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State:	New York
Jurisdiction Type:	Municipal
Municipality:	Town of Yorktown
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Community Type – applicable to:	Suburban; Rural
Title:	Town of Yorktown Clustering and Flexibility Standards
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Abstract

The purpose of this article is to encourage flexibility of design and development of land in such a manner as to promote the most appropriate use of land, to facilitate the adequate and economic provision of streets and utilities and to preserve the natural and scenic qualities of open land.

Resource

Town of Yorktown NY Clustering and Flexibility Standards
Code of the Town of Yorktown NY
Chapter 300: Zoning
Article XXV

ARTICLE XXV Clustering and Flexibility Standards
[Added 3-4-1986 by L.L. No. 8-1996]

§ 300-208. Purpose, intent and applicability.

- A. The purpose of this article is to encourage flexibility of design and development of land in such a manner as to promote the most appropriate use of land, to facilitate the adequate and economical provision of streets and utilities and to preserve the natural and scenic qualities of open land.
- B. The standards and procedures hereinafter set forth are adopted pursuant to Town Law § 278. These standards and procedures are hereby declared to be the sole manner in which the Town Board or Planning Board may authorize development in a manner other than as required by the strict application of this article.
- C. This article shall be applicable to all residential districts, except the R1-160 and R1-200 Districts. In multifamily districts, including R-2 and RSP-1 Districts, the Planning Board or Town Board is authorized to approve cohesive development of individual or multiple sites to allow row houses (townhouses, patio houses, etc.) of not more than three stories and to allow apartments for either rental, sales, cooperatives or condominiums. These standards may be applied, provided that the open land resulting from such provision is

reserved in open space, and provided that the total plan of development (including the architectural treatment of the buildings, the building locations, the parking layout, the provisions for developed usable open space, parking egress and ingress and appurtenant facilities proposed) is constructed in accordance with a site development plan approved by either the Town Board or the Planning Board, as indicated in this article. The density formula shall not be applied to the zoning districts referred to above. **[Amended 3-3-1987 by L.L. No. 5-1987; 9-16-1987 by L.L. No. 25-1987]**

- D. The dwelling units constructed pursuant to the standards and procedures set forth herein may, at the discretion of the Planning Board and subject to any conditions set forth by the Town Board, be in detached, semidetached, attached or multistory structures.
- E. The provisions of this article shall not be deemed to authorize a change in the permissible use of lands as provided for in this article.
- F. The application of this article shall result in a permitted number of building plots or dwelling units which shall in no case exceed the number which could be permitted if the land were subdivided into lots conforming to the minimum lot size and density requirements of this article applicable to the district or districts in which such land is situated and conforming to all other applicable requirements. This calculation of density shall be determined by use of the standards and formula set forth below.
- G. The provisions of this article are not intended and shall not be deemed to give the Planning Board the authority or the power to apply or remove the RSP-I or any other zoning designation or classification to any area, district, zone, lot or parcel of land within the Town of Yorktown. **[Added 6-15-2004 by L.L. No. 17-2004]**

§ 300-209. Findings; objectives.

- A. The Town Board of the Town of Yorktown hereby finds that a substantial proportion of the remaining vacant land in the Town is environmentally sensitive and topographically difficult. The Town Board further finds that it is to the benefit of all, wherever practicable, to promote the conservation of remaining open space, preserve environmentally sensitive areas in their natural state and preserve the existing aesthetic qualities of the Town while providing sufficient housing for those who wish to live in the Town.
- B. The goal to be achieved by the use of the procedures and standards set forth in this article is the creative use of land so as to establish a more desirable living environment than would otherwise be possible through the conventional application of this article.
- C. Objectives to be attained by the use of this article include:
 - (1) The preservation, enhancement and/or creation of water bodies, wetlands, open space, major stands of trees, outstanding natural topography, significant geological features and other areas of scenic and ecological value and the prevention of soil erosion and minimization of potential pollution and flood hazards.
 - (2) An efficient use of the land so as to facilitate the adequate and economical provision and maintenance of streets and drainage facilities and to facilitate, where possible,

the establishment of central wastewater treatment and water supply systems as an integral part of residential development, consistent with the promotion of the public health, safety and welfare.

