

INTRODUCTORY LOCAL LAW NO. 1 OF 2009

A LOCAL LAW AMENDING THE ZONING LAW AND SUBDIVISION REGULATIONS OF THE TOWN OF CHESTER

SECTION 1: Purpose and Intent

The purpose of this Local Law amending the current Cluster Regulations section of the Zoning Law of the Town of Chester is to clarify the procedures involved in order to allow for clustering in the residential zoning districts of the Town of Chester. Due to these changes to the Clustering Section (98-25), other portions of the Zoning Law and Subdivision Regulations (Chapter 83) needed to be amended to coordinate with the changes.

The Cluster Regulations were dramatically revised and readopted by the Town of Chester Town Board in December 2003. Subdivisions were proposed and the Planning Board reviewed them under the current regulations. Confusion occurred relative to the point in time that the Planning Board would recommend the clustered development to the Town Board and the point at which the Town Board authorization could be granted. Clustering is allowed in the AR-.3, SR-1, SR-2 and SR-6 residential zoning districts in the Town of Chester.

SECTION 2:

Section 98-25 shall be amended in its entirety to read as follows:

§ 98-25. Cluster developments.

A. Cluster authority. Pursuant to § 278 of the Town Law, for the purpose of enabling and encouraging the flexibility of design and the development of land in such a manner as to promote the most appropriate use of land, and to further the goals of the Town of Chester Comprehensive Plan, including preserving the scenic and open quality of the Town's rural landscape and protecting historical and agricultural resources, the Planning Board is authorized, subsequent to receipt of a subdivision plat in any of the Town's residential zoning districts, to require and approve a cluster development modifying the applicable provisions of Chapter 98, subject to the following conditions:

1. This procedure shall be followed at the discretion of the Planning Board if, in the Board's judgment, the application would benefit the Town. In addition, an applicant may request Planning Board review for a cluster development subject to the same criteria as set forth in this section.
2. A cluster development shall in no case result in a permitted number of building lots or dwelling units which exceeds the number that could be permitted, in the

Planning Board's judgment, if the land were subdivided into lots conforming to the minimum lot size and all other applicable requirements pertaining to the district or districts in which the land is situated. Where the plat falls within two or more contiguous districts, the Planning Board may approve a cluster development representing the cumulative density as derived from the summing of all units allowed in such districts pursuant to all other applicable requirements and may authorize actual construction to take place in all or any portion of such districts. The phrase "all applicable requirements" means not only all applicable local zoning, schedule of use and area requirements, land use laws and subdivision regulations (Editor's Note: See Ch. 83, Subdivision of Land) but also any applicable county, state and federal laws, regulations and requirements.

3. As a condition of plat approval, the Planning Board may establish conditions on the ownership, use, and maintenance of such open lands shown on the plat as it deems necessary to assure the natural, scenic, agricultural, open space or other characteristics of such open lands.

4. No Final Plat shall be approved by the Planning Board until such conditions are approved by the Town Board where a town district, easement, road or utility are involved.

5. The plat showing such cluster development may include areas within which structures may be located, the height and spacing of buildings, open spaces and their landscaping, open or enclosed off-street parking spaces, streets, driveways, and any other features that may reasonably be required by the Planning Board.

6. In no case shall the provisions of this section be deemed to authorize a change in the permissible use of such lands as provided in Chapter 98 of the Town of Chester Code.

B. Purpose of regulations and considerations for approval. The Town Board has adopted these regulations for the purpose of establishing the following considerations on which the approval of clustered subdivisions in the Town of Chester shall be based:

1. Conformance with the applicable parts of the Town of Chester Comprehensive Plan adopted May 1, 2003, and as may be amended from time to time, and Chapters 83 and 98 of the Town of Chester Code.

2. To help achieve the specific community-wide objectives set forth in the Comprehensive Plan, protecting not only cultural landmarks and resources but also their surrounding visual context, protecting significant agricultural lands and resources, and the rural appearance of the Town of Chester, including the preservation of natural assets such as streams, ponds, fields, trees, and critical habitat areas.

