

22.40 Flexible Development

(Amended: Article 9, October 20, 2014 Special Town Meeting)

A. Purposes

The purposes of Flexible Development provisions, in addition to the general purpose of the Zoning Bylaw are these:

1. To allow for flexibility and creativity in the design of developments.
2. To encourage the permanent preservation of natural and cultural resources, including open space, agricultural and forestry land, water bodies and wetlands, other natural resources, and historical and archeological resources.
3. To reflect Rochester's traditional rural character.
4. To protect scenic vistas as seen from Rochester's roadways and to preserve the integrity of other places.
5. To facilitate the economical and efficient construction and maintenance of streets, utilities and public services.
6. To protect existing and potential public water supplies, and the capacity and safety of the street network.
7. To encourage a non-sprawling and efficient form of development that conforms to topography and other natural and cultural features.
8. To minimize the total amount of disturbance of existing terrain.
9. To preserve agricultural open space and farmland features of the area.
10. To preserve open space areas for active and passive recreational use, including the provision of neighborhood parks and trails.
11. To further the goals and policies of the *Rochester Master Plan*.

B. Decision Basis

Plans are to be approved for Flexible Development provided that the Planning Board determines that they comply with the following requirements and, in so doing, better serve Town interests that would be expected from a conventional plan at the full density conventionally allowed. To facilitate that superior performance, these provisions allow flexibility in type of development, lot size and configuration, and the means of providing for open space, if it is to be included.

These provisions are not intended as a means of obliging density reduction below that otherwise allowed, or to impose limitations on the rate of development, although an applicant may elect to propose densities lower than allowed or constraints on build-out rate as part of the chosen approach.

C. Applicability and Procedures

1. The provisions of this Section are applicable to all Major Residential Developments, regardless of size or district. In addition, developments other than Major Residential Developments may, at the applicant's option, seek approval under these provisions. A single MRD plan may include land in more than one ownership and may include non-contiguous parcels, whether or not in the same ownership. If the plan involves more than one ownership, each owner of land included in the plan shall be a party to the application and upon plan approval, subject to its provisions.
2. The use of Flexible Development lots shall be limited to residential use, plus those specified in Chapter 20.40, Section E.5.
(Amended: Article IV, October 29, 2007 Special Town Meeting)
3. Applicants are encouraged to contact the Planning Board, Board of Health and Conservation prior to application for a special permit to discuss the applicant's plan. Applicants are also strongly encouraged to submit at least one Sketch Concept Plan for review by the Planning Board, preferable several to facilitate selection of a basic conceptual approach. Another of the purposes of this review is to determine the number of lots possible in the Flexible Development. For this reason, it is strongly recommended that a copy of the existing conditions plan required at item subsection C.4.e of this Chapter 22.40 below be submitted at this stage.

(Amended: Article IV, October 29, 2007 Special Town Meeting)

(Amended: Article XXIII, June 9, 2003 Annual Town Meeting)

4. Applicants for a special permit for Flexible Development shall submit the following, except for any submittals that the Planning Board has determined to not be germane, and has so documented prior to the public hearing:

- a. the form of organization proposed to own and maintain any protected open space;
- b. the substance of covenants to be imposed upon use of land;
- c. a development schedule,
- d. a Flexible Resource Development Plan showing the location and boundaries of the site, proposed land and building uses, lot lines, location of open space, proposed location and width of streets and ways, parking, landscaping, existing vegetation to be retained, water supply or approximate location of wells and sewage systems, anticipated sightings of residences, drainage, proposed easements and methods of sewage disposal. This plan shall be prepared and stamped by a team that includes a Registered Professional Engineer, Professional Land Surveyor, and a Registered Landscape Architect.

(Amended: Article IV, October 29, 2007 Special Town Meeting)

- e. An accompanying Existing Conditions Plan depicting existing topography, wetlands, waterbodies and the 100-year floodplain, all existing rights of way, easements, and existing structures, the location of significant features such as woodlands, tree lines, open fields or meadows, scenic views, watershed divides and drainage ways, fences and stone walls, roads, driveways, cart paths, and resources of historic or archeological importance.

