

ARTICLE 10: AGE RESTRICTED HOUSING COMMUNITY (ARHC) BYLAW

A master-planned development of land as a unified residential community, constructed expressly for use and residence by persons who have achieved a minimum age of fifty five (55) years, in accordance with M.G.L. Chapter 151B, Section 4, Subsection 6, and also incorporating the preservation of natural open space areas as an integral element of the development. An Age Restricted Housing Community shall be permitted only within the Rural Residential/Agricultural Overlay District of Conway and only upon the granting of a special permit by the Planning Board.

10.1 PURPOSE:

The purposes of the Age Restricted Housing Community bylaw are:

- a. To increase the variety of well designed, market rate and affordable housing choices for citizens who are 55 years of age and older
- b. To provide for building at a higher density than would normally be allowed, and allow greater flexibility in site planning and the preservation of open space and historic resources within the ARHC development; and
- c. To provide for the review of all such proposals prior to construction, to ensure compliance with the above intent and objectives and to assure that the proposal will not result in or contribute to incompatible use of the land, pollution of the soil or groundwater, traffic congestion or inappropriate site development.

10.2 APPLICABILITY

The Planning Board (hereafter in this Section called the Board), acting as Special Permit Granting Authority, may grant a Special Permit for construction of a Age Restricted Housing Community (ARHC) and accessory structures, in the Rural Residential/Agricultural Overlay District as defined below:

10.2-1 Age Restricted Housing Community Overlay District Delineation:

The age restricted housing community overlay district shall be defined as the areas of town serviced by a public way and zoned Rural Residential/Agricultural.

10.2-2 Special Permit Approval:

Approval by the Board of a special permit hereunder shall not reduce any time periods for board consideration under the law.

10.2-3 Uses in the ARHC Overlay District:

Non-residential uses may be permitted in the ARHC development upon the issuance of a Special Permit by the Planning Board, provided that such use shall be consistent with those uses allowed by right and by Special Permit in Conway and the gross square footage of the proposed use does not exceed five (5 %) of the gross building square footage of the ARHC.

10.2-4 Age Qualification:

An ARHC shall constitute housing intended for persons of age fifty-five or over in accordance with M.G.L. chapter 151H, section 4, sub-section 6. One hundred percent (100 %) of the dwelling units in an Age Restricted Housing Community shall each be occupied by at least one person fifty-five (55) years of age or older except in the event of the death of the qualifying occupant of a dwelling unit, or foreclosure or other involuntary transfer of a dwelling unit, a two (2) year exemption shall be allowed to facilitate the transfer of the dwelling unit to another eligible household.

10.2-5 Applicant Qualifications:

The applicant for a Special Permit for an ARHC shall be the owner of the land proposed for such development or be authorized in writing by the owner to apply for and be issued such Special Permit.

10.2-6 Maximum Number of ARHC Dwelling Units in the Town of Conway:

The maximum number of permitted housing units within all permitted ARHC developments in the Town of Conway shall be limited to a number equivalent to five percent (5 %) of the existing residential units (excluding ARHC units) located in the Town of Conway. For the purpose of this Bylaw, the number of residential units shall be as established by the Board of Assessors as of January 1 of each calendar year.

10.2-7 Affordability Requirement:

A proposal shall, at a minimum, set aside fifteen percent (15 %), with a minimum of one (1) unit per development, of the total number of dwelling units provided on the site as affordable Age Restricted housing. For the purposes of this Section, affordable Age Restricted housing shall be defined as dwelling units that are rented or sold to, and occupied by, households earning up to 80 of the Median Area Household Income, as such median is defined by the United States Department of Housing and Urban Development (HUD). Affordable Age Restricted rental units shall be "rent restricted", as such term is defined in the Federal Low-Income Housing Tax Credit Program, Internal Revenue Code Section 42(g)(2), such that rents, including utilities, are set at no more than thirty (30) percent of the income limit. Affordable Age Restricted units shall be dispersed throughout the ARHC and shall be externally indistinguishable from the market rate units. The property owner shall seek the services of a third party entity such as a local community development corporation to manage the assignment of affordable age restricted units.

10.2-8 Permanent Age Restriction:

Each dwelling unit within an ARHC shall be subject to a permanent age restriction, described in a deed, deed rider or lease, and the organizational documents for the ARHC shall be recorded with the Franklin County Registry of Deeds or run with the land for a minimum period of ninety-nine (99) years and shall be enforceable by any or all of the owners of the ARHC or by the Town.

10.3 DIMENSIONAL REGULATIONS AND DEVELOPMENT REQUIREMENTS

Except as noted below, an ARHC shall comply with all applicable dimensional regulations and development requirements listed in Section 22, 23, 32, 33, and 41 of the Protective Bylaws of Conway.