3. Recognition of desirable standards of subdivision design, including adequate provisions for vehicular traffic, for surface water runoff, and for creating suitable building sites for uses permitted in the applicable zoning district or districts.
4. Provision for the necessary community facilities to support the contemplated use, such as parks and recreation facilities, school sites, firehouses and off-street parking where appropriate.
5. Provision of adequate utility services in a way that minimizes adverse visual impacts.

C. Procedural regulations for cluster development. If a cluster plan is proposed or required, the following procedure shall be employed:

1. The applicant shall submit a sketch plan for the proposed site, including the data required for a sketch plan and areas to be preserved to the Planning Board.
2. The Planning Board shall conduct an initial review and discussion with the applicant to determine whether the requested use of clustering appears appropriate and desirable for the site. The Planning Board may request other information it may need in order to determine if the goals listed in Section 98.25.B above and Section 98.25.C.8 below have been addressed and that there are benefits to the Town so that the Planning Board can determine if the plans fulfill the requirements for a clustered subdivision plan.
3. If the Planning Board determines that clustering may be appropriate, it shall direct the applicant to prepare a yield plan to determine the number of residential lots and/or dwelling units, as applicable, which can be obtained by subdividing a given parcel. A yield plan shall be prepared in accordance with zoning requirements and conventional lot layouts. Each residential lot, its building envelope and the entire subdivision layout must comply with all applicable laws and regulations affecting the use of land, including Town, county, state and federal laws and regulations, and all applicable road requirements, including but not limited to cul-de-sac length limit. The yield plan shall comply with the basic requirements for a preliminary plat under the Subdivision Regulations (Chapter 83), although the Planning Board may waive specific requirements if it deems that such items are not necessary for consideration of the site and for the determination of allowable density thereon. The Planning Board shall render a determination of the allowable density based on an acceptable yield plan. At this time the applicant can also submit their sketch cluster plan for the Planning Board's initial review. This sketch cluster plan will also be used for the preliminary public information meeting, as discussed below.
4. Once the Planning Board has agreed that the conventional or yield plan meets all pertinent requirements, then the Planning Board may hold a preliminary public

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information meeting at which the applicant will present both the conventional yield plan and the sketch cluster plan and the public will have an opportunity to ask questions and make comments. If a preliminary public information meeting is held, the meeting should be noticed in a paper of general circulation ten (10) days prior to the meeting, and the Planning Board may require additional notification. The Town Board and all residents within 500 feet of the boundary of the cluster subdivision will be notified of the preliminary public informational meeting. Notification will be provided in accordance with the same procedures used for preliminary subdivision approval.

5. Upon receipt of acceptable cluster and conventional or yield plans as reviewed to determine conformance with the Town regulations, the Planning Board shall begin SEQRA review with the lead agency establishing process.

6. For the purpose of these cluster regulations, the terms "conventional plan," and "yield plan" shall have the same meaning, and a conventional plan found acceptable to the Planning Board shall serve as the yield plan to determine the total number of lots which will be the basis for the cluster or average density plan.

7. The Town Board will be an involved agency and will be notified at this time of the alternative plans. The Planning Board would proceed through the SEQRA process and issue a negative declaration or findings statement.

8. Goals for preservation of open space.

(a) The following goals, as identified in the Town of Chester Comprehensive Plan, shall guide the preservation of open space within a clustered development:

1. Preservation of steep slopes.
2. Preservation of ridgelines.
3. Protection or preservation of habitat for threatened or endangered species or species of special concern.
4. Buffering and preservation of cemeteries, historic areas and historic buildings.
5. Preservation or enhancement of scenic vistas, specimen trees, tree lines and wooded groves, stone walls, etc., and to expand setbacks from existing roads and developed properties to 100 feet or greater where deemed appropriate.
6. Creation of recreation areas, trails or other open space, either public or private.
7. Preservation of wetlands, drainage areas and floodplains.
8. Separation of development from active farmland.
9. Preservation of cultural resources.
10. Protection of significant agricultural lands and resources.

11. Protection of cultural landmarks and resources and their surrounding visual context.
12. Protection of the rural appearance of Chester.
13. Preservation of natural assets such as streams, ponds, fields, trees and critical habitat areas.

