

## **Part 5**

### **Section §75-26.4 Planned Development District**

#### **ROUGH DRAFT**

**The following pages include proposed new section §75-26.1 of the zoning code.**

#### **The purpose of these proposed edits is:**

- To enable PUD / PDD Planned Development projects which may only be authorized with specific Town Board approval.
- To permit and encourage certain types of uses such as mixed use developments and affordable housing in certain districts within the town.
- To permit specific uses, such as hotel & resort developments, to only be allowed under specific conditions and approval of the Town Board.

Text shown is proposed new code, unless noted otherwise.

## §75-26 – Planned Development District

**A. Purpose.** The Planned Development District (PDD) is intended to encourage creative, compact development while fostering community amenities such as a usable open space system for residents and nearby neighborhoods throughout the town. Approved Planned Development Districts are permitted to address the unique environmental, physical and cultural resources of the project area and neighborhood through a customized, site-specific development plan and accompanying regulatory framework.

Where a PDD rezoning is deemed appropriate by the Town, the conventional use and dimensional requirements set forth by other sections of this Local Law are replaced by an approval process in which an approved Development Plan becomes the basis for continuing land use review and approvals.

**B. Boundaries.** The PDD district is a floating district which is not currently shown on the Zoning Map. Landowners who wish to develop according to the provisions of this section may apply to the Town Board for a zoning map amendment to rezone their land PDD. The Town Board has the sole discretion whether or not to approve such a rezoning based on its merits, overall benefits to the Town and consistency with the recommendations of the Comprehensive Plan.

**C. General Criteria.** The legislative determination to establish a Planned Development District shall be based upon the following standards:

(1) Location. A Planned Development District (PDD) may be established at any location within the Town, except within the A-1 or I-1 Districts, if the objectives and provisions of this article are satisfied as determined by the Town Board.

(2) Developable Area. The minimum development area required to qualify for a Planned Development District shall be twenty (20) adjacent acres of land in the case of residential or general use, and ten (10) adjacent acres in the case of commercial uses. The calculation of such land area shall not include existing streets, easements, parks, or otherwise dedicated land or water areas in excess of five percent (5%) of the minimum gross acreage, lands designated on the official map for public purposes, or lands undevelopable by reasons of topography, drainage, periodic inundation by flood waters, or adverse sub-soil conditions.

(3) Ownership. The tract of land for a PDD project may be owned, leased or controlled either by a single person or corporation, or by a group of individuals or corporations. An application must be filed by the owner or jointly by the owners of all property included in the project or contract vendee(s) or holder of bona fide purchase option. In the case of multiple ownership, the approved plan and all amendments shall be binding on all owners and all successors in title and interest.

(4) Common Property. When common property exists, the ownership of such property may either be public or private. For private ownership, satisfactory arrangements must be made for the improvements, operation and maintenance of such common property and facilities, including private streets, drives service and parking areas and recreational / open space areas.

**D. Permitted Uses in PD Districts.** The classification and mix of uses permitted within an area designated as a PD District shall be determined by the provisions of this section and the approved plan of the project concerned. During consideration of the rezoning request, the Town Board may determine that specific uses are inappropriate for certain locations of town and establish a refined list on a case-by-case basis. This final list would be established for each PD application and included in the PD District Legislation and SEQR findings statement.

(1) For a PD District which occurs through the rezoning of residential lands, the approvable land uses shall be restricted to the following:

- a) Residences which may be of any variety of type as appropriate within the intent and objectives of this PD regulation;
  - b) Mixed use residential with limited commercial services and other non-residential accessory uses scaled to primarily serve the residents of the PDD which are in keeping with the scale, size and traffic capacities of the existing neighborhood and its structures. A variety and mix of different residential housing types is strongly encouraged.
  - c) Hotel and resorts and their non-residential accessory uses including, but not limited to, lodging facilities, meeting rooms, conference rooms, restaurants, health spas and recreation facilities.
  - d) Such other uses as are allowed in the underlying district and approved by the Planning Board.
02. For a PD District created through the rezoning of non-residential lands, the approvable land uses shall be restricted to the following:
- a) Commercial uses permitted in the underlying zoning, with mixed use residential component. A variety and mix of different residential housing types is strongly encouraged.
  - b) Commercial uses permitted in the underlying zoning, without a mixed-use residential component.

**E. Conservation analysis requirement.** For any PDD application within lands heretofore zoned in primarily residential districts, the applicant shall prepare a Resource Analysis Map of the property as described in §75-26 E(1)(a)[1]. Such analysis shall be submitted to the Town Board for review in conjunction with their submission of a proposed Development Plan.

