

## SECTION XVIII Special Residential Development

*(Adopted: Article I, October 4, 2004 Special Town Meeting)*

### A. Purpose

The purposes of the Special Residential Development Special Permit are to grant relief in the form of increased density to encourage housing needed in the Town of Rochester such as providing alternative housing for a maturing population; providing a type of housing which reduces residents' burdens of property maintenance and which reduces demands on municipal services; and which promotes flexibility in land use planning in order to improve site layouts, protection of natural features (i.e., natural topography, wooded areas and scenic meadows) and environmental values and utilization of land in harmony with neighboring properties. For the purpose of this By-Law, the term Special Residential Development is defined as a residential development of multiple dwelling units configured as attached or detached single-family dwellings on a tract of land in single ownership.

### B. Applicability

The Planning Board, acting as Special Permit Granting Authority, may grant a Special Permit for construction of a Special Residential Development (SRD) and accessory structures, in the Agricultural/Residential District. The provisions of this section supersede the dimensional requirements and use provisions of the Zoning By-Law.

### C. Standards

This section identifies the standards that will be applied to all Special Residential Developments.

**1. Tract Size** - At the time of granting a special permit by the Planning Board, the property under consideration for a SRD shall be located on one or more contiguous parcels with definite boundaries ascertainable from a recorded deed or recorded plan, having a contiguous "Buildable Area" of no less than 15 and no more than 50 acres.

Frontage shall be a minimum of 150 feet on a public way and projects exceeding 30 dwelling units shall be 225 feet on a public way.

*(Amended: Article XXIX, October 24, 2005 Special Town Meeting)*

**2. Age Qualification** - A SRD may only be constructed as housing intended for persons of age fifty-five or over within the meaning of M.G.L. c151B, S4, 16 and 42 USC S3607 (b)(2)(c), and in accordance with the same, one hundred

percent (100%) of the dwelling units in a Special Residential Development shall be owned and occupied by at least one person fifty-five (55) years of age or older per dwelling unit, and such development shall be operated and maintained in all other respects in compliance with the requirements of said statutes and regulations promulgated pursuant thereto. In the event of the death of the qualifying owner/occupant(s) of a unit, or foreclosure or other involuntary transfer of a unit in a SRD, a two-year exemption shall be allowed for the transfer of the unit to another eligible household.

**3. Applicant Qualifications** - The applicant for a Special Permit for a SRD shall be the owner of the tract proposed for such development or be authorized in writing by the owner to apply for and be issued such Special Permit, and shall establish to the satisfaction of the Planning Board that the applicant has knowledge, experience and financial resources sufficient to construct and complete the development.

**4. Maximum Number of Dwelling Units Permitted** - The maximum number of dwelling units within an SRD shall be computed based on the maximum number of bedrooms. The maximum number of bedrooms per acre of buildable area shall be determined by multiplying the Buildable Area (expressed as acres) by the number 4.

The maximum number of dwelling units shall contain no more than the maximum number of bedrooms and shall be distributed at the developer's discretion between one, to three bedrooms per dwelling unit. In order to achieve the maximum development as allowed under the above measures, the applicant must demonstrate compliance with all other standards identified in Section XVIII. C.

**5. Configuration of Buildings** - The following requirements shall apply to all buildings and dwelling units in a Special Residential Development:

- a. Dwelling units can be attached, or detached as single units, or a combination of these types.
- b. *Dwelling Units per Building*. No building shall contain more than two dwelling units.
- c. *Maximum Height*. No building constructed in a SRD shall exceed 35 feet in height nor exceed two full floor levels.
- d. *Maximum Number of Bedrooms*. No dwelling unit constructed in a SRD shall contain more than three bedrooms. No more than ten percent (10%) of the total units in a SRD shall have fewer than two bedrooms.
- e. Minimum setback from the center-line of internal roads shall be

forty (40) feet.

