

## **Part 2**

### **Section §75-26.**

### **Residential Cluster Development**

*(Renamed: “Conservation Subdivisions”)*

#### **TOWN REVIEW COPY**

**The following pages include proposed edits to section §75-26 of the zoning code.**

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

- To enable Conservation Subdivisions within the zoning, as recommended by the Comprehensive Plan.
- To replace the existing cluster subdivision code with a conservation subdivision code.

See next page for a breakdown of the primary differences between the existing code and the proposed code.

NOTE: The contents of this section §75-26 are proposed to be replaced in their entirety.

All text shown is new, unless noted otherwise.

NOTE:

The following is a breakdown of the primary differences between the existing cluster development code, and the proposed conservation subdivision code:

1. Currently, cluster subdivision design is optional. Under the proposed code, all major subdivisions involving the creation of 8 lots or more would be required to be designed as a conservation subdivision.
2. Currently there is no requirement for applicants to do any natural resource or site analysis of the property to determine where development should be located, and what lands should be protected. The proposed code requires applicants prepare a site analysis and discuss with the Planning Board what areas of the site must be protected in the sketch plan phase.
3. Currently, the density of a cluster subdivision must only match the permitted density otherwise allowed. This method does not take into consideration soil capacities, septic requirements, the presence of steep slopes, wetlands or other constrained areas which would prohibit development, potentially allowing for more lots on a property than would normally be allowed. The proposed code requires that applicants produce a regular (conventional) subdivision layout to determine the actual number of lots which the site can accommodate.
4. There are currently no minimum requirements in order to qualify as a cluster subdivision. The proposed code would include minimum sizes and land characteristics in order to qualify.
5. Currently, the amount of required conservation land must equal the amount of lot size reduction, which can lead to very small conservation areas, down to a minimum of 3 acres. Under the proposed code, the conservation area must equal 30-40% of the total property, with a minimum of 5 acres.
6. Currently, there is no requirement that the protected open land contain “buildable” land – and as such may be entirely made up of steep slopes or wetlands. The proposed code requires that a minimum percentage of the total protected open space be buildable land.
7. Currently, the code does not qualify what type of land can be considered for protected open space. The proposed code prohibits disturbed areas (non-natural) from being considered as protected open space.

**§75-26 – Residential Cluster Development Conservation Subdivisions**

**A. Intent and Purpose.** The purpose of this section is to preserve to the extent practicable the Town of Rosendale's rural character and the community's irreplaceable agricultural, historic, scenic, and environmental resources by permitting and encouraging residential conservation development. In order to promote the objectives identified in this section, particularly to preserve the natural, agricultural and scenic qualities of open space use of land "conservation development" shall mean a subdivision plat in which layout, lot size, and some bulk requirements may be modified to provide an alternative permitted method for the layout, configuration and design of lots and supporting roads, utility lines and other infrastructure, parks, and landscaping which would result in development that is less likely to have an adverse environmental impact than a conventional subdivision. More specifically the conservation development shall be designed to achieve one or more of the following:

- (1) Directing human uses toward the least sensitive areas, and minimize alteration of natural features, including vegetation, soils, bedrock, and waterways;
- (2) Preserving links between natural habitats on adjacent properties;
- (3) Maintaining broad buffer zones of natural vegetation along streams, along shores of other water bodies and wetlands, and at the perimeter of other sensitive habitats;
- (4) The preservation of national, state and local historic buildings and contributing landscape, particularly but not limited to the hamlets where buildings and landscape combine to create important and unique settings;
- (5) The protection of designated wetlands, watercourses, watersheds, groundwater resources, unique geological features, mature trees, and similar environmentally encumbered or environmentally valuable assets;
- (6) The siting of buildings and other improvements in order to minimize, and eliminate if possible, adverse visual impacts on the viewshed from scenic roads or other scenic areas;
- (7) The providing of a variety of housing types meeting the needs of the community, including where permitted, detached single-family homes, duplex units, and multiple dwelling units;
- (8) The preservation of farmland potential wherever possible; and
- (9) The achievement of community land use planning and development objectives set forth in this Chapter and in the Town of Rosendale's Comprehensive Plan.

**B. Applicability.** All new major subdivisions involving 8 or more building lots within the A, R-1, R-2 and R-2a districts are required to be designed as a conservation subdivision in accordance with the provisions of this section.

