

**ARTICLE 500  
REQUIREMENTS FOR CERTAIN LAND DIVISIONS, LAND  
DEVELOPMENTS, AND INCLUSIONARY HOUSING**

**530 DIVISION OF LAND AND DEVELOPMENT OF MULTIPLE DWELLINGS**

**530.1 Purpose**

The purpose of this Bylaw is to ensure that land divisions, subdivisions, and developments of multiple dwellings on single lots are afforded the depth and breadth of review allowed by G.L. c. 40A, sec. 9 to adequately protect public health, safety and welfare of the current and future residents of the Town. This Bylaw, in concert with Section 540, 560 and/or 906.2 allows the Board of Appeals or Planning Board to grant a special permit for land divisions, subdivisions and large multi-unit developments, provided specific enumerated criteria are satisfied.

**530.2 Applicability**

The division and/or subdivision of land held in single ownership as of January 1, 2001 or anytime thereafter into:

1. Six (6) or more lots or;
2. The division of a track of land greater than ten (10) acres into five (5) or more lots or;
3. The construction of six (6) or more dwelling units on land that does not require land division and/or subdivision, whether on one or more contiguous parcels held in single ownership as of January 1, 2001 or anytime thereafter,

shall require a special permit from the Planning Board under the provisions of Sections 540 and/or 906.2, unless application is made under Section 700 of the Zoning Bylaw, in which case the special permit granting authority shall be the Board of Appeals. In cases where the proposed division of land is for six (6) or more lots and said division is proposed as a division of land not requiring Planning Board approval (G. L. c. 41, sec. 81-P), the Planning Board's special permit powers shall be limited to enforcing the provisions of Section 560 of the Zoning Bylaw. The provisions of Section 530.2.3 shall not apply to the construction of six (6) or more dwelling units on individual lots, if said six (6) or more lots were in existence as of January 1, 2001.

**530.3 Multiple Special Permits**

The special permit requirements of Section 530 may be subsumed by the special permit requirement of Sections 406, 540 and 700.

**540 RESIDENTIAL CONSERVATION CLUSTER**

**540.1 Purpose and Intent**

1. Allow for greater flexibility and creativity in the design of residential developments.
2. Encourage the permanent preservation of open space, agricultural and forestry land, other natural resources including waterbodies and wetlands, and historical and archeological resources.

3. Maintain the Town's traditional character and land use pattern in which small villages contrast with open land.
4. Protect scenic vistas from the Town's roadways and other places.
5. Encourage screening of new residential development from the Town's roads, open spaces and scenic areas.
6. Facilitate the construction and maintenance of streets, utilities and public services in a more economical and efficient manner.
7. Protect existing and potential municipal water supplies.
8. Encourage a less sprawling and more efficient form of development that consumes less open land and conforms to existing topography and natural features better than a conventional subdivision.
9. Minimize the total amount of disturbance on the site.
10. Preserve open space areas for active and passive recreational use, including the provision of neighborhood parks and trails.
11. Encourage the provision of diverse housing opportunities and the integration of a variety of housing types.
12. Further the goals and policies of the Duxbury Comprehensive Plan.

#### **540.2 Definitions**

In this Bylaw, the following words have the meanings indicated:

Residential Conservation Cluster (RCC) Development - A residential development in which the buildings are clustered together with reduced lot sizes and frontage. The land not included in the building lots is permanently preserved as open space. RCC Development is generally the preferred form of residential development and/or redevelopment in the Town for residential developments of five (5) or more acres and/or six (6) or more lots.

#### **540.3 Applicability**

A proposed subdivision of land into six (6) or more lots shall be filed in accordance with the provisions of Section 540.4, below. The Planning Board shall determine whether the proposed location is suitable for an RCC Development under the terms and provisions of this section. If the Planning Board determines that the proposed location is suitable for an RCC Development, any further subdivision of the land into six (6) or more lots shall be accomplished only through the provisions of this Bylaw. If the Planning Board determines, after discussion and analysis provoked by Section 540.4, that the location is best suited for subdivision under a conventional subdivision design, the Planning Board shall so inform the applicant and the applicant may then proceed to design a subdivision plan under the provisions of the Subdivision Control Law and the Duxbury Rules and Regulations Governing the Subdivision of Land (Subdivision Rules and Regulations) and the provisions of this section shall not apply. In cases where the Planning Board determines that the site is not suitable for an RCC Development, and where the proposed subdivision of land is for six (6) or more lots, the Planning Board's special permit powers shall be limited to enforcing the provisions of Section 560 of the Zoning Bylaw. In either case, however, a special permit from the Planning Board shall be required.

Notwithstanding the provisions above, the Planning Board may grant a special permit for an RCC Development for any parcel or contiguous parcels of at least five (5) acres in any district permitting single-family dwellings subject to the regulations and conditions herein.

Determination of whether the proposed location is not suitable for an RCC Development shall be based upon the opinion and judgment of the Planning Board, after consultation with its advisors and staff and may include the following criteria:

1. The degree to which the topography of the locus will not be preserved by a RCC Development;
2. The degree to which stormwater runoff and erosion will not be minimized by a RCC Development;
3. The degree to which the RCC Development will result in inappropriate site planning, subdivision design and/or damage to the site's natural features;
4. The degree to which the RCC Development will not preserve or protect abutting properties and associated views and vistas;
5. The degree to which public safety will be threatened by a RCC Development;
6. The degree to which other site specific attributes or site specific concerns are not appropriately addressed by a RCC Development.

