

CITY OF CONCORD

In the year of our Lord two thousand and fifteen

AN ORDINANCE amending the CODE OF ORDINANCES, Title IV, Zoning Code; Chapter 28, Zoning Ordinance; Article 28-4, Development Design Standards and Article 28-5, Supplemental Standards

The City of Concord ordains as follows:

SECTION I: Amend the CODE OF ORDINANCES, Title IV, Zoning Code; Chapter 28, Zoning Ordinance; Article 28-4, Development Design Standards, by amending Section 28-4-7, Cluster Development, by amending paragraph (c) as follows:

(a) Authority. This Section is adopted pursuant to the provisions of RSA 674:21, Innovative Land Use Controls. The Planning Board is authorized to administer the application, review, and approval process for Cluster Developments.

(b) Purposes. It is the purpose of these Cluster Development provisions to permit greater flexibility and more creative design for the development of residential areas than is generally possible under conventional zoning regulations. It is the intent of this Section to promote the efficient use of land while providing for a harmonious variety of housing choices, a higher level of amenities, the preservation of the natural and scenic qualities of open spaces, and compatibility with adjacent uses of land.

~~{(e) Subdivision Approval Required. Subdivision approval is required for a Cluster Development. An applicant seeking to construct a Cluster Development shall file an application with the Planning Board for subdivision approval in accordance with Section 28-9-4(c), Subdivision Approval, of this ordinance, and as specified in the Subdivision Regulations adopted by the Planning Board. The application, review, and administrative processes shall be as specified in the Subdivision Regulations, augmented by the provisions and standards contained in this Section. }~~

(c) *Subdivision Approval and Special Applicability*

(1) *Subdivision Approval Required. Subdivision approval is required for all Cluster Developments. An applicant seeking to construct a Cluster Development shall file an application with the Planning Board for subdivision approval in accordance with Section 28-9-4(c), Subdivision Approval, of this ordinance, and as specified in the Subdivision Regulations adopted by the Planning Board. The application, review, and administrative processes shall be as specified in the Subdivision Regulations, augmented by the provisions and standards contained in this Section.*

(2) **Special Applicability for RO District.**

a. ***All major subdivisions within the RO District shall comply with Article 28-4-7, Cluster Development, unless a Conditional Use Permit is granted under Article 28-5-46, Single-Family Dwellings in a Conventional Subdivision.***

b. ***Minor subdivisions within the RO District shall comply with either Article 28-4-7, Cluster Development, or the requirements of the RO Zoning District as set forth in Article 28-4-1, Dimensional Standards.***

(d) **Permitted Uses.** On a tract proposed for Cluster Development, any pre-existing use that does not conform to the uses permitted in this Section shall not be part of a Cluster Development, and must be discontinued or relocated to another tract. The following are the principal and accessory uses permitted within a Cluster Development:

(1) **Principal Uses.** The only principal uses that are permitted in a Cluster Development are single-family detached dwellings.

(2) **Uses Accessory to a Principal Residential Use.** The only accessory uses that are permitted on a lot for an individual single-family detached dwelling within a Cluster Development are as follows:

a. Garages, carports, and parking spaces;

b. Accessory buildings and facilities;

c. Outdoor storage of a boat, recreational vehicle, or camping trailer; and

d. A minor home occupation.

(3) **Uses Accessory to the Cluster Development.** The following accessory uses are permitted, subject to Planning Board approval, in a Cluster Development but not on a lot for an individual single-family detached dwelling, and are permitted only as common facilities for the use or benefit of residents of the Cluster Development:

a. Outdoor recreational facilities including, but not limited to, tennis courts, golf courses, swimming pools, basketball courts, playgrounds, beaches, docks, and trails;

b. Indoor recreational facilities including, but not limited to, a swimming pool, fitness center, clubhouse, cabana, spa, and tennis courts;

c. Indoor support facilities including, but not limited to, meeting rooms, management offices, child care facilities, and greenhouses;

d. Storage facilities for Cluster Development maintenance equipment;

e. Community gardens, agricultural and horticultural operations, and timber management; and

f. Signs in accordance with Article 28-6, Sign Regulations, of this ordinance.

(e) Development Standards.

