

PART C. STANDARDS

ARTICLE XIX CONSERVATION SUBDIVISIONS

175-107. Conservation Subdivisions.

The Town of Durham's Master Plan 2000 recommends that conservation subdivisions, in which a substantial portion of the site is set aside as permanent, common open space, be the primary form of residential development in the community. The provisions of this section govern the design and development of conservation subdivisions. The process for the design of conservation subdivisions, as set forth in the Town's Subdivision Regulations, requires that key natural, historic, archeological, and cultural features on the site be identified for protection and the development planned to protect these resources.

- A. **Purpose.** The purposes of these provisions are to assure that conservation subdivisions developed in the Town of Durham:
1. Preserve those areas of the site that have the highest value for conservation purposes;
 2. Preserve identified historic, known archeological and identified cultural features located on the site;
 3. Locate the buildings and structures on those portions of the site that are most appropriate for development considering both the development suitability of the site and its conservation value;
 4. Create continuous open spaces or "greenways" by linking the common open spaces in adjoining subdivisions wherever possible; and
 5. Minimize the impact of residential development on the Town, neighboring properties, and the natural environment.
- B. **Applicability.** All residential subdivisions in the Residence A District, Residence B District, Residence Coastal District, Rural District, Office Research Light Industry District, and Multiunit Dwelling Office Research District shall be developed as Conservation Subdivisions in accordance with the provisions of this section and the Town's Subdivision Regulations unless the subdivision is exempt from this requirement based upon subsection C. below.
- C. **Exempt Subdivisions.** A subdivision shall be exempt from the Conservation Subdivision requirement if the Director of Planning and Community Development determines that the proposal meets one of the criteria set forth in subsection D. below. If the Director

determines that a subdivision is exempt, the Director shall provide written notice to the applicant, all abutters, the chair of the Planning Board, and the chair of the Conservation Commission within five (5) business days after making the determination. An applicant, an abutting property owner, or the Conservation Commission may appeal the Director's determination to the Planning Board. The appeal shall be made in writing within thirty (30) days of the Director's determination. The Planning Board shall hold a public hearing on the appeal. The review by the Planning Board shall be based upon the materials submitted to the Director and the testimony at the public hearing. The Planning Board may affirm or change the decision of the Director. Until the appeal is decided, the Planning Board shall not process an application for the approval of a conventional residential subdivision for the subject site.

D. ***Exemption Criteria.*** The Director of Planning and Community Development shall find that a proposed subdivision is exempt from the requirement that a subdivision be developed as a Conservation Subdivision only if the proposed subdivision meets one of the following criteria. In determining if the criteria are met, any lot that has been or will be transferred to a qualified conservation organization as such term is defined in Section 170(h)(3) of the Internal Revenue Code of 1986 (Code) or any successor section, and the regulations promulgated thereunder, which organization is organized and operated primarily for one of the conservation purposes specified in Section 170(h)(4)(A) of the Code, and will be restricted to conservation use in perpetuity, shall not be counted as a lot for the purpose of this provision.

1. The subdivision will consist of three (3) or fewer lots accommodating a total of not more than three (3) dwelling units and there will be no potential for the future subdivision of the parcel or any of the lots created by the subdivision nor for the construction of additional dwelling units on any of the lots, or
2. The subdivision will consist of lots, all of which will have a minimum lot area of four hundred thousand (400,000) square feet, and there will be no potential for the future subdivision of the parcel or any of the lots created by the subdivision nor for the construction of additional dwelling units on any of the lots, or
3. The subdivision will consist of three (3) or fewer lots accommodating a total of not more than three (3) dwelling units, there is additional land that may be developable in the future for which a Conceptual Long Range Development Plan meeting the requirements of subsection N. will be prepared, all lots being created as part of the exempt subdivision will be consistent with and incorporated into the long range plan as part of a conservation subdivision, and no additional lots will be created in the future that are not part of a conservation subdivision, or
4. The subdivision will create not more than one additional lot accommodating one (1) dwelling unit and no other lots have been created from the parcel within the preceding seven (7) year period.