- (b) A portion of the required open space may be used for community septic disposal systems, required stormwater management/erosion control facilities, community water supply wells and/or for active or passive recreation at the discretion of the Planning Board.
- (c) Clustered developments shall preserve at least fifty (50) percent of a site's total acreage as restricted or usable open space. This area may include public or common recreational facilities and those areas cited in item 7 (b) above.
- (d) The Planning Board in its judgment shall have the right to reduce minimum lot area requirements for clustered developments in order to achieve increased open space preservation or benefits beyond those required or encouraged by Chapters 83 and 98 of the Town Code and the Town Comprehensive Plan. The benefits and goals of clustering can be found in Sections 98.25.B.2 and 98.25.C.7(a).. For lots reduced in area by greater than 25 percent below the required minimum lot area the Planning Board may impose floor area ratios to prevent excessively large residences on smaller lots. In accordance with §278(3)(b) of the Town Law no additional residences may be created and allowed.

9. Bonus density allowed under the former 98-25(C) still applies to those projects where an application was submitted to the Planning Board prior to May 2006.

D. Cluster design criteria. After the number of residential dwellings or units in a yield plan has been agreed upon by the Town of Chester Planning Board, the proposed building lots and the open space areas must be identified and shown on a plan.

1. Open space areas would include primary conservation areas and/or secondary conservation areas.

(a) Primary conservation areas are areas that are prohibited by existing law or other regulation from residential or other structural development, e.g., water bodies, streams and floodplains, wetlands and their adjacent areas, and areas that constitute significant barriers to development, such as a slope of 25% or more.

(b) Secondary conservation areas are areas that are not included as primary conservation areas but are deemed worthy of protection by the Planning Board. Such areas would include, but not be limited to, those listed in Section 98-

25.C.8(a). Secondary conservation areas may also include passive recreation areas and buffer areas of 50 to 100 feet separating development from water bodies, waterways and wetlands unless such areas are otherwise required to be located in the primary conservation area.

2. The permissible number of lots determined by the Planning Board from the acceptable yield plan shall be designed to accommodate the mapped primary and secondary conservation areas to the maximum extent feasible. Area to be developed shall be identified first, followed by access road locations, with the lot line delineation as the last step.
3. Open space areas shall be designed to be visually accessible and, if appropriate, physically accessible to as many lots within the subdivision as practicable, as well as being visually accessible to the general public. Open space areas shall be maintained in as large a contiguous land area as possible. Open space areas in adjoining subdivisions shall, if possible, be interconnected in order to maximize the habitat value and integrity of the open space. Provision of limited pedestrian access to open space areas may be encouraged within the cluster subdivision unless such use is not compatible with the open space preservation such as agricultural lands, historic resources or other resources that may be adversely affected by such use.
4. Planning Board evaluation of layout; open space ownership and maintenance.
 - (a) The Planning Board shall evaluate the proposed cluster subdivision layout to determine whether the proposed subdivision:
 - (1) Recognizes existing scenic views and vistas; preserves the existing visual character of the site area. This includes protecting the visual character and appearance of the site as viewed from existing public roads, thereby protecting the Town's open rural streetscape. New construction shall be sited to avoid visual prominence, where possible. Where new construction will unavoidably be visually prominent in visually or culturally sensitive areas, such structures shall be designed and detailed in a manner that is consistent with the appropriate architectural design vernacular. A buffer of at least 50 feet or more, not including access roads, shall be established back from existing roads and lot lines as part of an open space area and, where possible, existing field hedgerows and stone walls shall be preserved.
 - (2) Preserves active farm fields and open fields wherever possible, particularly when associated with actual or potential agricultural use or culturally or historically significant houses and agricultural structures such as barns. Farm fields shall be preserved for continued use where possible and appropriate.
 - (3) Provides contiguous open space and/or avoids habitat fragmentation. Open space resulting from the subdivision shall avoid fragmenting habitat to the greatest extent possible, in keeping with the resources identified for

protection. Open space areas in contiguous subdivisions shall connect where possible in order to maintain wildlife habitat and corridors. Consideration shall be given to simple methods of maintaining land cover types where deemed beneficial by the Planning Board for visual, aesthetic, or habitat purposes. Maintenance measures shall be identified and implemented.

