

# Chapter 145. Land Use

## Article VII. Performance Standards

### § 145-49. Residential cluster development.

[Amended 11-7-2006]

The purpose of this section is to allow, by Planning Board approval, the clustering of one- and two-family dwelling units. Clustering shall provide a more efficient use of land resulting in the preservation of natural land forms, wetlands, wildlife and waterfowl habitats, significant vegetation and agricultural lands, other natural resources, and historic sites. Notwithstanding other provisions of this chapter, the Planning Board may modify the dimensional requirements of this chapter as specified in this section to permit the clustering of one- and two-family homes. Such modifications shall not be construed as the granting of a variance to relieve hardship.

A. Permitted locations. Residential cluster development shall be permitted in all zoning districts where residential development is allowed. All areas of a cluster subdivision located within the Aquifer Protection District or the Shoreland Overlay District shall be dedicated as undeveloped open space.

[Amended 6-14-2016]

B. Density. The maximum density of dwelling units permitted shall be the same as permitted in the district(s) in which the cluster development is located, unless density bonuses are granted in accordance with § **145-49D**. To determine maximum density the following steps shall be taken:

- (1) In order to determine the maximum number of dwelling units permitted on a tract of land the net residential acreage shall be determined by calculating net area and subtracting 15% of the area of the lot to account for roads and parking.
- (2) A cluster development layout shall be submitted indicating a minimum of 35% open space and significant natural features.

C. Dimensional requirements.

- (1) The minimum lot sizes may be reduced ~~to 20,000 square feet in any district where clustering is allowed,~~ [to the following](#) if not serviced by public sewer, or may be reduced to the following if on public sewer:

### Served by Public Sewer

Type of Dwelling	RA, GB and RC Districts (square feet)
One-family dwelling	10,000
Two-family dwelling	15,000

<u>Type of Dwelling</u>	<u>Rural District (square feet)</u>
<u>One-family dwelling</u>	<u>20,000</u>

### Not Served by Public Sewer

<u>Type of Dwelling</u>	<u>Rural District (square feet)</u>
<u>One-family dwelling</u>	<u>40,000</u>

  

	<u>RA and RC Districts (square feet)</u>
<u>One-family dwelling</u>	<u>30,000</u>

- (2) The required setbacks from lot lines and from street rights-of-way within the cluster development may be reduced, but no structure shall be located within 15 feet of any lot line or within 20 feet of any street right-of-way within the cluster development.
- (3) The required street frontage on a proposed private street may be reduced to no less than 50 feet. The required street frontage on a Town Street may not be reduced, except lots within the Rural District may reduce street frontage on a Town Street to no less than 150 feet.
- (4) When a lot in a cluster subdivision abuts a nonclustered residential lot, the setback in the cluster subdivision lot shall be twice the required non-clustered setback along the adjoining lot line. The Planning Board may require additional screening or restrict the removal of vegetation within the setback to provide a buffer between higher and lower density development.
- (5) ~~The maximum lot coverage of 20% in the Rural District may be allowed by the Planning Board to be increased to 40% on lots smaller than 40,000 square feet in area. [Added 6-14-2016]~~ When a cluster lot abuts a Town Street, the setback from the street shall be twice the required non-cluster setback of the District. The setback area shall be a no cut buffer of natural vegetation, or the Planning Board shall require natural evergreen plantings to establish a visual screen, except at driveway locations. Utility and driveway locations shall combined as one location.

D. Innovative open space bonus. At least 35% of the total parcel acreage in a cluster subdivision must be designated as open space and protected as such in perpetuity. At the discretion of the Planning Board the applicant may earn density bonuses in addition to the maximum density permitted in § 145-49B. The applicant may seek application of more than one density bonus as set forth below, and the total density bonus earned shall be cumulative. However, in no case shall the total density bonus allow the overall subdivision density to exceed the maximum density allowed in § 145-49B above by more than 25% in the rural areas and 50% in the growth areas as set forth in the Comprehensive Plan. Bonuses shall be allotted in whole lot increments only and shall not be

rounded up. Density calculations, including all awarded open space bonuses, shall be shown on the subdivision plan.

(1) An open space cluster plan that provides at least 50% of the total parcel acreage as open space, protected as such in perpetuity, may be awarded a density bonus of 10%. The purposes for which proposed open space areas will be used shall be fully documented by the applicant.

(2) An open space cluster plan that protects agriculturally valuable lands and provides for their use as such in perpetuity may be awarded a 5% density bonus. The open space land preserved for agricultural use must consist of at least 3.5 acres, and be land that has been historically farmed, or contain good soils for farming, and be reasonably accessible to receive a bonus. The instrument designating the land as agriculture use, acceptable to the Planning Board, may reasonably restrict the type or intensity of farming to occur to prevent nuisances. This provision only requires that permission be reasonably available so that validity of the bonus is not affected if agricultural uses are not pursued at any particular time.

(3) An open space cluster plan that protects timber harvesting lands and provides permission for that use to continue in perpetuity may be awarded a 5% density bonus. The open space preserved for timber harvesting must include at least 10 contiguous acres and be land that has historically been forested, and must be reasonably accessible to receive a bonus. A forest management plan signed by a professional forester outlining proposed activities to ensure compliance with performance standards and regeneration requirements established pursuant to Title 12 M.R.S.A § 8869 must be submitted.