- E. **Maximum Development Density.** The maximum number of dwelling units that may be developed in a Conservation Subdivision shall be determined by dividing the calculated Usable Area of the parcel by the required Minimum Usable Area Per Dwelling Unit for the district in which the subdivision is located (see Section 175-54, Table of Dimensional Requirements) and rounding down to the maximum allowed whole number of units. If the parcel is located in more than one district, the maximum number of units allowed on the portion of the parcel in each district shall be calculated separately and the allowed maximum number of units (including fractional units) in each district shall be added together and then rounded down to the allowed number of whole units. If the subdivision involves only part of a parcel, the Usable Area shall be calculated for that portion of the parcel proposed to be included in the subdivision and the determination of the maximum number of dwelling units within the subdivision determined based upon that Usable Area. The Planning Board shall not approve a plan for a Conservation Subdivision that provides for the development of more dwelling units than the maximum number determined by this section.
- F. **Lots in a Conservation Subdivision.** Residences in a Conservation Subdivision may be located on individual residential lots, or on common lots with more than one dwelling unit 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.
- G. **Individual Lot Sizes.** If individual lots are created as part of a Conservation Subdivision, the lots shall conform to the following minimum lot size requirements:
1. Any lot that has its required lot frontage on a public street that existed as of July 1, 2003 shall conform to the minimum lot size requirement for the district in which it is located (see Section 175-54, Table of Dimensional Requirements).
 2. Any lot that has its required lot frontage on a public street created after July 1, 2003, including streets to be developed as part of the subdivision or private ways, may be smaller than the required minimum lot size for the district in which it is located. The size of the individual lots shall be shown on the subdivision plan and shall be subject to Planning Board approval based upon its finding that the lot sizes will allow for the creation of a high quality living environment for the residents of the subdivision and provide for adequate sewage disposal, but in no case shall any lot served by a private wastewater disposal system be less than ten thousand (10,000) square feet in area.
- H. **Individual Lot Frontages.** If individual lots are created as part of a Conservation Subdivision, the lots shall conform to the following minimum lot frontage requirements:
1. Any lot that has its required lot frontage on a public street that existed as of July 1,

2003 shall conform to the minimum lot frontage requirement for the district in which it is located (see Section 175-54, Table of Dimensional Requirements).

2. Lots that have frontage on a public street shall be laid out to minimize the number of curb cuts onto the public street through the use of shared or common driveways or other methods. In no case, shall two adjacent driveways be located on a public street that existed as of July 1, 2003 unless the driveways are separated by at least one hundred (100) feet or such other greater distance as required by other provisions of this ordinance.
3. Any lot that has its required lot frontage on a public street created after July 1, 2003, including streets to be developed as part of the subdivision or private ways, may have less frontage than the required minimum lot frontage for the district in which it is located. The amount of frontage for the individual lots shall be shown on the subdivision plan and shall be subject to Planning Board approval based upon its finding that the lot frontages will allow for the creation of a high quality living environment for the residents of the subdivision and provide adequate access to the residences and other facilities, but in no case shall any lot have less than fifty (50) feet of lot frontage.

I. **Common Open Space.** A Conservation Subdivision shall provide for the permanent set aside and protection of common open space meeting the following requirements:

1. The amount of common open space provided within the subdivision shall be equal to or greater the sum of the following:
 - a. the percentage of the calculated Usable Area set forth below, plus
 - b. the unsuitable area of the parcel that is deducted from the gross area of the site to determine the Usable Area.

The minimum percentage of the usable area that shall be set aside for common open space shall be as follows:

Residence A District	Thirty (30) percent
Residence B District	Forty (40) percent
Residence Coastal District	Fifty (50) percent
Rural District	Fifty (50) percent
All other districts	Fifty (50) percent

If the parcel is located in two or more districts, the percentage of the usable area located in each district shall be calculated and the required minimum percentage of the usable area set aside for open space determined based upon the weighted average of the percentages for the various districts.

