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2022 31 Oct, 1:16 pm

To: Mary de Alderete, Town Clerk
Development Community

TOWN CLERK

From: Lexington Planning Board

LEXINGTON MA

Re: Planning Board Zoning Regulations c. 176

Date: Approved by the Planning Board on October 12, 2022

On October 12, 2022, the Planning Board adopted to the following amendments to the Planning Board's Zoning Regulations Chapter 176 establishing a fee schedule in the amended Section 4.1.2 and added new Section 13 regulating Open Space Residential Developments for the recently adopted Section 6.12 Open Space Residential Zoning Bylaw.

Add Article 176-13.0 OPEN SPACE RESIDENTIAL DEVELOPMENT (OSRD) REGULATIONS

13.1. Goals and Purpose.

The goals and purpose of the Open Space Residential Development Regulations are to:

1. Further the purposes of §135-6.12 of the Zoning Bylaw permitting Open Space Residential Developments;
2. Provide guidance to applicants submitting OSRD applications;
3. Provide criteria for the reviewing authority to make a well-informed decision;
4. Establish a list of submission materials from concept through final occupancy;
5. Regulate the condition, location, ownership, and preservation of Open Land consistent with §135-6.12.5.4;
6. Regulate the physical characteristics, location, and access to services of inclusionary dwelling units; define limits on the household income of occupants, sale price, and rent of inclusionary dwelling units; and the form of required legal restrictions consistent with §135-6.12.6.1.e; and
7. Facilitate sustainable site layouts, quality building design, and quality outdoor amenity space consistent with §135-6.12.7.1.
8. To provide opportunity for the Planning Board to weigh in on design aspects of the OSRD proposal.

13.2. Authority.

1. These regulations governing OSRDs are adopted under §135-6.12 [OPEN SPACE RESIDENTIAL DEVELOPMENTS] and §135-9.5 [SITE PLAN REVIEW] of the Zoning Bylaw.
- 13.3. Applications. OSRD applications shall follow the Site Plan Review application process described in §176-9.0 of these Regulations for Major Site Plan Review under §176-9.3, including the following materials:
1. Application. The materials required under §176-9.3.2 other than the parking and transportation demand management (PTDM) plan;
 2. Proof Plan. A proof plan as defined in the Zoning Bylaw demonstrating that two or more lots can be created in compliance with the Zoning Bylaw, including a table of allowed gross floor area for each proof plan lot and showing any protected resources areas pursuant to §130-8 [Wetland Protection Definitions];
 3. Site Development Plans per § 9.3.2 (1). A site development plan with existing and proposed conditions showing all major site features such as existing trees, shrubs, natural land formations, and stone walls. Separate open space plan sheet identifying, differentiating and detailing the Open Land from Common Open Space including a table calculating the square footage and percentages for compliance with § 6.12.5, private amenity space such as lawns, and wetlands and other resource areas. The landscape plan shall follow § 12.6 of these regulations.
 4. Open Land. Draft legal documents implementing the ownership and restriction requirements of §135-6.12.5.2 and §135-6.12.5.3;
 1. If Open Land is to be conveyed to the Conservation Commission or a non-profit conservation organization, the Applicant shall submit written confirmation of agreement to accept ownership if the OSRD is approved. The deed shall contain the following:
 - i. A legal description of dedicated Open Land and the entity to which it is to be conveyed; and
 - ii. A statement of the purpose of the open space and any restrictions on its use.
 2. If ownership of Open Land is to be retained by the Homeowners Association, the Applicant shall submit written confirmation of agreement to accept the conservation restriction if the OSRD is approved. The conservation restriction shall contain the following:
 - i. Language defining the conservation restriction pursuant to MGL Chapter 184, §§31-33;
 - ii. Provisions for management of the Open Land that are explicitly tied to Town guidance on the management of conservation land; and

- iii. Provisions for a biannual assessment of Open Land status to be performed by the Conservation Commission or other non-profit conservation organization.
 3. If the property has wetlands or other non-developable land that does not qualify to be included in the 35% Open Land calculation, this land may be considered for protection via a conservation restriction, particularly if the non-developable land is contiguous with the Open Land or adjoining conservation land.
5. Common Open Space: Provisions for the management, maintenance, operation, improvement, and repair of any Common Open Space, including levying and collecting from the property owners' common charges to pay for expenses associated with the open space;
6. A copy of the approved Stormwater Permit issued by the Stormwater Agency [Public Works Engineering Division] demonstrating compliance with the stormwater management standards outlined in Chapter 114 of the Lexington General Bylaws and Current Stormwater Management Regulations per §181, or, if no stormwater permit has been issued, a stormwater permit application and stormwater drainage report for preliminary review by the Engineering Division; and
7. Architectural plans per §176-9.3. Interior floor plans will be reviewed by staff with building permit.