(4) An open space cluster plan that accomplishes either of the following:

(a) Protects valuable wildlife and environmental areas in a manner that is consistent with the goals, policies and strategies of the following chapters and related maps in the Comprehensive Plan may be awarded a density bonus of 5%.

~~[1] Chapter 3, Natural Resources Policies and Strategies;~~

~~[2] Chapter 4, Marine Resources Policies and Strategies;~~

~~[3] Map 4, Natural Areas Wildlife Habitat;~~

~~[4] Map 9, Wetlands; or~~

~~[5] Map 10, Areas of High Potential for Wildlife Habitat.~~

(b) Links dedicated open space to large parcels of adjoining dedicated open space to provide usable wildlife habitat or corridor connections between usable wildlife habitats in a manner that is consistent with the goals, policies and strategies of the following chapters and related maps in the Comprehensive Plan may be awarded a density bonus of 5%:

~~[1] Chapter 3, Natural Resources Policies and Strategies;~~

~~[2] Chapter 4, Marine Resources Policies and Strategies;~~

~~[3] Map 4, Natural Areas Wildlife Habitat;~~

~~[4] Map 9, Wetlands; or~~

~~[5] Map 10, Areas of High Potential for Wildlife Habitat.~~

(5) An open space cluster plan that allows public access to the open space may be awarded a density bonus of 5%. The nature of public access required to trigger this bonus is pedestrian traffic. The instrument granting access, acceptable to the Planning Board, may reasonably restrict the use of motorized vehicles.

(6) An open space cluster plan that preserves, and provides for their use as such in perpetuity, the Town's historic, traditional New England seacoast and rural community character and appearance by preserving and incorporating existing historic structures and natural features of historic significance may be awarded a density bonus of 5%.

(7) An open space cluster plan that effectively links large areas of the dedicated open space to adjoining dedicated open space may be awarded a density bonus of 5%.

(8) An open space cluster plan that preserves scenic vistas especially toward the seacoast from Route 1 and along scenic corridors especially along Routes 1, 9, 109, and roads in rural areas may be awarded a density bonus of 5%.

(9) A "unit for unit" density bonus may be granted for open space cluster plans that include affordable housing for moderate-income buyers. For example, if 10% of the dwelling units in the project are affordable for moderate-income buyers then a density bonus of 10% may be awarded. The matching density bonus may be doubled for open space cluster plans that include affordable housing for low-income buyers. For example, if 10% of the dwelling units in the project are affordable for low-income buyers then a density bonus of 20% may be awarded.

E. Aquifer Protection District. Where the parcel is located in the Rural District and partially in the Aquifer Protection District the permitted density for that portion of the lot within the Aquifer Protection District may be ~~doubled, transferred~~ applied to the portion of the lot located in the Rural District, ~~and counted towards total bonus density, provided that:~~

(1) All land within the Aquifer Protection District is shall be included within the common land or open space;

~~(2) A conservation easement is granted to the Town or to the Kennebunk, Kennebunkport and Wells Water District over that portion of the subdivision located within the Aquifer Protection District; and~~

~~(3)~~ (2) All stormwater ~~detention~~ and development facilities undisturbed natural buffers shall be located outside the Aquifer Protection District. Stormwater ~~retention facilities~~ undisturbed natural buffers may be located in the Aquifer Protection District.

F. Management of open space. The open space portion of the cluster development site shall be permanently dedicated open space by covenant recorded at the Registry of Deeds and shown on the recorded subdivision plans. No more than 2% of the open space shall be impervious surfaces that are accessory to the proposed use of open space (i.e., roads, parking areas, sheds, etc.), of which total structural coverage shall not exceed 600 square feet. Nonroofed or elevated structures (i.e., walking paths) are allowed. The designated open space shall not be used for additional building lots.

(1) Prior to the sale of any lots, the open space shall be controlled by one or more of the following methods:

(a) Ownership by an association of the owners of the dwelling units within the development;

(b) Ownership by an association of the owners of the dwelling units within the development with a conservation easement granted to the Town or recognized conservation organization;

(c) Dedication to the Town as public open space; and/or

(d) Transfer, with permanent restrictions, to a land trust or other recognized conservation organization.

(2) The developer may structure the control of the common open space in one or more of the above methods. The Planning Board shall approve the arrangements for the ownership, control and maintenance of the common open space as part of the subdivision approval. No changes in use or management of the common open space shall be made without the approval of the Planning Board.

G. Homeowners' association management of open space. If the open space will be owned and/or managed by the owners within the cluster development, then a homeowners' association shall be created to own and manage the common lands and facilities. Covenants for mandatory membership in the homeowners' association, setting forth the owner's rights, interest and responsibilities, and providing for the assessment of lots or units to fund common expenses shall be required and approved by the Planning Board and shall be included in the deed for each lot. The documents shall also include a management plan for the common open space and facilities.

## Chapter 202. Subdivision of Land

### § 202-8. Preliminary plan for major subdivision.

C. Rights vested. The submittal of the preliminary application, plans, other associated submittals in accordance with § 202-8. B and submittal of the application fee shall be considered as substantial for the purposes of bringing the plan under the protection of 1 M.R.S.A. § 302.