#### **540.4 Procedural Requirements**

1. Pre-Application Meeting: A pre-application meeting between the Planning Board and/or Planning Department and the applicant is strongly encouraged.
2. Preliminary (Conventional) Plan/RCC Sketch Plan: Applicants proposing the subdivision of land into six (6) or more lots shall submit a Sketch Plan for an RCC Development along with a Preliminary (Conventional) Subdivision Plan for review by the Planning Board. One of the purposes of this review is to determine the number of lots possible in the RCC Development. For this reason, it is strongly recommended that a copy of the existing conditions plan required in Section 540.4.3 below be submitted at this stage. The Planning Board shall approve, approve with conditions, or disapprove the preliminary plan/RCC Sketch Plan within forty-five (45) days of receipt of a completed application. Upon receipt of the Planning Board's written decision regarding said plan, the applicant may submit a definitive subdivision and RCC Development plan in accordance with the Planning Board's written decision. If the above-noted forty-five (45) day time period has lapsed without a written decision being issued by the Planning Board, the applicant may submit a definitive subdivision and RCC Development plan in accordance with Section 540.4.3 of this Bylaw.
3. Definitive Subdivision and RCC Development Plan: The Definitive RCC Development Subdivision Plan shall show: location and boundaries of the site, proposed land and building uses, lot lines, location of open space, proposed grading, location and width of streets and ways, parking, landscaping, existing vegetation to be retained, water supply or approximate location of wells, drainage, proposed easements and methods of sewage disposal. A team including a Registered Civil Engineer, Registered Land Surveyor, and a Registered Landscape Architect shall prepare the plan. An accompanying Existing Conditions Plan shall depict existing topography, wetlands, waterbodies and the one hundred (100) year floodplain, all existing rights of way, easements, existing structures, the location of significant features such as woodlands, tree lines, open fields or meadows, scenic views, watershed divides and drainage ways, fences and stone walls, roads, driveways, and cart paths. Submission of photographs depicting existing conditions, views and vistas from various locations on the property and from public and private ways shall accompany the plan submission. The Site Analysis shall also show locations of soil test pits and percolation tests, with supporting documentation on test results. Applicants shall

also include a statement indicating the proposed use and ownership of the open space as permitted by this Bylaw. Applicants should refer to the Subdivision Rules and Regulations for provisions regarding preparation and submittal of plans.

4. Density/Number of Dwelling Units: The total number of dwelling units in a Residential Conservation Cluster shall be determined by the following formula:

a) [Total area of land subject to the application] – [Area of wetlands and waterbodies] = Applicable Land Area

[ [Applicable Land Area] x [.75] ] Divided by Minimum Lot Area Established for the Zoning District = Total number of dwelling units.

The number of dwelling units permitted in a Residential Conservation Cluster shall not exceed that which would be permitted under a conventional subdivision that complies with the Zoning Bylaw and the Subdivision Rules and Regulations of the Planning Board and any other applicable laws and regulations.

5. Review and Decision: Upon receipt of the application and the required plans, the Planning Board shall transmit one copy each to the Board of Health, Historical Commission, and Conservation Commission. Within forty-five (45) days of their receipt of the application/plans, these agencies shall submit any recommendations to the Planning Board. The Planning Board shall act on applications according to the procedure specified in G. L. c. 40A, sec. 9. Notice shall be provided of hearings in accordance with Chapter 40A, sec. 11 and Chapter 41, sec. 81T. Public hearings for the subdivision application and the special permit application shall be conducted concurrently.

6. Criteria for Special Permit Decision:

- a) Findings: The Planning Board may approve the development upon finding that it complies with the purposes and standards of the RCC Development Bylaw and is superior in design to a conventional subdivision with regard to protection of natural features and scenic resources of the site. The Planning Board shall consider the following criteria in making its decision:
1. Upland open space as required by this Bylaw has been provided and generally conforms to the Design Requirements in Section 540.8 of this Bylaw.
  2. Approximate building sites have been identified and are not located closer than one hundred (100) feet to wetlands and waterbodies.
  3. Proposed streets have been aligned to provide vehicular access to each dwelling unit in a reasonable and economical manner. Lots and streets have been located to avoid or minimize adverse impacts on open space areas and to provide lots with views of and access to the open space.
  4. All lots meet the applicable dimensional requirements of Section 540.5 of the RCC Development Bylaw and all other relevant provisions of the Zoning Bylaw.
  5. The provisions of Section 560 of the Zoning Bylaw will be met. The Planning Board's findings, including the basis of such findings, shall be stated in the written decision of approval, conditional approval or denial of the application for special permit.

- b) Conditions: The Planning Board shall impose conditions in its decision as necessary to ensure compliance with the purposes of this Bylaw. Approval of an RCC Development shall be conditioned upon Definitive Subdivision approval and shall be conditioned to provide that no further division of land which increases the number of lots or results in an alteration to the area to be set aside as open space may occur without a modification of the special permit. Any alteration of lot lines or layout of ways shall require approval of the Planning Board and shall be in compliance with the requirements of the RCC Development Bylaw and the Subdivision Rules and Regulations.
- c) Time Limit: A special permit is granted for a period of two (2) years from the date of its approval and shall lapse if substantial use or construction has not commenced by such date, except for good cause shown. In its sole discretion, the Planning Board may grant extensions to allow construction of subdivisions within the vested rights limits set forth in G.L. c. 40A, sec.6 except where such extension would derogate from the intent and purpose of this Bylaw.
- d) Relationship to Subdivision Control Law: Nothing contained herein shall exempt a proposed subdivision from compliance with other applicable provisions of these Bylaws or the Subdivision Rules and Regulations of the Planning Board, nor shall it affect the right of the Board of Health and of the Planning Board to approve, condition or disapprove a subdivision plan in accordance with the provision of such Rules and Regulations and of the Subdivision Control Law.

#### **540.5 Standards and Dimensional Requirements**

Where the requirements of this section differ from or conflict with the requirements found elsewhere in this Bylaw, the requirements of this section shall prevail.

