

Topic:	Clustering & Cluster Development
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State:	New York
Jurisdiction Type:	Municipal
Municipality:	Town of Clinton
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Community Type – applicable to:	Suburban; Rural
Title:	Town of Clinton Cluster Development Residential Ordinance
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Abstract

This residential cluster development law establishes a procedure for specifying the zoning district in which the law is applicable and the objectives to be accomplished. The law's "standards" provide the applicable density and dimensional requirements and siting guidelines.

The law provides for the preservation of open space land and the granting of perpetual conservation easements to the municipality or qualified not-for-profits that prevent further development.

Resource

[HISTORY AND BACKGROUND: The following law, "Cluster Development, Residential" is found in Article 5, Supplemental Regulations, of the Town of Clinton Zoning Law (See TOWN OF CLINTON, N.Y., ZONING Local Law No.3, § 5,16 (1991)).]

§ 5.16 Cluster Development, Residential

A. Policy and Authority

It is the policy of the [Municipality], as expressed in the [Municipality] Master Plan, to provide for a variety of housing options, preserve open space, and harmonize new development with the traditional open, rural, wooded, agricultural, and hamlet landscapes of the [Municipality]. To that end, the [Municipality] board of the [Municipality], through the adoption of this zoning law, hereby adopts the provisions of section 281 of the [Municipality] law of the Consolidated Laws of New York, and hereby grants to the Planning Board the authority set forth in that section to modify the applicable provisions of the zoning law as they apply to a specific plat, but only to the extent herein permitted, including the authority to require an applicant to modify a plat in a manner consistent with the purposes and criteria of this section. The regulations contained in this section shall constitute the rules and regulations required by Section 281(a) of the [Municipality] Law, setting forth criteria by which cluster subdivision may be required.

B. Purposes

This provision encourages flexibility in the design and development of land in order to promote the most appropriate use of land, to facilitate the adequate and economic provision of streets and utilities, and to preserve as permanent open space agricultural land, important natural and cultural features, wildlife habitat, water resources, ecological systems, and scenic areas for the benefit of present and future residents. A residential cluster development shall achieve the following purposes:

1. Better protection of natural and scenic resources identified in the Master Plan and zoning law than would be provided by the conventional subdivision plan;
2. Compatibility with surrounding land uses and the [municipality's] traditional land use patterns in which small hamlets contrast with open space and farmlands;
3. Provision of adequate buffers for adjoining properties;
4. Contribution to [municipality]-wide open space planning by creating a system of permanently preserved open spaces, both within large parcels of land and among such parcels throughout the [municipality], and by providing linkages between existing open space areas and, where appropriate, linkages to hamlet areas;
5. Provision of a broader range of housing options and potentially lower housing prices by reducing the length of roadways and other critical infrastructure costs;
6. Preservation of land suitable for agriculture, particularly where development involves or borders active agricultural land or land with prime or important agricultural soils; and
7. Greater flexibility and creativity in the design of residential subdivisions, provided that the overall density of the development is no greater than what is normally allowed in the district.

A cluster division should accomplish the above purposes by reducing the lot size and bulk requirements contained in the zoning law, while clustering homes in those areas where they will have the least impact on natural or cultural features. The agricultural lands, open space, or sensitive areas are then permanently preserved through the use of conservation easements. The cluster principle can be applied not only to large developments but also to smaller subdivisions, enabling the subdivided lots to be smaller than the zoning would normally require, provided that compensating buildable land is placed under open space conservation easement to maintain the overall density at or below the level permitted by the zoning law.

C. Procedure

1. Any Residential Cluster Development shall be subject to Section 7.9, Site Plans and Town Subdivision Regulations. It is in the best interest of the applicant and the Planning Board to determine the applicable development pattern at the earliest possible time. If a

conceptual plan application meets any of the cluster preference criteria listed in paragraph 2 below, the Planning Board may use its authority to permit or require a residential cluster development alternative. The Planning Board may require that the applicant submit land inventory information at the conceptual plan stage to assist in making such a judgment. The Planning Board may also hold a public hearing and may refer the conceptual plan application to the Conservation Advisory Committee following the procedure in Section 7.12. [Article 7 sets forth the Administration and Enforcement of the town of Clinton Zoning Law. Section 7.9 explains the scope of the site plan, the site plan approval procedure, the application requirements, the general criteria and standards for approval, and the use of performance bonds. Section 7.12 concerns the Conservation Advisory Committee (CAC) and what matters it reviews.]