*(Amended: Article I, On Town Meeting Floor, October 4, 2004 Special Town Meeting)*

## 6. Location Design Standards and Landscaping

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

a. Identifying Conservation Areas and Potentially Developable Areas:  
Identify preservation land by the following steps:

1. Identify Primary Conservation Areas such as wetlands and floodplains regulated by local, state or federal law. This shall be accompanied by Conservation Commission acceptance of the Abbreviated Notice of Wetlands Resource Delineation.
2. An "Existing Conditions Plan" depicting soil characteristics as shown on Soil Conservation Service Maps; resource areas as defined by G.L. c. 131, s.40, and delineation of the official wetland area boundaries as accepted by the Rochester Conservation Commission pursuant to the Rochester Wetlands Protection By-Law, existing floodplain boundary lines, existing topography, wetlands, water bodies and the 100-year floodplain, all existing right-of-ways, easements, and existing structures, the location of significant features such as woodlands, tree lines, individual hardwoods of significant stature, open fields or meadows, scenic views, watershed divides and drainage ways, fences and stone walls, roads, driveways, cart paths, and resources of historic o(r) archeological importance.

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

- b. The units shall provide for an effective and unified treatment of the development possibilities of the project site, in the judgment of the Planning Board, making appropriate provision for the preservation of natural features and amenities of the site and the surrounding areas wherever possible.
- c. The units shall be planned and developed to harmonize with any existing or proposed development in the area surrounding the project site wherever possible.
- d. All units shall be arranged so as to preserve visual and audible privacy between adjacent houses wherever possible.
- e. Whenever possible, existing trees and vegetation shall be preserved and integrated into the landscape design plan.

- f. Whenever possible, the existing terrain shall be preserved and earth removal or relocation shall be kept to a minimum.
- g. Negative visual impacts of the development, if any, in the judgment of the Planning Board, shall be adequately screened from adjacent properties and nearby streets by landscaping and other site plan techniques.
- h. Additional landscaping amenities shall be proposed to achieve an effective, unified and aesthetic project in the judgement of the Planning Board.

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

**7. Interrelationship of Buildings** - The proposed buildings shall be related harmoniously to each other with adequate light, air, circulation, privacy and separation between buildings. Buildings shall comply with a minimum setback of eighty (80) feet from each other and all other structures except internal roads in the development. Minimum setbacks shall be measured at the nearest point between building footprints, not including patios and terraces. Building footprint shall include decks, porches and roof overhangs. The Planning Board at it's discretion may allow up to 25 % of the buildings to have minimum setbacks from each other of forty (40) feet if the applicant demonstrates outstanding preservation of natural features and/or open space.

*(Amended: Article XXIX, October 24, 2005 Special Town Meeting)*

**8. Perimeter Buffer** - A 100 foot wide buffer between a SRD and public ways and a 40-foot wide buffer between a SRD and abutting properties is required; provided, however, that access roads and pedestrian paths may cross or be within the perimeter buffer at the discretion of the Planning Board. This perimeter buffer shall remain in a natural state, both at the outset and perpetually thereafter, to preserve the visual character of the parcel being developed. The Planning Board may permit exceptions to allow maintenance of desirable resources, which may exist at the time of application.

**9. Common Property** - This includes but is not limited to the perimeter buffer, roadways, yards, driveways, accessory structures as in #10 below, parking areas, and all areas not part of dwelling units. Common Property shall be for the exclusive use of owners of the dwelling units and their guests. It shall be owned in common by the owners of the dwelling units in the SRD. An enforceable restriction, acceptable to the Planning Board, shall be recorded for this property.

**10. Accessory Buildings and Structures** - In a SRD, accessory buildings and structures over 120 square feet may be permitted, including clubhouse, swimming pool, tennis court, cabanas, storage and maintenance structures,

garages, and other customary accessory structures. Accessory buildings and structures shall be shown on the Plan and shall be available for the sole use and enjoyment of the residents and their guests.