**F. Intensity of residential land uses.** In order to provide additional amenities to the town, and prior to incentives or bonuses, the residential density allowed within a Planned Development District shall be determined according to the following standards:

- (1) Where a Planned Development District occurs by a rezoning of a prior residential district, the density shall not exceed the base density otherwise permitted per developable area in the “Density Control Schedule” for that district. The project amenity package will be considered for potential incentive to allow an increased density and/or smaller lot size per developable area above that base density.
- (2) Where a Planned Development District occurs by a rezoning of a prior non-residential district, the base residential density shall not exceed four (4) units per acre of developable area which shall also exclude areas used for nonresidential uses. Allowance of and any increases in residential density per developable area above the base shall be determined on the amenity package provided as part of the planned development.
- (3) Increase or bonus in density and/or change in permitted land use provided by the town in the PDD shall be commensurate with the amenity or benefit provided. As a general guideline, the amenity package proposed must be commensurate with any density increase or use change proposed, based on each additional unit beyond the base or allowed residential density and/or per 1,000 square feet of previously not permitted nonresidential (e.g., commercial) use. The Town Board may establish and maintain a required amenity schedule which outlines cash or equivalent reimbursements.
- (4) Amenity package shall include provision of on-site and/or off-site amenities beyond measures required to service the needs of the subject project and/or beyond the measures needed to mitigate the impact of the proposed project. The amenities may include but not be limited to the following:
  - (a) Open space system open to the public including a comprehensive multi-purpose path system and conservation lands (including developable land) permanently protected by conservation easement or other measure acceptable to the town.

- (b) Recreation amenities including parks, athletic fields beyond that required for the immediate residents of the project.
  - (c) Provision for the enhancement of public facilities including the public water, wastewater (sewage) and community services/public safety/transportation facilities.
  - (d) Affordable housing facilities for persons of low to moderate income.
  - (e) Cash payment to the Town for improvements or acquisition of public/community facilities such as improvements for roadways, parks, trails, water, sewer, parking, etc.
- (4) Where the Town Board determines that a suitable community benefit or amenity is not immediately feasible, or otherwise not practical, the board may require, in lieu thereof, a payment to the town of a sum to be determined by the board. These funds shall be deposited in a trust fund to be used by the town board exclusively for community benefits or amenities as defined herein.

### **G. Requirements for specific uses.**

- (1) Mixed Use Residential and Commercial.
  - (a) A variety and mix of different residential housing types.
  - (b) Residential housing units may only be provided on the upper floors above commercial space unless otherwise approved by the Planning Board.
- (2) Affordable Housing.
  - (a) A minimum of 10% of the proposed housing units shall meet the requirements for low to moderate income housing.
  - (b) Affordability provisions, as approved by the Planning Board, shall be established in a deed restriction, including restrictions on sale or lease and subsequent resale.
- (3) Hotel and Resort.
  - (a) A minimum of 40% of the total land area shall be devoted to open space and active or passive recreation uses for the primary use of the residents of the PDD.
  - (b) The project must be served by public water and sewer, or provide sufficient on-site supply and treatment facilities.
  - (c) Where projects have waterfront access, an accessible park and boat launch shall be provided for the use of the general public.

### **H. Establishment of a planned development district.**

- (1) Application for establishment of a planned development district shall be made in writing to the Town Board. Application shall be made by the owner(s) of the land(s) to be included in the district or by a person or persons holding an option to purchase the lands contingent only upon approval of the application for the change of zone. In the event an application is made by a person or persons holding an option to purchase the lands, the application shall be accompanied by a statement signed by all owners of such land indicating concurrence with the application.
- (2) The application must include an Environmental Assessment Form and all necessary documentation to comply with SEQRA. No application shall be deemed complete until a Negative Declaration has been made, or until a Draft Environmental Impact Statement has been accepted by the Town Board, acting as the lead agency, as satisfactory with respect to scope, content and adequacy. An application shall be accompanied by an application fee as set by the Town Board. All application fees are in addition to any required escrow fees, and do not cover the cost of environmental review. The applicant shall be

responsible for the total cost of environmental reviews that are determined to be necessary to meet the requirements of the State Environmental Quality Review Act (SEQRA). If the Board requires professional review of the application by a designated private planning, engineering, legal, Local Flood Plain Administrator or other consultants, or if it incurs other extraordinary expense to review documents or conduct special studies in connection with the proposed application, reasonable fees shall be paid for by the applicant and an escrow deposit will be required.

(3) Development Plan. The applicant shall prepare and submit a Development Plan of all lands and buildings within the area proposed for development. No application for site plan, special use permit, subdivision, or variance approval shall be reviewed or approved until a Development Plan has been approved by the Town Board in accordance with this chapter. In addition, with the exception of repairs and ordinary building maintenance, no building permit or certificate of occupancy shall be issued for any PDD project until a Development Plan has been approved by the Town Board in accordance with this chapter.

