

SECTION XIX
COMMERCE AND COMMUNITY OVERLAY DISTRICT

19.1 DISTRICT CREATED AND AUTHORITY There is hereby created an overlay zoning district, which shall be known as the “Commerce and Community Overlay District” (CCOD). The CCOD was created by the Town of Hopkinton on March 10, 2020, and as amended on March 28, 2023, under the authority of the provisions of NH RSAs 674:16 and 674:21, Innovative Land Use Controls.

19.2 PURPOSE AND INTENT The purpose of the Commerce and Community Overlay District is to provide an opportunity for a range of residential housing choices and small-scale neighborhood retail and services in a planned development that incorporates open space.

19.3 OBJECTIVES The objectives of the Commerce and Community Overlay District are:

- (a) To promote the goals and objectives of the Hopkinton Master Plan.
- (b) To encourage a variety of housing choices that allows for age-friendly and multi-generational homeownership and rental opportunities that meet the affordability needs of all households that desire to live in Hopkinton while providing neighborhood conveniences, such as retail and services.
- (c) To introduce uses that will have positive long-term social and economic impacts.
- (d) To augment conventional underlying zoning and land use regulations where the modifications of use, dimensional, density and other requirements are appropriate.
- (e) To enable development that will be compatible with the surrounding site environment and neighborhood; and
- (f) To ensure that private development will be compatible and coordinated with public investment and improvements.

19.4 DISTRICT BOUNDARY The location and boundaries of the Commerce and Community Overlay District are as delineated and shown on a map titled “Zoning Map of Town of Hopkinton, New Hampshire 2022, and as afterward amended.” The district includes lots identified as follows:

- (a) Tax Map 210, Lot 3.
- (b) Tax Map 211, Lots 7, 8, 9, and 9.01.

19.5 PERMITTED USES All uses permitted in the CCOD shall be those uses permitted by right or by special exception in the underlying district as specified in Section 3.6, Use Regulations (Table of Uses). The uses shall be permitted singularly or in combination.

In addition to the underlying permitted uses, the following uses may also be permitted.

- (a) Multi-family dwellings with a maximum of twenty-four (24) dwelling units per building.
- (b) Two-family dwelling units with no more than two (2) bedrooms per dwelling unit as part of a planned unit development.

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- (c) Buildings containing between eight (8) and twenty-four (24) attached dwelling units shall not be required to provide direct access to the ground or have some living area at ground level.

19.6 DIMENSIONAL AND DENSITY The underlying dimensional and density requirements outlined in Table 4.2 shall not apply to the development parcels located within the boundaries of the CCOD. Dimensional and density requirements shall instead be regulated by the following:

- (a) Development Parcel Definition. A parcel within the Commerce and Community District upon which a development proposal may be proposed and developed in accordance with this Section.
- (b) Minimum Development Parcel Size. The minimum development parcel gross area shall be one (1) acre (43,560 square feet).
- (c) Base Figure. The base figure to determine the number of dwelling units permitted on a development parcel shall be based on a density of eight (8) dwelling units per developable acre.
- (d) Development Parcel Lot Coverage. The entire density permitted for a single development parcel within the CCOD must be located in seventy (70%) percent or less of the entire parcel available for development. The density may vary depending on soil conditions, suitability of on-site locations for septic systems and community water systems, wetlands, topography, and other features of the land. In no case shall the average density be lower than that of a conventional subdivision.
- (e) Buildings may be located on individual lots or on common lots with more than one building on a lot, or a combination thereof. If more than one dwelling unit will be located on a lot, the ownership and management arrangements for that lot and the units thereon shall be detailed as part of the application, and those arrangements shall be submitted for approval by the Planning Board.
- (1) Lots and/or building envelopes shall be shown on the subdivision plan and shall be submitted for Planning Board approval.
 - (2) Building height shall not exceed 50 feet.
 - (3) Applicants are encouraged to vary lot sizes, lot dimensions, and the location of building envelopes and structures from the access road and from lot to lot within the development to retain natural vegetation; provide increased privacy for residents, and to increase the visual variety provided by the arrangement of buildings within the development.
 - (4) Lots may be irregular in shape, provided they conform to the natural topography and features of the parcel (e.g., the lot lines follow an existing stone wall, stream, or other natural dividing feature).
- (f) Incentives for Density Bonuses. Applicants under this Section who provide the Town with certain amenities, such as but not limited to, trails and trail connections, ballfields, playgrounds, fitness centers, meeting rooms and social spaces, and active or passive

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recreation areas, in the proposed development, may receive a density bonus beyond what is permitted by the base figure calculation. The Planning Board will consider permitting a density bonus based on suitable site conditions. A density bonus may be permitted as indicated below:

- (1) Where the development parcel incorporates, senior housing established and maintained in compliance with HUD/NHHFA guidelines up to a 25% increase in unit count.
- (2) Where the development parcel incorporates affordable housing in compliance with HUD/NHHFA up to a 25% increase in unit count.
- (3) Where 40% or more of the development parcel is set aside for Designated Open Space up to a 15% increase in unit count.
- (4) Where the proposed development includes a combination of senior or affordable dwelling units and a minimum of 40% Designated Open Space (area of parcel permanently protected from future development), up to a 30% increase in unit count.