**11. Parking** - A minimum of two off-street parking spaces shall be provided for each dwelling unit, in reasonable proximity to each dwelling, or in attached garages. Additional parking in proximity to any clubhouse or other facility serving residents in common, or guest parking, shall be provided in off-street parking areas, provided that no single accessory parking area shall contain more than one-half space per residential unit in the entire project, and all such areas shall be adequately landscaped.

The adequacy of all parking facilities shall be determined by the Planning Board.

**12. Road Construction Standards** - Roads and driveways within a SRD shall be subject to approval of the Planning Board based on the Rules and Regulations governing subdivisions as guidelines. The Planning Board may promulgate Rules & Regulations establishing minimum construction standards and design requirements for the SRD network of roads.

There shall be an adequate, safe and convenient arrangement of roadways and driveways in the opinion of the Planning Board.

**13. Other Facilities** - All facilities including but not limited to utility services, drainage, lighting and signage shall be in accordance with requirements established by the Planning Board, consistent with applicable provisions of the Zoning By-Law and the Rules and Regulations governing subdivisions, as the same may be waived or modified by the Planning Board to meet site conditions and design requirements.

**14. Project Maintenance** - Every SRD shall establish a trust, association or other legal entity whose membership includes all dwelling unit owners and which shall have the power to assess costs and fees to the dwelling unit owners, satisfactory to the Planning Board, which shall be responsible for the maintenance and repair of internal roads and driveways, snow plowing, landscape maintenance, trash removal, utility services and maintenance and repair of other common elements and facilities serving the residents, and the Town of Rochester shall not be responsible therefore. The organizational documents shall expressly require assumption of these obligations and shall be approved by the Planning Board before occupancy of any dwelling unit.

All such maintenance shall be the responsibility of the developer until such time as the legal entity assumes responsibility.

**15. Building Architecture** - All buildings in a SRD shall be designed

- (a) to have compatibility of style and building materials with those currently in Rochester,
- (b) to afford variations of facade and roof lines,
- (c) so as not to have any dwelling unit extend under or over another dwelling unit in the same building, and
- (d) to comply with requirements of law with respect to housing intended for persons of age fifty-five and over.

The Planning Board shall be satisfied with the architectural details and styling of the buildings prior to approval of a SRD.

**16. Common Water and Sanitary**

- a. Common Sanitary facilities are encouraged consistent with the applicable Board of Health and State regulation.
- b. For potable water, projects shall be services entirely by Municipal Water as defined in 310 CMR 22.00. If the project is not served by Municipal water and regardless of number of service connections or number of individuals served, any ground water source that is part of the system shall comply with 310 CMR 22.21 Groundwater Supply Protection and the Massachusetts Department of Environmental Protection (DEP), Drinking Water Program’s “Guidelines and Policies for Public Water Systems” as they presently exist and any subsequent amendments. Further, should the DEP for any reason, choose to not assert its jurisdiction, the applicant shall still comply with the technical requirements of the regulations and guidelines.

*(Amended: Article XIII, June 2, 2008 Annual Town Meeting)*

**D. Procedures**

The procedure for issuance of a special permit for a Special Residential Development shall be as follows:

- 1. Pre-Application Meeting** - A pre-application meeting with the Planning Board prior to formal submission of an application is strongly recommended. If such a meeting is requested, the Planning Board shall invite the Conservation Commission, Board of Health, the Town Planner, the Building Commissioner, and the Highway Surveyor. Peer Review participation may also be valuable at such a meeting. The applicant may choose to fund Board engagement of Peer Review capability at this time per Section E of this By-Law.

The pre-application discussion will be most productive if a report is available at this time from a Certified Soil Evaluator, confirmed by the Board of

Health, stating which locations for residential units contain soil conditions suitable for sub-surface sewerage disposal in accordance with rules and regulation of the Town of Rochester and applicable laws of the Commonwealth of Massachusetts.

