

# **Town of Westford, Massachusetts**

## **Zoning Bylaw**



### **From the Bylaws of the Town of Westford**

First adopted on March 12, 1955

With amendments through Annual Town Meeting of March 22, 2014  
As approved by the Attorney General's Office on April 28, 2014,  
Which, on May 15, 2014 are retroactive to March 22, 2014

#### **6.4.7 Exemption and Modification.**

The Planning Board shall not exempt the applicant from any provision of this Zoning Bylaw not specifically ruled upon by said Board or specifically set forth as excepted in this particular case by a provision herein. It shall be unlawful for any owner or person to reconstruct, convert or alter a structure or change the use of any building, structure or lot or change any required limitations or special conditions imposed by said Board in authorizing a special permit without appealing to said Board for a new special permit, which said Board shall have complete authority to deny, approve or modify.

### **6.5 CHILDCARE FACILITIES**

In Residence A and Residence B, the footprint of a building which is principally used as a child care facility shall not exceed 2,500 square feet. As used in this paragraph, the term "footprint" shall mean the land area occupied by a building, at the surface of the ground, excluding open porches. As used in this paragraph, the term "child care facility" shall mean a day care center or school age child care program as those terms are defined in Massachusetts General Laws Chapter 28A, Section 9. The provisions of this paragraph shall not apply to child care facilities which are located in buildings owned by non profit organizations and used in whole or in part by such non profit organizations for their non profit purposes.

## **SECTION 7.0 SPECIAL RESIDENTIAL REGULATIONS**

### **7.1 OPEN SPACE RESIDENTIAL DEVELOPMENT**

#### **7.1.1 Purpose.**

The purpose of Open Space Residential Development (OSRD) is to provide an acceptable alternative design to the development in residential districts located within the town. OSRD will serve the public by:

1. Encouraging better overall site planning;
2. Preserving the natural and scenic amenities of the property;
3. Providing open-space areas for both active and passive recreations;
4. Providing more efficient natural drainage systems;
5. Providing natural aquifer recharge systems;
6. Providing visual screening between the new construction and existing roads by means of trees and other natural vegetation;

#### **7.1.2 Applicability.**

All projects involving the construction of single family residential units subject to regulation and approval by the Planning Board pursuant to an applicable section of the Subdivision Control Law, G.L. c. 41, ss. 81K through 81GG and meeting the minimum requirements of this section may seek approval through the provisions of this section.

1. All projects involving the construction of single family detached dwellings subject to regulation and approval by the Planning Board pursuant to the Subdivision Control Law and involving the subdivision of ten (10) acres or more of land and/or the construction of one thousand (1,000) feet or more of roadway and located in the RA District shall submit an application for Open Space Residential Development and conform to the requirements of this section, unless waived by vote of the Planning Board in consideration of the submittal of a special permit application for Flexible Development pursuant to this Bylaw. Discontinuance of this alternative application shall render all related approvals null and void. Dimensional controls shall be those provided in the Table of Dimensional and Density Regulations, except as provided herein:

Minimum Lot Area	20,000 square feet
Minimum Frontage	50 feet
Average Total Aggregate Frontage	100 feet
Minimum Lot Width at the Nearest Point on the Front Wall of the Dwelling	100 feet

#### **7.1.3 Planning Board Determination.**

The Planning Board shall make a determination for all projects involving the subdivision of ten (10) acres or more of roadway and/or the construction of one thousand (1,000) feet or more of roadway and located in the RA District following a review of materials presented pursuant to this section. The Planning Board may, in turn, require the application of this section generally or may waive the application to allow conventional subdivision.

#### **7.1.4 Minimum Dimensional Requirements.**

Open space residential development, as defined above, shall be allowed on parcels of land having a minimum contiguous area of ten (10) acres and which are located within a residential district. These proposals shall be permitted only within a subdivision as defined in Chapter 41 of the Massachusetts General Laws.

