

TOWN OF HOPKINTON
ZONING BYLAW

ARTICLE XIII

Garden Apartments in Residential Districts

[Added 3-11-1970 ATM, Art. 53; amended 3-12-1973 ATM, Arts. 27, 28, 29, 30 and 34; 4-14-1975 ATM, Arts. 32, 33, 34 and 35; 4-13-1978 ATM, Art. 39; 4-14-1986 ATM, Art. 37; 5-5-1997 ATM, Art. 22; 5-5-2003 ATM, Art. 22]

§ 210-72. Planning, design, conservation and development objectives. [Amended 5-1-2006, Art. 35]

- A. General intent and purposes. It is the intent and purpose of this Article XIII to maintain a working balance in the Town of Hopkinton between the demand for new development and its rewards on the one hand, and the human need for our natural resources and their maintenance on the other. The Town of Hopkinton cannot and should not prevent its citizens from owning, selling and developing their land. But it is also a fundamental and important truth that with each new house and each cut tree, the environment and ecology of the Town changes. Therefore, the control and maintenance of a reasonable balance between new development and the preservation of the town's natural resources is a legitimate area for public concern and legislation. It is, therefore, the intent of the Town that this article shall provide for the reasonable protection of its natural resources by properly conserving its land as development takes place. This shall be accomplished by establishing a procedure whereby each proposal for apartment development will be reviewed separately and judged by standards designed to protect both the special quality of the site and its environs and the Town and its environment against misuse or overdevelopment of the land. In this article, the guiding principle in judging apartment proposals will be the variety and diversity in the proposed development and the care shown by the developer in conservation, site planning and building design as applied to the specific parcel of land proposed for development.
- B. General objectives. The following planning, design, conservation and development objectives will apply to all proposals for apartment construction in Hopkinton:
- (1) To provide new housing for all citizens regardless of income, race, color, creed or other like characteristics.
 - (2) To promote the beneficial use and conservation of land by relating proposed buildings to the unique features, conditions and natural quality of the site. Beneficial use shall be measured in terms of topography, surface and subsurface soil and drainage conditions, location with respect to adjacent or existing streets, buildings or other natural features, the type and size of trees to be retained or removed, the use and retention of natural ground cover, open space, water, swamp, other natural water source or feature, stone walls, ledge or any other feature of recognized conservation or historical significance.
 - (3) To facilitate sound and orderly public and private development in Hopkinton by relating an apartment proposal to any public Master Plan for land use, conservation, streets or public facilities.
 - (4) To recognize the importance of diversity and variety in the exterior quality, appearance and design of apartment structures by rejecting monotonous, look-alike designs and to encourage those designs that are specifically designed for and related to the special conditions and features of the proposed site.
 - (5) To conserve and preserve the significant and unique natural and historic features of the proposed site in their natural state and ensure or provide for their permanent protection

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from future encroachment or development. Permanent protection of the undeveloped, conservation or open-space portion of the development site shall be assured by a legally binding agreement running with the land, which shall permanently protect a minimum of 30% of the development site as open space. [Amended 5-1-2006 ATM, Art. 35]

- (6) To give encouragement to owners and developers to produce the highest quality design in the apartment structures to be built by using visual space planning applied to other site development elements, such as parking areas, wooded or conservation areas, adjacent streets, accessory buildings, lighting and open areas.
- (7) To give fair and full consideration to the opinions and statements of abutting property owners at the public hearings required for each application.
- (8) To provide for design review of all proposals prior to construction, to ensure compliance with the above intent and objectives and to assure that the proposal will not result in or contribute to incompatible use of the land, pollution of the soil or groundwater, traffic congestion or inappropriate site development.

§ 210-73. Definitions.

As used in this article, the following terms shall have the meanings indicated:

BASEMENT -- Any portion of a structure below the first story.

CONDOMINIUM -- A method of ownership whereby an individual may own separately one or more single dwelling units in an apartment building or project. Said individual and other owners of such apartment units may have an undivided interest in the common areas and facilities that serve the unit or project, such as land, roofs, floors, main walls, stairways, lobbies, halls, parking areas, driveways, recreation areas, open space areas and natural landscaped and/or conservation areas. Said individual may take title to his individual dwelling unit or units, vote on a proportional basis in all respects of his undivided interest in common areas, be taxed separately by the Town for the individual dwelling unit or units and may have a mortgage on the individual dwelling unit.

FLOOR AREA -- The sum of the horizontal area of the several floors of a dwelling unit measured from the outside, excluding cellar floor areas, basement rooms, garages, porches and open attics or unfinished rooms, and for which a certificate of occupancy has been issued as habitable living quarters. In split level houses, the first two levels may be counted as one floor, provided that the difference in floor levels is less than five feet.