1. Minimum Lot Size: The minimum lot size shall be one-half (1/2) the square footage otherwise required by the Zoning District in which the project is located.
2. Minimum Frontage: The minimum frontage may be reduced from frontage otherwise required in the Zoning District, provided however that no lot shall have less than fifty (50) feet of frontage and provided further that such frontage reduction shall apply only to lots fronting on proposed internal roadways.
3. Setbacks: Provided that no objection to the contrary is raised by the Fire Department, the Planning Board may reduce by up to one-half (1/2) the setbacks otherwise required by the Zoning Bylaw if the Board finds that such reduction will result in better design, improved protection of natural and scenic resources, and will otherwise comply with this Bylaw. Notwithstanding this provision or the requirements of the Zoning Bylaw, every dwelling fronting on the proposed roadways shall be set back a minimum of fifteen (15) feet from the roadway right-of-way, and a minimum of fifty (50) feet from the outer perimeter of the land subject to the application. This fifty (50) foot setback shall be maintained in a naturally vegetated state to screen and buffer the development and may be included within the open space. This setback may be eliminated where the proposed development abuts existing permanent open space. Wherever feasible, construction of the dwelling at the front setback line is encouraged.
4. Required Open Space: All land area not utilized for lots, roads, and drainage shall be set aside as open space. A minimum of sixty percent (60%) of the upland area of the parcel ("applicable land area") shall be provided as open space. As an exception, where the open space is proposed to be deeded to the Town or a qualified land trust

pursuant to 540.7 of this Bylaw, and in fact, such a transfer occurs, a minimum of fifty percent (50%) of the upland area of the parcel shall be provided as open space. Applicants are encouraged to include wetlands and waterbodies within the open space; however, they do not count toward the open space requirement. Roadway rights-of-way shall not count toward the area to be provided as open space.

#### **540.6 Permissible Uses Of Open Space**

1. Purposes: Open space shall be used solely for recreation, conservation, or agriculture purposes by residents and/or the public. Where appropriate, multiple use of open space is encouraged. At least half of the required open space may be required by the Planning Board to be left in a natural state. The proposed use of the open space shall be specified in the application. If several uses are proposed, the plans shall specify what uses will occur in what areas. The Planning Board shall have the authority to approve or disapprove particular uses proposed for the open space.
2. Leaching Facilities: Subject to the approval of the Board of Health, as otherwise required by law, the Planning Board may permit a portion of the open space to be used for components of sewage disposal systems serving the subdivision, where the Planning Board finds that such use will not be detrimental to the character, quality, or use of the open space, wetlands or waterbodies, and enhances the site plan. The Planning Board shall require adequate legal safeguards and covenants that such facilities shall be adequately maintained by the lot owners within the development. No portion of the open space containing components of a sewage disposal system(s) shall count toward the open space requirements of Section 540.5.4, nor shall any portion of said open space areas be accepted by the Town or conveyed to a nonprofit organization other than a corporation or trust described in Section 540.7(c).

#### **540.7 Ownership Of Open Space**

1. Ownership Options: At the developer's option and subject to approval by the Planning Board, all areas to be protected as open space shall be:
  - a) Conveyed to the Town to be placed under the care, custody and control of the Conservation Commission, and be accepted by it for a park or open space use. Land conveyed to the Town shall be open for public use;
  - b) Conveyed to a non-profit organization, the principal purpose of which is the conservation or preservation of open space, with a conservation restriction as specified below. Such organization shall be acceptable to the Town as a bona fide conservation organization; or
  - c) Conveyed to a corporation or trust owned or to be owned by the owners of lots or residential units within the development (i.e. "homeowners' association") and placed under conservation restriction. If such a corporation or trust is utilized, as indicated herein, ownership thereof shall pass with conveyance of the lots or residential units. The developer is responsible for the maintenance of the open space and other facilities to be held in common until such time as the homeowners' association is capable of assuming such responsibility. Thereafter, the members of the association shall share the cost of maintaining the open space. The Planning Board shall require the applicant to provide documentation that the homeowners' association is an automatic (mandatory) association that has been established prior to the conveyance of any lots within the subdivision.

2. Permanent Restriction: In any case when open space is not conveyed to the Town, a permanent conservation or agricultural preservation restriction, in accordance with G. L. c. 184 sec. 31, approved by the Planning Board and Board of Selectman, and enforceable by the Town, conforming to the standards of the Massachusetts Executive Office of Environmental Affairs, Division of Conservation Services, shall be recorded to ensure 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 or roadways except as permitted by this Bylaw and approved by the Planning Board. Restrictions shall provide for periodic inspection of the open space by the Town. Such restriction shall be submitted to the Planning Board prior to approval of the project and recorded at the Registry of Deeds/Land Court simultaneously with recording of the definitive subdivision plan. A management plan may be required by the Planning Board that describes how existing woods, fields, meadows or other natural areas shall be maintained in accordance with good conservation practices.
3. Encumbrances: All areas to be set aside as open space shall be conveyed free of any mortgage interest, security interest, liens or other encumbrances.
4. Maintenance of Open Space: In any case where open space is not conveyed to the Town, the Town shall be granted an easement over such land sufficient to ensure its perpetual maintenance as conservation or recreation land. Such easement shall provide that in the event the trust or other owner fails to maintain the open space in reasonable condition, the Town may, after notice to the lot owners and public hearing, enter upon such land to maintain it in order to prevent or abate a nuisance. The cost of such maintenance by the Town shall be assessed against the properties within the development and/or to the owner of the open space. The Town may file a lien against the lot or lots to ensure payment of such maintenance expenses.

#### **540.8 Design Process**

Each development plan shall follow the design process outlined below. When the development plan is submitted, applicants shall be prepared to demonstrate to the Planning Board that this design process was considered in determining the layout of proposed streets, house lots, and contiguous open space.