(1) Minimum Tract Requirements and Design Standards for a Cluster Development. A tract of land that is proposed for use as a Cluster Development shall comply with the dimensional, density, and open space standards as specified hereinafter:

Base District	Minimum Tract Dimensions		Maximum Density (units/acre buildable land)	Minimum Common Open Space (% of tract)	Maximum Lot Coverage (% of tract)
	Size (acres)	Frontage (feet)			
RO	4	300	0.5	60	10
RM (w/o sewer)	10	200	1	50	20
RM (w/ sewer) and RS	10	100	3	40	40
RN	2	80	4	30	50

(2) Design Standards Where There is a Subdivision of the Tract Into Lots. Where lots are proposed to be created for individual dwelling units by subdivision of the Cluster Development tract, each lot shall meet the following minimum requirements:

Base District	Dimensions for Lots for Individual Dwelling Units						
	Minimum Lot Size (sq ft)	Minimum Buildable Land (sq ft)	Minimum Lot Frontage (ft)	Minimum Yards (ft)			Maximum % Lot Coverage
				Front	Rear	Side	
RO	30,000*	20,000	120	30	30	20	20
RM (w/o sewer)	20,000*	20,000	100	25	25	15	30
RM (w/ sewer) and RS	9,000	6,250	80	20	20	10	50
RN	7,500	5,000	75	15	20	10	60

* or larger, as required by the N.H. Department of Environmental Services-Water Division

- (3) Design Standards Where Lots are Not Created for Individual Dwelling Units. Where lots are not created for individual dwelling units, each dwelling shall observe a minimum setback from a street right-of-way, a minimum separation from other dwellings, and have adjacent to it a private yard space, all as specified hereinafter:

Base District	Minimum Standard for Each Dwelling		
	Setback From Street ROW (ft)	Building Separation (ft)	Private Yard (sq ft)
RO	30	50	500
RM (w/o sewer)	25	40	500
RM (w/ sewer) and RS	20	30	300
RN	15	30	300

The private yard space adjacent to each unit shall be dedicated to the exclusive use of the residents of said unit and may contain patios, decks, fences, landscaping, gardens, and other outdoor facilities.

- (f) Perimeter Buffer Required. In order that adjacent land uses be visually and physically separated, a buffer area along the perimeter of the Cluster Development tract shall be observed, and no buildings or parking facilities shall be located within this buffer. The minimum width of the buffer shall be twenty-five (25) feet in the RN District, fifty (50) feet in the RM and RS Districts, and one hundred (100) feet in the RO District. The Planning Board may permit streets and utilities to cross through the buffer, and may allow certain outdoor recreational facilities within the buffer, provided that such improvements are compatible with adjacent land uses and do not diminish the purpose of the buffer. The buffer shall incorporate existing natural features of the tract to the greatest extent possible. Existing vegetation including significant large trees shall be preserved, and the Planning Board may require landscape materials to be integrated with the existing vegetation in order to provide effective screening on a year-round basis between the Cluster Development and adjacent land uses.

In the RO District, the minimum width of the perimeter buffer may be reduced to fifty (50) feet as opposed to the standard minimum width of one hundred (100) feet for cluster developments comprised of four (4) or fewer lots or units and where the cluster development tract is less than twenty (20) acres in area.

- (g) Open Space Standards.

- (1) Minimum Common Open Space. Common open space shall include the perimeter buffers as well as areas internal to the Cluster Development such that all dwelling units have access or are contiguous to some of the common open space. Common open space shall incorporate natural features of the parcel including shorelines, surface waters, wetlands, floodplains, steep slopes, and other environmentally sensitive areas within which existing

vegetation shall be preserved. A minimum of forty (40) percent of the required common open space in a Cluster Development shall be comprised of buildable land which may be used for recreational and utilitarian purposes as provided in this Section. A minimum of one-half (½) of the common open space that is comprised of buildable land, shall be contiguous, shall be accessible from a public or private road, and shall have no horizontal dimension which is less than fifty (50) feet. Furthermore, such common open space that is comprised of contiguous buildable land shall not be less than ten thousand (10,000) square feet in area, and where such land exceeds one (1) acre in area, the minimum horizontal dimensions of such land shall be increased by fifty (50) feet for each additional acre, or portion thereof, up to a total of four hundred fifty (450) feet. The required minimum contiguous buildable open space may have inclusions of non-buildable land up to a maximum of five (5) percent of said required contiguous buildable open space.

Where the required contiguous buildable open space is at least ten (10) acres in size, upon the granting of a conditional use permit by the Planning Board pursuant to Section 28-9-4(b), Conditional Use Permits, of this ordinance, the minimum contiguous buildable land area may be provided in discrete segments of at least five (5) acres in area, which shall meet the minimum horizontal dimensional requirements as specified herein, and which shall be connected to other portions of the common open space. Ord. #2666 (3-12-07)