- f. A Site Analysis showing locations of soil test pits and percolation tests, with supporting documentation on test results;

- g. A landscape plan as described at Chapter 22.40, Section E.2.

(Amended: Article IV, October 29, 2007 Special Town Meeting)

(Amended: Article XXIII, June 9, 2003 Annual Town Meeting)

- h. A statement indicating the proposed principal uses to be allowed, and their extent; and a statement of the proposed use and ownership of any protected open space proposed.

- i. A natural and wildlife resources inventory approved by vote of the Conservation Commission.

(Amended: Article IV, October 29, 2007 Special Town Meeting)

- j. An historical and archeological resources inventory approved by vote of the Historical Commission.
(Amended: Article IV, October 29, 2007 Special Town Meeting)
 - k. If a shared sewage system is proposed, a system design approved by the Board of Health shall be submitted. If proposed, such sewage system shall be positioned on a segregated separate lot with maintenance access suitable to the Planning Board and Board of Health. This separate lot shall not be designated nor considered to be Open Space.
(Amended: Article IV, October 29, 2007 Special Town Meeting)
 - l. A plan describing how the open space will be maintained in perpetuity to the satisfaction of the Planning Board.
(Amended: Article IV, October 29, 2007 Special Town Meeting)
 - m. Conventional Subdivision Plan (CSP) complying with Chapter 22.40, Section D.1.a. and showing the maximum number of lots that could be deemed buildable upon the site under a conventional subdivision process according to reasonable application of the Rochester Zoning By-Laws and the Rules and Regulations Governing the Subdivision of Land in the Town of Rochester and all other applicable state and local rules and regulations. At a minimum, the CSP shall show lot configuration, street layout, setbacks, topography, wetland resource areas, and general location of stormwater management structures and on-site disposal facilities.
(Amended: Article IV, October 29, 2007 Special Town Meeting)
 - n. A compliance narrative with documentation to address subsections D through K of this by-law.
(Amended: Article IV, October 29, 2007 Special Town Meeting)
5. Upon receipt of the application by the Planning Board, the Planning Board shall give one copy to the Conservation Commission, one copy to the Board of Health and one copy to the Housing Opportunity Partnership, each of whom shall provide written comment to the Planning Board within 45 days. If no written comment is received within that time period, it will be considered approved by the respective Board. The Planning Board shall also give one copy to the Fire and Police Department to ensure that the proposal addresses adequate emergency vehicle access to all lots. If necessary to ensure compliance with this section, the Planning Board in consultation with the Board of Health, may require further engineering or environmental analysis to be conducted at the expense of the applicant.
(Amended: Article IV, October 29, 2007 Special Town Meeting)

D. Density and Dimensional Standards

1. The maximum number of allowable building lots for single family dwellings shall be determined as follows:
 - a. The maximum number of dwelling lots in a Flexible Development, hereinafter, "Basic Maximum Number", shall be derived from and delineated on a Conventional Subdivision Plan (CSP) as required in Chapter 22.40, Section.C.4.m. herein. The applicant shall have the burden of proof with regard to this maximum number of dwelling lots. The Planning Board may request further information for determination of this maximum including but not limited to an approved wetland and resource delineation (including an Abbreviated Notice of Resource Area Delineation) and soil and percolation tests allowing Board of Health confirmation of compliance
(Amended: Article IV, October 29, 2007 Special Town Meeting)
(Amended: Article XXIII, June 9, 2003 Annual Town Meeting)
 - b. All wetlands shall be defined under the supervision of the Conservation Commission and in accordance with the provisions of the Wetlands Protection Act, MGL Ch. 131, Section 40.
 - c. The maximum number of dwelling units shall equal the "Basic Maximum Number" of single family lots permitted per Chapter 22.40, Section.D.1.a., increased by bonus lots as specified in Chapter 22.40, Section.H., all as limited by Open Space non-wetland area as specified in Chapter 22.40, Section G.2."
(Amended: Article IV, October 29, 2007 Special Town Meeting)
(Amended: Article XXIII, June 9, 2003 Annual Town Meeting)
2. Provided that all requirements for sewage system can be met, the required individual building lot size for flexible development may be 0.5 times the size of a lot as required at Chapter 20.40, Section D. A smaller lot may be authorized upon demonstration by the applicant that all applicable standards of zoning (other than lot area and frontage), health and environmental regulations can be met on each such lot proposed, and that the smaller size serves the purposes of this Section.