- (1) Applicants proposing smaller subdivisions may submit a request for a conservation subdivision if the site is 10 or more acres in size, contains a contiguous unaltered tract of land large enough to meet the open space requirements and includes any or all of the following features which could be preserved to maintain the overall character, resources and/or natural beauty of the land:
  - (a) Is adjacent to other conservation or protected land areas which could be expanded.
  - (b) Has significant road frontage which provides public views of the parcel as part of the local streetscape or viewshed.
  - (c) Is located on a hill or bluff which is readily visible from surrounding areas, providing public views of the natural hillside as part of the local viewshed.
  - (d) Includes cultural resources such as historic or locally important houses, barns, stone walls or foundations, cemeteries, etc.

- (e) Includes active or previously productive agricultural land.
  - (f) Includes prime farmland soil or farmland soil of statewide importance and /or has hill slopes with good air drainage for orchards and vineyards.
  - (g) Includes unique land features such as large old-growth trees, hedgerows, rock outcroppings, meadows, waterbodies, or similar attractive elements which could be showcased as part of the design.
  - (h) Includes known plant or animal habitats including those that may be unique, rare or endangered.
  - (i) Includes trails, is adjacent to trails, or includes or is adjacent to areas that could be used for trails, which could be linked and preserved as part of a passive recreation system.
  - (j) Includes any steep slopes, wetlands, streams, lakes, ponds, karst topography or other constrained lands as defined in §75-26.3 Constrained Lands.
- (2) The Planning Board may, at its discretion and as part of SEQR, require a conventional subdivision applicant to submit a conservation subdivision layout as an alternative if, in its judgment, the site includes any of the criteria above, and such layout would potentially reduce adverse environmental impact or otherwise meet the goals and objectives of the Chapter and/or the Comprehensive Plan.
- (3) Allowable Residential Types. The allowable residential units in a conservation subdivision may be developed as single-family or two-family dwellings. The allowable residential units in a conservation subdivision may be developed as multifamily dwellings upon approval by the Planning Board of a Special Use Permit. Such permit shall be conditional upon the following:
- (a) The proposed multifamily structures shall be broken down into groups where no more than eight dwelling units are provided per structure.
  - (b) The maximum height of all multifamily structures shall be limited to 30 feet.

**C. Procedures.** All applications being considered under this section shall adhere to the submission requirements set forth within Chapter 60, Subdivision of Land. The following requirements and procedures shall be followed in conjunction with those submission and process requirements:

**(1) Step 1: Prepare and Submit Resource Analysis:** In order for an application to be reviewed for conservation subdivision, a Conservation Subdivision Resource Analysis must be prepared and submitted to the Planning Board for review.

(a) Submission Requirements: The submission request should include, but is not limited to, the following items:

[1] Resource Analysis Map: In addition to the requirements of a sketch plat submittal under §60-7, a Resource Analysis Map shall be submitted to the Planning Board which shall depict the following:

- (i) Any of the site features listed under criteria for acceptance, above.
- (ii) The extents of existing wooded areas and any tree-lines, fields or meadows.
- (iii) Areas of constrained land, as defined in §75-26.3, should be graphically illustrated on the map for clear visual reference including, but not limited to, wetlands, streams or other bodies of water, floodplains, areas of steep slopes.
- (iv) Any existing roads, building setbacks, or known easements.
- (v) General topographic information, contours at intervals of 10 feet or less if available.
- (vi) Resource Analysis Maps must be drawn to a minimum scale of not less than 1 inch equals 100 feet. If accurate site survey information is available, this information should be used to create the map, however it is not a requirement.

[2] The tax map sheet, block and lot numbers, as available from the Town Assessor's Office.

[3] Soil(s) maps that indicate suitability and limitations for agriculture and development and if proposed, locating the most favorable soils for septic.

[4] A conventional subdivision development plat in accordance with sketch plat submittal under §60-7, containing proposed lots, streets, rights-of-way, and other required elements.

(i) The conventional sketch plat submission may be waived if, in the Planning Board's judgment, the conservation design clearly would not meet or exceed the number of lots possible under a conventional development layout.

[5] An aerial or orthographic photo which delineates the property boundaries and includes surrounding parcels.