19.7 SUBMISSION AND APPROVAL PROCEDURES An application under this Section shall comply with the application and review process specified in Sections II and III of the Subdivision Regulations and Section IV of the Site Plan Review Regulations.

19.8 CONDITIONAL USE PERMIT Development within the CCOD shall obtain a Conditional Use Permit. The purpose and intent of a Conditional Use Permit is to provide a mechanism to allow for modifications to standards, with the intent of providing relief where the application of a standard creates practical difficulties in allowing development to proceed.

(a) A Conditional Use Permit shall be granted only if the Planning Board determines that the proposal conforms to all of the following Conditional Use Permit criteria (except for specific criteria that are deemed by the Planning Board to be not pertinent to the application):

- (1) Site suitability. The site is suitable for the proposed use. This includes:
 - (a) Adequate vehicular and pedestrian access for the intended use.
 - (b) The availability of adequate public services to serve the intended use, including emergency services, pedestrian facilities, schools, and other municipal services.
 - (c) The absence of environmental constraints (floodplain, steep slope, etc.) or development of a plan to substantially mitigate the impacts of those constraints.
 - (d) The availability of appropriate utilities to serve the intended use, including water, sewage disposal, stormwater management, electricity, and similar utilities.
- (2) Preservation of natural, cultural, historic, and scenic resources. The proposed use of the site, including all related development activities, shall preserve identified natural, cultural, historic, and scenic resources on the site and shall not degrade such identified resources on abutting properties. This shall include, but not be limited to, identified wetlands, floodplains, significant wildlife habitat, stonewalls, mature tree lines,

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cemeteries, graveyards, designated historic buildings or sites, scenic views, and viewsheds.

- (3) Availability of Public Services & Facilities. Adequate and lawful facilities or arrangements for sewage disposal, solid waste disposal, water supply, utilities, drainage, and other necessary public or private services, are approved or assured to the end and that the use will be capable of proper operation. In addition, it must be determined that these services will not cause excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police protection, fire protection, and schools.
 - (4) Net Fiscal impacts. The proposed use will not have a negative net fiscal impact on the Town unless the Planning Board determines that there are other positive community impacts that off-set the negative net fiscal aspects of the proposed use. The Planning Board's decision shall be based upon an analysis of the net fiscal impact of the project on the town. The Planning Board may commission, at the applicant's expense, an independent analysis of the net fiscal impact of the project on the town.
- (b) Conditional Use Permit approvals shall be subject to appropriate conditions where such conditions are shown to be necessary to further the objectives of this ordinance and the Master Plan, or which would otherwise allow the general conditions of this article to be satisfied. The conditions shall, if applicable, include, but are not limited to, the following:
- (1) Front, side, and rear setbacks in excess of the minimum requirements of this Ordinance.
 - (2) Screening of the premises from the street or adjacent property in excess of any minimum requirements of this Ordinance.
 - (3) Landscaping in excess of any minimum requirements of this Ordinance.
 - (4) Modification of the exterior features of buildings or other structures.
 - (5) Limitations on the size of buildings and other structures more stringent than the minimum or maximum requirements of this Ordinance.
 - (6) Footprint or lot coverage less than the allowed maximum of this Ordinance.
 - (7) Limitations on the number of occupants and methods and times of operation.
 - (8) Grading of the premises for proper drainage.
 - (9) Regulation of design of access drives, sidewalks, crosswalks, and other traffic features.
 - (10) Off-street parking and loading spaces in excess of, or less than, the minimum requirements of this Ordinance; and
 - (11) Other performance standards as appropriate.