The total number of residential lots allowable within an Open Space Residential Development shall not exceed the number of lots allowed in the zoning district in which the property is located (i.e. conventional subdivision). The burden of proof shall be upon the applicant to submit such evidence as necessary to support the calculation of the allowable number of lots, based upon accepted standards of soil testing for sewage disposal systems on the individual lots, limitations due to

wetlands, flood plains and steep slopes, and requirements of the Planning Board's "Rules and Regulations Governing Subdivisions." If an Open Space Residential Development is situated in more than one zoning district, once the total number of residential lots allowed within the development is established, as aforesaid, the location of the OSRD lots shall be allowed without regard to the location of such multiple zoning districts. Dimensional controls shall be provided in the Table of Dimensional and Density Regulations, except as provided herein:

Minimum Lot Area	20,000 square feet
Minimum Frontage	50 feet
Average Total Aggregate Frontage	100 feet
Minimum Lot Width at the Nearest Point on the Front Wall of the Dwelling	100 feet

#### **7.1.5 Minimum Yard Requirements.**

The minimum yard requirements shall be those as set forth in the Table of Dimensional Regulations<sup>1</sup> provided, however, that with the approval of the Planning Board pursuant to the definitive subdivision plan approval process, the yard requirements may be reduced or increased as shown by dashed lines identified as "building location boundaries" on each such affected lot on the definitive subdivision plan to be recorded at the Registry of Deeds, except that the front yard shall not be less than fifteen (15) feet.

#### **7.1.6 Common Land.**

The common land shall contain no less than ten thousand (10,000) square feet of dry land (non-wet land) for each building lot or dwelling unit, and for each twenty-five (25) lots or twenty-five (25) dwelling units, or fraction thereof, one (1) acre of the common land shall be level, dry land suitable for baseball or other similar recreational purposes. In developments of twenty-five (25) lots or more, said land must not be designated open space, excepting, however, that in an Industrial A District, the total common land shall not be less than thirty percent (30%) of the parcel which is the subject of the subdivision. All land within one hundred (100) feet of any building lot shown on an open-space residential development plan shall be designated as open space.

1. Common land other than designated open space may contain accessory structures for educational, recreational, cultural or community utility service for the development.
2. All common land must have access to a roadway within the subdivision. The minimum width shall be twenty-five (25) feet.

#### **7.1.7 Other Design Requirements.**

1. Open Space Residential Developments shall be served by a water system approved by the Planning Board under the special permit process with the recommendation of the Conservation Commission and the Board of Health of

the Town of Westford. This provision shall not apply in an Industrial A District.

2. Natural surface drainage channels shall be either incorporated into the overall design or preserved as part of the common land. The developed areas shall be served by storm sewers.

#### **7.1.8 Legal Requirements for Common Land Ownership and Maintenance.**

The common land and other facilities which may be held in common shall be conveyed to the mandatory homes' association, whose membership includes the owners of all lots or units contained in the tract, or if the development is a cooperative, then the owners of the shares in the cooperative association.

1. The developer shall include in the deed to the owners of individual lots beneficial rights in said common land and shall grant a conservation restriction to the Town of Westford over such land pursuant to G.L. c. 184, ss. 31-33, to ensure that such land shall be kept in an open or natural state and not be built upon for residential use or developed for accessory uses such as parking or roadways. This restriction shall be enforceable by the Town through its Conservation Commission in any proceeding authorized by G.L. c. 184, s. 33. In addition, the developer shall be responsible for the maintenance of the common land until such time as the homes' association is capable of assuming said responsibility or, in the case of a trust, for the benefit of the tenant upon the execution of the trust.
2. In order to ensure that the homeowners' association will properly maintain the land deeded to it under this section, the developer shall prepare a declaration of covenants and restrictions, which shall at a minimum provide the following:
  - a. Mandatory membership in an established homes' association as a requirement of residence or ownership of any lot in the tract.
  - b. Provisions for maintenance and tax assessment of all lots in order to ensure that the common land is maintained in a condition suitable for the uses approved by the homes' association. Failure to pay such assessment shall create a lien on the property assessed, enforceable by either the homeowners' association or the owner of any lot.
  - c. Provisions which, so far as possible under the existing law, will ensure that the restrictions placed on the use of the common land will not terminate by operation of law.
  - d. This declaration of covenants and restrictions shall be reviewed and approved by the Planning Board and then shall be recorded with the Middlesex Registry of Deeds. A copy of said declaration or trust shall also be filed with the Town Clerk. Prior to the Building Commissioner's issuance of a building permit for any lot, the developer shall provide satisfactory assurance of the conveyance and recording as required above,

in the form of copies of the recorded instruments bearing the recording stamps.

