

Town of Eaton

Cluster Development Regulations



2005

CLUSTER DEVELOPMENT REGULATIONS

(Subdivision regulations implementing changes to the Town of Eaton Zoning Ordinance regarding Cluster development voted at Town Meeting March 8, 1988)

I. AUTHORITY AND TITLE

Pursuant to the authority vested in the Eaton Planning Board by the voters of the Town in accordance with the provisions of RSA Chapter 674:21 (Innovation), and specifically the amendment to the Town of Eaton Zoning Ordinance authorizing the Planning Board to establish Subdivision Regulations regarding Cluster Subdivision voted at Town Meeting March 8, 1988, the Eaton Planning Board adopts the following rules governing the review and approval or disapproval of cluster development applications. These regulations shall be entitled "Cluster Development Regulations, Town of Eaton, New Hampshire".

II. PURPOSE

Cluster development is permitted and encouraged for the preservation of open space, to promote more efficient use of land in harmony with its natural features, and to provide flexibility in subdivision design consistent with goals and priorities in Eaton's Comprehensive Master Plan.

III. OBJECTIVES

To stimulate imaginative and economical approaches to land use and community development;

To facilitate the adequate and economical provision of streets, utilities and public spaces;

To preserve the natural and scenic qualities of open areas for conservation and recreation;

To establish living areas that provide a diversity of housing opportunities while ensuring adequate standards for public health, safety, welfare and convenience.

IV. JURISDICTION

The provisions of this ordinance shall be restricted to, and permitted only in, the Rural Residential District of the Town of Eaton.

V. DEFINITIONS

V.A Cluster Development

Cluster development is the design and development of a residential tract with open space as an integral characteristic, in which the overall number of dwelling units does not exceed the number that would be allowed using conventional lot requirements of the Town of Eaton Zoning Ordinance and its High Intensity Soil Survey Requirements; however, instead of subdividing the entire tract into house lots of conventional size, the same number of dwelling units may be clustered on a reduced amount of acreage provided the remainder of the tract is designated and maintained as permanent open space, the future development or subdivision of which is prohibited, by legal instruments acceptable to the Planning Board after review by the Town Attorney. Cluster development is an option, not a subdivision right, and shall apply only to the Rural Residential District, and may include detached single family, duplex, attached multifamily, and condominium units in individual, corporate or cooperative ownership.

V.B Open Space

Open space is the total common land in a cluster development for which future development rights have been deeded to the Town, to which access is provided to residents of the cluster development (and possibly residents of the Town), and which is owned by a mandatory association, a municipal body, or private, non-profit conservation organization. Open space is further classified as either common natural area or common recreational area.

V.C Common Natural Area

Common natural area is open space set aside for the benefit and enjoyment of the residents of a cluster development (and possibly residents of the Town) as an area to be kept predominantly undisturbed and in its natural condition, while permitting timber and agricultural management. Minor improvements, such as walking trails, which enhance passive recreational use and do not significantly alter the natural features of the area may be permitted, but not accessory structures. No motorized vehicles are allowed except for timber management and agricultural purposes.

V.D Common Recreational Area

Common recreational area is open space set aside for the benefit and enjoyment of the residents of a cluster development (and possibly residents of the Town) for non-commercial, outdoor active recreational uses, such as ballfields, picnic areas, playgrounds, swimming pools, golf courses, tennis courts, gardens and the like. Structures accessory to these uses are permitted.

V.E Mandatory Association

A Mandatory association of property owners, such as a homeowners or condominium association, shall mean a private, non profit corporation, association or other non-profit

entity under the laws of the State of New Hampshire established by the developer for the purpose of ownership, care and maintenance of open space areas and improvements. Membership in such an association shall be mandatory for all property owners in the cluster development, and made a required covenant in any deed issued or passed.

V.F Open Space Easement

An Open space easement is a provision by which development rights have been legally restricted by deed which guarantees all residents of the cluster development access to the open space within the development for appropriate open space uses. The easement may be worded so as to allow or disallow recreational development. Easements shall be tied to the title of the land regardless of its subsequent ownership.