1. Understanding the Site. The first step is to inventory existing site features, taking care to identify sensitive and noteworthy natural, scenic and cultural resources on the site, and to determine the connection of these important features to each other.
2. Evaluating Site Context. The second step is to evaluate the site in its larger context by identifying physical (e.g., stream corridors, wetlands), transportation (e.g., road and bicycle networks), and cultural (e.g., recreational opportunities) connections to surrounding land uses and activities.
3. Designating the Contiguous Open Space. The third step is to identify the contiguous open space to be preserved on the site. Such open space should include the most sensitive and noteworthy resources of the site, and, where appropriate, areas that serve to extend neighborhood open space networks.
4. Location of Development Areas. The fourth step is to locate building sites, streets, parking areas, paths and other built features of the development. The design should include a delineation of private yards, public streets and other areas, and shared amenities, so as to reflect an integrated community, with emphasis on consistency with Duxbury's historical development patterns.
5. Lot Lines. The final step is to draw the lot lines.

#### **540.9 Design Requirements**

The location of open space provided through this Bylaw shall be consistent with the policies contained in the Duxbury Comprehensive Plan and the Open Space and Recreation Plan, as amended. The following design requirements shall apply to open space and lots provided through this Bylaw:

1. Open space shall be planned as large, contiguous areas whenever possible. Long thin strips or narrow areas of open space (less than one hundred [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.
2. Open space shall be arranged to protect valuable natural and cultural environments such as stream valleys, wetland buffers, unfragmented forestland and significant trees, wildlife habitat, open fields, scenic views, trails, and archeological sites and to avoid development in hazardous areas such as floodplains and steep slopes. The development plan shall take advantage of the natural topography of the parcel and cuts and fills shall be minimized.
3. Open space may be in more than one parcel provided that the size, shape and location of such parcels are suitable for the designated uses. Where feasible, these parcels shall be linked by trails.
4. Where the proposed development abuts or includes a body of water or a wetland, these areas and the one hundred (100) foot buffer to such areas shall be incorporated into the open space. Where appropriate, reasonable access shall be provided to shorelines.
5. The maximum number of house lots compatible with good design shall abut the open space and all house lots shall have reasonable physical and visual access to the open space through internal roads, sidewalks or paths. An exception may be made for resource areas vulnerable to trampling or other disturbance.
6. Open space shall be provided with adequate access, by a strip of land at least twenty (20) feet wide, suitable for a footpath, from one (1) or more streets in the development.
7. Development along existing scenic roads and creation of new driveway openings on existing regional roadways shall be minimized.
8. Where a proposed development abuts land held for conservation purposes, the development shall be configured to minimize adverse impacts to abutting conservation land. Trail connections should be provided where appropriate.
9. Residential structures shall be oriented toward the street serving the premises.

#### **540.10 Types of Buildings**

The provisions of Section 410.1.1 notwithstanding, an RCC Development may consist of any combination of single-family, two-family and multifamily residential structures. A multifamily structure shall not contain more than three (3) dwelling units. The architecture of all multifamily buildings shall be residential in character, particularly providing gabled roofs, predominantly wood siding, an articulated footprint and varied facades.

### **540.11 Affordable Component**

As a condition of the grant of any special permit for a RCC Development containing six (6) or more lots or dwelling units, the Planning Board shall ensure compliance with the provisions of Section 560 ("Inclusionary Housing") of the Zoning Bylaw.

### **540.12 Special Permit Requirements**

In reviewing an application under this Bylaw, the Planning Board shall rely, to the extent warranted, on the provisions of Section 906.2 of the Zoning Bylaw.

## **560 INCLUSIONARY HOUSING**

### **560.1 Purpose and Intent**

The purpose of this Bylaw is to outline and implement a coherent set of policies and objectives for the development of affordable housing in compliance with the Duxbury Comprehensive Plan, G.L. c. 40B sec. 20-23 and ongoing programs within the Town to promote a reasonable percentage of housing that is affordable to moderate income buyers. It is intended that the affordable housing units that result from this Bylaw be considered as Local Initiative Program (LIP) dwelling units in compliance with the requirements for the same as specified by the Department of Community Affairs, Division of Housing and Community Development and that said units count toward the Town's requirements under G. L. c. 40B sec. 20-23.

### **560.2 Definitions**

1. Affordable Housing Unit. A dwelling unit that qualifies as a local initiative unit under the Commonwealth's Local Initiative Program and meets the requirements of a subsidized housing unit for purposes of listing in the subsidized housing inventory under G. L. c. 40B Sec. 20-23.
2. Qualified affordable housing unit purchaser. An individual or family with household incomes that do not exceed 80% of the median income, with adjustments for household size, as reported by the most recent information from the United States Department of Housing and Urban Development (HUD) and/or the Massachusetts Department of Housing and Community Development (DHCD).

### **560.3 Applicability**

1. Division of Land. This Bylaw shall apply to the division of land into six (6) or more lots, and shall require a special permit from the Planning Board under Section 530 or Section 540 of the Zoning Bylaw. A special permit shall be required for land divisions under G. L. c. 40A sec. 9 as well as for "conventional" or "grid" divisions allowed by G. L. c. 41 sec. 81-L and sec. 81-U, including those divisions of land that do not require subdivision approval.
2. Multiple Units. This Bylaw shall apply to the construction of six (6) or more dwelling units in accordance with Section 700 of the Zoning Bylaw, whether on one or more contiguous parcels, and shall require a special permit from the Board of Appeals.

### **560.4 Mandatory Provision of Affordable Units**

The Planning Board or Board of Appeals shall, as a condition of approval of any development referred to in Sections 560.3.1 and 560.3.2, require that the applicant for

special permit approval comply with the obligation to provide affordable housing pursuant to this Bylaw and more fully described in Section 560.5.