3. As an alternative to the procedures outlined in paragraphs 7.1.8.1 and 7.1.8.2, with the vote of the Planning Board, some or all of the common land open space may be conveyed to the Town of Westford to be administered by the Conservation Commission.

#### **7.1.9 Special Regulations.**

In an Industrial A District, or in an Industrial C District, notwithstanding anything above to the contrary or act in relation thereto:

1. A developer may convey all of the common land designated on the plan to the Town of Westford, to be held and used for purposes set forth in this section, without the necessity for compliance with other provisions or paragraph E above stated. If the Town fails to vote to accept all of said common land within one (1) year from the date of delivery of the deed, the developer shall place on such land not accepted, a conservation restriction to the Town of Westford over such land pursuant to G.L. c. 184, ss. 31-33, to ensure that such land shall be kept in an open or natural state and not be built upon for residential use or developed for accessory uses such as parking or roadways. This restriction shall be enforceable by the Town through its Conservation Commission in any proceeding authorized by G. L. c. 184, s. 33.
2. The common land may be designated in relation to phases within a subdivision. If all lots within a phase are withdrawn from a subdivision, or not built, then the common land associated with that phase will not be subject to this Section.

#### **7.1.10 Procedures for Approval.**

1. *Filing of Application.* Any application for the granting of a special permit by the Planning Board to approve an open space residential development shall be filed with the Board, with a copy filed forthwith with the Town Clerk, and shall be accompanied by six copies of a preliminary plan for the entire tract under consideration, prepared by a registered professional architect, engineer or landscape architect.
2. *Contents of Application.* Said application and plan shall be prepared in accordance with requirements for a preliminary subdivision plan in the rules and regulations of the Planning Board governing subdivision of land and shall include proposed location, bulk and height of all proposed buildings. In addition, the applicant shall provide the following information:
  - a. An analysis of the site, including wetlands, slopes, soil conditions, areas within the one-hundred year flood zone, trees over six (6) inches and other natural features as the Planning Board may request.
  - b. A summary of the environmental concerns relating to the proposed plan.

- c. A description of the neighborhood in which the tract lies, including utilities and other public facilities and the impact of the proposed plan upon them.
- d. Evaluation of the open land proposed within the cluster with respect to size, shape, location, natural resource value, and accessibility by residents of the Town or of the cluster.

#### **7.1.11 Review by Other Boards.**

Before acting upon the application, the Board shall submit it with the plan to the following boards, which may review it jointly or separately: the Board of Health, the Superintendent of Streets and the Conservation Commission. Any such board or agency to which petitions are referred for review shall submit such recommendations as it deems appropriate to the Planning Board and the applicant. Failure to make recommendations within thirty-five (35) days of receipt shall be deemed lack of opposition.

#### **7.1.12 Public Hearing.**

After the opportunity for review by other boards has taken place, the Planning Board shall hold a hearing under this section in conformity with the provisions of G.L. c. 40A, s. 9, and this Zoning Bylaw.

#### **7.1.13 Relation to Subdivision Control Act.**

Planning Board approval of a special permit hereunder shall not substitute for compliance with the Subdivision Control Act nor oblige the Planning Board to approve any related definitive plan for subdivision nor reduce any time periods for Board consideration under the law. However, in order to facilitate processing, the Planning Board shall, insofar as practical under existing law, accept regulations establishing procedures for submission of a combined plan and application which shall satisfy this section and the Board's regulations under the Subdivision Control Act.

#### **7.1.14 Findings of Board.**

The Board may grant a special permit under this section only if it finds that the applicant has demonstrated the following:

1. That the OSRD will be in harmony with the general purposes of this chapter and the requirements of Chapter 40A of the General Laws and the long-range plan of the town (if any);
2. That the OSRD will not have a detrimental impact on the neighborhood;
3. That the OSRD will be designed with due consideration for health and safety;
4. That the OSRD is superior to a conventional plan in preserving open space, minimizing environmental disruption, allowing for more efficient provision of services;

5. That the OSRD allows for greater variety in prices or types of housing;
6. That the OSRD meets the specific requirements identified above.