2. The location and layout of the common open space shall conform to the standards and process set forth in the Subdivision Regulations.
3. The common open space in a Conservation Subdivision shall not be used as the location for dwelling units or other nonresidential buildings or parking except as provided for below and shall only be used for the following purposes:
 - a. The conservation and protection of natural resource areas, wildlife habitats, scenic features or views, identified cultural or historic features such as stone walls, graveyards or cemeteries, and similar identified features or resources
 - b. Passive and active outdoor recreation uses and facilities included related accessory structures and buildings that are compatible with the overall scale and character of the subdivision provided that any building shall have a gross floor area of less than two hundred (200) square feet and the total gross floor areas of all such buildings shall be less than one thousand (1000) square feet
 - c. Indoor community or recreational facilities that primarily serve residents of the subdivision, have a total gross floor area for all such facilities of less than two thousand (2,000) square feet, and are compatible with the overall scale and character of the subdivision
 - d. Forest management and agricultural uses including animal husbandry that are specifically approved by the Planning Board as part of the subdivision approval
 - e. Support facilities necessary for the subdivision including community wells, stormwater management facilities, underground utility lines and related facilities such as sewer pump stations, small community storage buildings, and similar buildings and structures that are needed for the operation of the subdivision but not including personal storage buildings or sheds
 - f. Individual or group underground wastewater disposal systems or parts thereof, provided that this use was approved as part of the subdivision plan and that appropriate legal arrangements are established and approved by the Planning Board for the maintenance and operation of these facilities
 - g. Other appropriate uses that are compatible with the overall scale and character of the subdivision and that are specifically approved by the Planning Board
4. Permanent provisions for the use, ownership, and maintenance of the common open space including provisions for screening and buffering shall be established subject to approval by the Planning Board as part of the approval of the subdivision in accordance with the Subdivision Regulations.

5. Appropriate legal mechanisms for the on-going maintenance and stewardship of the common open space shall be established, including the creation of a stewardship account or payment to the Town's Stewardship Fund as set forth in the Subdivision Regulations, subject to approval by the Planning Board as part of the approval of the subdivision in accordance with the Subdivision Regulations.

J. *Front Yard Setbacks.*

1. The minimum front yard setback for any lot with its required lot frontage on a public street in existence as of July 1, 2003 shall be the required minimum setback for the type of street and the district in which the subdivision is located (see Section 175-54, Table of Dimensional Requirements) or thirty (30) feet whichever is greater.
2. The minimum front yard setback for any lot with its required lot frontage on a public street created after July 1, 2003, including streets to be developed as part of the subdivision or private ways, may be less than that required by the district regulations. The size of the minimum setback shall be shown on the subdivision plan, may vary from lot to lot or in different areas of the subdivision, and shall be subject to Planning Board approval based upon its finding that the setbacks will allow for the creation of a high quality living environment for the residents of the subdivision and provide for adequate privacy and public safety.
3. If the approved front yard setback for any lot is less than that required by the requirements of the district in which the subdivision is located (see Section 175-54, Table of Dimensional Requirements), any garage with garage doors that face the street, whether attached or detached, shall be located so that the front wall of the garage is located at least two (2) feet behind the front wall of the principal building. This requirement shall not apply to a garage located in the basement of a single-family home.
4. If the approved front yard setback for any lot is less than that required by the requirements of the district in which the subdivision is located (see Section 175-54, Table of Dimensional Requirements), any accessory building shall be located so that the front wall of the accessory building is located at least two (2) feet behind the front wall of the principal building.

K. *Side and Rear Yard Setbacks.*

1. When a side or rear yard of a lot containing a residence or other building abuts the external perimeter or property line of a Conservation Subdivision, the minimum side and rear yard setbacks shall be the required minimum setback for the district in which the subdivision is located (see Section 175-54, Table of Dimensional Requirements) unless the streetscape buffer requirements of L. result in a greater setback.

2. The minimum side and rear yard setbacks from internal property lines within a Conservation Subdivision may be less than the required setbacks established by the district regulations (see Section 175-54, Table of Dimensional Requirements). The size of the minimum setbacks shall be shown on the subdivision plan, may vary from lot to lot or in different areas of the subdivision, and shall be subject to Planning Board approval based upon its finding that the setbacks will allow for the creation of a high quality living environment for the residents of the subdivision and provide for adequate privacy and public safety.
3. In all cases, the separation distance between principal buildings within the subdivision, whether on the same lot or on different lots, shall conform to the requirements of the Town's building code and the NFPA fire protection codes based upon the type of construction and the use of the buildings.

