



# TOWN OF HOPKINTON

## OFFICE OF THE PLANNING BOARD

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## **Flexible Community Development Regulations**

Hopkinton Planning Board

Adopted July 9, 2007

### A. Authority

These Regulations are adopted by the Hopkinton Planning Board as authorized by MGL Ch. 40A and Article XI of the Hopkinton Zoning Bylaw, Chapter 210 of the Bylaws of the Town of Hopkinton.

### B. Purpose

The purpose of the Regulations is to establish uniform procedures and requirements for conducting the business of the Planning Board under its jurisdiction as a Special Permit Granting Authority for Flexible Community Development Special Permits, pursuant to Article XI of the Hopkinton Zoning Bylaw (the "Bylaw"), and to assist applicants with the process. The Regulations are supplemental to the Bylaw and whether certain provisions of the Bylaw are repeated here or not, applicants must conform to the requirements of both.

### C. Applicability

Any person applying for a Special Permit for Flexible Community Development under the Bylaw, whether or not governed by any other federal, state or local regulations, laws, permits, variances, approvals, or programs, shall comply with the provisions of these Regulations.

### D. Waivers

Strict compliance with the provisions of these Regulations may be waived if the Board finds that the waiver is in the public interest or is irrelevant to the project, and is consistent with the intent and purpose of the Bylaw and the Regulations and when applicable, the Subdivision Rules and Regulations. Any request for a waiver must be submitted in writing to the Board. Such requests must clearly identify the provisions of the Regulations from which relief is sought and be accompanied by a statement setting forth the reasons why, in the applicant's opinion, the granting of such a waiver would be in the public interest or why the specific provision is irrelevant to the project, and why a waiver would be consistent with the intent and purpose of the Bylaw and these provisions.

Please note that while the Board has the authority to waive provisions of these Regulations, it does not have the authority to waive the requirements of the Bylaw, unless the Bylaw specifically states that such a waiver is permissible. If the Bylaw does not give the Planning Board the authority to waive a specific provision and an applicant wishes to request a variance, a separate application/petition must be submitted to the Board of Appeals

## E. Administration

### 1. Application Procedure

- a) Pre-Application: The applicant should first submit plans sufficient to judge the scope of a project to the Planning Director for discussion of the process and determination of whether the proposed project complies in general with bylaw requirements. The Planning Board also encourages potential applicants to attend a Planning Board meeting in the early stages of project planning to discuss the general concept prior to submission, for feedback and guidance.
- b) The applicant shall submit the required materials to the Planning Department with a copy of the application to the Town Clerk. The Planning Department will check to make sure the application is complete and will schedule a public hearing date. In the event that the application is incomplete, the Planning Department will notify the applicant and indicate what additional items are required. An application will not be considered complete until all required materials have been received by the Planning Department.
- c) The Planning Department will transmit copies of the plan and application within 7 days of its receipt of a complete application to the Director of Public Works, Conservation Commission, Housing Committee, Board of Health and Fire Department for comment and recommendations. Those Boards and officials have up to 35 days to make recommendation to the Board. The Board will not act on the application until the comments are received or 35 days has elapsed, whichever is sooner.
- d) The Planning Department will also transmit copies of the plan and other materials submitted to consultant(s) for review. Applicants are urged to work with the consultant(s) to resolve any outstanding issues prior to the public hearing. The consultant(s) shall be selected by the Planning Department and may be in, but shall not be limited to, the following professional disciplines: engineering, law, architecture, landscape architecture, and affordable housing.
- e) The Planning Board will hold a public hearing within 65 days of submission of a complete application. Abutters will be notified of the hearing date and time by the Planning Department.
- f) The Planning Board is required to make its decision and file it with the Town Clerk within 90 days from the close of the public hearing.

- g) After the decision has been filed with the Town Clerk, there is a 20 day appeal period from the date the Board files its decision. If the special permit is granted, the applicant must file the decision with the Registry of Deeds as required by MGL c.40A Sec. 11.
- h) The special permit is valid for two years. A special permit shall lapse if not exercised within this time period, unless an extension is granted by the Board.