VI. APPLICATION PROCEDURE

- VI.A Anyone desiring to develop a parcel of land having characteristics which, in their opinion, are suited to cluster development, shall request in writing to the Planning Board that such proposal be considered under the provisions of this cluster ordinance. The written request shall specify the land characteristics (such as, but not limited to, topography, lakes, streams, woodlands, stonewalls, vistas, houses, family graveyard etc.) that would be enhanced or preserved by cluster development
- VI.B The written request for consideration of cluster development described above is in addition to the application procedures required in Sections 3, 4 and other provisions of the Subdivision Regulations of the Town of Eaton, which shall also apply to cluster development. In the event that the proposed cluster development includes multifamily units, Site Plan Review regulations must also be met.
- VI.C The applicant shall submit, as proof of permitted density a plat showing how the tract could be subdivided in a convention subdivision which meets all the usual requirements of the Town, including High intensity Soil Survey. The Planning Board may require additional studies at the expense of the subdivider.
- VI.D The Planning Board may make an on-site visit to the tract proposed for cluster development during preliminary review and prior to acceptance of the completed application.

VII PLAN REQUIREMENTS

VII.A A General Design Standards

In acting on a proposed cluster or condominium application the Planning Board shall negotiate particular plans, rather than strictly pre-regulating all plans, to ensure that the following criteria are met to the greatest extent possible:

1. The proposed development is in accordance with the Master Plan and complies with all applicable ordinances and regulations of the Town, except as modified in these cluster development regulations.
2. Diversity in lot layout and individual building design shall achieve the best possible relationship between development and the land, in accordance with the Purposes and Objectives specified above.
3. Individual lots, buildings and units shall be arranged and situated to relate to surrounding properties, to improve the view from and the view of buildings and to lessen the land areas devoted to motor vehicle access.
4. Individual lots, buildings, units, and parking areas shall be situated to avoid the adverse effects of shadows, noise, and traffic on the residents of the site. Adverse effects of noise and traffic on abutters to the tract shall not exceed the effects of conventional subdivision development of the tract.
5. The proposed cluster development will be served adequately by essential public facilities and services such as, but not limited to, streets, parking spaces, police and fire protections, drainage structures, refuse disposal, water and sewers, and schools, or the persons or agencies (developer) responsible for the establishment of the proposed use will provide adequately for such services.
6. Individual lots, buildings streets and parking areas shall be designed and situated to minimize alteration of the natural site features to be preserved.
7. The usability of cluster open space intended for recreational or public use shall be determined by size, shape, topography and location requirements of the particular purpose proposed for the site.
8. Open space shall preserve natural features located in the tract (such as, but not limited to, stream beds, significant stands of trees, individual trees of significant size, rock outcroppings, stonewalls, and historic landmarks.)
9. Common recreational areas shall be easily accessible to all residents of the site.
10. The proposed project will not have a substantial or undue adverse effect on adjacent property, the character of the neighborhood, traffic conditions, parking, utility facilities, an other matters affecting the public health, safety, and general welfare.

VII.B Specific Requirements

The Planning Board may approve a cluster development provided that:

VII.B.1 Permitted Density

The total number of dwelling units or lots shall not exceed the number of dwelling units or lots permitted under conventional minimum size lot requirements as established by High Intensity Soil Survey regulations of the Town of Eaton.

VII.B.2 Tract size, frontage, and setbacks

There shall be no minimum tract size requirements for cluster development; however, the tract shall have a minimum of 200 ft. frontage on a Class V or better road. Tract frontage shall not be considered as road frontage for lots or units in the cluster development. All structures and parking lots shall be set back a minimum of 100 ft. from the centerline of the tract frontage road and a minimum of 30 ft. from side and back boundaries along the perimeter of the tract. If buffering is deemed inadequate, greater side and back boundary perimeter setbacks may be required

VII.B.3 Amount of Open Space

A minimum of 35% of the developable area of the tract shall be designated open space and bound by permanent open space agreements acceptable to the Planning Board after review by the Town Attorney. Wetlands, known aquifers, and land with slopes greater than 25% cannot be counted in the 35% minimum. The open space must include both common natural area and common recreational area. The proportion of each type of common area shall be decided with consideration of the particular characteristics of the tract.

In the event a cluster development proposes, wholly or partially, the development of prime agricultural land, the planning Board may provide for the protection of those lands, whereby the common open space area for the use of the residents of the development may be reduced in favor of setting aside and permanently restricting the development of these prime agricultural areas. This land may be sold, leased or protected in a fashion described in Section VIII.A. 1.