- a. **Lot Area:** At the time of granting a special permit by the Planning Board, the property under consideration for an ARHC shall be located on one or more contiguous parcels, whether or not separated by a public or private way, having an area of at least three (3) acres.
- a. **Lot Frontage:** An ARHC shall have a minimum frontage of not less than one hundred (100) feet.
- b. **Setbacks:** There shall be no minimum standards for internal lot line setbacks within the ARHC; however the distribution of buildings and lots within the ARHC shall be distributed in a manner designed to enhance the primary and secondary resources as defined in Section 10.6-2 and 10.6-3. There shall be a minimum of thirty (30) feet between the edge of the access drive and any abutting property line.
- c. **Lot Width:** The lot or combination of lots upon which an ARHC is located shall maintain a minimum width of open land between the limits of work of the ARHC and any adjacent property of forty (40) feet, except for access to the development.
- d. **Open Space:** A goal of fifty percent (50 %) of an ARHC lot shall be maintained as open space as defined in Section 10.5.
- f. **Number of Dwelling Units:** The maximum number of dwelling units allowed in an ARHC is twenty (20). The minimum number of dwelling units allowed in an ARHC is seven (7).
- g. **Distribution of Dwelling Unit Types:** In an ARHC development, the distribution of dwelling unit types shall be at the discretion of the applicant, except for the following standards:
 1. At least fifty percent (50 %) of the units constructed shall be single-family or two-family dwellings.
- h. **Parking:** Parking for motor vehicles shall be provided as follows:
 - o One and one-half (1-1/2) spaces per dwelling unit.
 - o Guest parking - One (1) space per six (6) dwelling units.
 - o Common Facility parking - Additional parking spaces shall be provided at shared or common facilities (swimming pool, clubhouse, etc.) within the ARHC provided that no common facility lot shall contain more than twelve (12) spaces.

All driveways must meet the performance standards for driveways or common driveways as set forth in the Conway Zoning Bylaw, Sections 41.4 and/or 41.5 as applicable.

10.3-1 Driveways and Lot Access:

All proposed private driveways shall comply with Sections 22.4 Street naming and Building numbering, and/or 41.4 Driveways and/or 41.5 Common Driveways as set forth in the Protective Bylaws of the Town of Conway.

The construction and maintenance of roads, driveways, alleyways, and parking areas in an ARHC is the sole responsibility of the project applicant or an association of dwelling unit owners.

10.3-2 Natural and Neighborhood Features:

The plan for an ARHC shall be designed to maximize the preservation of natural and neighborhood features. To the extent possible, existing vegetation should be retained where such growth provides a benefit to the natural environment. In developed areas, the design of the ARHC shall also consider human designed landscapes by extending existing street tree plantings and by providing landscapes and landscape amenities that reinforce the physical layout of the neighborhood.

10.3-3 Pedestrian Facilities:

The plan for an ARHC shall incorporate pedestrian systems that allow for the convenient and safe movement of those who choose to walk for leisure or as a means of transportation. Connections to the Town's existing sidewalk network shall be made by the applicant where possible.

10.3-4 Landscaping and Screening:

All service areas and equipment, rubbish and recycling containers, service outbuildings, and any other accessory facilities identified by the Planning Board, shall be adequately screened from the view of public ways and adjacent properties using vegetative plantings, fencing, berms, or a combination of these techniques.

10.3-5 Lighting:

Lighting within ARH communities shall be consistent with local, state and federal law. Lighting of other parts of the community, such as appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties. Where feasible, lighting of the ARHC shall be directed downward and shall incorporate full cut-off fixtures to reduce light pollution.

10.3-6 Accessory Buildings and Structures:

In an ARHC, accessory buildings and structures may be permitted, including storage and maintenance structures, garages, and other customary accessory structures. Accessory buildings and structures shall be shown on the Site Plan.

10.3-7 Other Facilities:

All facilities for utility services, drainage, lighting and signage shall be in accordance with requirements established by the Planning Board, consistent with applicable provisions of the Protective Bylaws of Conway.

10.3-8 Project Maintenance:

In an ARHC there shall be an organization of the owners of the residential dwelling units, either a Condominium or Homeowners Association, which shall be responsible for the maintenance and repair of internal roads and driveways, snow plowing, landscape maintenance, trash removal, utility services and maintenance and repair of other common elements and facilities serving the residents. The Town of Conway shall assume no responsibility for these facilities unless

specifically noted under separate agreement.