## **7.2 FLEXIBLE DEVELOPMENT**

### **7.2.1 Purpose.**

The purpose of this section, Flexible Development, are:

1. To encourage the preservation of open land for its scenic beauty and to enhance agricultural, open space, forestry, and recreational use;
2. To promote the development of housing for affordable low, moderate, and median income families;
3. To preserve historical and archeological resources, to protect the natural environment, including Westford's varied landscapes and water resources;
4. To protect the value of real property;
5. To promote more sensitive siting of buildings and better overall site planning;
6. To perpetuate the appearance of Westford's traditional New England landscape;
7. To facilitate the construction and maintenance of streets, utilities, and public services in a more economical and efficient manner;
8. To offer an alternative to standard subdivision development; and
9. To promote the development of housing for persons over the age of fifty-five.

### **7.2.2 Applicability.**

Upon the issuance of a special permit by the Planning Board, and in accordance with the following provisions, a Flexible Development project may be created, whether a subdivision or not, from any parcel or set of contiguous parcels held in common ownership and located entirely within the Town of Westford. Notwithstanding the provisions of Section 7.1, all projects meeting the threshold set forth therein shall submit a plan for a Flexible Development, and, if such special permit is granted, shall conform with the requirements set forth in this Section 7.2.

### **7.2.3 Procedures.**

Applicants for the Flexible Development shall file with the Planning Board seven (7) copies of the following:

1. A development plan conforming to the requirements for a preliminary plan as set forth in the Subdivision Rules and Regulations of the Planning Board.
2. Where wetland delineation is in doubt or dispute, the Planning Board may require appropriate documentation.



3. Data on proposed wastewater disposal, which shall be referred to a consulting engineer for review and recommendation.
4. The Planning Board may also require as part of the development plan any additional information necessary to make the determinations and assessments cited herein.
5. As part of the Application and Design Process, the Planning Board shall obtain and receive input from all Land Use Boards, Departments, and Commissions.

#### **7.2.4 Design Process.**

Each development plan shall follow the design process outlined below. When the development plan is submitted, applications shall be prepared to demonstrate to the Planning Board that this Design Process was considered in determining the layout of proposed streets, house lots, and contiguous open space.

1. *Understanding the Site.* The first step is to inventory existing site features, taking care to identify sensitive and noteworthy natural, scenic, and cultural resources on the site, and to determine the connection of these important features to each other.
2. *Evaluating Site Context.* The second step is to evaluate the site in its larger context by identifying physical (e.g. stream corridors, wetlands), transportation (e.g. road and bicycle networks), and cultural (e.g. recreational opportunities) connections to surrounding land uses and activities.
3. *Designating the Contiguous Open Space.* The third step is to identify the contiguous open space to be preserved on the site. Such open space should include the most sensitive and noteworthy resources of the site, and, where appropriate, areas that serve to extend neighborhood open-space networks.
4. *Location of Development Area.* The fourth step is to locate building sites, streets, parking areas, paths, and other built features of the development. The design should include a delineation of private yards, public streets and other areas, and shared amenities, so as to reflect an integrated community, with emphasis on consistency with Westford's historical development patterns.
5. *Lot Lines.* The final step is simply to draw in the lot lines (if applicable).

#### **7.2.5 Modification of Lot Requirements.**

The Planning Board encourages applicants for Flexible Development to modify lot size, shape, and other dimensional requirements for lots within a Flexible Development, subject to the following limitation:

1. Lots having reduced area or frontage shall not have frontage on a street other than a street created by the Flexible Development; provided, however, that the Planning Board may waive this requirement where it is determined that such reduced lot(s) are consistent with existing development patterns in the

neighborhoods.