2. An application for any subdivision shall provide a conceptual plan for a cluster subdivision on parcels thirty (30) acres or larger in the C, AR5, and AR3 districts, or ten (10) acres or larger in the MR1, RH, and H districts, or when some of the following objectives, in the judgment of the Planning Board, are better accomplished by a cluster subdivision as compared to a conventional subdivision with residential lots occupying most of the tract. A conceptual plan should include:
 - A Preservation of contiguous prime or statewide important agricultural soils, as defined in Article 8;
 - B Maintenance of active agricultural land;
 - C Protection of the ground or surface water, wetlands, steep slopes, floodplains or unique areas of natural, scenic, or historical significance;
 - D Mitigation of significant environmental impacts identified through application of the State Environmental Quality Review Act (SEQRA) requirements;
 - E Preservation of open space views identified as important to the [municipality];
 - F Reduction in the amount of new roads or driveways obtaining access from existing roads;
 - G Reduction in the amount of new road that may be required to be dedicated to the [municipality];
 - H Protection of Critical Environmental Areas designated by the [Municipality] board;
 - I Accomplishment of specific goals set forth in the [Municipality's] Master Plan.
3. An application for cluster development shall include all plans and materials required for a conventional subdivision. The maximum number of dwelling units that may be permitted and approved within a cluster development shall not exceed the number of lots shown on an approvable conceptual plat for the lot-by-lot development of the site for single-family

detached dwellings. Any regulations contained in section 5.16 of the Town of Clinton Zoning Law which restrict the number of single-family dwelling units permitted shall also restrict the number of dwelling units permitted in a cluster proposal or requirement including section 4.11, Land Designated as Freshwater Wetlands or Under Water. Lots shown on the conventional conceptual plat shall be fully consistent with both the lot area and bulk requirements of the zoning district in which the cluster development is proposed and the requirements of the Town's Subdivision Regulations for the provision of streets and other required facilities and improvements.

D. Standards

1. Where the cluster development results in the creation of individual lots for the development of single-family detached dwellings, the minimum lot area per dwelling unit that may be created within a cluster development shall be one-half (1/2) acre.
2. All dwelling units within a cluster development shall be owner-occupied units. Wherever common property is approved as part of the cluster proposal, a homeowner's association agreement will be established under New York State law.
3. While attached or detached dwelling units are permissible within a cluster development, no individual structure shall contain more than four (4) attached dwelling units in the C, AR5, and AR3 districts, or more than six (6) attached dwelling units in the MR1, CR1, RH, and H districts.
4. Common driveway access may be provided to the extent practical by the Planning Board. A pedestrian circulation and/or trail system shall be designated and installed sufficient for the needs of residents.
5. Maximum structure height within a cluster development shall be restricted to thirty-five (35) feet.
6. Minimum separation distance between individual residential structures within a cluster development shall be fifty (50) feet in the C, AR3, and AR5 districts, and twenty-five (25) feet in the MR1, CR1, RH, and H districts.
7. The minimum front yard setback from the centerline of a public roadway shall be no less than the normally applicable setback requirements in the district in which the property is located. Any other area and bulk regulations shall be determined by the planning board in the site plan review process.
8. Water supply and sewage disposal facilities shall be designed by a licensed engineer for any such residential cluster development in accordance with the requirements of the Town of Clinton and the Dutchess County Health Department. Underground facilities may be located in areas to be set aside as permanent open space.