Each lot, except for Open Space, must meet the requirements of Chapter 20.40, Section D.2. for minimum contiguous square feet of Buildable Area within the Structure Placement Area. Minimum connected upland Buildable Area for the entire lot shall bear the same relationship to total lot dimensions as the ratio of the requirements of Chapter 20.40, Section D.2. bears to the Lot Dimensions specified in Chapter 20.40, Section D.1.
(Amended: Article IV, October 29, 2007 Special Town Meeting)

3. Each lot shall have sufficient frontage to provide adequate access as intended under the Subdivision Control Law, Section 81K-81GG, Chapter 41, MGL.
4. The following buffers between designated natural or cultural resources and any buildings or parking shall be observed unless, in granting the Major Residential Development special permit, the Planning Board determines that either such buffering is inappropriate, as in the case of proposing an architecturally compatible building in the vicinity of an historic structure, or that meeting these resource buffers would leave otherwise developable property without economically beneficial use, and that the relief granted is the minimum necessary to allow economic use.
 - a. 200 feet from natural wetlands, water bodies, public waters supply wellheads, or vernal pools, and 100 feet from agricultural activities, with at least half of that buffer containing trees and other uncultivated vegetation, in each case at locations as documented in inventory materials approved or amended and approved by vote of the Conservation Commission.

(Amended: Article IV, October 29, 2007 Special Town Meeting)
(Amended: Article VI, November 27, 2000 Special Town Meeting)
 - b. 100 feet from historic structures, archeological sites, or Indian burial grounds and 50 feet each side of corridors of ascertainable Indian trails, in each case where those locations are documented in inventory materials approved or amended and approved by vote of the Rochester Historical Commission.

(Amended: Article IV, October 29, 2007 Special Town Meeting)
(Amended: Article VI, November 27, 2000 Special Town Meeting)
5. At other locations, the requirements for front, side, and rear yards shall be 0.5 times the yards required under conventional Rochester zoning in Chapter 20.40, except that the conventional yard requirements shall apply for all yards abutting the perimeter of the development.

(Amended: Article IV, October 29, 2007 Special Town Meeting)
6. Every special permit for flexible development shall include a condition that each recorded plan of lots created pursuant to the special permit shall have endorsed upon it a statement that the plan is based upon a special permit for flexible development and that no lot shown thereon may be further divided to increase the number of building lots, and shall contain a reference to the flexible special permit and where it is recorded.

(Amended: Article IV, October 29, 2007 Special Town Meeting)
(Amended: Article XXVII, October 24, 2005 Special Town Meeting)
7. No more than one dwelling may be located on a building lot.

(Amended: Article IV, October 29, 2007 Special Town Meeting)

E. Landscape Design

1. General Approach.

Elements such as any protected open space areas, street trees, stream buffer areas, other buffers, cul-de-sac planting areas, and outstanding specimen trees or tree groupings shall be used as part of the integrated conceptual design uniting the various elements of the site and preserving and enhancing its natural and scenic resource elements.

2. Landscape Plan.

A Comprehensive Landscape plan prepared and stamped by a registered Landscape Architect shall be submitted at the same scale as the development plan, existing conditions plan, and site analysis plan, identifying all areas of retained vegetation, proposed plantings, proposed restrictions upon vegetation alteration, and other elements of the conceptual design.

(Amended: Article IV, October 29, 2007 Special Town Meeting)

3. Requirements

a. Existing trees and indigenous vegetation shall be retained to the extent reasonably feasible, except where the Board concurs that removal is preferable for opening vistas from public roads, control of invasive growth, or other benefits.

b. Protected areas and resources shall be linked in continuous patterns to the extent reasonable feasible. The linking shall include continuity of vegetation and availability for human access.