- (4) Minimizes intrusion into wetlands, floodways and floodplains, water bodies and steep slope areas of 25% slope or more. Although some intrusion may be necessary in order to obtain road access to the site for building purposes, this should be kept to a minimum. Any pedestrian access that is provided to primary and secondary conservation areas shall also be designed to minimize impacts on these resources.
- (5) If appropriate and if desired, provides for pedestrian access to and/or within preserved open space areas for property owners within the subdivision. Such access, if provided, does not imply a right of access to the general public unless explicitly so provided.
- (6) If appropriate and as may be required by the Planning Board, provides for pedestrian needs along the subdivision access road(s) and street tree plantings located outside of the road right-of-way.
- (7) Otherwise achieves the goals set forth in Section 98-25.B.2 and Section 98-25.C.7(a).

(b) Open space ownership and maintenance.

(1) As an integral part of the clustered development plan, the ownership of any resulting open space area must be determined relative to its intended function and the lot layout. Provisions shall be made to ensure the proper management, maintenance and care of the open space area. Its relationship to the lots, its purpose and habitat or other function within the subdivision shall be considered in this regard, including but not limited to periodic maintenance of septic systems and stormwater/erosion control facilities located in open space areas. If the Board determines that it is visually or culturally important for land to be preserved in field or meadow vegetation, then some minimum level of maintenance needed to preserve the ground cover shall be provided. The open space easement area shall be planned with the objective of minimizing maintenance requirements using suitable native landscape elements. The owner(s) of the open space area(s) shall be responsible for all expenses of maintenance and care.

(2) All lands designed and designated for open space or other purposes of this section that are not accepted for dedication in fee by the Town shall be owned in fee by individual lot owners, a duly established homeowners' association or land trust or conservation organization approved by the Town Board. If a

homeowners' association is formed, it shall be mandatory for all lot owners to be members of the association. Adequate provision shall be made to ensure that such common open space or other areas remain dedicated to their approved use, cannot be further subdivided, are adequately maintained and cannot be abandoned for tax or other reasons by the owner(s). A restrictive covenant shall be placed on all land and must recite all deed restrictions which shall run in favor of the Town of Chester as well as the HOA, land trust or homeowners and shall be approved as to form and content by the Town Attorney and filed with the Orange County Clerk prior to the issuance of a building permit.

(3) Such open areas shall not be improved or used except as shown on the approved subdivision plan.

(4) The approved plan shall be filed in the Orange County Clerk's office and shall contain reference to recorded declarations setting forth all covenants and restrictions limiting the use of the property and providing for continuing and proper maintenance of the property, as well as any limitations or requirements imposed on the property as conditions of authorization and approval of the clustered development plan.

(5) A clustered subdivision plan shall show the location and dimensions of building envelopes for the clustered residential lots, showing structural and nonstructural uses, including any open space easements. All applicable setback requirements for houses and accessory structures that are proposed to apply to the resulting clustered lots shall be shown. Locations of wells and septic systems, if applicable, shall be shown, along with driveway and other access way locations.

E. A cluster development containing a Homeowners Association (HOA) shall be organized as follows:

(1) The Planning Board, in consultation with its attorney shall review and approve, or approve with modifications, the Certificates of Incorporation and bylaws of said HOA and to require whatever conditions are deemed necessary to ensure that the intent and purpose of this chapter are carried out. In considering of said approval, the Planning Board shall, in part, require the cluster development to meet the following conditions:

(a) The HOA shall be established as a not-for-profit corporation operating under recorded covenants through which each lot owner and any succeeding owner is automatically a member and each lot is automatically subject to a charge for a proportionate share of the expenses of the organization's activities. Said proportion of the expenses shall be determined by the tax assessment on each owner's property.

(b) Title to all common areas, exclusive of land set aside for public schools, shall be placed in the HOA or definite and acceptable assurance shall be given that it

automatically will be so placed within a reasonable period of time to be determined by the Planning Board.