9. Common open space totaling not less than sixty percent (60%) of the total cluster development site in the C and AR5 districts, or forty percent (40%) of the total cluster development site in the AR3, MR1, CR1, RH, and H districts, shall be provided in perpetuity as part of the cluster development. A plan for maintenance or landscaping of the common open space shall be reviewed and approved by the Planning Board. No portion of this minimum required open space shall be utilized for roads, driveways, utility structures, or similar features.
10. Open space land may be owned in common by a homeowner's association, held in private ownership subject to a permanent conservation easement or dedicated to the [municipality] if such agreement is approved by the [Municipality] Board. If owned by a homeowner's association, the common open space land shall be protected by conservation easement from future subdivision and development. The Planning Board shall assure that proper provision has been made for ownership and maintenance of open space land, roadways, and other improvements. Ownership shall be structured in such a manner that real property taxing authorities may satisfy property tax claims against the open space lands by proceeding against all individual owners in the homeowner's association and the dwelling they each own. Ongoing maintenance standards shall be established, enforceable by the [municipality] against an owner of open space land as a condition of subdivision approval, to assure that the open space land does not detract from the character of the neighborhood. Maintenance standards may include the obligation to mow open fields in order to maintain their scenic character or agricultural potential.
11. A perpetual conservation easement – leaving the open space land forever wild or limiting the use of such land to agricultural, managed forest land, passive recreational or open space use, or to the residential use specified as part of the plan and prohibiting institutional, industrial, or commercial use of such open space, pursuant to Section 347 of the General Municipal Law and/or Sections 49-0301 through 49-0311 of the Environmental Conservation Law – may be granted to the [municipality], with the approval of the [Municipality] Board or to a qualified not-for-profit conservation organization acceptable to the Planning Board. Such conservation easement shall be reviewed and approved by the Planning Board and shall be required as a condition of plat approval under the [municipality's] Subdivision Regulations. The conservation easement shall not be amendable to permit commercial, industrial, institutional, or further residential development and shall be recorded in the Dutchess County Clerk's office simultaneously with the filing of an approved cluster subdivision plat.
12. The open space shall be shown on the plat map and shall be labeled in a manner to indicate that such land is not to be further subdivided for building lots and is permanently reserved for open space purposes. Residential structures and buildings accessory to non-commercial recreation, conservation, or agriculture may be erected on this land, subject to the cluster development plan and Section 7.9, Site Plans.

E. Partial Subdivisions

This subsection allows for the partial subdivision of a parcel that would otherwise meet the purposes and requirements of a cluster development to accommodate landowners who may not wish to subdivide the entire property at the time of the application.

1. If the Planning Board determined that a residential cluster development is to be considered or shall be required for a given parcel, based on the purposes and objectives of this section, any partial subdivision which does not develop the maximum allowable number of lots on this parcel shall only be approved in accordance with an overall cluster plan for the entire parcel that meets all the requirements of this section.
2. Before any such partial subdivision is approved, the applicant shall demonstrate to the satisfaction of the Planning Board that the overall cluster plan is physically possible, that it is the best layout for achieving the purposes of this section, and that it will indeed be followed in any subsequent development phase or by any subsequent owner.
3. In order to guarantee the long-term intention to carry out the overall cluster plan for the entire property, the applicant shall accomplish either a or b below, or both:
 - A. Indicate all future property lines, roads, and other major improvements for the cluster plan on the map to be filed for the partial subdivision.
 - B. Permanently protect through conservation easement the designated open space for the entire property.

F. Siting Guidelines

In the clustered development, the lots shall be laid out so that dwelling units will be located in a manner consistent with the purposes of this section. The following guidelines (listed in order of general priority) are to be applied, when applicable, on a case-by-case basis by the Planning Board with lots to be laid out:

1. On the least fertile soils for agricultural uses and in a manner which maximizes the usable area remaining for such agricultural uses;
2. Within any woodland contained in the parcel, or along the far edges of the open fields (to reduce impact upon agriculture, to provide summer shade and shelter from winter wind, and to enable new construction to be visually absorbed by natural landscape features);
3. To permanently protect significant natural or cultural features identified on the site;
4. So as to minimize the number of driveways with access to existing roads;
5. In such a manner that the common boundary between the new house lots and any active farmland is minimized in length (to reduce potential conflict situations);

6. In a location least likely to block or interrupt scenic vistas, as seen from the public roadway(s) or other public vantage points;
7. In locations where the greatest number of units could be designed to take maximum advantage of solar heating opportunities; and
8. To meet other criteria listed under section 7.9 site plans.

