

Article 7B – Fair Market Rental (FMR) Housing Subdivision

7B.1 – Authority

This article is adopted pursuant to the provisions of NH RSAs 674:16 and 674:21, Innovative Land Use Controls, and is adopted to effectuate the Master Plan for the Town of Chester. The effective date of adoption of this article is May xx, 202x.

The Chester Planning Board shall administer the application, review, and approval process for the Fair Market Rental (FMR) Housing zoning allowance through the subdivision and site plan review process. The authority for implementing this article is delegated to the Planning Board under NH RSAs 674:16 and 674:21.

7B.2 - Purpose and Objectives

One of the key topics voiced by Town residents during the drafting of the Vision and Goals section of Chester's current Master Plan was to address the lack of "affordable and reasonably priced" housing. This topic was reemphasized again by Town residents during 2017 and 2018, when, in cooperation with the Tufts Foundation and AARP, Chester participated in the state-wide, Age-Friendly Community Initiative. This community assessment included multiple outreach events for Town residents to review and discuss potential opportunities to make Chester a more inclusive community for people of all ages and income levels.

Our Town is a growing community. Most of the housing units being built, however, are typically far too large and expensive to contribute to the Town's spectrum of housing needs for certain current and future residents. These residents include seniors who wish to downsize, young adults who wish to live independently, or residents with disabilities, all of whom wish to continue living in Chester.

Chester also needs more housing that meets the criteria of RSA 674:58-61, NH's Workforce Housing Law. This law requires every municipality to provide a reasonable and realistic opportunity for the development of workforce housing. The NH Supreme Court has ruled that regional needs are relevant in determining a local jurisdiction's proportionate or "fair share" of workforce housing. NH towns need to address both current and future needs.

The objective of this article is intended to address this primary concern expressed by our citizens as well as the requirements of NH's Workforce Housing Law, by providing a development alternative to encourage builders to build other housing types to meet the needs discussed above. These FMR housing neighborhoods are envisioned to consist of single-bedroom and two-bedroom rental homes for all people, regardless of age, ability, or disability.

Historically, Chester's zoning regulations required two (2) acre lots for single-family homes, and twenty-five (25) acre tracts or larger for open space developments. Builders argue that they must construct large, expensive housing units to meet their profitability requirements.

Lots ten (10) acres or greater in size may be developed under this article. However, to prevent fundamentally altering the rural character of Chester and to ensure that FMR housing subdivisions blend with existing development, the locations of these subdivisions (see Section 7B.5.5 c) and the total number of units per subdivision will be limited (see Section 7B.10.1.3). These subdivisions shall require the approval of a conditional use permit (CUP) application by the Planning Board.

7B.2.1 - Additional Purposes - In addition to the general purpose and objectives, FMR housing subdivisions shall also promote the following objectives:

- a.) Reduce the occurrence of strip development along existing town-approved roads and streets.
- b.) Promote efficient use of land in harmony with its natural features.
- c.) Maintain the rural and open character of the town and encourage the preservation of open space.
- d.) Protect historic, archeological, and cultural features.
- e.) Protect valuable wildlife and habitat areas.
- f.) Reduce adverse impacts of growth on surface water and groundwater quality.
- g.) Locate buildings and structures on portions of the site that are most appropriate for development considering development suitability and conservation importance.
- h.) Allow for site design that encourages a more practical utility and transportation network.
- i.) Preserve opportunities for agriculture and farming within the town.
- j.) Protect areas of the Town with a high co-occurrence value per the Conservation Commission's Natural Resource Inventory maps.

7B.3 – Fair Market Rental Housing Definition

For the purposes of this article, FMR Housing is defined as housing that is permanently restricted to the U.S. Department of Housing and Urban Development (HUD) Fair Market Rental Rate for one (1) and two (2) bedroom dwelling units located in the Lawrence MA-NH HMFA¹ (in which Chester is located) as published by the HUD each year².

¹ HMFA stands for HUD Metro Fair Market Rent Area.

² As of March 11, 2024, the published HUD Fair Market Rent restrictions for a one (1) bedroom dwelling was \$1,483 dollars per month, and a two (2) bedroom dwelling was \$1,917, for units located in the Lawrence MA-NH.