A Development Plan shall include the following:

- (a) Site location map. A site location map showing the location of the site in relation to existing roads, properties, structures, land uses, zoning districts, school districts, service and utility districts, hydrogeologic zone boundaries, flood hazard areas, special groundwater protection areas, historic district boundaries, and other similar significant information for the subject property itself and all areas within 500 feet of it.
- (b) A phasing plan for all construction and development work including required infrastructure.
- (c) The location of any existing buildings on the property and their associated redevelopment or rehabilitation plans.
- (d) The location of any proposed open space and recreation areas.
- (e) A Resource Analysis Map, if required in subsection E. above.
- (f) Proposed Land Use. A land use plan illustrating the proposed land use patterns as well as uses for each building, including statistical summaries of the total proposed quantity and type of each land use
- (g) Proposed Area and Bulk. Proposed area and bulk, setback and height regulations which will dictate the development.
- (h) Proposed Design Standards. Design standards which will dictate the architectural design, exterior materials, finishes, landscaping, signage, lighting and parking, with clear illustrations.
- (i) Summary Report. A description of the proposed physical changes to the project area in a report that includes graphics and a supporting narrative. The application shall contain sufficient facts and information for the Town Board or reviewing board to make the findings required under this section. Fully engineered plans and construction details are not required at this stage in the process.

(4) The Town Board shall refer the Development Plan and its related documents to the Planning Board and Ulster County Planning Board for review. The Planning Board shall, within 60 days of the date of referral, render either a favorable or an unfavorable report to the Town Board. The Planning Board may request a reasonable extension of time to review the proposal, if needed. If no report has been rendered after 120 days, the applicant may proceed as if a favorable report were given. A favorable report shall include a recommendation to the Town Board that a public hearing be held for the purpose of considering planned development district districting. It shall be based on the following findings, which shall be included as part of the report:

- (a) That the proposal conforms to the Town Comprehensive Plan and meets the purposes of this section.
- (b) That the site plan reasonably responds to existing site conditions, constrained lands and sensitive areas identified on the Resource Analysis Map.

- (c) That the proposal is conceptually sound in that it meets a community need and it conforms to accepted design principles in the proposed functional roadway system, land use configuration, open space system, drainage system and scale of the elements, both absolutely and to one another.
  - (d) That there are adequate services and utilities available or proposed to be made available in the construction of the development.
  - (e) The site shall be well-drained, and stormwater generated by development of the site shall not place an undue burden on existing facilities or contribute to downstream flooding.
  - (f) The site shall be located in an area suitable for such purposes and that any objectionable conditions such as odors, noise, dust, air pollution, high traffic volumes, incompatible land uses and other environmental concerns have been sufficiently mitigated.
  - (g) The architectural style of the proposed development, exterior materials, finish and color shall be consistent with existing community and neighborhood character.
- (5) An unfavorable report shall state clearly the reasons therefore and, if appropriate, point out to the applicant what might be necessary in order to receive a favorable report. The applicant may, within 10 days after receiving an unfavorable report, file a revised application with the Town Board. The Town Board may then determine on its own initiative whether or not it wishes to call a public hearing, or deny the application.
- (6) Upon receipt of a favorable report from the Planning Board or upon its own determination subsequent to an appeal from an unfavorable report, the Town Board shall set a date for and conduct a public hearing for the purpose of considering the PD redistricting for the applicant's plan. Such public hearing shall be conducted within 45 days of the receipt of the favorable report or the decision on appeal from an unfavorable report.
- (7) If the Town Board grants the planned development district rezoning, the Zoning Map shall be so amended. The Town Board may, if it feels it necessary in order to fully protect the public health, safety and welfare of the community, attach to its zoning resolution any additional conditions or requirements for the applicant to meet. Such requirements may include, but are not confined to, visual and acoustical screening, land use mixes, order of construction and/or occupancy, circulation systems, both vehicular and pedestrian, availability of sites within the area for necessary public services, such as schools, firehouses and libraries, protection of natural and/or historic sites and other such physical or social demands. The Town Board shall state at this time its findings with respect to the land use intensity and any applicable amenity packages.
- (8) Planned development district districting shall be conditional upon the following:
- (a) Securing of site plan approval in accordance with the procedures set forth in §60. Site plan approval shall be limited, however, to siting and dimensional details within general use areas and shall not significantly alter the concept plan as it was approved by the Town Board.
  - (b) Compliance with all additional conditions and requirements as may be set forth by the Town Board in its resolution granting the planned development district.