L. ***Streetscape Buffer Adjacent to Existing Public Streets.*** A vegetated buffer strip shall be maintained along any public street existing as of July 1, 2003 that is adjacent to a Conservation Subdivision to minimize the visual impact of the Conservation Subdivision on the streetscape. The depth of the buffer strip shall be at least three times the minimum front yard setback requirement for the zoning district in which the parcel is located and the type of street (see Table of Dimensional Requirements) or one hundred (100) feet whichever is greater. This provision shall be reduced to twenty-five (25) feet for individual residential lots that front on public streets that existed as of July 1, 2003. No parking, buildings, structures, or recreational facilities shall be permitted within this buffer strip but accessory structures such as signs, walls, underground utility structures, and drainage facilities may be located within this buffer. The buffer strip may be crossed by driveways or access drives that run essentially perpendicular to the street. The buffer strip shall be naturally vegetated or landscaped in accordance with the landscaping provisions of Article XXII and the treatment shall be subject to approval by the Planning Board as part of the approval of the subdivision. Appropriate legal mechanisms shall be established by the subdivider, subject to approval by the Planning Board as part of the approval of the subdivision, to assure that the buffer strip will be permanently protected and maintained.

M. ***Perimeter Buffer.*** A vegetated buffer strip shall be maintained along the external perimeter or property line of the Conservation Subdivision to minimize the impact of the Conservation Subdivision on abutting properties. The width of the buffer strip shall be at least the minimum setback requirement for the zone in which the subdivision is located. If the subdivision abuts a water body or wetland, the width and treatment of the buffer shall be consistent with the requirements of the Wetland Conservation Overlay District and/or the Shoreland Protection Overlay District. No parking, buildings, structures, access roads or driveways, or recreational facilities shall be permitted within this buffer strip but accessory structures such as walls, underground utility structures, and drainage facilities may be located within this buffer. The buffer strip shall be naturally vegetated or landscaped in accordance with the landscaping provisions of Article XXII and the

treatment shall be subject to approval by the Planning Board as part of the approval of the subdivision. Appropriate legal mechanisms shall be established by the subdivider, subject to approval by the Planning Board, to assure that the buffer strip will be permanently protected and maintained.

- N. ***Conceptual Long Range Development Plan.*** When a Conservation Subdivision will not utilize the entire parcel and there is potential for future subdivision or development of the parcel or any of the lots being created, the application for subdivision approval shall include a Conceptual Long Range Development Plan showing the potential utilization of the lots and the balance of the parcel not being subdivided. The Long Range Plan is intended to be conceptual in nature, to rely on published data about natural resources relevant to the parcel and the built environment, and to demonstrate that the current subdivision proposal will not compromise important conservation values or the long term development of the parcel as a Conservation Subdivision. This plan shall show the relationship of the proposed subdivision area to the balance of the parcel and to adjacent land. This plan shall analyze the conservation and development potential of the remaining area of the parcel and shall show, in general terms, the potential street network, open space areas, and development areas in a manner that demonstrates that both the proposed development and the future development can occur so that it conforms to the requirements for Conservation Subdivisions and preserves the significant natural resource and conservation values of the entire parcel.

175-107-II Workforce Housing Option

A. Purpose

The purpose of this Section is to provide an option for including workforce housing in Conservation Subdivisions that is consistent with the requirements of RSA 674:58-61 and will:

1. provide reasonable and realistic opportunity for the development of workforce housing;
2. ensure the continued availability of a diverse supply of home ownership and rental opportunities;
3. meet the goal of providing an adequate supply of affordable housing in Durham as set forth in the town's Master Plan; and
4. address the regional need for workforce housing as documented in the Strafford Regional Planning Commission's Housing Needs Assessment, as updated.

B. Authority

This section is adopted under the authority of RSA 674:21, Innovative Land Use Controls, and is intended as an "Inclusionary Zoning" provision as defined in RSA 674:21(I)(k) and 674:21(IV)(a), as well as RSA 672:1, III-e.

C. Applicability

1. Development in accordance with the provisions of this Section is permitted as a Conditional Use in the Rural (R), Residential A (RA), Residential B (RB) and Office Research/Light Industry (ORLI) Districts as an option to Article XIX, Conservation Subdivision.

2. Permitted Uses

Single family, duplexes, multi-units not to exceed four (4) units, accessory apartments, and accessory dwelling units. A mix of housing types within the same subdivision is permitted within an application under this Section. Any housing type that exceeds more than two (2) units shall be designated as workforce housing.

D. Procedural Requirements

Any applicant, who applies to the Planning Board for approval of a development that is intended to qualify as workforce housing under this section, shall follow the same procedure as outlined in the Town of Durham Subdivision Regulations and as provided for in the *Developer's Guidance Document for Affordable Housing*, January, 2011 as updated. Any such applicant shall also file a written statement of such intent as part of the application as per RSA 674:60.