19.9 DESIGNATED OPEN SPACE

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- (a) Area of Designated Open Space. No more than fifty percent (50%) of the designated open space may consist of wetlands or water bodies. The Planning Board may authorize a reduction in the area of the designated open space by Conditional Use Permit issued pursuant to Section 19.8.
- (b) Areas Excluded from the Calculation of the Required Area of Designated Open Space. Portions of the parcel that comprise part of an individual house lot, roadway, driveway, access road, roadway right-of-way, existing utility easement (e.g., power line easement), other new or existing right-of-way, buffer between any new structure and an existing right-of-way, or that are less than 100 feet wide shall not count toward the calculation of the designated open space.
- (c) Areas Included in Designated Open Space. When evaluating a proposal for a density bonus, the Planning Board shall consider areas or features including but not limited to the following:
 - (1) Riparian areas, wetlands, streams, and other water resources and buffers for those resources.
 - (2) Critical or high-quality habitat areas, including areas identified as the highest statewide or eco-region importance by the NH Fish and Game's Wildlife Action Plan, and buffers or supporting landscapes to these areas.
 - (3) Significant stands of trees or significant individual trees.
 - (4) High-quality soil resources (forest or agricultural soils).
 - (5) Cultural and historic resources (e.g., stone walls, historic structures).
 - (6) Existing trails.
 - (7) Areas that connect to undeveloped open space on adjacent properties.
 - (8) Ridgelines, particularly those that continue through the parcel.
 - (9) Viewshed areas; and
 - (10) Water supply protection areas.
- (d) Design Standards for Designated Open Space. The location and layout of the open space shall conform to the standards and process set forth in the Subdivision Regulations.
- (e) Allowable Uses in Designated Open Space. Any use of the designated open space is subject to approval of the Planning Board and shall demonstrate that such uses shall not negatively impact the natural and/or cultural amenities.
 - (1) The following uses generally are permitted in the designated open space unless specifically prohibited or restricted as a condition of approval for the purposes of protecting important natural features or characteristics of the parcel:

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- (a) Forest management.
 - (b) Agricultural cultivation; and
 - (c) Passive (non-motorized) trails and recreational uses.
- (2) Up to fifteen percent (15%) of the designated open space may be used by Conditional Use Permit for the following:
- (a) Agriculture involving animal husbandry.
 - (b) Active outdoor recreation uses, including formal playgrounds and fields.
 - (c) Parking areas for access to the designated open space.
 - (d) Support facilities necessary for the development including community wells, stormwater management facilities, underground utility lines, and related facilities such as sewer pump stations; and
 - (e) Individual or group wells and/or transmission pipes for stormwater or wastewater disposal systems provided that this use was approved as part of the development plan and that appropriate arrangements are established and approved by the Planning Board for the maintenance and operation of these facilities.
- (f) Protection and Management of Open Space
- (1) Area Boundaries of the designated open space shall be clearly identified:
- (a) Boundaries shall be clearly delineated on plans including plats.
 - (b) Boundaries shall be clearly marked prior to commencing construction activities (temporary markings are acceptable, temporary fencing may be required in sensitive areas to prevent disturbance during construction); and
 - (c) Boundaries shall be clearly and permanently marked in the field with tree blazes and signage approved by the Planning Board to identify the area as protected open space.
- (2) Prior to the sale of any lots or dwelling units, the designated open space shall be protected and controlled by one or more of the following methods, subject to Planning Board approval:
- (a) Transfer, with permanent deed restrictions or conservation easement, to a land trust or other recognized conservation organization (subject to acceptance by the organization).
 - (b) Ownership by one or more private individuals (separately or in common) or by an association of the owners of the dwelling units within the subdivision (i.e.,

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homeowner's association) with a conservation easement granted to the municipality and/or recognized conservation or land trust organization.

- (c) For designated open space areas of 30 acres or less, ownership by one or more private individuals (separately or in common) or by an association of the owners of the dwelling units within the subdivision (i.e., homeowner's association) with a deed restriction on the Designated Open Space that is enforceable by any landowner within the association, any owner of a separate land parcel adjacent to the open space, or the municipality; or
 - (d) Transfer to the municipality as open space, with permanent deed restrictions or conservation easement (subject to acceptance by the municipality).
- (3) Said deed restrictions and/or conservation easement documents shall be placed on file with the Town Clerk upon receipt of Planning Board approval and duly recorded at the County Registry of Deeds. Such documents shall clearly indicate whether the property is open to all residents of the municipality or open only to residents of the development.
- (4) A management plan for the designated open space and facilities shall be prepared and approved by the Planning Board, which includes the following:
- (a) Identifies the entity assuming responsibility for stewardship and management of the designated open space, including regular inspections to confirm continued compliance with the terms of the approval and conservation easement or deed restrictions.
 - (b) Includes detailed standards and schedules for maintenance of the designated open space, including maintenance of vegetation.
 - (c) Allows for municipal maintenance in the event that the maintenance specified under the agreement is not completed and recovery of costs incurred from the designated management entity or the owners of the designated open space within the development; and
 - (d) Provides that any amendments to the plan shall be reviewed and approved by the Planning Board.
- (5) For properties containing designated open space protected under a conservation easement to be held and enforced by the town or a third party, a one-time stewardship fee, as determined by the town or third-party easement holder, shall be collected and provided to the town or third party to be held in a separate trust account and used to support the monitoring and enforcement of the conservation easement.

