

## Article V-A Residential Cluster Development Overlay District

### Section 5. PROCEDURES

A. Cluster Development: A Cluster Development shall be subject to the granting of approval of the ~~site~~-subdivision plan by the Planning Board.

#### Discussion:

“Site plan review” is not authorized here by RSA. Approving a “site plan” sounds like site plan review. Approving a “subdivision plan” sounds different enough to avoid possible claim that PB exceeds authority.

## **Article XIII**

### **Nonconforming Uses, Structures and Lots**

#### **Section 1. NONCONFORMING USES**

- A. Continuance: A nonconforming use may be continued although such use does not conform to current provisions of this Ordinance.
- B. Discontinued Use: Whenever a nonconforming use has been discontinued for more than one year for any reason, such nonconforming use shall not thereafter be re-established, and the future use of the property shall be in conformity with the provisions of this Ordinance.
- C. A non-conforming use may not be enlarged or changed except as a Special Exception by the Board of Adjustment in accordance with Article XV, SECTION 2 ~~and following Site Plan approval by the Planning Board as required by Article XV, Section 2.B.1.~~

#### **Section 2. NONCONFORMING STRUCTURE**

Continuance: Any lawful nonconforming structure existing at the time of adoption of this Ordinance may be occupied, operated and maintained in a state of good repair.

#### **Section 3. NONCONFORMING LOTS**

- A. A nonconforming lot, which has been developed with a structure, may be continued for the same use but no expansion of a structure which intensifies its use on a nonconforming lot, shall be allowed except as a Special Exception by the Board of Adjustment as provided in Article XV, SECTION 2. Intensification is any use that increases the demand on the designed septic system or that increases interior living spaces a.) by more than ten (10) percent of the original structure or b.) to more than 1,152 square feet total, whichever is greater.

#### **Discussion:**

The site plan review requirement is restated in the referenced section so this is redundant. Delete this reference and fix the authorization problem in XV 2,B,1

## Article XV Board of Adjustment

### Section 2. GRANT OF AUTHORITIES

The Zoning Board of Adjustment shall have all the powers and authorities authorized by RSA 674:33 and 674:3-a. These include the power and authority to hear and decide appeals, grant variances and grant equitable waivers of dimension and to grant Special Exceptions subject to the provisions of this ordinance.

The Zoning Board of adjustment may:

- A. Grant a Special Exception for the construction of a replacement dwelling while an existing dwelling remains occupied on the site, within the General Residential and Agricultural District.
  1. The Board of Adjustment shall consider impacts on abutters and safety of residents during construction.
  2. The Board of Adjustment may require a performance bond or other assurance of project completion be provided to the Selectmen when granting such a Special Exception.
  3. Such Special Exceptions shall specify an expiration date allowing adequate time for completion of construction but in no case for more than two year's duration.
  4. Special Exceptions granted under this provision do not imply authorization to expand, enlarge, change or intensify a non-conforming use. Such authorization(s) must be explicit and subject to relevant ordinance provisions.
- B. Grant a Special Exception in the General Residential and Agricultural District for the expansion, enlargement, change or intensification of a non-conforming use or lot as provided for in Article XIII, SECTION 1. C and SECTION 3.A if approval criteria are met and appropriate conditions are specified in the Special Exception approval.
  1. Criteria for Special Exception approval:
    - a. The Planning Board has granted Site Plan Review approval [where authorized by RSA 674:43 \(e.g. for nonresidential uses or for multi-family dwelling units\)](#).
    - b. The Zoning Board has specifically found that the proposed use:
      - i. is compatible with the neighborhood;
      - ii. is appropriate to the specific location within the neighborhood;
      - iii. will not have a negative effect upon the neighborhood;
      - iv. does not present a hazard to pedestrians or vehicles;
      - v. does not have a negative effect on the health and welfare of the neighborhood and the general community;
      - vi. is consistent with the spirit of the ordinance.
  2. The Board of Adjustment shall impose any relevant conditions that it finds appropriate to ensure continuing compliance with the criteria for approval, and to safeguard the neighborhood or otherwise serve the purposes of the ordinance, including, but not being limited to, the following:
    - a. Yards larger in area or in any specified dimension than those required by the ordinance;
    - b. Screening of part or all of the premises of the proposed use by walls, fencing, or planting;
    - c. Modification of the design or appearance of any structure in the proposed use;
    - d. The establishment of adequate parking facilities to service the proposed use;
    - e. Limitation of the number of occupants or employees upon the premises, and restriction of the methods and time of operation and use, and of the size and extent of facilities;
    - f. Limitations upon the size, location and lighting of signs more restrictive than those otherwise imposed by this ordinance, including the prohibition of signs where, in the opinion of the Board, their display would be contrary to the spirit of the ordinance.

**Discussion:**

Addition to XV Section 2, B.1 is a quick fix to problem of authorization. It requires the reader to reference the RSA and decide what is applicable, not simple but correct.