E. Definitions: The following terms as used in this section shall have the following definitions:

1. Reasonable and Realistic Opportunities for the development of Workforce Housing: Opportunities to develop economically viable workforce housing within the framework of Durham's municipal ordinances and regulations adopted pursuant to this chapter and consistent with RSA 672:1, III-e.
2. Workforce Conservation Subdivision: A Conservation Subdivision that provides rental or ownership housing opportunities to households based on the following standards: (1) workforce rental housing is defined as a housing unit that has a monthly rent not exceeding 30 percent of the gross income of a household earning no more than 60 percent of the Area Median Income for a 3-person household for the Portsmouth-Rochester Fair Market Rent Area as published annually by the United States Department of Housing and Urban Development consistent with RSA 674:58 II; (2) workforce ownership housing is defined as housing that can be purchased at a price, including the combination of mortgage loan debt service, property taxes and insurance, that does not exceed 30 percent of the gross income of a household earning no more than 100 percent of the Area Median Income for a 4-person household for the Portsmouth-Rochester Fair Market Rent Area as published annually by the United States Department of Housing and Urban Development consistent with RSA 674:58 II.

3. Area Median Income (AMI): the median income of the greater region, the HUD Fair Market Rent Area to which Durham belongs, as is established and updated annually by the US Department of Housing and Urban Development. Income considers both wage income and assets.

F. Density Incentive

Any Conservation Subdivision that seeks to include workforce housing shall be permitted to increase the number of market units by 20% above the Maximum Development Density as calculated per Section 175-107 E (2) and that will guarantee an additional 20% of units above the Maximum Development Density to be designated as workforce housing.

G. General Requirements of Workforce Housing Units

1. The workforce housing units should be interspersed to the greatest extent possible throughout the overall development and not concentrated in a separate area of the Subdivision.
2. Phasing—The phasing plan for the development shall provide for the construction of workforce housing units concurrently with the market-rate units.
3. More than fifty percent of the workforce housing units in the development shall contain two or more bedrooms.
4. The subdivision plan must also adhere to the standards outlined in Section H and satisfactorily meet the following criteria:
 - a. The dwellings qualifying as workforce housing shall be compatible in exterior appearance and reasonably consistent with the market rate dwellings in the proposed Subdivision.
 - b. Incorporate the equivalent of the Energy Star rating in all building designs or the current requirements outlined within Chapter 38 “Building Construction” of the Town of Durham Code, whichever performs better energy efficiency.
5. Alternative Lot Sizing: The Planning Board may authorize variations from the minimum lot sizes and lot dimensions specified by standards of the underlying zone through the Conditional Use Permit, provided the Planning Board determines that the following conditions are met:
 - a. All lots comply with the New Hampshire Department of Environmental Services requirements (RSA 485: A) for subsurface wastewater management (developments may

utilize individual or community wells and/or septic systems) and private water wells within the decreased lot size; and

- b. The objectives and standards of this article and the Subdivision Regulations are otherwise achieved.

H. Assurance of Affordability

1. Certification of Income Levels

All of the workforce housing units gained under this provision must meet the affordability requirements for workforce housing in Paragraph E (2) of this Section.

2. Assurance of Continued Affordability

Workforce ownership housing units must retain the development criteria and affordability standards herein for a minimum period of thirty (30) years through a suitable deed restriction, easement and/or mortgage deed instrument deemed acceptable to the Durham Planning Board and as monitored through reports provided to the Durham Planning Board by a selected third-party agent prior to the time of unit sale or resale.

I. Administration

This Section shall be administered by the Planning Board in cooperation with a third party property management entity that will be responsible for income verification and ongoing affordability compliance.

J. Conflict

If any provision of this Section is in conflict with the provisions of any other provisions of this ordinance, the more restrictive provision shall apply, except for any provision relating to reductions in standards for lot size, setbacks, or density, in which case the provisions of this Section shall apply.

175-108. Stewardship Fund.

Payments to the Town to provide for the periodic monitoring of conformance with the conservation restrictions on common open space shall be deposited in the Town's Stewardship Fund. The Stewardship Fund shall be maintained as a separate trust account and shall be used only for the monitoring of conservation restrictions. The use of the Fund shall be managed by the Town's Conservation Commission. The Commission shall provide the Town Council with an annual accounting of the use of the fund.