(Amended: Article IV, October 29, 2007 Special Town Meeting)

c. Protection for trees and tree groupings to be retained shall include avoidance of grade change within the drip line, careful marking to avoid accidental damage, and location of materials and soil deposits distant from those trees.

F. Additional Site Design Standards

1. Wherever it is feasible, all buildings shall be located away from agricultural soils that are classified by the U.S. Conservation Service as prime farmland and placed on soils least suitable for production of crops and livestock. This provision does not apply to the location of on-site sewage systems, which must be placed on soils meeting Title 5 of the Massachusetts Environmental Code and local Board of Health regulations.

(Amended: Article IV, October 29, 2007 Special Town Meeting)

2. The layout and construction of utilities, drainage systems, and roads shall be designed to have the least possible impact on on-site and adjacent agricultural lands and uses, mature forests stands, or open space.
3. Farm and woods roads and stone walls should be saved and reused for proposed roads or for lot boundaries where possible.
4. To the maximum extent possible, residential units should be integrated into the landscape to avoid interrupting the views from adjacent public ways. Vegetative and structural screening, landscaping, grading and building placement on the lot should be used to minimize visual interference with pre-existing landscape features.
5. To the maximum extent possible, structures should be sited within any woodland contained on the parcel; along the edges of fields; or in locations where structures can be visually screened or absorbed into natural vegetative or topographic features.
8. The design shall avoid large amounts of cut and fill, unnecessary removal of existing groundcover, and avoidable impacts such as noise, traffic, and view interruption on adjacent developed premises.
9. Sewage systems shared or otherwise shall be located outside of all agricultural land supporting farming operations. For shared systems the Planning Board shall require the applicants to demonstrate that, through easements, restrictive covenants running to the Town, (also see Title 5 Covenants) and/or other appropriate legal devices, the maintenance, repair, future upgrades and all liability shall remain perpetually the responsibility of the private parties and their successors in-interest and should the Board of Health determine that adequate actions are not taken, the Town may provide these services and cause liens to be placed on the appropriate properties. These documents shall expressly require assumption of the obligations and shall be approved by the Planning Board before any occupancy of any dwelling unit.

(Amended: Article IV, October 29, 2007 Special Town Meeting)

G. Open Space Requirements

The following standards shall apply to any open space to be protected as part of the flexible development:

1. The area to be preserved as open space shall be made subject to perpetual restriction of the type described in MGL c, 184, Section 31 (including future amendments thereto and corresponding provisions of future laws)

running to or enforceable by the Town of Rochester, which restriction shall limit the use of the protected land to the following:

- a. Agricultural production, including but not limited to, the raising of crops and livestock, forest management activities, nurseries, orchards;
 - b. Activities necessary to successful agricultural production, including but not limited to, farm equipment operations, manure storage, and use of pesticides, herbicides, and fertilizers as regulated by state and federal laws;
 - c. Farm support operations, including but not limited to, farm equipment storage, agricultural processing, greenhouses and farm animal veterinary services.
 - d. Conservation and passive recreation.
 - e. Shared sewage systems, as provided at subsection c.4.k of this Chapter 22.40. shall not be constructed on land intended for Open Space designation.
(Amended: Article IV, October 29, 2007 Special Town Meeting)
(Amended: Article XXIII, June 9, 2003 Annual Town Meeting)
 - f. Buildings shall cover not more than 5% of any parcel reserved as protected open space. Said restriction shall be in such form and substance as the Planning Board shall prescribe and may contain additional restrictions on development and use of the land as the Planning Board may deem appropriate to meet the purposes of this Section. The restriction shall be recorded in the Registry of Deeds.
2. To the extent possible the preserved land shall form a contiguous tract and shall include minimum connected Buildable Area in the same relationship to non-buildable area as the ratio of the requirements of Chapter 20.40, Section D.2. bear to the Lot Dimensions specified in Chapter 20.40, Section.D.1.
(Amended: Article IV, October 29, 2007 Special Town Meeting)
 3. Ownership shall be as specified in subsection K of this By-Law.
(Amended: Article IV, October 29, 2007 Special Town Meeting)

H. Bonus Incentives

1. Creating a subdivision development using the flexible approach is often less expensive for the developer as roads are shorter and utilities are grouped together. Thus, Rochester's provision of a flexible development option should be considered an incentive unto itself. However, to further

encourage flexible development the following “point incentive system” has been developed. A development plan that meets any of the following criteria will earn the number of points listed. Depending on the total number of points earned, a developer may earn a bonus in the form of extra building lots allowed within the development. The Planning Board will determine, upon review of the development plan the bonus point total.