## 2. Concurrent Reviews – Other Permits Required

- a) Subdivision Approval - In the case where a project also requires approval under the Subdivision Control Law, the applicant shall submit the applications for approval as follows: 1) Open Space and Landscape Preservation Development – as in b) Special Permits, below; 2) Conventional subdivision plan – the applicant shall submit the Flexible Community Development application with the definitive subdivision plan application. To the extent permitted by law, the Board shall consider the applications concurrently.
- b) Special Permits - In the case where a project requires another special permit from the Planning Board, the applicant may: 1) submit the separate application(s) for a special permit with the application for a Flexible Community Development special permit; or 2) submit the Combined Special Permit Application Form; or 3) submit two non-concurrent separate applications. To the extent permitted by law, the Board shall consider all applications concurrently. The Board encourages concurrent applications and reviews.
- c) Subdivision Approval Not Required (i.e. 81-P/ANR plans) – Because the Planning Board must take final action on an ANR plan within 21 days of the date of submission, concurrent action on the ANR and special permit is not possible. In this case, there are two options: 1) an ANR plan may be submitted and endorsed by the Board, but no building permits may be obtained until a Flexible Community Development special permit has been issued; or 2) an applicant may file an application for Flexible Community Development before filing the application for ANR endorsement. The Board recommends the second option, especially if the applicant is seeking a reduction in dimensional requirements in order to accommodate affordable units on-site.

## 3. Extensions

Special Permits issued under the Bylaw shall lapse within two years if the construction authorized has not commenced. An applicant may request an extension if construction has not begun by such date except for good cause. The applicant shall provide information necessary for the Board to determine whether construction has not commenced for good cause.

4. Amendments

Amendments to issued Special Permits may be requested. Minor amendments may be approved by majority vote of the Planning Board without public hearing. Major amendments shall require a public hearing, following the same procedure as is required for a Special Permit application.

F. Submission Requirements

The following materials are required to be submitted to the Planning Board. When combined with another application to the Board, either by use of the Combined Special Permit Application Form or by virtue of concurrent submission, both requirements shall be satisfied.

1. Completed application form.
2. Submission Fees:
  - a) Administrative Fees:

<i>Type of Application</i>	<i>Administrative Fee</i>
Flexible Community Development Application	\$1,000.00
Combined Special Permit Application (Flexible Community Development and other)	Highest administrative fee for any of the individual special permits, plus \$500.00
Flexible Community Development or Combined Special Permit Extension	\$50.00
Flexible Community Development or Combined Special Permit Amendment	\$50.00 if no public hearing required; \$100.00 if public hearing required.

- b) Consultant Review Fees – Initial Deposit<sup>1</sup>:

<i>Type of Application</i>	<i>Consultant Review Fee Deposit</i>
Flexible Community Development Application	\$1,000.00 plus \$10.00 per dwelling unit
Combined Special Permit Application (Flexible Community Development and other)	\$2,000.00 plus \$50.00 per dwelling unit
Flexible Community Development or Combined Special Permit Extension	None
Flexible Community Development or Combined Special Permit Amendment	\$500.00

<sup>1</sup> Costs for consultant review in excess of the initial deposit shall be the sole responsibility of the Applicant and shall be payable upon receipt of a Cost Estimate provided to the Applicant by the Planning Department.

- c) Legal Advertisement in Newspaper: Cost of the legal advertisement, paid directly to the newspaper publishing the notice. Proof of payment shall be submitted at the public hearing.
  - d) Notification of Abutters: Two envelopes for each abutter on the certified list of abutters, stamped with postage sufficient to send certified mail, return receipt requested to each, and 12 envelopes stamped with first class postage for the required notification to abutting communities.
3. Certified list of abutters within 300 feet of the property, from the Assessors office. The list shall include abutters across any street and in adjacent communities, where applicable. The list of abutters shall have been certified within 30 days of the date of application.
  4. Narrative describing the proposed project, including the following:
    - a) Proposed number of dwelling units permitted in the zoning district, prior to the addition of the additional units (i.e. base plan);
    - b) Proposed number of dwelling units requested;
    - c) The proposed diversity and approximate cost range for all of the proposed dwelling units;
    - d) The proposed number and location of market rate and affordable dwelling units, whether proposed on or off-site;
    - e) The proposed method or combination of methods to satisfy the Bylaw requirements with respect to the provision of affordable units – number of affordable units on-site, number off-site, and/or fees in lieu of units;
      - a) Proposed timing of the provision of affordable housing units and market rate units and a proposed phasing plan for construction, if any. In accordance with the Bylaw, affordable housing units shall be provided coincident to the development of market rate units;
      - b) Proposed timing of payment of fees in lieu of units;
    - f) How the project conforms with the latest Master Plan and Open Space and Recreation Plan;
    - g) How the requirements of the Bylaw are met.
  5. Waiver Requests:
 

Written list of all waivers requested, clearly identifying the provisions of these Regulations from which relief is requested. A statement setting forth the reasons why the granting of such waiver would be in the public interest or why the specific provision is irrelevant to the project, and why a waiver would be consistent with the Bylaw shall be included.
  6. Reduction in Dimensional Requirements:

Written list of all proposed reductions in dimensional requirements, clearly identifying the provisions of the Zoning Bylaw from which relief is requested. Reductions shall only be requested from dimensional requirement provisions of the Zoning Bylaw applicable to the proposed development. The list shall accurately describe the specific location of the reduction and the reason for the request.