GARDEN APARTMENTS -- A multifamily residential land use consisting of multiple dwelling units on one single contiguous parcel.

HALF-STORY -- Any place under the gable, hip or gambrel roof, the floor of which is not more than two feet below the plate.

SCREENING -- A suitable area that will serve as a buffer to adjacent properties, will reduce noise levels and partially obscure any structures.

STORY -- That portion of a building above the finished grade included between the floor and the ceiling or roof above it.

USABLE LAND -- Usable land excludes wetland and floodplains as defined in MGL c. 131, § 40, and areas with slopes of more than 15%. For the purpose of calculating density, 20% of unusable land may be considered usable.

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§ 210-74. Use regulations and dimensional requirements.

- A. Use districts. Garden apartments, under single ownership or as condominiums, shall be allowed by special permit in all districts where residential uses are permitted by right in accordance with the requirements and regulations set forth in this article.
- B. Dimensional requirements. The following lot sizes, setbacks and regulations must be adhered to by each applicant:
- (1) Anyone wishing to build garden apartments may do so only on a site containing an area of not less than 10 acres of usable land, but not more than 30 acres of usable land per apartment project and/or application. The minimum lot frontage shall be 200 feet on a public road.
 - (2) Density shall be a maximum average of eight bedrooms per acre of usable land.
 - (3) The total ground floor area of apartments, garages and accessory buildings shall not exceed 20% of the site area.
 - (4) Garden apartment units may contain one or two bedrooms. One-bedroom units shall contain a minimum of 600 square feet of floor area. Two-bedroom units shall contain a minimum of 800 square feet of floor area. **[Amended 5-4-2009 ATM, Art. 25]**
 - (5) Buildings shall not exceed 2 1/2 stories in height and shall contain a maximum of 12 units. The number of detached single-family dwelling units shall not exceed 10% of the total number of dwelling units in the project.
 - (6) Parking spaces. There shall be provided two parking spaces per unit, at least one of which shall be located so as to provide convenient access to its assigned dwelling unit. Parking garages will be permitted as a parking space if located and designed so as to complement the building design and site layout.
 - (7) Setbacks. All buildings must be located a minimum of 100 feet from any side or rear lot line and 100 feet from any established street layout or, where applicable, any defined street line of a public road, which street setback area shall be undeveloped and/or landscaped. Upon a finding by the Planning Board that a setback of lesser width would be sufficient to screen and/or separate the development from adjacent property, or would allow a historic structure to be preserved, the setback may be reduced. The Board may require no-cut easements, conservation restrictions, historic preservation restrictions or the like where the setback has been reduced. Buildings shall be located a minimum of 20 feet from interior roadways and driveways which are not considered streets or public roads. **[Amended ATM 5-3-2010, Art. 43]**
 - (8) Maintenance of roads. Maintenance of roads and driveways, including snowplowing within the project limits, is the responsibility of the project owner.
 - (9) Lighting. All lighting must be directed away from adjoining property.
 - (10) Signs. Signs are subject to such limitations of size and usage as may be imposed by the Planning Board.