- (3) Innovation, flexibility and variety in the type, design and layout of residential housing so as to permit greater variety and range in the choice of housing types, living environment, occupancy tenure and housing cost.
- (4) Diversity and originality in lot layout and individual building design shall be encouraged to achieve the best possible relationship between development and the existing topography.

§ 300-210. Authorization to approve plans; application procedure.

- A. Authorization is hereby granted to the Planning Board of the Town of Yorktown, as herein set forth, to simultaneously with the approval of a plat or plats, pursuant with this article, modify applicable provisions of this article subject to the conditions set forth in this article and such other reasonable conditions as the Town Board of the Town of Yorktown may, in its discretion, add thereto.
- B. An applicant desiring to use the standards set forth in this article shall file, with the Planning Board, the application and plans required for subdivision review and approval as set forth in Chapter 195, Land Development. Such application and plans shall have clearly marked upon their face that said plan is for development in accordance with these standards. The applicant shall also submit a written, detailed statement setting forth the nature of modifications, changes or supplementations of existing zoning provisions and the reasons for the same. Said statement shall include the manner in which such modifications, changes or supplementations of existing zoning provisions will benefit the Town and will further the public health, safety or welfare. The applicant may be required, at various stages of the planning process, to further justify his request to use the standards and procedures set forth herein.
- C. In addition, the applicant shall file the following maps and data, in the form indicated, so that a determination may be made, by the Planning Board, of the number of dwelling units which may be permitted by the use of this article:
 - (1) A recent topographical survey, drawn at a scale of not less than 100 feet to the inch, stamped by a licensed surveyor, indicating the following:
 - (a) Water bodies, such as lakes, ponds and streams (streams shall have running water at least six months per year).
 - (b) Wetlands, which shall be identified as state controlled and/or Town controlled. Boundaries of state wetlands shall be certified by a representative of the New York State Department of Environmental Conservation in the event that DEC wetlands maps are unavailable. Boundaries of Town wetlands shall be determined pursuant to § 178-3 of the Code of the Town of Yorktown or any amendment, replacement or supplementation thereto.
 - (c) Wetland-controlled areas pursuant to § 178-3 of the Code of the Town of Yorktown or any amendment, replacement or supplementation thereto.

- (d) Slope analysis identifying all slopes in excess of 20%.
- (e) Existing utility easements.
- (f) Contiguous rock outcrops of at least 2,000 square feet.
- (g) Areas identified as flood-prone areas on Federal Emergency Management Agency maps.
- (h) Any other information required by the Planning Board.

(2) Any other data, plans and maps required by the Planning Board.

- D. The Planning Board shall review the above documents to determine compliance with the criteria set forth in this article and shall make a determination of the number of lots or dwelling units which may be permitted. If, in the Planning Board's judgment, the proposed development is appropriate for processing pursuant to this article, said Board shall transmit such application and other relevant documents to the Town Board with a request for authority to act in accordance with the standards set forth herein.
- E. After receipt of such request from the Planning Board, the Town Board shall schedule an informational hearing relative to the proposed use of the standards set forth herein. The applicant shall comply with Chapter 205 of the Code of the Town of Yorktown relating to notice to interested parties. The applicant shall provide the Town Board with such data, maps and plans as are required by the Town Board.
- F. The Town Board shall review the recommendation of the Planning Board and determine whether or not to authorize the Planning Board to process the proposed development pursuant to this article. Said authorization, if granted, shall specify the lands to which this procedure shall be applicable and may contain such other reasonable conditions as the Town Board, in its discretion, may add thereto.
- G. In the event that such authorization is granted, the Planning Board shall process the application pursuant to Chapter 195, Land Development, including review at public hearings held pursuant to Town Law §§ 276 and 277.
- H. Town Board authorization for use of the standards set forth in this article shall expire and become void if any of the following events do not occur within the time limits as set forth:
 - (1) The adoption of a resolution, by the Planning Board, preliminarily approving a plat (or site or parking plan) within nine months of the aforesaid Town Board authorization. This preliminary approval may be subject to conditions.
 - (2) The adoption of a resolution of final approval, by the Planning Board within 24 months of the aforesaid Town Board authorization. This final approval may be subject to conditions.
 - (3) The signing of the plat by the Planning Board within 36 months of the aforesaid Town Board authorization.

(4) Commencement of construction within 18 months from the filing of the plat in the Westchester County Clerk's office. A note to this effect shall be placed on the plat. If construction is not so commenced, the plat shall be void.