2. At least 50% of the required side and rear yards in the district shall be maintained in the Flexible Development.

#### **7.2.6 Basic Maximum Number of Dwelling Units.**

The Basic Maximum Number of dwelling units allowed in a Flexible Development shall not exceed the number of lots allowed in the zoning district in which the property is located (i.e. conventional subdivision). The burden of proof shall be upon the Applicant to submit such evidence as necessary to support the calculation of the allowable number of lots, based upon accepted standards of soil testing for sewage disposal systems on the individual lots; limitation due to wetlands, flood plains, and steep slopes; and requirements of the Planning Board's Subdivision Rules and Regulations.

#### **7.2.7 Density Bonus.**

The Planning Board may award a density bonus to increase the number of dwelling units beyond the Basic Maximum Number. The density bonus for the Flexible Development shall not, in the aggregate, exceed fifty (50) percent of the Basic Maximum Number. All dwelling units awarded as a density bonus shall be limited to not more than two bedrooms. Computations shall be rounded to the next lower integer. A density bonus may be awarded in the following circumstances:

1. *Open Space.* For each additional ten (10) percent of the site (over and above the required ten (10) percent) set aside as contiguous open space, a bonus of five (5) percent of the Basic Maximum Number may be awarded; provided, however, that this density bonus shall not exceed twenty-five (25) percent of the Basic Maximum Number. (A maximum density bonus for this provision would require a minimum of sixty (60) percent open space.)
2. *Age Restricted.* For every two (2) dwelling units restricted to occupancy by persons over the age of fifty-five, one (1) dwelling unit may be added as a density bonus; provided, however, that this density bonus shall not exceed ten (10) percent of the Basic Maximum Number.
2. *Design.* Where the Planning Board determines that the development is in substantial conformance with design standards that shall be promulgated by the Planning Board, a bonus of up to fifteen (15) percent of the Basic Maximum Number may be awarded.

#### **7.2.8 Affordable Component.**

[Amended 05-06-06 Art. 25] As a condition of the grant of any special permit for a Flexible Development, a minimum of fifteen (15) percent of the total number of dwelling units shall be restricted in perpetuity to people/persons with families who meet or qualify under this Bylaw's definition of low, moderate, or median

income. The perpetuity restriction shall be approved as to form by legal counsel to the Planning Board, and a right of first refusal upon the transfer of such restricted units shall be granted to the Westford Housing Authority for a period not less than 120 days after notice thereof. The affordable component shall be divided as follows:

1. Five (5) percent of the units shall be affordable to persons or families qualifying as low income;
2. Five (5) percent of the units shall be affordable to persons or families qualifying as moderate income; and
3. Five (5) percent of the units shall be affordable to persons or families qualifying as median income.

When computing the number of affordable units, the number will be rounded to the next lower integer.

#### **7.2.9 Standards.**

The following standards shall apply in a Flexible Development:

1. *Types of Buildings.* The Flexible Development may consist of any combinations of single-family, two-family, and multifamily residential structures. A multifamily structure shall not contain more than five (5) dwelling units. The architecture of all multifamily buildings shall be residential in character, particularly providing gabled roofs, predominately wood siding, an articulated footprint, and varied facades. Residential structures shall be oriented toward the street serving premises and not the required parking area.
2. *Roads.* The principal roadway(s) serving the site may be designed to conform with the standards of the Planning Board where the roadway is or may be ultimately intended for dedication and acceptance by the Town of Westford. Private ways shall be adequate for the intended use and vehicular traffic and shall be maintained by an association of unit owners or by the Applicant.
3. *Parking.* Each dwelling unit shall be served by two (2) off-street parking spaces. Parking spaces in front of garages may count in this computation.
4. *Buffer Areas.* A buffer area of one hundred (100) feet shall be provided at the perimeter of the property where it abuts residentially zoned or occupied properties, except for driveways necessary for access and egress to and from the site. No vegetation in this buffer area will be disturbed, destroyed, or removed, except for normal maintenance. The Planning Board may waive the buffer requirement.
  - a. where the land abutting the site is the subject of a permanent restriction for conservation or recreation so long as a buffer is established of at least fifty (50) feet in depth which may include such restricted land area within such

buffer area calculation;

- b. where the land abutting the site is held by the Town for conservation or recreation purpose; or
- c. the Planning Board determines that a smaller buffer will suffice to accomplish the objectives set forth herein.