In cluster developments exceeding twenty (20) dwelling units, the Planning Board shall consider the layout of smaller groupings, each having some open space immediately surrounding it, so that large concentrations of units with little or no differentiation can be avoided and so that cluster development will be more compatible with the neighborhood in which it is located.

8.2. Definitions

[The following definitions are taken from Article 8 of the Town of Clinton Zoning Law. Only the definitions applicable to the above are included.]

Agriculture, Agricultural Operations, or Agricultural Practices – All activities conducted on a farm, necessary to the operation of a farm, or activities conducted in accordance with animal husbandry regulations contained therein.

Area and Bulk Regulations – The combination of controls which establishes the minimum lot size of a lot and the maximum size of a building, its location on such a lot, as well as controls on parking, frontage, and open space.

Area, Building – The total of areas taken on a horizontal plane at the main grade level of the principal building and all accessory buildings exclusive of uncovered porches, terraces and steps. All dimensions shall be measured between exterior faces of walls.

Area, Land – The term “land area,” when referring to the required area per dwelling unit, means “net land area,” the area exclusive of streets and other public open space.

Attached – A term which, when used in reference to a building, shall mean connected to another building by means of at least one (1) common wall. A common roof, porch, patio, or breezeway shall not be construed as causing a building or structure to be “attached” to another. For the purposes of this law, the terms “attached” and “semi-detached” may be interchanged in any context.

Buffer – Land area which is suitably developed with fencing, berms, and natural vegetation and which is used to visually separate one use from another or to shield or block lights, noise, or other nuisances.

Building Coverage – The total of areas taken on a horizontal plane at the main grade level of all principal and accessory structures located on the lot.

Building Height – The vertical distance measured, in the case of a building with a flat roof, from the average elevation of the finished lot grade at the front of the building to the level of the highest point of the roof beams and, in the case of a building with a pitched roof, from the average elevation of the finished lot grade at the front of the building to a point halfway between the top of the plate and the ridge. Such measurement shall not include chimneys, spires, towers, tanks, and similar projections.

Cluster Development – A development pattern in which uses are grouped (clustered) through a density transfer within a particular development, rather than spread evenly throughout a parcel as in conventional lot-by-lot development, in order to achieve the purposes stated herein.

Conceptual Plan – The initial stage of subdivision or site plan review by the Planning Board, also called “sketch plan.”

Detached – A term which, when used with reference to a building, shall mean either (a) not connected to another building by any physical construction, or (b) connected to another building by some physical construction, but without at least one (1) common wall.

Development – Any humanly incurred change to improved or unimproved real estate, including but not limited to, buildings or other structures; mining; dredging; filling; clearing; grading; paving; excavation; or drilling operations, but excluding normal agriculture, conservation, or forest management activities.

Driveway – Land situated on a lot used or intended to be used to provide access to a lot by vehicular traffic.

Dwelling – A house or other building designed or primarily used for human habitation. The word “dwelling” shall not include tourist homes, mobile homes, camping vehicles, motels, hotels or other structures designed for transient or temporary residences. A bus is not construed to be a dwelling.

Dwelling Unit – A building or entirely self-contained portion thereof containing complete housekeeping facilities, including kitchen facilities and bath for only one (1) family and having no enclosed space, other than vestibules, entrances or other hallways, porches, or cooking or sanitary facilities, in common with any other “dwelling unit.” A boarding house, tourist home, motel, inn, nursing home, or other similar building shall not be deemed to constitute a “dwelling unit.”

Floodplain – A land adjoining a river, stream, watercourse, or lake which is susceptible to being inundated by water from any source. The term “100 year floodplain” shall mean the highest elevation of water from flooding that on average is likely to occur once every 100 years or has a one percent (1%) chance of occurring each year.

Forestry – The raising, harvesting and sale of forest products.

Habitat – The region or environment where a plant or animal grows or lives.