- (2) Protection of Common Open Space. Provision shall be made to ensure that the common open space is permanently restricted as such. Covenants, easements, or other legal instruments providing for the permanent protection of the common open space shall be submitted to the Planning Board for review and approval. The legal instruments shall be recorded at the Merrimack County Registry of Deeds as a condition of approval of the Cluster Development application.
- (3) Permitted Uses of Common Open Space. Natural features and environmentally sensitive areas shall be retained as such, with allowance for establishment of walking paths and trails, for forest management practices, and for the maintenance of open fields. The Planning Board may permit the following recreational and utilitarian uses of that portion of the common open space which is comprised of buildable land:
 - a. Outdoor recreational facilities, provided that no more than ten (10) percent of the required common open space be devoted to outdoor recreational facilities with impervious surfaces such as tennis courts, swimming pools, and basketball courts;
 - b. Water supply wells;
 - c. The leaching systems of subsurface wastewater disposal systems; and
 - d. Community gardens, and agricultural and horticultural operations.
- (h) Accessory Facilities. A Cluster Development application shall include a narrative description and schedule for development for proposed accessory recreational, support, and storage facilities. Such facilities shall be suitable for the scale of the development, its market orientation, and the needs of the anticipated residents of the Cluster Development.
- (i) Utility Service Requirements.

- (1) Water Supply. If available, municipal water service shall be provided to all buildings within a Cluster Development. If municipal water service is not available, each building in a Cluster Development shall be served by a private well for the exclusive use of that building and its accessory facilities. The protective radius around a well shall be located solely within the lot served by the well, or within common open space that is immediately adjacent to the lot served by the well, or within defined easement areas on adjacent lots.
- (2) Sanitary Sewage Disposal. If available, municipal sanitary sewer service shall be provided to all buildings within a Cluster Development. If municipal sanitary sewer service is not available, sanitary sewage disposal shall be by means of a subsurface waste disposal system for each individual lot or building as approved by the New Hampshire Department of Environmental Services (NHDES)-Water Division (WD).
- (3) Non-municipal Utilities. All non-municipal utilities, both those existing on the tract and those proposed to serve a Cluster Development, shall be placed underground. Such utilities include but are not limited to electricity, telephone, gas, cable television, and fiber optic cable.

(j) Ownership and Maintenance.

- (1) Roads, Utilities, and Other Accessory Facilities. The ownership and maintenance of private roads, utilities, parking facilities, and recreational and other accessory facilities shall be assigned to an ownership interest such as an association of lot owners, condominium owners, or cooperative shareholders, or as otherwise approved by the Planning Board.
- (2) Common Open Space.
 - a. Where there is no subdivision of the tract into lots, the ownership and maintenance of the common open space shall be assigned to an ownership interest such as an association of condominium owners or cooperative shareholders, or as otherwise approved by the Planning Board.
 - b. If there is a subdivision of the tract such that common open space lots are to be created, such common open space lots may be conveyed subject to covenants, restrictions, and a maintenance agreement, to a governmental entity or to a private land trust, as approved by the Planning Board. Otherwise, the title to common open space lots, subject to covenants and restrictions, shall be conveyed as proportionate, undivided interests-in-common to each owner of a lot on which a dwelling unit may be built, and the maintenance responsibilities for such common open space lots shall be borne by an association of lot owners.
 - c. Where the Cluster Development is subdivided into lots, the Planning Board may permit portions of individual building lots to be dedicated as part of the common open space provided that such lots are duly encumbered with covenants, restrictions, and maintenance stipulations, and further provided that there will be an adequate area remaining on the lot to reasonably accommodate the construction of a principal residential use.

(k) Parking Requirements. The parking requirements for principal residential uses in a Cluster Development shall be as specified in Article 28-7, Access, Circulation, Parking, and Loading Requirements, of this ordinance. Additional parking spaces shall be provided in conjunction with accessory recreational and support facilities for the common use and benefit of the Cluster Development residents on the basis of one (1) space for every five (5) dwelling units that are more than five hundred (500) feet distant from an accessory facility. Parking spaces for accessory facilities shall be located immediately adjacent to the accessory facility.

(l) Phasing of a Cluster Development. An applicant may propose a phasing plan subject to the approval of the Planning Board. The Board shall impose conditions upon such a phasing plan including the duration of each phase and total number of phases. All phasing plans shall be subject to the following provisions:

- (1) The open space covenants or easements for the entire Cluster Development shall be recorded at the Merrimack County Registry of Deeds and become effective at the time of recording of the approved plan of the first phase of the Cluster Development; and
- (2) Accessory recreational and support facilities shall be completed in the same phase as the dwelling units intended to be served by the accessory recreational and support facilities, except that all accessory recreational and support facilities shall be completed at such time as fifty (50) percent of the dwelling units in the entire Cluster Development are complete.