(c) Each lot owner shall have equal voting rights in the HOA and shall have the right to the use and enjoyment of the common areas.

(d) Once established, all responsibility for operation and maintenance of the common areas and facilities shall lie with the HOA.

(e) Dedication of all common areas to the HOA shall be recorded directly on the subdivision plat or by reference on the plat to a dedication in a separately recorded document. Re-subdivision of such areas is prohibited. The dedication shall:

- (1) Grant the title to the common areas to the HOA free of any cloud of implied public dedication.
- (2) Commit the applicant to convey the common areas to the HOA at the approved time to be determined by the Planning Board.
- (3) Grant easements of enjoyment over the common areas to the lot owners.
- (4) Give to the HOA the right to borrow for improvements upon the security of the common areas.
- (5) Give to the HOA the right to suspend membership rights for nonpayment of assessments or infraction of published rules.

(f) Covenants shall be established and filed of record, limiting all lots to residential use and all common lands to open space uses prior to conveyance of any lots. No buildings or structures may be erected on such common lands except as shown on the approved plat.

(g) Each deed to each lot sold shall include by reference all recorded declarations, such as covenants, dedications and other restrictions, including assessments and the provision for liens for nonpayment of such.

(h) The HOA shall be perpetual; shall purchase insurance; pay taxes; specify in its certificate of incorporation an annual homeowner's fee, provision for assessments and establish that all such charges become a lien on each property in favor of said association. The HOA shall have the right to proceed in accordance with all necessary legal action for the foreclosure and enforcement of liens, and it shall also have the right to commence action against any member for the collection of any unpaid assessment in any court of competent jurisdiction.

(i) The applicant shall assume all responsibilities as previously outlined for the HOA until a majority of the dwelling sites are sold, at which time the HOA shall be automatically established.

(j) Prior to subdivision or site plan approval or the signing of the plans by the Planning Board Chair, the applicant shall file with the Town Board a performance bond to ensure the proper installation of all public recreation and park improvements shown on the site plan and a maintenance bond to ensure the proper maintenance of all common lands until the HOA is established. The amount and period of said bonds shall be determined by the Planning Board, and the form, sufficiency, manner of execution and surety shall be approved by the Town Attorney and the Town Board. In lieu of bonds the Planning Board may require completion of said facilities prior to completion of a certain percentage of the dwellings in the project.

(k) Conservation, recreation, utility or access easements required by the Planning Board or the Town Board shall be shown on an approved plan and also filed in the office of the Orange County Clerk as a deed restriction in a form approved by the Town or Planning Board.

F. Role of the Town Board:

The Town Board hereby gives authority to the Planning Board to approve cluster developments in the Town of Chester in accordance with Section 278 of New York State Town Law. The Town Board however, retains the right to make decisions and give approvals on the following items which shall be referred to the Town Board following preliminary plat approval.

1. The Planning Board shall inform the Town Board of any Town Board actions required to accomplish the clustered development plan. This would include their future dedication of parkland to the Town or acceptance and review of Conservation Easements for which the town would be named as a holder of said easement.
2. The Town Board may be required to make determinations on limitations regarding the ownership and/or use of the open space land resulting from the clustered development, so that the land shall not become a public burden or nuisance.
3. A drainage district could be formed by the Town Board, if deemed necessary.
4. Other public districts as may be required based on proposed plans.

SECTION 3: 83-22 Lots

Amend paragraph A, second sentence, by adding the following words after “dwelling site”. “..., onto which the dwelling and all future extensions shall be placed,...”

SECTION 4: 98-20 Clustering of one and two-family homes in the SR-6 District

Rewrite paragraph A in its entirety to read as follows:

“A. Intent. It is the intent of the Town of Chester to provide more flexibility in the design of single and two-family dwelling unit development in order to promote a variety of dwelling unit types, densities and values within certain guidelines to reduce the potential of significant impacts on community facilities. To accomplish this a maximum of four dwelling units per buildable acre in combinations of detached single and two-family dwellings may be approved within the SR-6 District in accordance with the provisions contained herein, and as set forth in §83-15 of the Code of the Town of Chester.”