- a. Plans shall earn 2 points per percentage point by which permanently protected non-wetland land area exceeds 40% of the total area of such land in the development (e.g. protecting 50% of upland would earn 20 points).
- b. An agricultural management plan that ensures continued crop production (rather than just haying and mowing) on at least 10% of the site area earns 10 points.
- c. For protected forest land, a forest management plan covering at least 10% of the site area for at least a 10 year term, if prepared by a forester with credentials acceptable to the Planning Board, earns 10 points.
- d. A flexible plan that protects at least 10 acres of land in one contiguous tract earns 5 points; a plan that protects at least 20 acres in a contiguous tract earns 10 points.
- e. A flexible plan that protects land in a tract that is contiguous to an already protected area so to increase the area of working agricultural land or forest wildlife habitat earns 10 points.
- f. A development plan that the Planning Board determines screens structures from view from an existing public way as evidenced by cross sections of the definitive plan at a scale of 1” = 10’-0” earns 5 points.
- g. Architectural designs for the single family structures that the Planning Board determines match the current character of the area earn 10 points. Architectural elevation drawings of the single-family homes must accompany the site plan to be eligible to receive points in this category, and must be determined by the Planning Board to be consistent with guidelines approved or amended and approved by the Planning Board following a public hearing and filed with the Town Clerk prior to the special permit application date.
- h. Assuring that at least 10% of the lots or dwelling units will be reserved for households having no more than 80% of the regional median

income and spending no more than 30% of that income on housing, as determined by the Housing Opportunity Partnership, earns 15 points.

- i. Assuring that at least 50% of the lots or dwelling units will be reserved for housing to be occupied by households having not more than one member under 55 years of age earns 20 points.
2. A development plan that earns at least 35 points will earn a 10% building lot bonus above the maximum number of building lots allowed under subsection D.1.a of this Chapter 22.40, above. A development plan that earns 50 points or more earns a 20% building lot bonus above the maximum number of building lots allowed under subsection d.1.a of this Chapter 22.40 if the point total results in a building lot bonus of a fractional number, the bonus building lot total will be rounded down to the next lowest whole number. The total number of building lots cannot exceed 120% of the maximum number of building lots allowed under subsection d.1.a of this Chapter 22.40 before the addition of bonus units.

(Amended: Article XXIII, June 9, 2003 Annual Town Meeting)

(Amended: Article VI, November 27, 2000 Special Town Meeting)

I. Road Construction Standards

Roads and drainage within a Flexible Development shall be subject to approval of the Planning Board based on the Rules and Regulations governing subdivisions as guidelines. Said construction standards may be waived in the same manner, which applies to Subdivisions.

(Amended: Article IV, October 29, 2007 Special Town Meeting)

(Amended: Article V, April 24, 2006 Special Town Meeting)

J. The Planning Board may promulgate Rules & Regulations governing Flexible Development Special Permits from time to time as it judges appropriate.

(Amended: Article VI, April 24, 2006 Special Town Meeting)

K. Ownership of various features specified within this subsection:

(Amended: Article IV, October 29, 2007 Special Town Meeting)

1. Open Space: The protected open space may be retained under under any of the following options:
 - a. Conveyed to an incorporated non-profit Homeowners Association made up of the owners within the development subject to a covenant, acceptable to the Planning Board, running with the land which shall be recorded and which provides for the following:
 - i. Ownership and membership within the Homeowners Association shall pass with conveyances of the lots in perpetuity.

