

**Draft Zoning Changes for the 2nd Planning Board Public Hearing,
January 22, 2018.**

**No changes were made at the 1st Public Hearing. Proposed wording for the 1st
Public Hearing in red, eliminated text in red strikethrough.**

**ARTICLE XV
RESIDENTIAL CONSERVATION SUBDIVISION BY SPECIAL PERMIT
[Added by ballot 3-11-08 ATM, Amended 3-8-16 ATM, Art. 3]**

RESIDENTIAL CONSERVATION SUBDIVISION:

Pursuant to RSA 674:21, the Planning Board is hereby authorized to grant a Special Permit to allow for a CONSERVATION SUBDIVISION in accordance with the restrictions and requirements of this section. The Planning Board is further authorized to adopt amendments to the Subdivision Regulations in order to further administer the requirements of this Ordinance.

307-93 Purpose

Among the goals of this Conservation Subdivision Ordinance is to promote the conservation of undeveloped land and to limit the length of new roads so as to minimize the impact of their future and ongoing maintenance. Special Permits shall be administered by the Planning Board to ensure that Conservation Subdivision opportunities will not adversely impact neighboring properties, town citizens, or the Town of Pelham. The Planning Board shall consider the following purposes during its review of individual applications:

- A. to maintain and preserve the rural character of the Town of Pelham;
- B. to provide multiple options for landowners to conserve open space from development while minimizing impacts on environmental resources (such as wetlands, floodplain, and steep slopes) and disturbance of natural or cultural features (such as mature woodlands, hedgerows and tree lines, critical wildlife habitats, historic buildings, and fieldstone walls);
- C. to provide design flexibility and efficiency in the establishment of services and infrastructure, including the opportunity to reduce road lengths, utility runs, and the amount of paving required for residential development;
- D. to reduce erosion and sedimentation by retaining existing vegetation;
- E. to provide for a diversity of lot sizes, building orientation, and proximity in the physical placement of homes while minimizing confusion over issues of property ownership;
- F. to provide for connected corridors of open land throughout town for the protection of wildlife habitats, environmental resources, and public enjoyment of such corridors for recreational and aesthetic purposes;
- G. to conserve scenic views, unique and aesthetic elements of the town's character while minimizing views of new development from existing roads.
- H. to provide reasonable and realistic opportunities for the development of workforce housing. [Added by ballot March 10, 2009 ATM, Art. 2]

307-94 Special Permit

All Conservation Subdivisions shall obtain a special permit from the Planning Board. The special permit shall set forth all conditions of approval and shall list all plans, drawings, and other submittals that are requisite elements of each application. Everything on a plan or submittal that is listed on the special permit shall be considered a condition of approval to the Pelham Conservation Subdivision zoning

ordinance. Construction shall not deviate from the stated conditions without first obtaining approval of such modification from the Planning Board or from their designated agent.

307-95 Application Procedure [Amended 3/8/16 ATM, Art. 3]

All applicants must submit a conceptual plan to the Planning Board as part of their yield plan proposal. After the yield plan has been approved applications for special permits for a Conservation Subdivision shall be made in accordance with the procedures set forth in the relevant sections of the Subdivision Regulations of the Pelham Planning Board.

307-96 Approval of Applications

The Planning Board may condition its approval on reasonable conditions necessary to accomplish the objectives of this section, including but not limited to; a reasonable adjustment in allowed density, required frontage, setbacks, or any other requirement necessary to accomplish said objectives.

307-97 Special Permit Review [Amended 3/8/16 ATM, Art. 3]

When reviewing requests for Special Permits the Planning Board may require the establishment of a Home Owner's Association to fund, maintain and protect the Open Space and common areas including private roads, sidewalks, buildings and utility facilities. Every development shall provide the Planning Board with easements, covenants, or deed restrictions, which shall provide for the perpetual continuation of the Open Space and common areas. Said easements, covenants, or deed restrictions shall apply to all units, be reviewed by qualified legal counsel on behalf of the town (at the developer's expense) and approved by the Planning Board prior to the issuance of any final approval.

307-98 Definitions

The following definitions apply specifically to this Article of the Zoning Ordinance:

Common Area: Any parcel or area of land and/or area of water set aside as a part of a Conservation Subdivision plan. A common area is designed for the benefit and enjoyment of the residents of a Conservation Subdivision. These areas may contain accessory structures and improvements necessary and appropriate for the educational, recreational, cultural, social or other non-commercial/non-residential / non-industrial uses, plus any utility services utilized by the owners of the common area.

Conservation Easement. A legal agreement between a landowner and a land trust or government agency that permanently limits uses of land that has been donated in order to protect its conservation values.

Density Offsets: Allowances for a minor increase in lots or units to a Conservation Subdivision for inclusion of ~~amenities, design attributes, and protection of natural land features beyond what is found in conventional subdivisions.~~ Workforce Housing.