7. Restrictive Documents:

- a) Draft deed restrictions and contractual agreements which restrict the affordable dwelling units to occupancy by low or moderate income households at the time of the original sale or rental and at the time of a resale or re-rental, and any other restrictions and covenants designed to insure initial and long-term affordability of the affordable dwelling units. The Local Initiative Program (LIP) Affordable Housing Deed Rider shall be used.
- b) Monitoring Plan – Description of how the long-term affordability of the units will be monitored over time, including a draft Regulatory Agreement.
- c) Draft marketing plan which describes how the affordable units will be marketed to potential homebuyers. This plan shall include a description of the lottery or other process to be used for selecting buyers. The marketing plan must describe how the applicant will accommodate local preference requirements, if any, established by the Town, in a manner that complies with the nondiscrimination in buyer selection guidelines of the Local Initiative Program.

8. Plans - Nine (9) copies of the plan set at a scale of 1" = 40', on sheet sizes 24" x 34" and one reduced plan set 11" x 17", prepared by a registered professional engineer, registered architect or registered landscape architect, unless indicated otherwise by the Board, containing the information below. When combined with another application to the Board, either by use of the Combined Special Permit Application Form or by virtue of concurrent submission, the Board encourages applicants to submit one plan set with the combined information.

- a) Locus plan at a scale of 1" = 800';
- b) Zoning district boundaries;
- c) Proposed parking areas and driveways;
- d) Existing and proposed wetlands, flood plains, streams, rivers and water bodies, if any;
- e) Existing and proposed topography at 5' contour intervals;
- f) Existing and proposed roadways, driveways, sidewalks, curbs and curb cuts with proposed dimensions indicated;
- g) Existing and proposed landscape features including trees, stone walls, plantings and walkways;
- h) Existing and proposed boundaries and easements;
- i) Adjacent streets;
- j) Existing structures on adjacent properties within 50' of the property line;

- k) Existing significant environmental features such as ledge outcrops, scenic views and large trees;
- l) Estimated location and dimensions of existing structures, including a notation indicating which units will be affordable and market rate;
- m) Proposed structures including setbacks, exterior dimensions and exterior elevation drawings, in a conceptual manner;
- n) Proposed architectural floor plans of the dwelling units, including dimensions;
- o) Proposed stormwater management system, in a general manner;
- p) Location of proposed sewage disposal systems, in a general manner;
- q) Location of proposed water supply if town water will not be utilized;
- r) Proposed recreation areas and open space;
- s) Base plan showing the number of lots or units without the affordable component. Such plan shall conform to the zoning and/or Subdivision Rules & Regulations requirements under which the land is proposed to be developed.

#### F. Approval Criteria

Before the Planning Board may issue the Special Permit, it shall determine that all of the requirements of the Flexible Community Development Bylaw are met. The submission information should be sufficient to illustrate to the Board how the conditions will be met. Please note that the issuance of a special permit is discretionary, and it is the responsibility of the applicant to provide all information necessary for the Board to make an informed decision.

In the case of a Combined Special Permit Application, the Planning Board shall evaluate the proposal in accordance with the criteria contained in each specific bylaw under which an application is submitted, and shall render its decisions based on the criteria of each.

The Planning Board may impose reasonable conditions necessary to implement the provisions of the Bylaw and to achieve the housing goals of the Town, including a schedule of when the affordable housing units are to be provided or payments in lieu of units are to be made.

#### G. Affordable Unit Sales and Rentals

##### 1. Initial Sale

The developer of the housing units or his/her agent shall verify prior to transferring title that each prospective purchaser of an affordable housing unit created under the Bylaw is a qualified affordable housing unit purchaser, as defined in the Zoning Bylaw and the Local Initiative Program. Toward this end:

- a) The developer shall engage a qualified certifying agent, acceptable to the Planning Board, to receive purchase applications, obtain and review documentation concerning sources and amounts of household income, and certify to the Town that all purchasers approved for an affordable unit meet income eligibility requirements.