#### **I. Subdivision and Site Plan review.**

- (1) Upon approval of the Planned Development District by the Town Board, application shall be made within one hundred and twenty (120) days for approval of all or some portion of the intended development, in accordance with the more specific review requirements of the Town's Land Subdivision Regulations, the Site Plan Review and Approval Procedure contained in Chapter 60, and other applicable regulations.
- (a) Additional performance requirements which may have been specified by the Town Board in its PD District approval action, such as a time limit for either initiation or completion of improvements and other construction work on the proposed development, shall also be strictly enforced, with the Town

Board acting to return the property to its prior zoning classification unless the Town Board, upon specific application and for good cause, authorizes an extension of such performance requirement.

(2) Conformity with Development Plan required. The Planning Board shall not approve any site plan and/or subdivision within an area covered by an approved Development Plan unless the Board finds that the site plan and/or subdivision is in substantial conformance with the approved plan and any conditions and requirements imposed by the Town Board at the time of its approval.

(a) Repair and Maintenance. Nothing herein shall be construed so as to prevent the issuance of a building permit for repair of a building or structure so long as such repair does not result in the expansion of said building or structure, and the repair is necessary to prevent the deterioration of the building or structure or to prevent or remove an unsafe condition.

(3) Building projects within established districts. Application for approval of an additional building project or later phase within an established planned development district shall be made in writing to the Town Board which shall follow the procedures of this section in considering an amendment to a prior approved plan. All further development or phases within a PDD shall conform to the development standards established for that district.

(4) Performance surety. Before granting approval for a building project, the Town Board may require the applicant to furnish a performance bond in connection with the construction involved in the preparation of the building project site and/or in connection with construction of buildings. The amount of such bond and the amount of any liability insurance to be furnished shall be determined by the Town Board.

(5) Other approvals and permits. Before granting approval for a building project, the Town Board may require that evidence of such other approvals by appropriate governmental agencies as are normally required in connection with the collection and disposal of surface and subsurface waters, the collection and disposal of sanitary wastes and the provision of an adequate water supply be submitted to it.

(6) Time limits. If construction work on the proposed building project is not begun within the time limits specified in the building project approval or if such work is not completed within the period of time specified by such building project approval, approval of the project application shall become null and void and all rights therein shall cease unless the Town Board, for good cause, authorizes an extension.

(7) Building permits. Applications for building permits for each structure in a building project shall be made to the Building Department and shall be subject to all rules and regulations of the Town pertaining to the issuance of such building permits.

#### **K. Amendments to Planned Development Districts.**

(1) Request for changes in Development Plan. If in the site plan review it becomes apparent that certain elements of the Development Plan, as it has been approved by the Town Board, are unfeasible and in need of significant modification, the applicant shall then present a solution to the Planning Board. The Planning Board shall then determine whether or not the modified site plan is still in keeping with the intent of the zoning resolution. If a negative decision is reached, the site plan shall be denied. The developer may then, if they wish, produce another site plan in conformance with the approved Development Plan. If an affirmative decision is reached, the Planning Board shall so notify the Town Board, stating all of the particulars of the matter and its reasons for feeling the project should be continued as modified. Site plan approval may then be given only with the written consent of the Town Board.

(2) Exemptions. Proposed changes to a previously-established planned development district will be exempt from the formal amendment process if any or all of the following conditions are the only changes proposed:

- (a) Decrease of height or floor area of any approved project or program element or,
- (b) Reduction or elimination of any non-required parking spaces or,

(c) Change to an approved building resulting in a net impact of less than five percent of total gross square footage for projects less than 100,000 square feet.

(2) Determination of Amendment. Minor and Major - The Code Enforcement Officer shall determine whether a proposed amendment is a minor or major change to the approved site plan.

(a) Minor amendment. In making its determination, the Code Enforcement Officer shall make findings of fact upon which the decision shall be based. The officer must find that the effect of approving the amendment would have no significant additional adverse impact on the site or nearby neighborhood relative to the impact of the previously-approved plan. A minor amendment may be approved by the planning board subsequent to a public hearing.

(b) Major amendment. A major amendment is any change to a master plan and/or development standards and development program that has not been classified as “minor”. A major amendment shall only be approved by the Town Board following the procedure described in the establishment of a Planned Development District in this section.

**K. Effect of Conditions.** All conditions imposed by the Town Board, including those the performance of which are conditions precedent to the issuance of any permit necessary for the development of any part of the entire site, shall run with the land and shall neither lapse nor be waived as a result of any subsequent change in the tenancy or ownership of any or all of said area. Such conditions shall further be a part of any Certificate of Occupancy or Use issued for any use or structure in such development.