19.10 PHASED DEVELOPMENT The review and approval procedure for phased developments shall be as follows:

- (a) For purposes of these Regulations, "phased development" shall mean a project which the applicant intends to construct in phases over a period of time. Phased development may

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also include a project for which the Planning Board has imposed a phasing requirement pursuant to Section XIII of the Zoning Ordinance, or otherwise, in order to mitigate the impact of a development on community facilities, services, or utilities.

- (b) Where development of the site will be phased, the following information, in addition to the requirements of Section XIII, shall be provided:
 - (1) The methods to be used during construction to control erosion and sedimentation through use of sediment basins, mulching, matting, temporary vegetation, or covering of soil stockpiles.
 - (2) The approximate size and location of portion(s) of the parcel to be cleared at any given time and length of time of exposure.
 - (3) The required public improvements, if any, and how such improvements to be integrated into the phased construction; and
 - (4) The proposed total period of time over which full build-out of the development shall occur.

- (c) The Planning Board may waive and/or modify the phasing schedule after considering the totality of the circumstances, including but not limited to the following factors.
 - (1) The extent to which review of the development in its totality is logical and reasonable due to the degree to which the proposed phases are well integrated, both as to their use and development scheme and as to common infrastructure and other improvements.
 - (2) The extent to which phasing will benefit the Town by mitigating and making more predictable the impacts of the complete development upon community facilities, services, utilities, and other Town goals as set forth in the Master Plan.
 - (3) The degree to which the integration of the phases, as described above, would make private investment in such improvements unlikely.
 - (4) The extent to which the proposed phasing schedule represents a realistic timeline for active and substantial development progressing at a steady pace, in light of the type and complexity of the project as a whole; and
 - (5) The total length of time proposed, and the degree of unpredictability or Board uncertainty involved, with respect to whether a later phase or phases will continue to meet current regulations, at the time of construction, and in light of potential changed conditions which might occur in the meantime within the neighborhood or the Town as a whole.

- (d) If the development is proceeding in accordance with the approved phasing schedule, the later phase(s) shall normally be presumed to be “vested” against changes in the Town’s land use ordinances and regulations, except as otherwise specified by the Board as part of its approval. However, the Planning Director may determine that, due to specific circumstances, including but not limited to non-compliance with applicable regulations or

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conditions of approval, a later phase or phases should not be considered “vested” under RSA 674:39 or the New Hampshire common law of vested rights. In such a case, the Planning Director may forward to the Planning Board a recommendation to initiate proceedings, using the procedures of RSA 676:4-a as applicable, to revoke approval of an unbuilt phase or phases.

- (e) If the applicant anticipates being unable to meet any time deadline(s) set forth in the approved phasing schedule with respect to any phase, he or she may apply to the Planning Board for an extension of up to two years for the particular phase. The request for an extension shall be submitted prior to the expiration of the deadline(s) involved.
- (f) If the applicant fails to meet any such deadline or extension thereof, then the approval of that phase and all subsequent phases shall be considered void, and such phase(s) shall no longer be presumed “vested.” However, the applicant may resubmit the application for such phase(s) to the Planning Board for further review and re-approval in light of changes in ordinances, regulations, or other material circumstances which have occurred in the Town since the original approval.

19.11 DETERMINATION OF POTENTIAL REGIONAL IMPACT Upon receipt of an application for development, the Planning Board shall review the application and determine whether or not the development, if approved, reasonably could be construed as having the potential for regional impact, pursuant to RSA 36:54, et seq. The Planning Board may, in its discretion, determine that any project has the potential for regional impact, whether or not the project meets or exceeds the criteria in RSA 36:54, et seq.

19.12 STREETS AND UTILITIES The installation of streets and utilities shall comply with applicable sections found elsewhere in this ordinance and requirements specified in the Subdivision Regulations, including the posting of bonds.

19.13. SEQUENTIAL SUBDIVISIONS The provisions of this ordinance shall apply to the sequenced development of a parent parcel over time through separate successive applications. When a subdivision is proposed that involves part of a larger parcel or includes lots that are capable of further subdivision, the planning board may require that a site inventory and a conceptual (non-binding) long-range plan be submitted for the entire parcel and for use in evaluating the proposed subdivision.

19.14 LEGAL REVIEW Prior to final approval by the Planning Board, the applicant shall submit for review by the town counsel any restrictive covenants, condominium or cooperative agreements, conservation easement, deed restrictions, or other legal agreements proposed for use in the conservation subdivision. The town counsel shall advise the Planning Board of the adequacy of such legal provisions. The applicant shall pay all associated costs of the legal review.