I. The Town Board may, upon request of the Planning Board, extend any of the time periods in Subsection H above.

§ 300-211. Density calculations.

A. The permitted density shall be determined on the basis of the following formula:

$\frac{0.9A_n}{L}$ where:

$N = L$

$A_n = A_g - (W + W_c + S_l + R + F + \text{Rec.})$

Definitions

N = Number of lots permitted

A_g = Gross area of property

A_n = Net buildable area

L = Zoned minimum lot area

W = Water bodies and wetlands area

W_c = Wetlands control area

S_l = Area of slopes over 20%

R = Contiguous rock outcroppings over 2,000 feet in area

F = Area prone to flooding

$\text{Rec.} = .10 \times A_g$

B. Explanation.

(1) All areas shall be shown in square feet.

(2) There shall be no double counting of overlapping areas.

(3) Water bodies shall include lakes, ponds and streams. Streams shall have running water at least six months of the year. Wetlands shall be identified as state-controlled wetlands and/or Town-controlled. Boundaries of the state wetlands have to be certified by a representative of the New York State Department of Environmental Conservation until such time that DEC wetlands maps are available. Boundaries of Town wetlands shall be based on the definitions in § 178-3 of the Yorktown Code.

(4) Wetlands control area shall be determined on the basis of the definitions in § 178-3 of the Yorktown Code.

(5) Areas with slopes over 20% shall be deducted from the gross area except for the following: in the R1-20 zone, areas of 100 feet in width or less; in the R1-40 zone, areas of 150 feet in width or less; and in the R1-80 zone, areas of 200 feet in width

or less shall not be so deducted. The width shall be measured perpendicular to the slope.

- (6) Contiguous rock outcroppings shall be identified as large masses of projecting concreted stone.
- (7) Flood prone areas are those shown on the Federal Emergency Management Agency maps.
- (8) In the event that N contains a fractional part equal to or exceeding .5, N shall be rounded off to the next highest whole number. In the event that N contains a fractional part less than .5, said fractional part less than .5 shall be disregarded.
- (9) The "Rec." factor shall not be included in the formula where the Planning Board, pursuant to § 195-17 of the Code of the Town of Yorktown, accepts cash in lieu of land dedication for park, playground and recreational purposes.

§ 300-212. Site standards.

- A. A "site" is defined as the entire area of land proposed for development.
- B. The site, when developed, shall be served by an approved public water supply system and an approved public sanitary sewer system.
- C. The site shall have a minimum of 50 feet of frontage on an existing public street or highway which is owned and/or maintained by the Town of Yorktown, the County of Westchester or the State of New York (hereinafter in this article referred to as a "public street"). **[Amended 7-16-1996 by L.L. No. 11-1996]**
- D. If the site is to contain attached dwelling units, no more than eight such units shall be attached in any one cluster.

§ 300-213. Lot standards.

- A. A "lot" is defined as an area of land upon which it is proposed to build a detached dwelling.
- B. The minimum lot size, regardless of zoning district, shall be 10,000 square feet.
- C. The minimum setbacks for each dwelling (or group of dwellings, in the event that they are attached) shall be determined by the approving board only after receipt of a recommendation from ABACA.

§ 300-214. Open space preservation.

- A. In the event that the application of this procedure results in a plat showing lands available for park, recreation, open space or other purposes, the Planning Board, as a condition of plat approval, shall establish such conditions on the ownership, use and maintenance of such lands as it deems necessary to assure the preservation of such lands for their intended purposes.
- B. Any of such open spaces shall be shown on the plat with a notation on the face thereof that such open spaces shall not be further subdivided or used for future building lots.
- C. If any or all of the common open space is not dedicated to and accepted by the Town, the formation and incorporation of a neighborhood association, homeowners' association

or other entity approved by the Planning Board shall be required. At the discretion of the Planning Board, documents indicating said formation shall be presented, either prior to the signing of the plat, prior to the granting of building permits or prior to the issuance of the first certificate of occupancy for a dwelling within the plat. If required by law, the approval of the Attorney General shall be obtained prior to the formation of the association.