SECTION II: Amend the CODE OF ORDINANCES, Title IV, Zoning Code; Chapter 28, Zoning Ordinance; Article 28-5, Supplemental Standards, by amending Section 28-5-46, Single-Family Dwelling in a Standard (Noncluster) Subdivision, by revising the title to Single Family Dwelling in a Conventional Major Subdivision and revising the introductory paragraph as follows:

~~*[Single-Family Dwellings in a Standard (Noncluster) Subdivision.*~~

~~In the Open Space Residential (RO) District, wherein single-family dwellings are allowed by right in Cluster Developments pursuant to Section 28-4-7, the Planning Board may grant a conditional use permit to allow single-family homes to be developed in a standard, noncluster subdivision, subject to the following conditions:]~~

Single Family Dwelling in a Conventional Major Subdivision.

The Planning Board shall have the authority to grant or deny a conditional use permit to allow a conventional residential subdivision in the Open Space Residential (RO) District for major subdivisions, subject to the following conditions:

- (a) A comparable amount of open space will be protected on the premises by deed or easement as would otherwise be required for a Cluster Development pursuant to Section 28-4-7; or
- (b) A comparable amount of open space will be protected on another parcel in the RO District by deed or easement as would otherwise be required for a Cluster Development pursuant to Section 28-4-7.

SECTION III: Amend the CODE OF ORDINANCES, Title IV, Zoning Code, Chapter 28, Zoning Ordinance, Article 28-2, Zoning Districts and Allowable Uses, Section 28-2-4, Allowable Principal and Accessory Uses in Zoning Districts, Paragraph J, Table of Principal Uses by renumbering the Use Category and Descriptions A-8 to A-14, deleting the Use Category and Descriptions A-15, and creating a new A-8, Single Family Dwelling in a Conventional Major Subdivision and A-9, Single Family Dwelling in a Conventional Minor Subdivision, as follows:

Use #	Use Category and Description	R O	R M	R S	R N	R D	R H	C N	C G	C H	C U	C B P	G W P	O C P	O F P	C V P	I S	I N	U T	Development Design and Supplemental Standards
1	Single-family detached dwelling	P	P	P	P	P	P	P	-	-	-	-	-	-	-	P	P	-	P	
2	Duplex or two-family dwelling	-	P	-	P	P	P	P	-	-	-	-	-	-	-	P	P	-	P	Section 28-5-2
3	Attached dwellings	-	-	-	P	P	P	-	P		P	-	-	-	-	P	P	-	P	Section 28-4-5
4	Multifamily dwellings	-	-	-	-	P	P	P	P		P	P	-	P	-	P	P	-	P	Section 28-4-5
5	Manufactured housing subdivision	-	-	-	P	P	P	-	-	-	-	-	-	-	-	-	-	-	-	Section 28-4-6
6	Manufactured housing park	-	-	-	CU	CU	CU	-	-	-	-	-	-	-	-	-	-	-	-	Section 28-4-6
7	Cluster development	P	P	P	P	-	-	-	-	-	-	-	-	-	-	-	-	-	-	Section 28-4-7
8	<i>Single Family Dwelling in a Conventional Major Subdivision</i>	<i>C U</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	-	-	-	-	-	-	-	<i>P</i>	<i>P</i>	-	<i>P</i>	<i>Section 28-4-7(c) and 28-5-46</i>
9	<i>Single Family Dwelling in a Conventional Minor Subdivision</i>	P	P	P	P	P	P	P	-	-	-	-	-	-	-	P	P	-	P	<i>Section 28-4-7(c)</i>
[8]10	Planned unit development	-	P	-	P	-	P	-	-	-	-	-	-	-	-	-	-	-	-	Section 28-4-8
{9}11	Conversion of a	-	-	-	P	P	P	P	-	-	P	-	-	-	-	P	P	-	P	Section 28-5-3

	residential building to accommodate not more than five (5) units																			
{10} I2	Multifamily dwelling units for the elderly including congregate dwelling units	-	P	P	P	P	P	-	P	P	P	P	-	P	-	P	P	-	P	Section 28-4-5
{11} I3	Assisted living residence	-	P	-	P	P	P	-	-	-	P	-	-	-	-	P	P	-	P	Section 28-5-4
{12} I4	Residential social service center	-	CU	-	CU	CU	CU	-	-	-	C U	-	-	-	-	P	CU	-	CU	Section 28-5-5
{13} I5	Rooming house	-	-	-	-	SE	-	-	-	-	S E	-	-	-	-	-	-	-	SE	Section 28-5-6
{14} I6	Conversion of a nonresidential building to accommodate one or more dwelling unit	-	-	-	-	P	P	P	P	-	P	P	-	P	-	P	P	-	P	Section 28-5-7
{15}	Single family dwellings in a standard (noncluster) subdivision	C U	P	P	P	P	P	P	-	-	-	-	-	-	-	P	P	-	P	Section 28-5-46

SECTION IV: This ordinance shall take effect upon its passage.

Explanation: Matter added to the current ordinance appears in *bold italics*.
Matter removed from the current ordinance appears in [brackets and ~~struck through~~].