10.3-9 Water Supply and Wastewater Disposal:

In every development the water supply and wastewater disposal shall comply with the regulations of the Conway Board of Health and applicable Massachusetts Department of Environmental Protection regulations.

10.4 BUILDING AND DWELLING UNIT REQUIREMENTS

The following requirements shall apply to all buildings and dwelling units in an Age Restricted Housing Community:

10.4-1 Dwelling Unit Types:

Unit types allowed in an approved ARHC are:

- Single-Family Detached
- Duplex or Two-Family Dwelling
- Triplex or Three-Family Dwelling
- Quadplex or Four-Family Dwelling

10.4-2 Maximum Number of Bedrooms:

No dwelling unit shall contain more than two (2) bedrooms.

10.4-3 Maximum Height:

No building shall exceed thirty-five (35) feet in height.

10.4-4 Architectural Appearance:

All buildings shall be compatible with the character, scale and context of the surrounding neighborhood. When an ARHC is located in a Historic district the applicant shall present and respond to review comments by the Conway Historical Commission.

10.5 OPEN SPACE AND BUFFER AREA REQUIREMENTS

No development, including primary or accessory structures, parking, or stormwater management shall take place within the required open space areas. Appropriately designed subsurface wastewater disposal may be located within the open space area at the discretion of the Planning Board.

10.5-1 In ARHC development the following requirements for open space shall apply:

- a. The open space shall be planned as single, contiguous areas whenever possible. Long thin strips or narrow areas of open space (less than 100 feet wide) shall occur only when necessary for access, as vegetated buffers along wetlands or the perimeter of the site, or as connections between open space areas.
- b. Open space areas shall be designed to protect or enhance the primary and secondary

resources as defined in Sections 10.6-2 & 10.6-3.

- c. Where the proposed development abuts or includes a stream, river, body of water or wetland, these areas and the buffer to such areas shall be incorporated into the open space.
- d. Where a proposed development abuts land held for conservation purposes, the development shall be configured to minimize adverse impacts to the abutting conservation land. Trail connections should be provided where appropriate.
- e. No more than fifty percent (50 %) of the common open space shall be situated within wetlands or the Conway Flood plain Overlay District.
- f. The open space shall be owned in common by the owners of the dwelling units in the ARHC, or by an organization or entity owned and controlled by such dwelling unit owners. An enforceable restriction shall be recorded on all open space parcels providing that such land shall be kept in an open or natural state and not be built for residential use or developed for accessory uses such as parking, roadway or active recreation.

10.6 APPLICATION PROCEDURES

The Planning Board shall by regulation establish a fee schedule for each application.

The procedure for issuance of a special permit for an Age Restricted Housing Community shall be as follows:

10.6-1 Preliminary Plan:

Applicants shall submit preliminary plans and materials for a joint review by the Zoning Board of Appeals and the Planning Board prior to formal application for special permit. The applicant may submit a Sketch Plan to assist the Boards in making a determination regarding maximum number of dwelling units to be permitted on the tract of land proposed for an AHRC. The sketch plan shall include a proposed development plan as follows:

- a. A proposed development plan drawn to scale shall clearly indicate the primary and secondary resource areas as defined below. From these two resource areas, the final plan shall clearly indicate the building placement, lots and driveway layout of the proposed AHRC.

10.6-2 Primary Resource Areas:

Primary resource areas should show the following:

- a. The location of all wetlands and floodplains as determined by a licensed hydrologist, and/or qualified licensed professional.
- b. The location of all significant woodlands, tree lines, or open fields or meadows, rocky outcroppings of ledge or bedrock, public water supply areas, watershed divides, aquifer recharge areas, drainage ways, wildlife habitat and corridor areas and areas of slopes greater than 10 % grade.
- c. The location of soil test pits with supporting documentation on test results.

10.6-3 Secondary Resource Areas:

Secondary resource areas should show the following:

- a. The location and description of all significant scenic views, fences and stone walls, roads and trails, recreational areas, historic structures and archeological sites.
- b. A statement of the proposed use and ownership of the open space as permitted by this bylaw.

10.6-4 Maximum Housing Density of Proposed Development Plan:

If the proposed area of common open space exceeds sixty percent (60 %) of the site, the permitted maximum housing density allowed under the ARHC special permit shall be the number of units permitted on conventional lots as determined by the board times 115 percent. If the proposed area of common open space exceeds seventy percent (70 %) of the site, the permitted maximum housing density allowed under the ARHC special permit shall be the number of units permitted on conventional lots as determined by the Planning Board times 130 percent.