Mandatory Homeowners' Association: A private, non-profit corporation, association, or other non-profit legal entity established by the developer for the benefit and enjoyment of the residents of the Conservation Subdivision. Membership in said association shall be mandatory for property owners and made a required covenant in any deed issued or passed. It shall provide voting and use rights in the common area, when applicable and may charge dues to cover expenses which may include tax liabilities of the common area, recreational or utility facilities. Articles of association and or incorporation must be acceptable to the Planning Board and reviewed by Town Counsel at the applicant's expense.

Viewshed: An area of land, water, or other environmental elements visible from a fixed vantage point with particular scenic, aesthetic or historic value that is deemed worthy of protection against development or other change.

Workforce Housing: Deed restricted housing intended to comply with the New Hampshire Workforce Housing Law, NH RSA 674:59, I and 674:21, IV (a) to provide to provide reasonable and realistic opportunities for the development of workforce housing within reach of recent college graduates, young professionals and community employees so that they may live in the community in which they work. All workforce housing units must be compatible in style and appearance to the other units within the proposed development. [Added by ballot March 10, 2009 ATM, Art. 2]

Yield Plan: The Yield Plan is the design, acceptable to the Planning Board, showing the number of lots that could be approvable and buildable following the requirements of conventional zoning and subdivision regulations. The Yield Plan should represent a realistic baseline of development against which the Planning Board can compare the density proposed for the Conservation Subdivision.

307-99 Strict Adherence

Strict adherence to these provisions shall not be construed as establishing a legal right to a special permit for a Conservation Subdivision.

307-100 Parcel Requirements [Amended 3/8/16 ATM, Art. 3]

Fifteen (15) acres is the minimum size for a Conservation Subdivision development. The minimum frontage for the development shall be a continuous one hundred (100) feet and of sufficient length to provide safe access for a right-of-way of at least fifty (50) feet. At least one access shall be within the minimum frontage. The minimum frontage and access shall be within the Town of Pelham. If, however, the subject parcel has only fifty (50) feet of frontage and was legally created prior to the date of adoption of this ordinance under ordinances and regulations that required at least a fifty (50) feet minimum right-of-way, fifty (50) feet shall be the minimum required frontage for such pre-existing lots. Frontage lands on roads existing at the time of application shall be preserved as buffers to the maximum extent possible in addition to all required setbacks. [Amended March 10, 2009 ATM, Art. 2]

307-101 Density

The maximum density for Conservation Subdivisions shall be determined by use of a yield plan. The Planning Board shall adopt subdivision regulations that provide for the generation of a yield plan in accordance with this section. After review of the yield plan the Planning Board shall determine whether the established density meets the Conservation Subdivision regulations. The Board may, at its discretion, and at the developer's expense, require additional engineering or engineering review.

307-102 Density Offsets [Amended 3/8/16 ATM, Art. 3]

For the inclusion of ~~amenities, design attributes, protection of natural land features beyond what is found in conventional subdivisions, and to provide reasonable and realistic opportunities for the development of~~ workforce housing, ~~it is the intent to provide~~ the Planning Board ~~the flexibility to may, in its sole discretion,~~ allow for a minor increase in lots or units to a Conservation Subdivision. [Amended March 10, 2009 ATM, Art. 2]

Density offsets are based on the number of lots or units achievable under the yield plan baseline. In no instance shall the Planning Board grant density offsets totaling in excess of twenty percent (20%) beyond the density established in the yield plan.

The Planning Board may grant development density offsets if the required criteria as set forth in the Pelham Subdivision Regulations are met. The required criteria within the Subdivision Regulations shall be based on the following standards:

~~A. the preservation of unique land, wildlife habitat/corridors, environmental features, and/or facilities;~~

- ~~B. innovative layout and design of the project to encourage a village or community type environment with such amenities as village greens and parks, community viewsheds and/or integration into existing protected farm activities or existing recreational facilities;~~
- ~~C. the development of new recreational facilities such as parks, playgrounds, trails, and/or community centers. If the improvements are made available to the general public, a density offset may be adjusted to reflect use;~~
- ~~D. the protection of each potential frontage lot as open space. Merging adjacent road frontage parcels with the parent parcel and removing structures shall qualify.~~
- ~~AE. the inclusion of workforce housing as defined in 307-98. Criteria for density offsets shall be developed by the Planning Board and outlined in the subdivision regulations.~~ Administration of deed restrictions and assurance of buyer/renter qualification shall be outsourced at the expense of the applicant to the agency or agencies identified by the Planning Board within the subdivision regulations. [Added by ballot March 10, 2009 ATM, Art. 2]
- ~~F. sidewalks (where a Home Owner's Association is required per 307-97)~~
- ~~G. connectivity to a municipal water system owned and operated by Pennichuck East or its successor.~~

307-103 Standards for Approval [Amended 3/8/16 ATM, Art. 3]