13.4 General Provisions.

1. Upon receipt of a complete application, the Planning Board shall seek comments from the Select Board, Housing Partnership Board, Commission on Disability, Conservation Commission, Historical Commission, and the Regional Housing Services Office Director. The Board shall seek comments from the Housing Partnership Board, Select Board, Commission on Disability, and Regional Housing Services office on the proposed inclusionary dwellings.
2. Phasing. OSRD projects may include phased development. A preliminary phasing plan shall be submitted to the Planning Board during the public hearing for an initial review. It is expected that the specific timing will vary during permitting and construction. The phasing plan shall include estimated start and construction completion timeframes for installation of utilities, road or driveway, drainage and sidewalks. The phasing plan shall specify if there will be requests for occupancy prior to full completion of the project.
3. A final As-Built Plan showing final landscaping, walkways, paths, trails, sidewalks, parking, common space, amenity space, utilities, drainage structures, buildings, impervious areas, gross floor area, fencing, shall be submitted to the Planning Department prior to final occupancy of the last dwelling.

4. Relationship to Subdivision Control. If the development will require a division of land not requiring approval under the Subdivision Control Law, then the Applicant shall submit an Approval Not Required (ANR) Plan after grant of site plan review but before issuance of a building permit. If the development will require a division of land requiring approval under the Subdivision Control Law, the Applicant shall submit a Definitive Subdivision Plan for approval to the Planning Board consistent with the Board's Subdivision Regulations. The Definitive Subdivision Plan review and OSRD site plan review may be considered at one public hearing.
5. Legal Documents and Recording. Any inclusionary housing restrictions, easements, covenants, and open land and common open space deeds or conservation restrictions and any other legal instruments shall be recorded at the South Middlesex Registry of Deeds and proof of recording submitted to the Planning Office.
6. Site Inspections and Issuance of Occupancy Permit. Planning staff, engineering staff, and conservation staff, where applicable, shall perform a site inspection prior to the first request for a certificate of occupancy. Fire hydrants, drainage structures, footpaths, trails, all work associated with any access drives except for the final top course of pavement, Open Land restoration, and utilities shall be installed and completed prior to the first occupancy permit, unless specifically approved delay as part of the approved phasing plan. All work shall be completed prior to the final occupancy of the last unit.
7. Common Walls. Two or more buildings sharing common walls are treated as a single building for the purposes of the GFA restrictions in §135-6.12.3.7.b.
8. Amenity space may include areas such as an outdoor gathering space, fire pit, seating area, game area, patio, grilling area, pool, playground, yard space, or similar unroofed space.

13.5 Open Land and Common Open Space.

1. Open Land.

1. Location. Open Land shall be land in one or more parcels of a size and shape appropriate for the intended use, contiguous to the maximum extent possible, and available for use by all occupants of an OSRD. Open Land shall include any or all of the following, as appropriate:
 - i. Land that separates groups of buildings within the OSRD from other groups and from adjacent property;
 - ii. Outstanding natural and man-made features of the site, including but not limited to stone walls, that enhance the land form;
 - iii. Natural habitat area and wildlife corridors, but shall not include wetlands or associated buffers;
 - iv. Paths or entry points specifically designed for access purposes; and

- v. Degraded land, or land that has been used for other purposes, that is to be restored with native plantings.
- 2. Open Land areas shall be left in or restored to their naturally vegetated state. Removal of trees or vegetation or disturbance is permitted only when specifically permitted by the Planning Board or the Conservation Commission if the project requires Conservation Commission approval.
- 3. Open land shall remain in an undeveloped condition and may not be used for buildings, parking, paved sidewalks, driveways, accessory structures, lawn areas, or any another impervious surface.
- 4. Open Land shall be monumented and marked on a recorded survey, so that the Commission or ownership entity can monitor the boundaries as part of its routine oversight.
- 5. When Open Land adjoins public conservation or recreation areas, the Open Land shall include paths to those resources.
- 6. Snow storage shall not be permitted in Open Land areas.
- 7. The following are uses that may be deemed acceptable in open land areas subject to prior written approval:
 - i. Disease control and or control or removal of invasive species;
 - ii. Wildlife habitat restoration or improvement to restore native biotic communities or to enhance wildlife, wildlife habitat, or native tree and plant species;
 - iii. Paths or trails approved by the Planning Board or Conservation Commission where applicable;
 - iv. Vegetation management with selective minimal removing of vegetation, including selective cutting of trees and pruning to prevent, control or remove hazards, disease, insect or fire damage, mosquitoes and ticks, poison ivy and other plants potentially harmful to humans;
 - v. Passive recreation activities such as hiking, walking, bicycling, cross-country skiing, and other non-motorized recreational activities that do not materially alter the landscape or do not degrade the environmental quality.
 - vi. Small signage identifying protected area located with minimal impact to open space area.