5. *Drainage.* Stormwater management shall be consistent with the requirements for subdivisions set forth in the Rules and Regulations of the Planning Board.

#### **7.2.10 Contiguous Open Space.**

A minimum of ten (10) percent of the parcel shown on the development plan shall be contiguous open space. Any proposed contiguous open space, unless conveyed to the Town and administered by the Conservation Commission, shall be subject to a recorded restriction pursuant to G.L. c. 184 enforceable by the Town, providing that such land shall be perpetually kept in an open state, that it shall be preserved for exclusively agricultural, horticultural, educational, or recreational purposes, and that it shall be maintained in a manner which will ensure its suitability for its intended purpose.

1. The percentage of the contiguous open space which is wetlands shall not normally exceed the percentage of the tract which is wetlands; provided, however, that the applicant may include a greater percentage of wetlands in such open space upon a demonstration that such inclusion promotes the purpose set forth in Section 7.2.1, above. In no case shall the percentages of contiguous open space which is wetlands exceed fifty (50) percent of the tract.
2. The contiguous open space shall be used for conservation, historic preservation and education, outdoor education, recreation, park purposes, agriculture, horticulture, forestry, or for a combination of these uses, and shall be served by suitable access for such purposes.
3. The contiguous open space shall remain unbuilt upon, provided that the Planning Board may permit up to twenty (20) percent of such open space to be paved or built upon for structures accessory to the dedicated use or uses of such open space, pedestrian walks, and bike paths.
4. Underground utilities to serve the Flexible Development site may be located within the contiguous open space.

#### **7.2.11 Ownership of the Contiguous Open Space.**

The contiguous open space shall, at the Planning Board's election, be conveyed to:

1. The Town of Westford and administered by the Conservation Commission;
2. A nonprofit organization, the principle purpose of which is the conservation of open space and any of the purposes for such open space set forth above; and

3. A corporation or trust owned jointly or in common by the owners of lots within the Flexible Development. If such corporation or trust is utilized, ownership thereof shall pass with conveyance of the lots in perpetuity. Maintenance of such open space and facilities shall be permanently guaranteed by such corporation or trust which shall provide for mandatory assessments for maintenance expenses to each lot. Each such trust or corporation shall be deemed to have assented to allow the Town of Westford to perform maintenance of such open space and facilities, if the trust or corporation fails to provide adequate maintenance, and shall grant the Town an easement for this purpose. In such an event, the Town shall first provide fourteen (14) days written notice to the trust or corporation as to the inadequate maintenance, and, if the trust or corporation fails to complete such maintenance, the Town may perform it. Each individual deed, and the deed or trust or articles of incorporation, shall include provisions designed to effect these provisions. Documents creating such trust or corporation shall be submitted to the Planning Board for approval, and shall thereafter be recorded.

#### **7.2.12 Decision.**

The Planning Board may approve, approve with conditions, or deny a special permit for a Flexible Development after determining whether the Flexible Development better promotes the purposes of Section A of this Flexible Development Bylaw than would a conventional subdivision development of the same locus.

#### **7.2.13 Relation to Other Requirements.**

The submittals and permits of this Section shall be in addition to any other requirements of the Subdivision Control Law or any other provisions of this Zoning Bylaw.

### **~~7.3 ASSISTED LIVING FACILITIES~~**

#### **7.3.1 Purpose.**

The purpose of this Section is to provide a mechanism for the approval of:

1. Assisted living facilities (ALF) that offer supportive services to individuals who are unable to live independently in the community by offering supervision and/or assistance with basic activities of daily life, such as, but not limited to, dressing, bathing, toileting, and nutrition;
2. The development of ALF in a manner that conserves environmental features, woodlands, wet areas, open space, areas of scenic beauty, views and vistas as well as encouraging the renovation and rehabilitation of older, existing buildings;
3. The development of ALF in a manner harmonious with the surrounding land uses while protecting natural resources and open space; and
- ~~4. The appropriate reuse of land and buildings that are no longer needed or~~