SECTION 5: 98-20B Specific Regulations

Delete B(1) in its entirety and renumber B(2) to (8) to read (1) to (7)

SECTION 6: 98-20B (4)

This section will be changed to (3) as per Section 5 above.

Amend the wording relative to percentages and phasing in its entirety to read as follows:

“(3) Bedroom mix and restrictions. In order to ensure the intended variety of housing mix and opportunities for various households, the following regulations shall apply to each phase of a project unless otherwise noted. The following bedroom mixes or limits shall be required:

- (a) No single or two-family dwelling unit shall contain more than four bedrooms.
- (b) No more than 40% of all approved dwelling units shall contain four bedrooms.
- (c) At least 20% of all dwelling units shall contain two bedrooms. This subsection shall be deemed cumulative and shall be satisfied and of no further effect when 20% of all approvable units contain two bedrooms.
- (d) The average number of bedrooms shall not exceed three for the entire project.”

SECTION 7: 98-20 B (7)

This section will be changed to (6) as per Section 5 above.

Amend to read as follows:

“(6) The proposal shall meet only the applicable provisions of §98-25 as determined by the Planning Board and all other applicable provisions of this chapter. A yield or conventional plan is not required.”

SECTION 8: 83-15 Application of Clustering Provisions

In accordance with the changes provided in Section 98-25 of the Zoning Law this section which consists of a single paragraph shall be amended to add the word “approve” and to eliminate town board review other than review of standard town board responsibilities such as district formations. The paragraph shall read in its entirety as follows:

83-15. Application of Clustering Provisions.

Pursuant to § 98-25 of the Zoning Law, the Planning Board is empowered to require, review and approve clustered subdivisions in accordance with the provisions of § 278 of the Town Law. Such authorization is hereby granted to approve such projects based on specific benefits to the community for lands in all residential districts. The purpose of such authorization shall be to enable and encourage flexibility of design and development of land in such a manner as to promote the most appropriate use of land, to facilitate the adequate and economical provision of streets and utilities and to preserve the natural and scenic qualities of open lands. Refer to §98-25 of the Zoning Law.

SECTION 9: 83-22 Lots

Add the Agricultural Notes to this section by adding subsection P. which shall read as follows:

83-22 P. Agricultural Notes

In accordance with the Agricultural and Markets Law, adjacent properties shall be notified of the presence of active agricultural operations in the vicinity of a proposed subdivision. During their review of a subdivision, the Planning Board shall determine, based on the type of active agricultural operation near the subdivision, if a buffer is required and the extent of said buffer. For all lots and subdivisions adjacent to an active agricultural operation the following note shall be added to the subdivision plat to be filed.

Agricultural Note:

“Property adjacent to lot(s) ___ is in active agricultural operation and production and residents must be aware that such property is protected by New York State’s “Right to Farm Laws” as regulated by the Department of Agriculture and Markets. From time to time during and prior to the normal growing season land and crops may be sprayed from the ground or by air, manure may be applied and noise may occur periodically from machinery operations at various times throughout the year. Residents should be aware of this action by the adjacent property owners.” If appropriate, the following sentence may also be included in the note. “No residence structure or facility designed for human occupancy on lot(s) ___ shall be located closer than ___ feet to the adjacent agricultural parcel noted on the plans.”

SECTION 10: 98-2 Definitions and Word Usage

Revise the definition of “Townhouse or Row House” by eliminating the reference to condominium ownership. The words “or in condominium ownership” shall be eliminated from the definition.

SECTION 11: Severability Clause

If any section or subsection, paragraph, clause, phrase or provision of this local law shall be adjudged invalid for any reason or shall be deleted or subsequently repealed, the same shall not affect the validity of this local law as a whole or any part or provision herein other than the part as adjudged to be invalid and/or deleted and/or subsequently repealed.

The determination by any court of competent jurisdiction that any provisions of the within local law as unenforceable, invalid, void, unconstitutional or in conflict with federal or state law shall not in any way affect the enforceability or validity of any other provision contained herein.

SECTION 12: Effective Date

This local law shall take effect immediately upon posting and filing with the New York State Department of State.