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10.6-5 Conclusion of the Preliminary Plan Process:

Upon the conclusion of the preliminary plan process, the Planning Board shall approve, approve with modifications or disapprove said preliminary plan and in the case of disapproval, the Planning Board shall state in detail the reasons for its disapproval.

10.7 SPECIAL PERMIT w/ PLAN

A Special Permit for an ARHC may be submitted after a preliminary plan application and determination of housing density has been made by the Planning Board. The purpose of the Special Permit Review is to further the purposes of this Bylaw and to ensure that new development of ARHC residential structures are designed in a manner that reasonably protects visual and environmental qualities and property values of the Town, and assures safe vehicular access, safe pedestrian movement, and appropriate drainage of surface water.

10.7-1 Special Permit Application

- a. Each application for an ARHC Special Permit shall be submitted to the Planning Board by the current owner of record or his written designee(s), accompanied by nine (9) copies of the Site Plan.
- b. The Planning Board shall by regulation establish a fee schedule for each such application.
- c. A Special Permit application may not be submitted without an approval of the preliminary plan as endorsed by the Planning Board.
- d. The Special Permit application process shall be conducted in accordance with SECTION 63: Special Permit Guidelines of these bylaws. Additional guidance may be found in SECTION 64 (f): Required contents of a site plan, and is included hereto by reference.

10.7-2 Technical Consultants

If after receiving an ARHC Special Permit application the Planning Board determines that it requires technical advice unavailable from municipal employees and departments to review the application, it may employ outside consultants. The Planning Board may, by majority vote, require that the applicant pay a reasonable review fee for the employment of outside consultants chosen by the Planning Board alone.

- a. A review fee may be imposed only if:
 - o The work of the consultant consists of review of studies prepared on behalf of the applicant, and not of independent studies on behalf of the Planning Board,
 - o The board finds that an adequate review cannot be performed by Town board members or employees,
 - o The work is in connection with the applicant's specific project, and
 - o All written results and reports are made part of the record before the Planning Board.
- b. Before a fee is imposed:
 - o The applicant shall be given five business days notice and opportunity to submit written comments relative to the invitation for bids or request for proposals,
 - o The applicant shall be given five business days notice and opportunity to comment on all bids or proposals prior to the selection of the consultant and the award of a contract,
 - o The applicant shall be given five business days notice and the opportunity to file an appeal of the selection of the outside consultant with the Selectboard, Grounds for said appeal are limited to written claims, with written documentation, that the consultant selected has a conflict of interest or does not possess ~ the minimum required qualification in accordance with MGL Ch., 44, Section 53G.

10.7-6 Finding

- a. Before a finding on an ARHC Special Permit, the Planning Board may request the applicant to make modifications in the proposed design of the project to ensure that the Special Permit criteria are met.
- b. After a public hearing, the Planning Board may waive, for good cause shown, any or all requirements of ARHC Special Permit where such action is in the public interest and not inconsistent with the purpose and intent of this Bylaw.
- c. The Planning Board's finding shall consist of:
 - o A written denial of the application, stating that the plan fails to provide adequate information for the Planning Board to make a determination of whether the development satisfies decisional criteria set forth in this section.
 - o A finding that the project will constitute a suitable development subject to any conditions, modifications, and restrictions the Planning Board may deem necessary or appropriate.
 - o A finding that the proposed project does not constitute a suitable development in that it does not meet the criteria set forth in this and referenced sections of the Protective Zoning Bylaws of Conway.

10.8 DEFINITIONS

CONDOMINIUM - A legal form of ownership of real property, usually individual ownership of a dwelling unit in a multi-unit development where some rights are held in common by the residents of that development.

HOMEOWNERS ASSOCIATION - A private non-profit organization (corporation, association, or other legal entity) established by the developer to manage, maintain, support, and finance the common area and facilities and open space of an Age Restricted Housing Community Development, and to enforce certain covenants and restrictions.

OPEN SPACE - Undeveloped land set aside for common or individual ownership as a result of a Retirement Community Development, with conservation easements and other deeded restrictions to ensure that the land will remain permanently open and undeveloped. A condition of Age Restricted Housing Community Development approval is that open space may not be further subdivided.

AGE RESTRICTED - An individual who is 55 years of age or older.

AGE RESTRICTED HOUSING COMMUNITY- A master-planned development of land as a unified, self-contained, residential community, constructed expressly for use and residence by persons who have achieved a minimum age requirement for residency of fifty five (55) years or older, in accordance with M.G.L. Chapter 151B, Section 4, Subsection 6, and also incorporating the preservation of natural open space areas as an integral element of the development. An Age Restricted Housing Community shall be permitted only within the Rural Residential/Agricultural Overlay District of Conway and only upon the granting of a special permit by the Planning Board.