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- (11) Rubbish disposal. Rubbish disposal shall be provided for by the owner and not by the town. There shall be no outside burning of rubbish. Inside incinerators which are approved by the Planning Board may be allowed.
- (12) Underground utilities. Underground utilities are mandatory and shall be installed in accordance with the standards contained in the subdivision rules and regulations of the Town of Hopkinton.
- (13) Recreation area. Suitable recreation space of at least 600 square feet per dwelling unit shall be provided for both adults and children. Such areas shall be suitable for the siting of active recreational facilities and shall be in addition to the open space required for the project. Such recreation areas may be contiguous to the open space or may be separately located.
- (14) Landscaping. Suitable landscaping materials no less than 15 feet in width must be placed along property lines to provide screening if there is no suitable natural growth in these areas. No solid fences shall be allowed. The screened area may be included in the required setback distances. The Planning Board may require suitable landscaping materials up to 50 feet in width if it determines that the additional width and screening is necessary in any location along the property lines. **[Amended 5-7-2007 ATM, Art. 29]**
- (15) Suitability of land area. Natural watercourses and ponds may not be altered, filled, drained or relocated. Any pond that has been in existence for over 25 years shall be deemed to be a natural pond. Floodplain or marshes may be included as part of a lot, but may not be altered, filled, drained or relocated and may not be used for building sites, sewage disposal areas or ways.
- (16) Distance between structures. The distance between structures shall be no less than the average height of the two structures or 35 feet, whichever is greater. Such distance shall include any garages or other accessory structures.
- (17) Road Construction. Roads are to be constructed in accordance with the Design Standards and Construction Requirements of the Subdivision Rules and Regulations of the Town of Hopkinton with the exception of width and length, which shall be determined by the Planning Board based on the specific characteristics of each plan submittal. The Planning Board may grant waivers from the Design Standards and Construction Requirements if the Board determines that such waiver will not result in any substantial detriment to the public good or substantially derogate from the intent or purpose of such Standards or Requirements or of this Chapter. All requests for waivers must be in writing and must be submitted to the Board at the time of plan submittal. Inspection of the roads during construction shall be in accordance with the procedures contained in the Subdivision Rules and Regulations and the inspection process shall be administered by the Planning Board. Such procedure shall include the payment of any fees or deposits for the inspections as required by the then applicable Subdivision Rules and Regulations. **[Amended 5-5-2003 ATM, Art. 22]**
- (18) Open space, as described in § 210-72B(5), shall consist of a minimum of 30% of the development site and shall be clearly delineated and defined on the site plan of each application. It is the intention of this article that the open space shall generally occur as a single contiguous area of open space which shall retain those natural features of the site most worthy of preservation in their natural state.
- (19) Where the Planning Board has issued a special permit pursuant to § 210-117.2, Lots with Historic Structures, for any of the land subject to a Garden Apartment special

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permit or site plan application, the Board may authorize the reduction of any of the dimensional requirements of this Article in order to facilitate the preservation of an Historic Structure. **[Added 5-2-2011 ATM, Art. 44]**

§ 210-75. Administration. [Amended 5-4-2009 ATM, Art. 25]

A. Application procedure. The application procedure consists of two steps: application for garden apartment concept plan special permit approval to the Planning Board and application for garden apartment site plan approval to the Planning Board. A garden apartment site plan shall be considered neither a definitive subdivision plan under the provisions of the Subdivision Control Law,¹ nor a site plan under the provisions of Article XX of this Chapter. A garden apartment site plan shall be considered a technical administrative review of an approved concept plan. The garden apartment concept plan special permit is the special permit referred to in § 210-74A of this article.

(1) Concept plan special permit.

(a) A record owner desiring to use land for garden apartments shall file with the Planning Board an application for a garden apartment concept plan special permit to use the land for garden apartments, together with such plans, drawings, specifications and additional information as set forth in the Garden Apartment Submission Requirements and Procedures Manual adopted by the Planning Board and filed with the Town Clerk. After adoption of this article, the Planning Board shall vote to adopt the Garden Apartment Submission Requirements and Procedures Manual after holding a public hearing.

(b) Within seven days of receipt of the application for the garden apartment concept plan special permit, the Planning Board shall transmit copies of the application and plan to the Director of Public Works, Conservation Commission and Board of Health for comment and recommendations. The Planning Board shall not approve any such application until the final reports of such departments shall have been submitted to it or until 35 days shall have elapsed after the transmittal of the plans and additional materials without such report being submitted. Consultant review fees shall be governed and set by the Planning Board and shall be assessed to the record owner and applicant. **[Amended 5-4-2009 ATM, Art. 25]**

(c) The Planning Board will hold a public hearing and will file its decision with the Town Clerk as required by MGL c. 40A, § 9.

(d) Approval criteria. Before the Planning Board may issue the special permit, it shall determine each of the following:

[1] That the proposed development constitutes a desirable development in the neighborhood and in the town.

[2] That the proposed development will not be detrimental to the neighborhood or the town.

[3] That the plans generally provide adequately for convenience and safety of vehicular and pedestrian movement within the site and in relation to

¹Editor's Note: See MGL c. 41, § 81K et seq.

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adjacent streets, property or improvements, with the understanding that review of such items will be more detailed at the site plan stage.