Also facilitating this meeting will be availability of a plan, which contains the boundaries of all wetland resource areas as defined in the Rochester Wetlands Protection By-Law with Conservation Commission acceptance of the Abbreviated Notice of Wetlands Resource Delineation.

**2. Application for Special Permit** - Any person who desires a Special Permit for construction of a SRD shall submit a written application to the Planning Board. Each such application shall be accompanied by the following information:

- a. Identification of applicant; information as to the record title to the tract; identification of applicant's professional and development associates.
- b. An "Existing Conditions Plan" depicting soil characteristics as shown on Soil Conservation Service Maps; resource areas as defined by G.L. c. 131, s.40, and delineation of the official wetland area boundaries as accepted by the Rochester Conservation Commission pursuant to the Rochester Wetlands Protection By-Law; existing floodplain boundary lines; existing topography, wetlands, water bodies and the 100-year floodplain, all existing right-of-ways, easements, and existing structures, the location of significant features such as woodlands, tree lines, individual hardwoods of significant stature, open fields or meadows, scenic views, watershed divides and drainage ways, fences and stone walls, roads, driveways, cart paths, and resources of historic and archeological importance.

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

A SRD Site Plan showing, insofar as pertinent, all of the information required for a definitive subdivision plan, as specified in the Town of Rochester, Rules and Regulations Governing Subdivisions, as amended, and showing the following additional information: existing and conceptually proposed locations of buildings containing dwellings and other buildings; all setback lines; existing and proposed roads and driveways; lighting; signs; proposed and existing wells and wastewater disposal systems on the parcel and abutting properties if such systems are within 200 feet of the property line; existing and proposed topography; existing perimeter of trees; proposed landscape features (such as fences, walks, planting areas, type, size and location of planting materials, methods to be

employed for screening); the proposed use of the common land including improvements intended to be constructed thereon; the proposed ownership of all common land; and any other information required by the Planning Board.

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

Landscape Plan: A landscape plan shall be submitted at the same scale as the development plan, identifying areas of retained vegetation, proposed planting, proposed restrictions upon vegetation alteration, and other elements of the conceptual landscape design.

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

The plans shall be prepared and stamped by a team that includes a Registered Professional Engineer, Professional Land Surveyor and a Registered Landscape Architect.

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

- c. A schedule of the stages or phases of development, which the applicant proposes for construction of the SRD, including dates.
- d. Sample floor plans of dwellings; elevation drawings or models of dwellings; schedule of building materials.
- e. Plans showing proposed methods of storm water management, including drainage calculations per the Planning Board Rules & Regulations.
- f. Plans showing proposed wastewater disposal facilities.
- g. Sample copies of the condominium association or other legal structure formed for the operation, maintenance, management and enforcement of this development, including a master deed and bylaws of the organization. All such documentation shall include a reference to the objectives of the Special Residential Development and the requirement for 100% of the units to be owned and occupied by at least one person age 55 or over.
- h. A Municipal Lien Certificate indicating tax status satisfactory to the Rochester Tax Collector.
- i. Impact Analysis: A narrative report, satisfactory to the Planning Board, detailing the impact of the proposed project on the Town's capacity to furnish services including but not limited to roads, traffic, water, and sanitation and emergency services, including but

not limited to police, fire apparatus and ambulance services.

*(Amended: Article XXIX, October 24, 2005 Special Town Meeting)*

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

*(Amended: Article XXIX, October 24, 2005 Special Town Meeting)*

- k. An historical and archeological resources inventory approved by vote of the Historical Commission.

*(Amended: Article XXIX, October 24, 2005 Special Town Meeting)*

**3. Reports from Town Boards or Agencies** - The Planning Board shall transmit forthwith a copy of the application and plan(s) to the Board of Selectmen, Board of Health, Conservation Commission, Board of Assessors, Historic District Commission, Building Commissioner, Fire Department, Highway Surveyor and the Police Department.

