Such approval notwithstanding, the Planning Board, on the advice of a sanitary system engineer of its own choice, may approve or disapprove, or approve with modifications, such plans if it deems such State approved plans insufficient, and may make additional requirements.
- c. In no case will discharge of pollutants into surface water or wetlands be permitted, nor will any system which utilizes mechanical or powered devices be permitted unless a copy of a service contract, prepaid at least 12 months in advance, giving the Town the power to call for repairs, or in bond in lieu thereof, shall be submitted to the Planning Board, and after approval such contract or bond shall be renewed annually.

8. Erosion Controls:

- a. The recommendations of the district representative of the Natural Resource Conservation Service (NRCS) shall be complied with, including but not limited to the provision of impoundment basins, i.e. for a fire pond, grass or ground cover, diversions, riprap channels, storm sewers, culverts and other erosion and sediment-control devices during and after construction.
- b. A written copy of the NRC recommendations shall be provided to the Planning Board prior to any construction

G. EXHIBITS:

- 1. Exhibits shall include all those required by Section C.1. of this Article IX, by the Subdivision Regulations and by the Zoning Ordinance as applicable. In addition, the preliminary and final plats for all proposed structures and improvements shall show:
 - a. The number, type, location, size and conceptual elevations of all buildings;
 - b. The number and type of dwelling units;

- c. The number, type, location, and size of structures designed for other permitted uses and the elevations thereof.
 - d. The location and number of off-street parking spaces.
 - e. The location of Open Spaces, Common Land; unimproved natural areas; perimeter buffer strips; improved natural areas such as beach of boat launch; Common Land for Recreation; pedestrian/bicycle pathways.
 - f. The existing and proposed landscaping and vegetation.
2. If ownership is to be of the cooperative-condominium or other similar legal form and/or if there is to be a total area of Common Land and Open Space of one acre or more, the appropriate agreements shall be presented. Such legal agreements shall be reviewed by the Town Counsel, who shall determine that the documents are acceptable before a cluster development approval is given.

H. MODIFICATION – ABANDONMENT.

- a. Plans for a cluster development may be modified in accord with the requirements for initial approval. Any approval under this provision shall be valid for a period of three years. If active and substantial construction is not completed within that time period, the approval shall be deemed void. For the purposes of this Article IX, active and substantial construction shall mean the construction of all access roads as specified in Section D.1 and D.2 such that each such road is completed to the base coat of paving, including all of the following:
 - i. installation of all underground utilities in the locations and manner shown on the approved plat and accompanying documentation, including a detailed utilities plan prepared by the relevant electric utility;
 - ii. all drainage features and related embankments and ditch lines have been completed and are stable with grass growing; and
 - iii. all driveway and internal road accesses are constructed at the locations and manner shown on the approved plat and accompanying documentation with culverts installed, with all embankments seeded and stable and with a paved flare where each driveway and internal road access meets the paved road.