[6] An aerial or orthographic photo which shows the context of the property with respect to the surrounding area – at a minimum the area depicted should extend to the nearest [public](#) roads in each direction.

[7] Photographs of various areas of the site, including the property as seen from adjacent public roadways.

[8] Photographs of the site from a distance if on a hillside or part of the viewshed in other areas of Town, if applicable.

[9] Environmental Assessment Form (EAF).

[10] Other available information regarding the natural characteristics of the site, as applicable.

(b) The Planning Board, in conjunction with representatives of the Environmental Commission and/or appropriate planning and engineering consulting professionals retained by the Town, shall review the applicant's resource analysis for completeness and conduct a site visit to verify accuracy. The site visit may also be used by the Planning Board to help determine relative priorities of conservation value. The applicant shall secure permission and access to the parcel prior to submitting an application to the Planning Board if the applicant is not the property owner.

**(2) Step 2: Resource Analysis Worksession.** The purpose of this worksession is for the Planning Board and the Town planning consultant and/or Town engineer to review the Resource Analysis Map with the applicant and determine what areas of the site should ideally be protected, and what areas are more suitable for development.

(a) Types of Protection: The areas of protection should be agreed upon by the Planning Board in discussion with the applicant using the Resource Analysis Map, photographs and other available information. The areas of land considered for protection may fall into two categories:

(i) Conservation Areas: (Required) Areas of the parcel which are candidates for protection from site disturbance during development and which could be included within a permanent conservation easement.

(ii) Reserved Areas: (Optional) The Planning Board may also optionally identify areas of the parcel which should be protected from disturbance during development or otherwise set aside as a future project amenity (e.g. open fields or common green) and showcased as part of the site design. Such areas should be reserved or designed as common open space such as a stone wall, grove of trees, or a commons, square or other proposed site features which can be integrated into the design to enhance the beauty of the development. These areas do not have to be included in a conservation easement, but are instead intended to be showcased as part of the development design.

(b) General Considerations: The following guidelines should be used when considering what areas of land should be protected:

(i) Conservation areas should be contiguous, unless the Planning Board determines that a non-contiguous arrangement would meet the goals and intent of this section.

(ii) Disturbed areas of land shall not be included as conservation area except for roads, access ways, and other utilities as necessary, but not to exceed 5% of the conservation area. Recreation fields, landscaped greenspace, naturalized stormwater detention areas, and leachfields may exceed 5% of the conservation area, but not more than 20% without Planning Board approval.

(iii) Conservation areas should connect to adjoining open spaces or conservation areas on adjacent lands wherever possible.

(iv) Vegetative buffer areas should be provided adjacent to natural resources such as wetlands, waterbodies or agricultural land.

(v) Protected areas should be prioritized in terms of relative importance. Consult the Rosendale Biodiversity Assessment and habitat maps to determine whether the site contains any habitats recommended for priority preservation.

(vi) Agricultural land should be left unfragmented to the maximum extent practical to ensure continued production and use of the land.

(c) Review of Analysis Map. The Planning Board shall identify to the applicant the preliminary areas of land which should be protected as either Conservation or as Reserved Areas, and what areas of land are suitable for development. These areas should be drawn and identified on the Resource Analysis Map during the meeting. The Resource Analysis Map may also be amended with preferred locations for intensive development as well as acceptable locations for less dense development, as suggested by the Planning Board.

**(3) Step 3: Submit Conservation Subdivision Sketch Plat.** The applicant shall prepare and submit a conservation subdivision sketch plat and submit a request for a conservation subdivision Sketch Plat Review. The subdivision should be designed to avoid disturbance to any areas identified for protection by the Planning Board during the Resource Analysis Map worksession.

(a) Minimum Conservation Areas. Based on the recommendations of the Planning Board and the approved Resources Analysis Map, the applicant shall designate and highlight areas of the property on the sketch plat for permanent protection through a conservation easement agreement. These areas should include the areas desired for protection as directed by the Planning Board on the Resource Analysis Map, as follows:

[1] The minimum amount of conservation land proposed within the A district shall be 40% of the total lot area;

[2] The minimum amount of conservation land proposed within the R-1, R-2 and R-2a districts shall be 30% of the total lot area;

[3] At least 30% of the required conservation area must include buildable land.