### **560.5 Provision of Affordable Units**

The Planning Board or Board of Appeals shall deny any application for a special permit for development under Sections 530, 540, and 700, and this section if the applicant for special permit approval does not agree that:

1. At least ten percent (10%) of the lots in a division of land or units in a multiple unit development subject to this Bylaw shall be established as affordable housing units in any one or combination of methods provided for below. Fractions of a lot or dwelling unit shall be rounded up to the nearest whole number, such that a development proposing six (6) dwelling units shall require one affordable unit, a development proposing eleven (11) dwelling units shall require two affordable units and so on.
  - a) Constructed or rehabilitated on the locus subject to the special permit;
  - b) Constructed or rehabilitated on a locus different than the one subject to the special permit (see Section 560.8);
  - c) An applicant may offer, and the Planning Board or Board of Appeals, in concert with the Board of Selectmen, may accept donations of land in fee simple, on or off-site, that the Planning Board or Board of Appeals determines are suitable for the construction of affordable housing units. The value of donated land shall be equal to or greater than the value of the construction or set-aside of the affordable units. The Planning Board or Board of Appeals may require, prior to accepting land as satisfaction of the requirements of this Bylaw, that the applicant submit appraisals of the land in question, as well as other data relevant to the determination of equivalent value;
  - d) For non-rental affordable housing units, a cash payment to the Affordable Housing Trust Fund may be made subject to Section 560.11 of this Bylaw.

The applicant may offer, and the Planning Board or Board of Appeals may accept, any combination of the Section 560.5.1(a)-(d) requirements provided that in no event shall the total number of units or land area provided be less than the equivalent number or value of affordable units required by this Bylaw.

### **560.6 Provisions Applicable to Affordable Housing Units On- and Off-Site**

1. Siting of affordable units – All affordable units constructed or rehabilitated under this Bylaw shall be situated within the development so as not to be in less desirable locations than market-rate units in the development and shall, on average, be no less accessible to public amenities, such as open space, as the market-rate units.
2. Minimum design and construction standards for affordable units – Affordable housing units within market rate developments shall be integrated with the rest of the development and shall be compatible in design, appearance, construction and quality of materials with other units.
3. Timing of construction or provision of affordable units or lots – Where feasible, affordable housing units shall be provided coincident to the development of market-rate units, but in no event shall the development of affordable units be delayed beyond the schedule noted below:

MARKET-RATE UNIT %	AFFORDABLE HOUSING UNIT%
Up to 30%	None required
30% plus 1 unit	At least 10%
Up to 50%	At least 30%
Up to 75%	At least 50%
75% plus 1 unit	At least 70%
Up to 90%	100%

Fractions of units shall not be counted.

**560.7 Marketing Plan for Affordable Units**

Applicants under this Bylaw shall submit a marketing plan or other method approved by the Planning Board or Board of Appeals, to the Planning Board or Board of Appeals for approval, which describes how the affordable units will be marketed to potential homebuyers. This plan shall include a description of the lottery or other process to be used for selecting buyers. The marketing plan must describe how the applicant will accommodate local preference requirements, if any, established by the Board of Selectmen, in a manner that complies with the nondiscrimination in tenant or buyer selection guidelines of the Local Initiative Program.

**560.8 Provision of Affordable Housing Units Off-Site**

As an alternative to the requirements of Section 560.5.1(a), an applicant subject to the Bylaw may develop, construct or otherwise provide affordable units equivalent to those required by Section 560.5 off-site. All requirements of this Bylaw that apply to on-site provision of affordable units, shall apply to provision of off-site affordable units. In addition, the location of the off-site units to be provided shall be approved by the Planning Board or Board of Appeals as an integral element of the special permit review and approval process.

**560.9 Maximum Incomes and Selling Prices: Initial Sale**

1. The developer of the housing units or his/her agent shall verify prior to transferring title or executing a lease that each prospective purchaser or renter of an affordable housing unit created under this Bylaw is a household of low or moderate income, as defined by the Commonwealth’s Local Initiative Program (LIP). Toward this end:
  - a) The developer shall engage a qualified certifying agent acceptable to the Planning Board, or to the Board of Appeals for a special permit application pursuant to Section 700 of the Zoning Bylaw, to receive purchase or rental applications, obtain and review documentation concerning sources and amounts of household income, and certify to the Town that all purchasers or renters approved for an affordable unit meet LIP income eligibility requirements.
  - b) The developer is responsible for making arrangements acceptable to the Planning Board, or to the Board of Appeals for a special permit application pursuant to Section 700 of the Zoning Bylaw, to provide annual certifications to the Town as may be required to place and maintain the affordable units on the Commonwealth’s Chapter 40B Subsidized Housing Inventory.

2. The maximum allowable purchase price or maximum allowable rent for affordable units created under this Bylaw shall comply with the regulations and guidelines of the Local Initiative Program (LIP).

### **560.10 Preservation of Affordability; Restrictions on Resale**

Each affordable unit created in accordance with this Bylaw shall have the following limitations governing its resale. The purpose of these limitations is to preserve the long-term affordability of the unit and to ensure its continued availability to qualified purchasers in the future. The resale controls shall be established through a deed rider or an affordable housing restriction as defined by G.L. c.184, Section 31, recorded at the Plymouth County Registry of Deeds or the Land Court, and shall be in force for as long a period as is lawful. The affordable housing use restriction shall meet the requirements of the Local Initiative Program.