VII.B.4 Location of Residential Units, Internal Setbacks

Provided the design standards in Section VI.A are met to the greatest extent possible, the following may be negotiated:

- (a) the allowable number of lots or dwelling units may be located, grouped, or dispersed in any fashion on the remaining developable area within the tract boundary perimeter setbacks;
- (b) within the internal developable area there shall be no minimum lot size, frontage and setback requirements for residential units.

VII.B.5 Streets, Driveways and Parking Places

All streets within the cluster development shall be constructed to Town Road Specifications. Driveways shall serve no more than two single family detached residences or one multifamily structure. Two off-street parking places shall be provided for each dwelling unit. Private roads intended for access to recreational areas and similar purposes, not serving residential units and not open to public vehicular traffic as a matter of right, may be permitted; provided the maintenance and repair of such roads is borne by the developer or included in the Mandatory Association agreement, and need not be constructed to Town specifications.

VII.B-6 Septic System Capacity

Two bedroom units shall be considered as three-bedroom units in calculating septic system requirements.

VII.B.7 Revision of Final Plans After Approval

No change shall be made subsequent to approval of the final plans for a cluster development without a written request from the applicant detailing the proposed revision to the final plans, and approval of the requested change(s) in writing by the Planning Board. The Planning Board shall determine whether the proposed change(s) is significant enough to require submission and acceptance of a revised application and public hearing prior to Planning Board approval or disapproval. In the event the Planning Board requires a revised application, the hearing and decision shall be limited to only those portions of the approved plans affected by the proposed change(s), and shall not constitute a rehearing of the entire cluster development plan. Any approved revision shall be recorded in the Registry of Deeds of Carroll County.

VII.B.8 Applicability of Other Town Ordinances

All provisions of Eaton's Zoning Ordinance, Subdivision and (if applicable) Site Plan Regulations, shall apply, unless modified by these Cluster Development Regulations.

VII.C Permitted Uses

VII.C.1 Any residential housing units are permitted in cluster development.

VII.C.2 The Planning Board may permit, as it deems appropriate, the use of common recreational area for subsurface septic disposal where the Board finds that such use will not be detrimental to or detract from the character or quality of the open space.

VII.C.3 Non-commercial, non-profit outdoor recreation facilities and service buildings and structures accessory to permitted outdoor recreation are permitted. Planning Board review and approval shall include the siting of all outdoor recreational facilities and accessory service buildings and structures.

VIII OPEN SPACE AGREEMENTS

VIII.A.1 Permanency of Open Space

All areas designated as open space shall be permanently maintained as open space and shall be guaranteed as open space by restrictive covenant prohibiting the future development or subdivision of such area(s) . This common open space shall be permanently restricted for recreation and conservation uses and protected by a mandatory association of property owners; except that upon mutual agreement of the Town, the developer, and/or the mandatory association, a portion of the common open space may be permanently protected by any or a combination of the following:

- (a) a municipal body (for example, the Town) for the benefit of Town residents,
- (b) a private, non-profit organization which has as a purpose the preservation of open space through ownership and control (for example, the Society for the Protection of New Hampshire Forests) provided that the residents of the cluster development have access to the common open space for appropriate recreational uses. The Town and property owners within the cluster development shall be assured of enforceable rights with respect to such preservation.
- (c) an agricultural easement.

VIII.A.2 Restrictive Covenant

The restrictive covenant guaranteeing the open space against future development shall be contained in the deed to every lot or dwelling unit sold in the development, and shall run with the land. The covenant shall contain a legal description of the common areas, and shall clearly differentiate common natural area(s) and common recreational area(s) and their location and approved use(s) and improvement(s) as shown in the final plan.

VIII.B. Ownership and Maintenance of Open Space Areas

VIII.B.1 Establishment of Mandatory Association

The developer shall provide for and establish a Mandatory Association of property owners as a legal entity under the laws of the State of New Hampshire for the ownership, care and maintenance of all common open space land and improvements, other than those protected under (a), (b) and (c) in Section VIII.A.1 above. It shall provide voting and use rights in the open space area(s). The Articles of Incorporation or Association shall be approved in writing by the Planning Board after review by the Town Attorney, prior to development. The cost of such legal review shall be borne by the developer. Any change in such articles of incorporation or association shall require the prior written approval of the Planning Board.