[4] At no point shall the amount of conservation land be less than 5 acres.

(b) Minimum Lot Sizes. The minimum lot sizes permitted within a conservation subdivision shall be as follows:

<b>Conservation Subdivision Lot Size Requirements</b>			
District	Minimum Lot Size (square feet)	Minimum Lot Width (feet)	Minimum Front Yard (feet)
<b>A</b>	30,000	125	50
<b>R-1</b>	15,000	80	30
<b>R-2 / R-2a</b>	7,500	60	25

(c) Subdivision layout.

- [1] All minimum lot sizes and densities must be approved by the Planning Board and shall meet the specific structural and septic soil capacities and County Department of Health standards for their lot locations.
- [2] The number of building lots on the proposed sketch plat shall not exceed the number of approvable lots shown on the conventional sketch plat submitted as part of Step 1.
- [3] Any additional places or elements identified by the Planning Board as Reserved areas should also be integrated into the site plat, where possible.
- [4] Setbacks. Setbacks from adjacent existing lots must meet the requirements set forth in the Density Control Schedule; however setbacks internal to the conservation subdivision may be reduced, with Planning Board approval and in compliance with applicable safety regulations.
- [5] Conservation areas should be designed to have useful massing or clusters which create meaningful natural areas. Leftover strips of land or perimeter areas which do not create meaningful conservation areas typically do not qualify as conservation land unless they are adjacent to other conservation land or provide useful ecological purpose, such as a riparian buffer to a waterway.
- [6] Conservation areas which are independent of, and do not overlap with, private homeowner lots are encouraged wherever possible.
- [7] Conservation areas should be designed to be visually accessible where possible, and if appropriate, physically accessible to as many potential building lots within the subdivision as practicable.
- [8] Conservation and other open spaces should be designed to enhance the natural beauty of the development and to protect the quality of natural resources and ecosystem functions of the area over many years as the surrounding lands develop.
- [9] Conservation and maintenance of active of agricultural land shall be a priority.

(d) Submission Requirements: A total of ten (10) copies of the following items and information shall be provided to the Planning Board and one (1) copy to the Environmental Commission at least thirty (30) days prior to the scheduled review meeting:

- [1] Resource Analysis Map indicating the areas of protection as designated by the Planning Board in Step 2.
- [2] Items 2 – 10 in Step 1.
- [3] Proposed Conservation Subdivision Sketch Plat in accordance with the requirements set forth above. The sketch plat should identify the proposed location, number and types of housing units, roadway access, conservation areas, reserved areas (if any) and requested dimensional requirements. Any features identified on the Resource Analysis Map which would be removed or disturbed should be identified as such on the proposed sketch plat. Although it must be drawn to scale, it need not be based on a field survey. However, it must be a realistic layout reflecting a development pattern that could reasonably be expected to be implemented, taking into account the presence of wetlands, watercourses, floodplains, steep slopes, existing easements or encumbrances and, if unsewered, the suitability of soils for subsurface sewage disposal.
- [4] Description of the proposed conservation easement to be placed on the conservation area and identification of any proposed land trust managers, homeowners association, or other management structure proposed for the conservation area meeting the requirements of subsection D.
  - (i) The proposed easement must be a perpetual conservation easement meeting the requirements of subsection C(6), leaving the land forever wild or limiting use of such land to agricultural, managed forest land, passive recreational or open space use by amendment of the deed language

as approved by the Planning Board, pursuant to §247 of the General Municipal Law and/or §§ 49-0301 through 49-0311 of the Environmental Conservation Law, and shall be granted to the Town, subject to the approval of the Town Board, or to a qualified not-for-profit conservation organization acceptable to the Planning Board.

(ii) The conservation area may be owned in common by a homeowners' association, dedicated to the Town, held by a qualified nonprofit organization, or held in private ownership in one or more large parcels, provided that in all cases, it is protected by conservation easement from future subdivision and development. Prior to approval the Planning Board shall assure that proper provision has been made for ownership and maintenance of the conservation area.

[5] Additional information or fees as may be required under Chapter 60 Subdivision of Land.

**(4) Step 4: Sketch Plat Review Meeting.** The applicant shall meet with the Planning Board to review and discuss the proposed sketch plat. The Planning Board shall review the layout of lots and siting of structures for all applications being considered under conservation subdivision.