Review and written approval of the concept for the proposal shall be obtained from both the Conservation Commission and the Board of Health, including confirmation of satisfactory soils testing for sanitary disposal, prior to Planning Board approval.

Plans shall be approved by the Police Chief and Fire Chief for satisfactory emergency access and facilities. This review may result in requirements for additional facilities such as reserve water tanks, emergency communications, etc.

Failure of other boards or agencies to make a written recommendation or submit a written report within 35 days of receipt of the application shall be deemed a lack of opposition.

**4. Planning Board Action** - The Planning Board shall not grant a Special Permit for a SRD unless it shall, after holding a public hearing in accordance with requirements of Chapter 40A of the General Laws, find that:

- (i) the SRD complies with the purposes of the SRD bylaw as stated herein;
- (ii) the SRD is in an appropriate location and does not significantly alter the character of the neighborhood in comparison to a single family residential development;
- (iii) adequate and appropriate facilities will be provided for the proper operation of the SRD;
- (iv) the SRD use would not be detrimental or offensive to the adjoining zoning districts and neighboring properties due to the effects of lighting, odors, smoke, noise, sewage, refuse materials or other nuisances;
- (v) the SRD use would not cause undue traffic congestion in the immediate area;
- (vi) the SRD responds to the recommendations of Town

Boards and Agencies; and (vii) the granting of the Special Permit would not result in unsuitable development of the land in question.

**5. Building Permit Conditions** - Any Special Permit issued hereunder shall impose the following conditions to be satisfied before construction of any dwelling unit commences

(i) the applicant shall have submitted to the Planning Board detailed plans showing the locations, designs and layouts of such buildings and all access roads, driveways and accessory structures, (ii) the applicant shall have provided security by covenant, bond or other means satisfactory to the Planning Board, generally of the character that in the context of a subdivision, would satisfy the requirements of General Laws Chapter 41, Section 81 U, securing the construction and installation of access roads, driveways, utilities, drainage and related services. The Building Commissioner shall not issue a permit for construction of any dwelling unit in an SRD until he has received a notice from the Planning Board that these conditions have been satisfied.

*(Amended: Article XXIX, October 24, 2005 Special Town Meeting)*

The Planning Board may in a Special Permit for a SRD set forth further requirements and conditions as the Board shall deem appropriate to accomplish the purposes of this Bylaw, including requirements of recording of plans and documents and report thereof to the Board.

**6. Enforcement** – The Town shall have the right to enforce the conditions and safeguards imposed on the exercise of Special Permits under this Section in equity or at law and to recover from the applicant, his successor or approved assignee(s) all moneys that may be required to complete the development plan approved.

#### **E. Fee Structure**

The Planning Board shall not accept an application or schedule a public hearing if the full fee amount as determined herein is not submitted with the application and plans. All application fees are non-refundable. The following fees shall apply to plans for an SRD:

#### **Application Fee:**

Per residential unit:	\$200.00
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#### **Outside Consultants:**

The Planning Board may promulgate reasonable Rules and Regulations, consistent with General Laws Chapter 40 A, Section 9, to implement this

section, including rules relating to the employment of outside consultants at the applicant's expense.

**F. Further Conditions**

A tract of land that is subject to a special permit granted under this section shall not be further divided, and a note to this effect shall be shown on the plan. Subsequent to granting the permit, the Planning Board may permit minor adjustments of building locations within the cluster that do not result in violation of the By-Laws. However, any change in overall density, street layout, or open space layout will require further hearings.

*(Amended: Article V, October 29, 2007 Special Town Meeting)*  
*(Amended: Article XXIX, October 24, 2005 Special Town Meeting)*

1. The Planning Board may impose other conditions, safeguards, limitations on time and use, as it deems reasonable to achieve the stated purposes of this section.
2. Exterior modifications, excluding routine maintenance, to residential units and/or common facilities not formally approved by the Special Permit Decision, as amended and recorded from time to time, shall require application to the Planning Board.

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