Homeowners Association – A legally established membership organization, created and regulated under the authority of the Attorney General of New York State, for the purpose of maintaining joint ownership of property. Such an organization shall have the power to collect funds to assure property maintenance as well as the ability to impose liens against lot owners or dwelling unit owners.

Industry/Industrial – The term “industry” or “industrial” includes the entire range of economic activity and as applied to specifics (i.e., Manufacturing, wholesale, retail, services, etc.) shall have the meaning set forth in the Standard Industrial Classification Manual, published by the Executive Office of the President, U.S. Office of Management and Budget, as currently updated.

Lake – An inland body of water that, for the purposes of this law, has a surface water area at the mean high watermark of one (1) acre or more.

Land and Wildlife Conservation – Vegetation and terrain left undeveloped and essentially unaltered in its natural state in order to allow vegetation and wild animals to be untouched by human actions.

Lot – A piece, parcel, tract, or plot of land owned in fee and occupied or designed to be occupied by a principal building or set of buildings and including the yards and other open spaces required by this law. “Premises” and “property” may mean one “lot” or multiple “lots,” when used with reference to a subdivision. Where a lot is in common ownership as a part of a cluster development, “premises” shall mean the area related to or property owned by residents of one (1) dwelling unit.

Lot Area – The total land area of a lot within the property lines excluding any area devoted to external streets.

Lot Area, Minimum – The calculation of minimum lot area shall be construed to include areas covered by utility easements and conservation easements, shall exclude areas not owned, and shall exclude areas devoted to public streets.

Lot Coverage – The entire unvegetated area of the lot, including the area covered by all structures, parking areas, driveways, walkways, patios, and terraces.

Lot Depth – The horizontal distance from the street line of the lot to its opposite rear line measured along the median between the two side lot lines.

Lot Frontage – That portion of the lot which abuts the street.

Lot Width – The horizontal distance between the two side lot lines measured at a right angle to the lot depth.

Open Space – Land and/or water in its natural state and containing no buildings or structures or land set aside or dedicated to remain unimproved except for improvements in support of agriculture.

Park – Any land and/or associated structures created and maintained by a municipality or organization for the express use and enjoyment by the general public for recreational purposes.

Pond – An inland body of water that, for the purposes of this law, has a surface water at the mean high watermark of one (1) acre.

Recreational Area – Public or private land developed with facilities for passive recreation (e.g., Trails and picnic areas) and/or with facilities for active outdoor individual or organized recreation, such as ball fields, tennis courts, swimming, or ice-skating.

Residential Cluster Development – A development pattern in which dwellings are concentrated in specific areas of the site to allow the remaining land to be used for recreation, common open space, and preservation of environmentally sensitive areas.

Setback – The minimum horizontal distance from the property line to any structure, roadway, parking area, accessory building, or other such improvement on the lot, except necessary driveways.

Setback, Front – The setback, as herein defined, measured to the center line of the roadway or street.

Subdivision – The division of a lot, tract, or parcel of land into two (2) or more lots, tracts, or other divisions of land.

Watercourse – A stream, creek, brook, or other path through which surface water travels on a regular or seasonal basis. Drainage areas which contain water only during and immediately after a rainstorm shall not be considered a watercourse.

Wetland – Land where saturation with water is the dominant factor determining the nature of soil development as well as the types of plant and animal communities living in the soil and on its surface, including bogs, marshes, and swamps. Unless otherwise specified, wetland regulations herein shall apply only to wetlands of 12.4 acres or larger that are regulated by New York State through the Department of Environmental Conservation.

ARTICLE VI. WAIVER OF PROVISIONS [OMITTED]

ARTICLE VI. ADMINISTRATION

§ 200-43 Time limits and notices [OMITTED]

§ 200-44 Referrals

A. General. The regulations provide for review and/or approval of plat applications and plans by officials or agencies will be made by the Board or the applicant as hereinafter specified.

B. Pre-application.

(1) It is expected that the applicant, in the preparation of a sketch plan or a preliminary plat, will confer for planning purposes with the appropriate [municipality], county and state agencies that may have future jurisdiction or counsel with regard to elements such as:

- (a) Street and drainage connections to state highways and county roads;
- (b) Protection of conservation resources;
- (c) Water quality and water resources;
- (d) Soil conditions and erosion control;
- (e) Central water supply or sewage disposal systems; and
- (f) On-site water and sewer systems.