(a) After review of the application the Planning Board may make a decision to approve to proceed to the next steps, approve with modifications or to deny.

(b) If approved, the applicant may prepare a Preliminary Plat per §60-10.

(c) If the Planning Board determines that the conservation sketch plat layout as proposed is not appropriate and does not meet the goals and objectives of this Chapter it may require the applicant to revise and resubmit the layout for reconsideration, including but not limited to, reducing the number of building lots or changing the configuration of the conservation areas.

[1] The Planning Board may optionally determine that a conventional layout is more appropriate, and require the applicant to submit such layout for consideration.

**(5) Step 5: Submit Conservation Subdivision Preliminary Plat.**

(a) The procedures for Preliminary Plat Review and Approval shall be the same as those for a conventional subdivision plat contained in Chapter 60 of the Town Code. In order to approve a Preliminary Plat, the Planning Board must find that it is consistent with the approved Sketch Plat conditions and complies with all relevant provisions of the Zoning Law.

**(6) Step 6: Final Plat Submission, Review, Approval and Filing.**

(a) The procedures for Final Plat Review and Approval, including notice and hearing procedures, shall be the same as those for a conventional subdivision plat contained in Chapter 60 of the Town Code. In order to approve a Final Plat, the Planning Board must find that it is consistent with any approved Preliminary Plat and complies with all relevant provisions of the Zoning Law. All Planning Board approvals shall be finalized in a document of agreement signed by applicant stating conditions that must be met. Preserved open space land shall be clearly delineated and labeled on the subdivision Final Plat as to its use, ownership, management, method of preservation, and the rights, if any, of the owners of lots in the subdivision and the public to the open space land. Preserved open space land shall also be clearly delineated and physically marked on the property as to its extents. The Final Plat shall clearly show that the open space land is permanently preserved for conservation purposes by a conservation easement required by this section, and shall include deed recording information in the County Clerk's office for the conservation easement.

(b) A perpetual conservation easement restricting development of the open space land and allowing use only for agriculture, forestry, passive recreation, protection of natural resources, or similar conservation purposes, pursuant to Section 247 of the General Municipal Law and/or Sections 49-0301 through 49-0311 of the Environmental Conservation Law, shall be granted to the Town, with the approval of the Town Board, and/or to a qualified not-for-profit conservation organization acceptable to the Town

Board. Such conservation easement shall be approved by the Planning Board and shall be required as a condition of Final Plat approval. The Planning Board shall require that the conservation easement be enforceable by the Town if the Town is not the holder of the conservation easement. The conservation easement shall be recorded in the County Clerk's Office, and recording information shall be shown on the Final Plat.

(c) The conservation easement shall prohibit residential, industrial, or commercial use of open space land (except in connection with agriculture, forestry, and passive recreation), and shall not be amendable to permit such use. Driveways, wells, underground sewage disposal facilities, (including constructed wetlands), local utility distribution lines, stormwater management facilities, trails, and agricultural structures shall be permitted on preserved open space land with Planning Board approval, provided that they do not impair the conservation value of the land. Forestry shall be conducted in conformity with applicable best management practices as described by the NYS Department of Environmental Conservation's Division of Lands and Forests.

(d) A land management plan, approved by the Planning Board, shall be included in the conservation easement. The conservation easement shall provide that if the Town Board finds that the management plan has been violated in a manner that renders the condition of the land a public nuisance, the Town may, upon 30 days written notice to the owner, enter the premises for necessary maintenance, and that the cost of such maintenance by the Town shall be assessed against the landowner or, in the case of an HOA, the owners of properties within the development, and shall, if unpaid, become a tax lien on such property or properties.

**D. Ownership of Open Space Land.** Open space land shall under all circumstances be protected by a perpetual conservation easement, but may be owned in common by a homeowner's association (HOA), offered for dedication to Town, County, or State governments, transferred to a non-profit organization acceptable to the Planning Board, held in private ownership, or held in such other form of ownership as the Planning Board finds appropriate to properly manage the open space land and to protect its conservation value.