1. Resale price – Sales beyond the initial sale to a qualified affordable income purchaser shall include the initial discount rate between the sale price and the unit's appraised value at the time of resale. This percentage shall be recorded as part of the restriction on the property noted in Section 560.10. For example, if a unit appraised for \$300,000 is sold for \$225,000 as a result of this Bylaw, it has sold for seventy-five percent (75%) of its appraised value. If, several years later, the appraised value of the unit at the time of proposed resale is \$325,000, the unit may be sold for no more than \$243,750, or seventy-five percent (75%) of the appraised value of \$325,000.
2. Right of first refusal to purchase – The purchaser of an affordable housing unit developed as a result of this Bylaw shall agree to execute a deed rider prepared by the Town, granting, among other things, the Town's right of first refusal for a period not less than the maximum period allowable under guidelines set by the Department of Housing and Community Development for Local Initiative Units as defined by the Local Initiative Program, to purchase the property or assignment thereof, in the event that, despite diligent efforts to sell the property, a subsequent qualified purchaser cannot be located.
3. The Planning Board or Board of Appeals shall require, as a condition for special permit approval under this Bylaw, that the deeds to the affordable housing units contain a restriction against renting or leasing said unit during the period for which the housing unit contains a restriction on affordability.
4. The Planning Board or Board of Appeals shall require, as a condition for special permit approval under this Bylaw, that the applicant comply with the mandatory set-asides and accompanying restrictions on affordability, including the execution of the deed rider noted in Section 560.10. The Zoning Enforcement Officer shall not issue an occupancy permit for any affordable unit until the deed restriction is recorded at the Plymouth County Registry of Deeds or the Land Court.

### **560.11 Fees in Lieu of Affordable Housing Units**

As an alternative to Section 560.5 (a) through (c), an applicant may contribute a cash payment to the Affordable Housing Trust Fund, to be used for the development of affordable housing by the Town or its designees, in lieu of constructing and offering affordable units within the locus of the proposed development or off-site.

1. Calculation of fees-in-lieu of units. The applicant for development subject to this Bylaw may pay a fee in lieu of the construction of affordable units. For each affordable unit not constructed or provided through one or a combination of the methods specified in 560.5 (a) through (c), the fee shall be an amount equal to the difference between the median sale price for new single-family homes built in Duxbury during the preceding three fiscal years, as determined and reported by the Board of Assessors, and the purchase price of a home that is affordable to a qualified purchaser.
  - a) For developments of multi-family condominiums, the Planning Board may substitute the median sale price for new condominiums built in Duxbury during the preceding three (3) fiscal years for the median sale price of new single-family homes.
  - b) The methodology used to determine an affordable purchase price shall comply with Local Initiative Program guidelines in effect at the time of application for a special permit.
  - c) The assumptions used to determine an affordable purchase price, including but not limited to minimum down payment, mortgage interest rate, term, closing and other costs shall be consistent with first-time homebuyer mortgage products available from commercial lending institutions located in or serving Duxbury at the time of application for a special permit, all in accordance with the Inclusionary Housing Submission Requirements and Procedures Manual adopted by the Planning Board and filed with the Town Clerk.
  - d) Upon adoption of this bylaw by town meeting, the Planning Board shall prepare and adopt an Inclusionary Housing Submission Requirements and Procedures Manual after holding a public hearing on the same.
  
2. Schedule of fees in lieu of construction. Fees in lieu of construction shall be paid to the Affordable Housing Trust Fund by the applicant at the time of application for building permits, according to the applicant's choice of one of the two following payment schedules:
  - a) A lump sum total payment submitted with the initial building permit application in the amount as calculated in accordance with Section 560.11 and established with the Planning Department;
  - or
  - b) A prorated payment calculated in accordance with Section 560.11 and divided as equal per unit fees established by the Planning Department, initiated with the first building permit application and paid in full with the filing of the building permit application representing the project's eighty percent (80%) completion.

## **570 AFFORDABLE HOUSING**

### **570.1 Purpose**

To facilitate affordable housing development on qualified pre-existing non-conforming lots as defined in this Bylaw. The intent of this section is to provide a mechanism for the construction of affordable housing units to satisfy the needs of the present and future inhabitants of Duxbury of low and moderate income. The Planning Board is designated as the Special Permit Granting Authority (SPGA) for purposes of this Bylaw and may grant a special permit for the specific and sole purpose of constructing an Affordable Housing dwelling pursuant to this section of this Bylaw.

### **570.2 Definitions**

1. Affordable Housing Unit: See Section 560.2.1
2. Low and Moderate Income Household: A household income not exceeding eighty percent (80%) of the median household income, adjusted for household size, in the metropolitan or non-metropolitan statistical area that includes the Town of Duxbury, as determined annually by the U.S. Department of Housing and Urban Development (HUD).
3. Median Household Income: The median household income for the metropolitan or non-metropolitan statistical area that includes the Town of Duxbury, as determined annually by the U.S. Department of Housing and Urban Development (HUD).
4. Qualified Affordable Housing Unit Purchaser: See Section 560.2.2.
5. Use Restriction: A deed restriction or other legal instrument recorded in the Plymouth County Registry of Deeds or land court registry district which effectively restricts the occupancy of an affordable housing unit to households of low and moderate income during the term of affordability. Selection of eligible tenant/owners shall be made in a fair and reasonable manner in compliance with any and all applicable fair housing and antidiscrimination laws.
6. Upland Area: All lands not defined herein as wetlands.
7. Floor Area Ratio (FAR): Gross floor area of all buildings on the lot measured in square feet, divided by the total square footage of the entire lot.
8. Vacant Lot: A lot absent of any man-made structure above the surface.
9. Appraised Value: An opinion of value developed by a Massachusetts licensed real estate appraiser that conforms to the Uniform Standards of Professional Appraisal Practice (USPAP).
10. Effective Date: March 8, 2008.