2. Common Open Space areas shall be designed for the common use or enjoyment of the residents of a development and may include such complementary structures and improvements as are necessary and appropriate but shall not include private lawn areas.

13.6 Inclusionary Dwelling Units.

- 1. Inclusionary dwelling units shall be subject to an affordable housing restriction as defined in MGL c. 184 §§31-32. Restrictions on inclusionary dwelling units shall meet the following standards:
 - a. Be enforceable in perpetuity;

- b. Restrict occupancy to income eligible households;
 - c. Require that residents occupy the units as their principal residence;
 - d. Provide for effective administration, monitoring, and enforcement of the restriction with the Town as monitoring agent, or a third party monitor as appointed by the Town;
 - e. Contain terms and conditions for the resale of a homeownership unit, including a definition of the maximum permissible resale price, and for the subsequent rental of a rental unit, including a definition of the maximum permissible rent;
 - f. Subject the units to an affirmative fair housing marketing and resident selection plan for approval by the Town; and
 - g. Be otherwise consistent with the Department of Housing and Community Development (DHCD) Universal Deed Rider and DHCD Guidelines, as may be amended from time to time.
2. Inclusionary dwelling unit features including, but not limited to, finishes, appliances, and outdoor amenity spaces must be comparable to those provided in the development's market-rate units, but need not be identical provided that they are durable, of good quality, and consistent with contemporary standards for new housing. Floor and interior plans to be reviewed by staff with building permit.
 3. Each inclusionary dwelling unit shall be assigned a maximum household income for its occupants, expressed as a percentage of the area median income (AMI) as annually determined by the U.S. Department of Housing and Urban Development.
 4. The maximum sale price or rent for an inclusionary dwelling unit shall be affordable to a household with an income 10 percentage points less than that unit's maximum household income, assuming one more person in the household than the number of bedrooms in the unit.
 5. Across all inclusionary dwelling units in a development, the average of the maximum household incomes, expressed as a percentage of AMI, weighted by the gross floor area of each inclusionary dwelling unit, shall not be greater than 100%.
 6. The DHCD shall grant approval of the Regulatory Agreement and indication of eligibility for inclusion on the Subsidized Housing Inventory for eligible inclusionary dwelling units prior to occupancy of the first residential unit. Proof of execution of the housing restriction of any inclusionary dwelling units shall be submitted to the Planning Department prior to the first certificate of occupancy for any non-restricted market rate unit in the OSRD development.

13.7 Design Standards.

1. Footpaths and Trails. The Board encourages the creation of footpaths and trails to offer public access to the open land and common open space within the OSRD and to connect to other nearby

open space, recreational areas, streets, bicycle paths, or other recreational areas at adjoining land for passive recreation. Proposed paths and trail locations and details shall be shown on the site development plans. Paths and trails shall be pervious and shall be stable to support foot traffic and provide proper soil drainage. Paths and trails may be gravel, stone dust, or similar material or boardwalk if the area is wet. Construction details must be submitted at the time of the first building permit. Planning staff shall confirm satisfactory completion after a site inspection before the last certificate of occupancy. The Applicant may provide a public easement if the trail network can benefit the neighborhood and surrounding area.

2. Dwellings. Dwellings should be clustered and situated to maximize open space. Dwelling units should have direct access to amenities and Open Land areas to the maximum extent possible. To the maximum extent practicable, applications shall be designed to fit the existing land patterns by retaining natural topography, vegetation, and natural drainage courses, rather than altering the site to accommodate a predetermined plan.
3. Roadways and interior drives should be designed to maintain existing site features such as existing mature trees and significant landmarks such as stone walls or historic structures.
4. Open Space. Open space should be designed to maximize visibility for persons passing the site from within or nearby properties to attract visual interest.
5. Architectural design. Overall scale, building massing, height, and roofline articulation should be sensitive to and compatible with surrounding residential areas. Building massing should be designed to reduce the overall perceived scale.

Amend Article 176-4.1 [ADMINISTRATIVE FEES]

Amend 4.1.2 Administrative Fee Schedule as follows: (changes to existing regulations shown in bold underline)

Type of Application	Administrative Fee
Site Plan Review, Section 176-9.0 <u>& 13.0</u>	
<u>OSRD site plan review</u>	<p><u>Projects involving 1-5 dwelling units: \$3,000 plus \$500 per dwelling unit.</u></p> <p><u>Projects involving 6-10 dwelling units: \$5,000 plus \$500 per dwelling unit.</u></p>

	<p><u>Projects involved 11-20 dwelling units: \$7,000 plus \$500 per dwelling unit.</u></p> <p><u>Projects involving over 20 dwelling units: \$9,000 plus \$500 per dwelling unit.</u></p>
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