- [4] That the plans appear to provide adequate methods of disposal of sewerage, refuse and other wastes, adequate methods for drainage for surface water and seasonal flooding, if any, and adequate provision of water for domestic purposes, with the understanding that review of such items will be more detailed at the site plan stage.
 - [5] That the plan complies with the Master Plan.
 - [6] That the provisions of § 210-72A and B of this article have been met.
- (e) Approval of the garden apartment concept plan special permit application shall not be considered approval of any construction. This approval is a preliminary approval intended to give guidance to the applicant for the development of the site plan and to determine whether the proposed concept meets the objectives of the bylaw and the town.
 - (f) After a garden apartment concept plan special permit application has been submitted, no tree removal, no utility installation, no ditching, grading or construction of roads, no grading of land or lots, no excavation except for purposes of soil testing, no dredging or filling and no construction of buildings or structures shall be done on any part of the site until the application has been reviewed and approved as provided by these regulations.
 - (g) A garden apartment concept plan special permit shall become void within two years from the date of issue, which two years shall not include time required to pursue or await determination of an appeal referred to in MGL c. 40A, § 17. If any construction work contemplated by such special permit shall have commenced and proceeded in good faith continuously, except for good cause, but notwithstanding, the project shall not have been completed within such two-year period, the applicant must request extension of the special permit from the Board, in which case the Board shall extend the special permit for such period of time as it deems appropriate.
- (2) Garden apartment site plan. After approval of the concept plan special permit, the applicant may submit an application for approval of a garden apartment site plan to the Planning Board. No garden apartment site plan application may be submitted unless a concept plan has been approved and is currently in effect. The garden apartment site plan shall be designed to be in conformance with the approved concept plan special permit. If the Planning Board determines that there is a substantial variation between the concept plan special permit and the site plan, it shall hold a public hearing on the modifications of the concept plan special permit.
 - (a) Within five days after receipt of the complete application, the Planning Board shall distribute copies of the application and plans to the Director of Public Works, Conservation Commission and Board of Health. These departments shall transmit recommendations, if any, to the Board within 35 days of receipt of the plans.
 - (b) The Board shall hold a public hearing within 45 days of the receipt of the complete application. Notice of the time, place and subject matter of the public hearing shall be given by the Planning Board at the expense of the applicant by

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advertisement in a newspaper of general circulation in the town, once in each of two successive weeks, the first publication being not less than 14 days before the day of such hearing, and by mailing a copy of such advertisement to the applicant and to all owners of land abutting the land included in such plan as appearing on the most recent tax list.

- (c) The Board shall file its decision with the Town Clerk within 90 days from the date of submission. This time may be extended by mutual agreement between the applicant and the Planning Board.
- (d) Approval criteria.
 - [1] Before the Planning Board may approve the site plan, it shall determine each of the following:
 - [a] That the plans provide adequately for convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent streets, property or improvements.
 - [b] That the plans assure the adequacy of the methods of disposal of sewerage, refuse and other wastes and the methods of drainage for surface water and seasonal flooding, if any.
 - [c] All of the provisions of this Chapter, including § 210-72A and B, have been complied with and all necessary special permits and variances have been granted from the Board of Appeals.
 - [2] If the Planning Board does not make all of the above determinations, it shall deny the application stating its reasons for such denial.
- (e) The Board may approve the site plan with conditions. Those conditions may include, but shall not be limited to, the following:
 - [1] Phasing of the garden apartment site plan construction.
 - [2] Performance guarantee. As a condition of plan approval, the Planning Board may require that a performance bond, secured by deposit of money or negotiable securities in the form selected by the Board, be posted with the Town to guarantee completion of improvements to be made in compliance with the plans submitted and approved hereunder. The Board may also require that an amount be included for land restoration not having to do with the construction of improvements. The amount of security shall be determined by an estimate from the applicant's engineer which may be confirmed or increased by the Board. The Town may use the secured funds for their stated purpose in the event that the applicant does not complete all improvements in a manner satisfactory to the Board within two years from the date of approval, or the final date of the last extension of such approval, if any. The term "improvements" shall not include the construction of buildings. **[Amended 5-4-2009 ATM, Art. 25]**
 - [3] Off-site improvements to correct conditions directly caused by the garden apartment development.

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[4] The duration of the Board's approval and a specified date of completion.

- B. Modifications to approved plan. The approved garden apartment site plan may be modified or amended by the Planning Board on its own motion or upon application by the developer. If the Board determines that such modifications are significant, it shall hold a public hearing in accordance with the provisions of Subsection A(2) above.
- C. Completion.
 - (1) Upon completion of construction of all site work and building construction, the applicant shall file a completion certificate with the Director of Municipal Inspections, such certificate to state that the site development, conservation and building construction has been completed in conformity with the approved plans.
 - (2) The applicant shall submit two as-built plans showing the entire site and including, but not limited to, the following: utilities, structures, roadways, open space and recreation areas.
 - (3) After submission of the completion certificate and as-built plans, the Board shall review such information and if such as-built plans conform to the site plan as approved and modified or amended, release the remaining performance guaranty, if any.
- D. Appeal. Appeals of decisions made under this article shall be pursuant to MGL c. 40A, § 17.