**(1) Homeowners Associations.** If the land is owned in common by an HOA, such HOA shall be established in accordance with the following:

(a) The HOA application must be submitted to the NYS Attorney General's Office before the approved subdivision Final Plat is signed, and must comply with all applicable provisions of the General Business Law. The HOA must be approved by the NYS Attorney General's Office prior to issuance of the first Certificate of Occupancy from the Code Enforcement Officer.

(b) Membership must be mandatory for each lot owner, who must be required by recorded covenants and restrictions to pay fees to the HOA for taxes, insurance, and maintenance of common open space, private roads, and other common facilities.

(c) The HOA must be responsible for liability insurance, property taxes, and the maintenance of recreational and other facilities and private roads.

(d) Property owners must pay their pro rate share of the costs in (b) above, and the assessment levied by the HOA must be able to become a lien on the property.

(e) The HOA must be able to adjust the assessment to meet changed needs.

(f) The applicant shall make a conditional offer of dedication to the Town, binding upon the HOA, for all open space to be conveyed to the HOA. Such offer may be accepted by the Town, at the discretion of the Town Board, upon the failure of the HOA to take title to the open space from the applicant or other current owner, upon dissolution of the association at any future time, or upon failure of the HOA to fulfill its maintenance obligations hereunder or to pay its real property taxes.

(g) Ownership shall be structured in such a manner that real property taxing authorities can satisfy property tax claims against the open space lands by proceeding against individual owners in the HOA and the dwelling units they each own.

(h) The Town Attorney's Office shall find that the HOA documents presented satisfy the conditions in subsections (a) through (g) above, and such other conditions as the Planning Board shall deem necessary.

**E. Protection of Site Features.** The following regulations shall be effective after plan approval and through all phases of construction. Whenever the requirements of these regulations are at variance with the requirements of any other lawfully adopted rules, regulations, or ordinances, the most restrictive, or that imposing the higher standards, shall govern. These regulations shall be enforced by the municipal Code Enforcement Officer. No building permit or certificate of occupancy shall be issued by the Code Enforcement Officer except where all the provisions of these regulations have been complied with.

(1) Prior to any site clearing the limits of clearing and grading shall be flagged.

(2) Reserved areas and conserved areas, as denoted on the final plat plan, shall be fenced-off with 48-inch high "international orange" plastic web fencing or equivalent to separate it from proposed development areas, including any constrained lands identified for protection under §75-26.3.

(a) Vehicular traffic and stockpiling of materials within the fenced areas is prohibited.

(3) All individual trees to be retained on the site, as denoted on the final plat plan and which are not within a fenced reserved area or conserved area shall be tagged with brightly-colored surveyor's ribbon at a height of 5 to 6 feet.

(a) Fencing (as described in (2) above) shall be installed at the dripline of the trees to be retained.

(b) Vehicular traffic and stockpiling of materials within the dripline is prohibited.

(c) Trees being removed shall not be felled, pushed, or pulled into trees being retained. Trees to be removed that are in close proximity to trees to be retained shall be felled by hand, with a chainsaw or equivalent.

(4) Following completion of flagging and fencing the Planning Board and/or its consultants must inspect and approve the locations of the flagging and fencing prior to site clearing activities.

(a) If it is deemed that the flagging and fencing is in agreement with the final plat plan and site clearing conditions, approval will be granted to begin site work.

(b) If it is deemed that the flagging and fencing is deficient approval will be withheld until such time as the flagging and fencing is completed to the satisfaction of the Planning Board and/or its consultants.

(5) Periodic inspections of the flagging and fencing may be conducted through the course of construction by the Planning Board and/or its consultants. If at any time it is determined that the site is no longer in compliance a stop-work order shall be issued. Persons receiving a stop-work order shall be required to halt all land development activities, except those activities that address the violations leading to the stop-work order. The stop-work order shall be in effect until the Town of Rosendale confirms that the land development activity is in compliance and the violation has been satisfactorily addressed. Failure to address a stop-work order in a timely manner may result in civil, criminal, or monetary penalties in accordance §75-55 Penalties for offenses.

(6) In the event that reserved areas, conserved areas, or trees to be retained are disturbed during the construction process violators may be required to restore land to its undisturbed condition. In the event that restoration is not undertaken within a reasonable time after notice, the Town of Rosendale may take necessary corrective action, the cost of which shall become a lien upon the property until paid.

[END SECTION]