### **570.3 Special Permit Criteria for Eligible Lots**

The Planning Board, as the Special Permit Granting Authority (SPGA) under this section of the Bylaw, may grant a special permit to allow construction of an Affordable Single Family Housing Unit on an eligible parcel of land in the Residential Compatibility (RC) and Planned Development (PD) Zoning Districts that meets the following criteria:

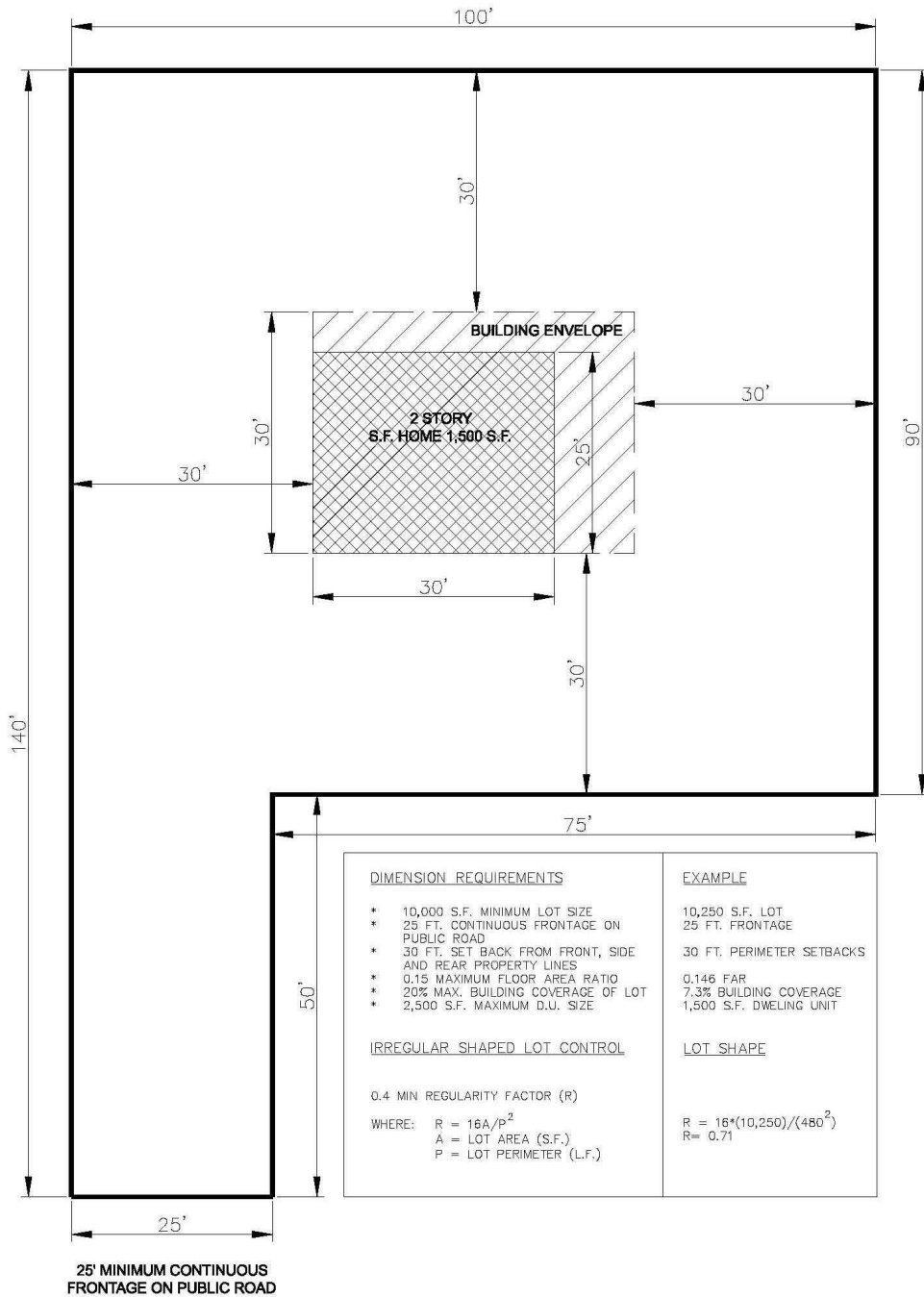
1. Pre-Existing Lot: Eligible parcels must have existed as a separate lot of record prior to the effective date of this Bylaw (the "Effective Date"). No landowner shall be eligible for more than one (1) affordable housing unit lot from a single parcel of land, or from adjoining parcels of land in common ownership, based on the ownership status of the land as determined by instruments and plans on file at the Plymouth County Registry of Deeds as of the Effective Date. No affordable housing

- unit lot shall be further divided. The Planning Board shall note such limitations, with a description of the land affected by such limitations, in its written decision.
2. Existing Ownership and Use: Eligible lots must be in private ownership and vacant prior to and following the Effective Date. Eligible lots may also be owned by the Duxbury Affordable Housing Trust and/or any other non-profit housing entity.
  3. Dimensional Characteristics: Eligible lots must meet the dimensional characteristics prior to the Effective Date:
    - a) Lot Area: Minimum ten thousand (10,000) square feet of upland area.
    - b) Continuous Frontage: Twenty-five (25) feet on a public road.
    - c) Lot Shape: See Section 570.3.13 below.
  4. Setbacks: All structures must be set back thirty (30) feet from all front, side and rear property lines.
  5. Access: The applicant shall provide for safe access for public safety vehicles and personnel to the dwelling unit to be constructed on the lot, and the intersection of such access driveway to the public way shall be placed across the frontage in the best location available to the applicant.
  6. Dwelling Unit Size and Coverage: The size of a dwelling unit and number of bedrooms in the Aquifer Protection Overlay District (APOD) zone shall meet the requirements of Section 406 herein.
  7. Floor Area Ratio: The maximum floor area ratio (FAR) of the dwelling shall not exceed 0.15 up to a maximum of two thousand five hundred (2,500) square feet per dwelling unit. Future additions or alterations that would exceed the two thousand five hundred (2,500) square feet maximum floor area ratio are prohibited once a special permit has been issued.
  8. Minimum and Maximum and Dwelling Unit Size: Each Affordable Housing Unit shall contain a minimum area of seven hundred (700) square feet with one (1) bedroom; a minimum area of eight hundred fifty (850) square feet with two (2) bedrooms; a minimum area of one thousand two hundred (1,200) square feet with three (3) bedrooms; or a minimum area of one thousand four hundred (1,400) square feet with four (4) bedrooms or more. The maximum dwelling unit size shall not exceed the FAR.
  9. Utilities: All utilities shall be installed underground.
  10. Purchase or Rent: The Affordable Housing Unit permitted by this section shall be restricted for purchase or rent by only low and moderate households, in accordance with the standards set forth in this section.
  11. Parking: All private parking areas shall be contained entirely on the property.
  12. Plans: The applicant shall submit, along with the special permit application, a surveyed site plan depicting the proposed affordable housing unit and lot layout. The plan shall be prepared by a registered land surveyor, and shall be in such form as will be required for recording with the Registry of Deeds or filing with the Land Court.
  13. Control of Substantially Irregular Lot Shape: No lot shall be created which is substantially irregular in shape. For the purposes of this section, a lot is "substantially irregular" if it has a regularity factor which is less than 0.4 as determined by the following formula:  $r = 16A/P^2$  where  $r$  = regularity factor;  $A$  = area of the lot (in square feet); and  $P$  = perimeter of the lot (in feet). Lots less than 0.4 by the applied formula shall be considered ineligible for the purposes of this Bylaw. (See Figure 1 below).