(2) Informal review of a sketch plan by the Planning Board is recommended.

C. Preliminary plat application. When a complete application for preliminary approval is received, the Planning Board (as deemed appropriate in the particular case) will refer the preliminary plat, profiles, and reports as follows:

(1) To the [Municipality] Superintendent of Highways or to his engineer or representative designated by the [Municipality] Board;

(2) To the Conservation Advisory Council with regard to natural features of the tract and protection of wetlands and watercourses;

(3) To the Board of Fire Commissioners with regard to fire-protection services, access, and fire ponds;

(4) To the Recreation Commission with regard to provision for parks and playgrounds;

(5) To the [Municipality] Board and [Municipality] Attorney concerning any proposed parks, playgrounds, special easements, water or sewer districts or other features involving future [Municipality] Board administrative jurisdiction or legal questions;

(6) To the planning consultant for the Board, such as with regard to overall planning of the plat;

(7) To the Westchester County Soil and Water Conservation District, such as with regard to cases of severe soil erosion and sedimentation potentials;

(8) To the Westchester County Department of Planning under the General Municipal Code; and/or

(9) To the [Municipality] Consulting Engineer, with regard to overall engineering of the plat.

D. Prior to final plat application. Prior to submission of the final approval application, the applicant will make the following referrals of appropriate maps and plans:

(1) To the Westchester County Department of Health for approval of plans for water supply and sewage disposal, and any approval will be endorsed on the final plat map prior to submission of the final approval application.

(2) To the New York State Department of Transportation and/or the Westchester County Highway Department for an application for street or drainage connections to state highways or county roads.

(3) To the New York State Department of Environmental Conservation for authorization for modification of wetlands, streams and stream beds, or land mining.

(4) To the [Municipality] Superintendent of Highways or to his engineer or representative designated by the [Municipality] Board for approval of the construction plans for streets and drainage, and any approval will be endorsed on the construction plans prior to submission of the final approval application.

(5) To the [Municipality] Tax Map Surveyor for approval of the metes and bounds description of the proposed subdivision.

(6) To the New York City Department of Environmental Protection for approval of plans for sewage disposal.

(7) To the [Municipality] Consulting Engineer, such as with regard to overall engineering of the plat.

E. Final plat application. When a complete application for final approval is received, the Planning Board, as deemed appropriate, will refer the final plat, profiles, construction program, and data as follows:

(1) To the [Municipality] Board and [Municipality] Attorney concerning proposed parks, playgrounds, special easements, water or sewer districts, or other features involving [Municipality] Board administrative jurisdiction or legal questions.

(2) To the planning consultant for the Board, such as with regard to overall planning of the plat.

- (3) To the United States Department of Agriculture Soil Conservation Service, such as with regard to construction plans and a program for soil erosion and sedimentation control.
 - (4) To [municipality] agencies receiving referral under preliminary consideration, such as for confirmation of design recognition of previous recommendations.
- F. Final plat approval. In connection with final approval procedures, including conditions for approval, the following referrals will be made by the Planning Board as appropriate:
- (1) Completion bonds, to the [Municipality] Board for approval as to security and as to form, sufficiency, and manner of execution;
 - (2) Conveyances (easements and offers of cession for streets, rights-of-way, and parks), to the [Municipality] Board for approval as to form and manner of execution.
 - (3) Maps, plans or documentation concerning water and sewer districts, to the [Municipality] Board for approval.
- G. Plat completion. Upon completion of required street, drainage and other improvements in the plat, the following referrals will be made by the Planning Board as appropriate:
- (1) The as-built construction plans, to the [Municipality] Superintendent of Highways or his engineer or representative designated by the [Municipality] Board, or the [Municipality] Consulting Engineer.
 - (2) Maintenance bonds, to the [Municipality] Board for approval as to security and as to form, sufficiency and manner of execution.

§ 200-45 Construction of Improvements; Inspection; Notification [OMITTED]