All open space areas and improvements thereon shall be held, managed, and maintained by the developer until ownership and control is passed to the Mandatory Association of property owners. If any properties in the cluster development remain unsold at the time of transfer of ownership and management of open space areas and improvements thereon to the Mandatory Association, the developer shall remain as a member of the Association until the development is completely sold out, and shall bear a share of the responsibility and cost of such maintenance in direct relation to the proportionate interest in the open space of the properties remaining unsold.

VIII.B.2 Mandatory Membership in Mandatory Association

Membership in such an association shall be mandatory for property owners in the development and made a required covenant in any deed issued or passed. Covenants for maintenance assessments for the open space area(s) shall also be included in the deed to every lot or building unit and also specified to run with the land.

VIII.B.3 Failure to Maintain Open Space

In the event that the organization established to own and maintain the open space, or any successor organization, or the owner or owners of the dwelling units or lots located within said development which own said open space shall for any reason fail to maintain the open space in reasonable order and condition in accordance with the final plan, the Board of Selectmen shall serve written notice upon such organization, successor organization, or residents setting forth the deficiencies in the maintenance, order and condition of the open space. Such notice shall include a demand that said deficiencies be cured forthwith and that a statement of intent to comply and a date of compliance be filed with the Board of Selectmen within fourteen (14) days of said notice, with copy to the Planning Board. If such maintenance shall not have been performed or said statement of intent not filed by the stated time, the Town, in order to preserve the taxable values of the properties within the cluster development and to prevent the open space from becoming a public nuisance, may enter upon the open space and maintain it for a period of not more than one (1) year. Said entry and maintenance shall not vest any rights in the general public to the use and enjoyment of the open space. Before the expiration of that period, the Town shall, upon its initiative or upon the request of the organization theretofore responsible for the maintenance of the open space, call a public hearing to be held by the Board of Selectmen. Notice of such hearing shall be given to such organization and the residents of the cluster development. At that hearing, such organization or the residents of the cluster development shall show cause why such maintenance by the Town shall not, at the election of the Town, continue for a succeeding year or other designated period. If the Board of Selectmen shall determine that such organization is not ready and able to maintain said open space in a reasonable condition, the Town may, in its discretion, continue to maintain said open space during the next succeeding year and subject to a similar hearing and determination, during each succeeding year thereafter. The decision of the Board of Selectmen in any such case shall constitute a final administrative decision subject to motion for rehearing.

VIII.B4 Assessment of Costs of Town Maintenance

The cost of such maintenance by the Town shall be assessed against the properties within the cluster development in direct relation to their proportionate interest in the open space, and shall become a tax lien on said properties. At the time of entering upon said open space for the purpose of maintenance, notice of such lien shall be filed in the Office of the Registry of Deeds.

VIII.C Conveyance of Open Space Easements to the Town

No cluster development shall be approved by the Planning Board unless all development rights in the form of recreational and open space easements, and the right to prohibit construction of any structures or other buildings, to any open space area(s) in the development are conveyed to the Town.

VIII.D Tax Valuation

All open space land and improvements shall be held in common ownership by the owners of lots or units within the development, unless accepted by the Town or by a conservation organization in accordance with Section VIII.A1 (a) and (b). The proportionate value of such open space land and improvements shall be included in tax valuation of each lot or unit. Except for land that was considered not developable and not used in calculating the permitted density, common areas do not qualify for current use appraisal and assessment under the provisions of RSA Chapter 79-A. The Planning Board shall require, as a condition for approval of a cluster development, that all deeds transferring property in the development specify that these common areas are acknowledged to be part of the residential use of the development and do not qualify for current use appraisal and assessment.

IX MISCELLANEOUS PROVISIONS

IX.A Additional Regulation

The Planning Board may impose such additional regulations, restrictions, controls and requirements as are deemed appropriate or necessary to accomplish the purposes and objectives of this Cluster Development Ordinance.

IX.B Amendments

Amendments to this Cluster Development Ordinance shall be made in the same manner in which amendments to Subdivision Regulations are made.

IX.C Separability

If any provision herein shall be held to be invalid for any reason by a court, such holding

shall not invalidate in any manner any other provisions contained herein.

IX.D Appeals

Any person aggrieved by an official action of the Planning Board may appeal therefrom to the Superior Court as provided by RSA 677:15

IX.E Effective Date

This ordinance shall take effect upon a vote by the Planning Board, and filing of the adopted text with the Town Clerk, the Board of Selectmen and the Registry of Deeds of Carroll County.