14. Other Requirements: All other requirements of Article 500 and the remainder of this Bylaw shall remain applicable and in full force and effect.

**FIGURE 1**

**EXAMPLE OF ELIGIBLE LOT FOR AFFORDABLE HOUSING UNIT**



#### **570.4 Use Restrictions**

Any affordable housing unit created under this section shall be subject to a use restriction/regulatory agreement on the lot conforming to the following criteria:

1. The restriction shall be assured in perpetuity or for the longest period of time allowed by applicable law.
2. The restriction shall be recorded as a condition of deed or mortgage.
3. The restriction shall have a legal mechanism for compliance that occurs without Town intervention in any form or manner.
4. The restriction shall include a process for verification of compliance.
5. The restriction shall ensure that the affordable housing unit may only be sold to Qualified Affordable Housing Unit Purchasers at an affordable price, or leased to Qualified Affordable Housing Unit Renters at affordable rents, subject to Section 570.6.3 herein.
6. The restriction shall provide that the affordable housing unit must be sold or rented on a fair and open basis.

For purposes of this bylaw, the Town of Duxbury either through the Duxbury Housing Authority or any designee established by the Town, agrees to perform the duties of Monitoring Agent and to adhere to the responsibilities as defined in the Monitoring and Marketing Agreement entered between the Town and the applicant.

#### **570.5 Maximum Incomes and Selling Prices: Initial Sale**

1. Proof of Income Eligibility: To ensure that only eligible households may purchase affordable housing units pursuant to this Bylaw, the purchaser of an affordable housing unit shall be required to submit copies of the last three (3) years' federal and state income tax returns and certify, in writing and prior to transfer of title, to the developer of the housing units or his/her/their agent, and within thirty (30) days following transfer of title, to the local housing trust, community development corporation, housing authority or other agency as established by the Town, that his/her or their family's annual income level does not exceed the maximum level as established by the Commonwealth's Department of Housing and Community Development, and as may be revised from time to time.
2. Maximum Housing Cost: The maximum housing cost for affordable units created under this Bylaw is as established by the Commonwealth's Department of Housing and Community Development, Local Initiative Program, as may be revised from time to time, or as revised from time to time by the Town.

#### **570.6 Preservation of Affordability; Restrictions on Resale**

1. Preservation of Affordability: Each affordable unit created in accordance with this Bylaw shall have limitations governing its resale. The purpose of these limitations is to preserve the long-term affordability of the unit and to ensure its continued availability for affordable income households. The resale controls shall be established through a use restriction on the property pursuant to Section 570.4 above and shall be in full force and effect in perpetuity or the longest period of time allowed by applicable law.
2. Resale Price: Sales beyond the initial sale to a qualified affordable income purchaser shall include the initial discount sale price not to exceed ninety percent (90%) of the property's appraised value (as defined under Section 570.1 above) at the time of

sale. This percentage shall be recorded as part of the restriction on the property pursuant to Section 570.4 above.

3. Right of First Refusal to Purchase: The purchaser of an affordable housing unit developed as a result of this Bylaw shall agree to execute a deed rider approved by the Town, consistent with model riders prepared by Department of Housing and Community Development, granting, among other things, the Town of Duxbury or the Duxbury Affordable Housing Trust the right of first refusal to purchase the property in the event that a subsequent qualified purchaser cannot be located.
4. Deed Restrictions: The Planning Board shall require, as a condition for a special permit under this Bylaw, that the applicant comply with the mandatory set-asides and accompanying restrictions on affordability, including the execution of a regulatory agreement pursuant to Section 570.4 above. The Building Commissioner/Inspector shall not issue a building permit for any affordable unit until the regulatory agreement is recorded.

### **570.7 Conflict with Other Bylaws**

The provisions of this Bylaw shall be considered supplemental of existing zoning bylaws. To the extent that a conflict exists between this Bylaw and others, the more restrictive bylaw, or provisions therein, shall apply.

### **570.8 Review by Special Permit Granting Authority**

Prior to granting a special permit for an affordable housing unit under this section, the Planning Board must make the following findings:

1. The proposed affordable housing unit will be in harmony with the general purpose and intent of the Bylaws;
2. The increase in density resulting from the grant of a special permit will not adversely affect the surrounding neighborhood;
3. The placement of a new single family housing unit on the non-conforming lot can be accomplished without jeopardizing public health or safety, and without detriment to the environment: and
4. In determining whether or not to grant a special permit for development of an affordable housing unit lot, and in determining what conditions, if any, to impose on such a special permit, the Planning Board may consider, among other things, circumstances related to soil conditions, topography, lot history, wetlands, proposed building locations, and public safety and convenience.

### **570.9 Severability**

If any provision of this Bylaw is held invalid by a court of competent jurisdiction, the remainder of this Bylaw shall remain in full force and effect.