- D. Covenants for mandatory membership in the association shall be approved by the Planning Board, filed in the Westchester County Clerk's office and included, in whole or by reference, in the deed to each lot.
- E. The association formed shall, in addition to any other rights or responsibilities, be responsible for maintaining the common open space(s) and operation and maintenance of any facilities within such open space(s).
- F. The association shall be empowered to levy and shall levy, when necessary, annual charges against all owners of lots to defray all expenses in connection with the maintenance, ownership and operation of open spaces and facilities placed thereon. The documents forming such association and the covenant filed in the Westchester County Clerk's office shall state that such charges, if unpaid, shall become a lien against the property which is in default.
- G. The documents forming such association and the covenant filed in the Westchester County Clerk's office shall additionally state that the Town of Yorktown shall have the right, but not the obligation, by legal action or otherwise, to enforce the property owner's obligation to pay any charges to the association.
- H. The developer or subdivider shall maintain control of such open space(s) and be responsible for its maintenance until development sufficient to support the association has taken place. Such determination shall be made by the Planning Board upon request of the neighborhood association or developer or subdivider; or the Planning Board may set forth conditions concerning the transfer of the open space to the association, in its approving resolution and/or by requiring an appropriate note to be placed upon the plat.
- I. Prior to the signing of the plat, the subdivider or developer (except where condominiums are to be constructed) shall execute an agreement with the Town of Yorktown, which the homeowners' association shall be subject to, provided that, in the event that the homeowners' association or any successor organization shall, at any time after approval of the development, fail to maintain the common land or any improvements thereon in reasonable order or condition in accordance with the approved plan, the Town of Yorktown may serve written notice upon such legal entity or successor organization or upon the property owners within the development, setting forth the manner in which the association has failed to maintain the common land or any improvements thereon, which said notice shall include a demand that such deficiencies be corrected within a designated time frame. If the deficiencies are not corrected within the designated time frame, the Town of Yorktown, in order to preserve the taxable values of the property within the development and to prevent the common land and improvements thereon from becoming a public nuisance, may, but shall not be

obligated to, enter upon and take possession of said common land and improvements and maintain the same until such time as the Town Board shall determine that the homeowners' association is ready and able to maintain the common land and improvements in proper condition. Said entry and maintenance shall not vest in the public any rights to use the common land or improvements except when the same is voluntarily dedicated to the public by the homeowners' association and the offer of dedication is accepted by the Town Board. The decision of the Town of Yorktown with respect to the action described in this subsection shall constitute a final administrative decision subject to review in accordance with the provisions of Article 78 of the Civil Practice Law and Rules. The cost to the Town of Yorktown of any such maintenance shall be assessed against the properties within the subdivision, and, in the event of the failure or refusal of any such property owner to pay any such charges when due, the unpaid amount thereof shall become a lien against that person's property and, together with interest from the due date thereof, shall be included in the annual tax levy of the Town of Yorktown upon such property for each such fiscal year, and the amount so levied shall be collected in the same manner as other Town taxes. **[Amended 11-18-1986 by L.L. No. 27-1986]**

§ 300-215. Special site standards. [Amended 7-16-1996 by L.L. No. 11-1996]

It is the intent of the Town Board to promulgate special standards in order to achieve more openness of development and to reduce the amount of public streets in the rugged areas of the Town. In the R1-80 and R1-40 Residence Districts, the Planning Board is hereby authorized to approve subdivision plats containing lots with less than 100 feet of frontage on an existing or proposed public street, subject to the standards and procedures set forth below.

- A. An applicant desiring to use this section shall comply with the procedure set forth in § 300-210 of this article.
- B. The preliminary density (lot count) of the parcel shall be determined by use of the density calculation formula found in § 300-211 of this article. The preliminary density shall be divided by two to determine the final density (maximum number of lots) for the parcel.
- C. No parcel of land (site) shall be considered for development pursuant to these special site standards unless the parcel has access to at least 50 continuous feet of frontage on an existing public street.
- D. Only single-family detached dwellings shall be constructed using these special site standards.
- E. The lots approved using these standards need not have any frontage on an existing or proposed public street.
- F. Neither the site, as a whole, nor individual lots need be connected to a central wastewater treatment facility, common sanitary sewer system or common water supply system. It is the intent of this section to allow for individual septic systems and wells to service individual lots.

G. The minimum lot size permitted by use of these special site standards is 40,000 square feet in the R1-40 zone and 80,000 square feet in the R1-80 zone.