All standards below must be met or impacts mitigated to the satisfaction of the Planning Board prior to the granting of a Special Permit:

- A. the permit shall be in compliance with this ordinance or any variance that may be granted there from;
- B. impacts to existing neighborhoods shall not exceed a conventional subdivision;
- C. the Planning Board shall verify the following aspects of the surrounding area:
 - 1. Transportation: Assessment through analysis of the following:
 - a. access for emergency vehicles onto the site, within the site, and to individual houses;
 - b. capacity of nearby and affected intersections, and transportation corridors;
 - c. no additional cost for the town to maintain roadways over a conventional subdivision;
 - d. layout, width, and construction of roadways on the site.
 - 2. Protection of Natural and Historic Resources: Assessment through analysis of the following:
 - protection of environmentally sensitive areas, including but not limited to, wetlands, shore land buffers, wildlife corridors, significant groundwater resources, etc;
 - protection of viewsheds, stone walls and other visually appealing aspects of the site;
 - protection of historic buildings and significant historical landscapes;
 - 3. Protection of existing trail systems;
- D. the granting of the permit shall not result in municipal expense that is in excess of that which is necessary for conventional subdivision development;
- E. existing or planned community facilities and services (including streets and highways) shall not be impacted more than would occur in a conventional subdivision development;

- F. landscaping or other appropriate buffers of sufficient opacity and materials shall be required if deemed necessary for the welfare of neighboring properties or the Town.

307-104 Subdivision Regulations

The Planning Board shall adopt sections of the Subdivision Regulations not preempted by this ordinance which shall apply to the Conservation Subdivision, including the right to waive such regulations. Where not specifically pre-empted by the provisions of this ordinance, the requirement that is more restrictive shall apply.

307-105 Minimum Open Space Requirements

The Planning Board shall adopt Subdivision regulations that specify the criteria for Open Space based on the following standards:

- A. a minimum of forty percent (40%) of the total land in the parcel must be dedicated as open space;
- B. the minimum required open space is land not to be built upon except that up to fifty percent (50%) of the open space may include recreational facilities, water supply facilities and subsurface systems. The open space cannot be subjected to current use taxation or discretionary easements;
- C. the dedicated Open Space shall be protected in perpetuity through deed restriction or conservation easement, and designated on the approved and recorded plan;
- D. the open space and/or common area within a Conservation Subdivision shall be owned and bound by one or more of the following:
 - 1. a Mandatory Homeowners' or Condominium Association;
 - 2. a Public Body;
 - 3. a Private Entity

Any such designation or combination of designations must be made prior to approval of the subdivision by the Planning Board.

307-106 General Requirements [Amended 3/8/16 ATM, Art. 3]

- A. Only single family detached residential units shall be permitted.
- B. Setbacks and Other Dimensions:
 - 1. The following road frontage requirements shall apply:
 - a. fifty (50) feet or more on interior roadways for each lot or unit;
 - b. two hundred (200) feet or more for each lot or unit proposed along an existing town road.
 - 2. All developments shall contain some form of lot or limited common area delineation or lines that designate the amount of land attributable to each unit.
 - 3. The following minimum setbacks shall apply to all residential structures within the development excluding existing historic buildings:
 - a. twenty-five (25) feet from exterior property lines of the initial Conversation Subdivision parcel;
 - b. thirty (30) feet from the right of way of roads;
 - c. fifteen (15) feet from side and rear lot lines of individual unit lots if applicable;
 - d. thirty (30) feet from any other residential unit within the development.

- C. All conservation subdivisions ~~proposing community well systems~~ shall be served by a community water system managed by a third-party entity with demonstrated expertise in the management of such water systems. All applicants must demonstrate to the Planning Board's satisfaction that their Homeowner's documents prohibit residents from drilling private irrigation wells.
- D. Roads constructed as part of a conservation subdivision may be private roads ~~and may count towards a density offset~~ at the discretion of the Planning Board.
- E. Existing trail connectivity must be protected. Should the trail need to be relocated, the relocated trail must remain within the limits of the initial sub-division and be constructed by the applicant. The relocated trail may be located within the open space or the setbacks.

307-107 Expiration

Any Special Permit shall expire if there has not been active and substantial development or construction on the site by the owner or the owner's successor in interest in accordance with the approved plan within twelve (12) months after the date of approval. As part of its approval of a plan, the Planning Board may, with due regard to the scope and details of a particular project, specify the threshold level of work which shall constitute "active and substantial development or construction" for purposes of complying with this paragraph.

307-108 Conditions

The Planning Board may impose stricter standards than allowed by this Article if it should determine that an adverse impact would result from the Conservation Subdivision.

307-109 Savings Clause

If any provision of this ordinance is found to be invalid or unenforceable such a result shall not be construed to invalidate the remainder of the ordinance which shall remain in full force and effect.

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