- ii. Maintenance of agricultural open space shall be ensured by establishing a maintenance fee for each lot sufficient to cover maintenance expenses or through a comparable arrangement satisfactory to the Planning Board. The covenant established shall describe land management practices that will ensure that the existing fields and pastures will be plowed or mowed at least once per year. Included with the covenant shall be copies of a lease, for a minimum of five years, with a farmer or operator who will use the land for agricultural purposes. Such a land agreement document shall be submitted with the Flexible Subdivision Plan and shall be subject to approval by the Planning Board and Town Counsel. A tentative agreement should be established and presented with the Preliminary Subdivision Plan.
- iii. The covenant established shall be approved by the Planning Board and specify that each lot owner has equal say in determining the affairs of the organization. Said covenant shall be enforceable by the Town and guarantee continued maintenance of such open space and/or facilities and assessing each lot a share of maintenance expenses including an agreement empowering the Town to perform maintenance of the open space in the event of failure to comply with schedules proposed in subsection C.4.1, and, if the Town is required to perform any maintenance work, the owners of the lots included in the Homeowner's Association shall pay the cost thereof and that the cost shall constitute a lien upon their properties until said costs have been paid.
- b. Conveyed to a non-profit land trust whose principal purpose is to conserve farmland and/or forest land, and/or open space; at no cost. Acceptance of such conveyance shall be at the option of the non-profit. Should such acceptance be denied by the non-profit, the portions of a Special Permit Decision relating to subsection G.3. shall become void and require reopening of the Special Permit hearing process for purposes of selecting another option with Subsection G.3., as specified in M.G.L. 40.A § 11.
- c. Conveyed to the Town at no cost if public access is satisfactory as determined by the Planning Board. Acceptance of such conveyance shall be at the option of the town and shall require approval at Town meeting. Should such approval be denied at Town Meeting, the portions of a Special Permit Decision relating to subsection G.3. shall become void and require reopening of the Special Permit hearing

process for purposes of selecting another option with Subsection G.3., as specified in M.G.L. 40.A § 11.

- d. Conveyed to the Rochester Conservation Commission as Conservation Land at no cost if public access is satisfactory as determined by the Planning Board. Acceptance of such conveyance shall be at the option of the Conservation Commission. Should such acceptance be denied by the Conservation Commission, the portions of a Special Permit Decision relating to subsection G.3. shall become void and require reopening of the Special Permit hearing process for purposes of selecting another option with Subsection G.3., as specified in M.G.L. 40.A § 11.
 - e. If the Open Space is not to be conveyed to any of the above, the applicant shall provide all of the following to the Planning Board for approval prior to commencement of construction:
 - i. A Covenant providing that the Open Space will be deeded as approved by the Planning Board. In addition, such covenant shall not be released by the Planning Board until proof of ownership has been provided to the Planning Board by the applicant.
 - ii. The covenant shall include an agreement empowering the Town to perform maintenance of the open space in the event of failure to comply with the maintenance program included in the application pursuant to subsection C.4.1., providing that if the Town is required to perform any maintenance work, the owners of the lots included in the Flexible Development shall pay the cost thereof and that the cost shall constitute a lien upon their properties until said costs have been paid.
 - f. Time of Dedication: All Open Space shall have been dedicated before any building permits are issued. The Building Commissioner shall be formally notified by the Planning Board upon confirmation that dedication per this subsection K is complete.
2. Common Sanitary Facilities: The requirement only for the selection of lots so served is specified in Subsection F.7
 3. Roads and Drainage Facilities: Unless and until full acceptance of roads and drainage facilities is consummated by the Board of Selectmen following an affirmative vote of a Town Meeting, these facilities shall be the exclusive responsibility of the Homeowner's Association subject to covenants, enforceable by the Town and satisfactory to the Planning Board, accepting

responsibility for all street and drainage maintenance including but not limited to plowing, sanding, road repair, trash removal and drainage system maintenance. Said covenant shall empower the Town to perform maintenance reasonably and normally expected for roads and drainage in the event of failure of the Homeowner's Association to comply, the Town is required to perform these functions and the lot owners in the Association shall pay the cost thereof and that the unpaid costs shall constitute a lien upon their properties.

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