- b) The developer is responsible for making arrangements, acceptable to the Planning Board, to provide annual certifications to the Town as may be required to place and maintain the affordable units on the Commonwealth's Chapter 40B Subsidized Housing Inventory.
- c) Sales price shall be calculated by using the method provided for under the Local Initiative Program (760 CMR 45.00). The sale price of an affordable unit shall not exceed that amount which will require a household earning between 70% and 80% of the median area income to spend a maximum of 30% of the household's annual income on housing costs. Housing costs shall include principal, interest, property tax, insurance payments and association or condominium fees.

## 2. Preservation of Affordability: Restrictions on Resale

Each affordable unit created in accordance with the Bylaw shall have limitations governing its resale. The purpose of these limitations is to preserve the long-term affordability of the unit and to ensure its continued availability to qualified purchasers in the future. The resale controls shall be established through a deed rider or an affordable housing restriction as defined by G.L. c.184, Section 31, recorded at the Registry of Deeds, and shall be in force in perpetuity, or for as long a period as is lawful. The affordable housing use restriction shall meet the requirements of the Local Initiative Program. The following shall apply:

- a) Resale price – Sales beyond the initial sale to a qualified affordable housing unit purchaser shall include the initial discount rate between the sale price and the unit's appraised value at the time of resale. This percentage shall be recorded as part of the restriction on the property. Notwithstanding the foregoing, the resale price of an affordable unit shall in no event exceed that amount which will require a household earning between 70% and 80% of the median area income to spend a maximum of 30% of the household's annual income on housing costs. Housing costs shall include principal, interest, property tax, insurance payments and association or condominium fees.
- b) Right of first refusal to purchase – The purchaser of an affordable housing unit created as a result of the Bylaw shall agree to execute a deed rider acceptable to the Town, granting, among other things, the Town's right of first refusal for a period not less than the maximum period allowable under the guidelines set by the Dept. of Housing and Community Development (DHCD) for Local Initiative Units as defined by the Local Initiative Program, to purchase the property or assignment thereof, in the event that, despite diligent efforts to sell the property, a subsequent qualified purchaser cannot be located.

## 3. Rental Units

The Applicant shall be responsible for establishing a long-term monitoring program for rental units which ensures continued affordability for as long a period of time as is legally

possible. Regulatory Agreements and other documents which provide for long-term monitoring, income certification, and unit leasing, shall not require any monitoring on the part of the Town of Hopkinton, unless the units are under the ownership and/or control of the Housing Authority.

#### H. Fees-in-lieu-of units

An applicant may contribute funds to the Town of Hopkinton Affordable Housing Trust Fund or Hopkinton Community Task Force, Inc. (CHTF) in lieu of constructing or providing affordable housing units on or off-site. Fees shall be calculated by following the guidelines below. However, the final calculated sales price per unit must be verified by the Department of Housing and Community Development (DHCD) as meeting the qualifications for inclusion on the Ch. 40B Subsidized Housing Inventory.

1. The fee shall be an amount equal to the maximum sales price of a 3-bedroom home that is affordable to a qualified affordable housing unit purchaser, as contained in the Local Initiative Program (760 CMR 45.00), multiplied by the number of units not provided. The amount shall be calculated and sales price verified by DHCD within 45 days of when the payment will be made, not at the time of special permit application to the Planning Board.
2. The affordable maximum sales price shall be determined based on low and moderate income households spending no more than 30% of their income on housing costs. Housing costs include all payments made towards the principal and interest of any mortgages placed on the unit, property taxes, and insurance, as well as homeownership, neighborhood association or condominium fee.
3. For the purposes of the calculation, household income applicable to a particular unit will be based on certain assumptions about the size of the family most likely to occupy the unit. In order to calculate the sales price of a 3-bedroom unit, the calculation shall assume a four-person household.
4. The timing of payments shall be made according to a schedule agreed upon by the Planning Board and the applicant and contained within the Special Permit. It is the intent that payments would be made at about the same time that the affordable unit, had it been constructed, would have been provided. However, the applicant may propose an alternate schedule subject to approval of the Planning Board.

#### I. Provision of security

The Board may require in the Special Permit decision that security be posted with the Town in such form and amount as is required by the Board to secure the satisfactory completion of all or any part of the work authorized under a permit. The security required by Special Permit issued under the Flexible Community Development bylaw may be combined/included with the security provided under other bylaws or subdivision approvals for the same project.

## J. Amendments

These Regulations may be amended by a majority vote of the Planning Board after holding a public hearing.