7B.4 - Procedure and Administration of Conditional Use Permits

7B.4.1 - Application

- (a) Application Form: An application for a CUP shall be initiated by filing an application with the Planning Board. The Planning Board is authorized to produce an application form for CUP Applications, which may provide for additional submission requirements as the Planning Board deems necessary.
- (b) Subdivision Plan Review: The CUP application hearing may occur simultaneously with a hearing on a subdivision application for the same project.

7B.4.2 - Summary of Process

- (a) The Planning Board may retain, at the applicant's expense, a certified planner, registered professional engineer, certified wetlands scientist, hydrologist, or any other applicable professional to represent the Planning Board and assist the Planning Board in determining compliance by the applicant with this article and other applicable regulations.
- (c) The Planning Board may refer the CUP application to the Conservation Commission, prior to the public hearing on the application, for review and comment if the proposed project contains or abuts wetlands or conservation property. In acting on the application, the Board shall consider any written comments or reports received from the Conservation Commission.
- (d) After holding a duly noticed public hearing on the application, at which the Planning Board first determines that the application is complete, and accepts public comment on the proposed project, the Board shall consider the criteria set forth in this article. The Planning Board shall then vote to approve the application as presented, approve it with conditions, or deny it.
- (e) Any decision of the Planning Board granting a CUP shall be documented in a written Findings of Fact and shall be noted on the final plan to be recorded.
- (f) Any decision denying a CUP shall also be documented in a Findings of Fact report, stating the reasons for the denial.

7B.4.3 - Application Requirements

7B.4.3.1 - Required Documents:

- (a) Completed CUP Application Form.
- (b) Application requirements set forth in Article 6.6.2.
- (c) List of Abutters with Mailing Addresses.
- (d) Appropriate Application Fees (see CUP Application Form).

7B.4.4 - Hearing Procedure

- (a) Burden of Proof - The applicant for a conditional use permit bears the burden of persuasion, through the introduction of sufficient evidence through testimony or otherwise, that the development will comply with the terms of this article and will satisfy the specific requirements for the uses which are contained in this article.

7B.4.5 - Required Criteria

The applicant for a conditional use permit must prove, through the application form, written submissions and testimony and evidence at the hearing, that all the following conditions exist:

- (a) The proposed subdivision will not unreasonably detract from the rural character of the surrounding area; and

- (b) The proposed subdivision will not significantly reduce the value of properties in the surrounding area; and
- (c) No other Article 7B housing subdivisions exist or have been approved for development within one (1) mile of the perimeter of the parent lot of the proposed subdivision; and
- (d) The subdivision shall comply with all other requirements and conditions set forth in this article, and applicable requirements and conditions set forth in Article 6 and the Town's Subdivision Regulations.

7B.4.6 - Review Factors

In reviewing an application for a conditional use permit, the Planning Board shall consider the following information in its deliberations, as may be applicable to the case:

- (a) Application, plans, other required information and documents and any other submissions by Applicant;
- (b) Reports analyses and comments by Town Departments, Boards, Officers, Counsel or Consultants;
- (c) The findings, goals and objectives of the most recent edition of the Town of Chester's Master Plan;
- (d) The relationship of the development to the timing, location and cost of public improvements scheduled in the Chester Capital Improvements Program;
- (e) The findings, goals and objectives of the Chester Zoning Ordinance; and
- (f) Testimony and evidence introduced at the public hearing on the application.

7B.4.7 - Required Findings

In order to approve the application, the Planning Board must find, based on the application, information and testimony submitted by the application that, when completed as proposed by the applicant, the subdivision will comply with all requirements of this article, including the criteria set forth above in Article 7B.4.5, and with any applicable conditions, requirements, regulations, or standards established in this article for subdivisions or in the Town's Subdivision Regulations. These findings shall be documented in written "Findings of Fact" per RSA 676:3.

7B.4.8 - Conditions of Approval

- (a) All conditions of approval shall be stated in writing in the Planning Board's decision.
- (b) Representations made at a public hearing or in material submitted to the Planning Board by an applicant to obtain a conditional use permit shall be deemed conditions of the issuance of the permit.
- (c) Additional Conditions: The Planning Board may attach other reasonable conditions to its approval where such conditions are shown to be necessary to further the objectives of this

Article or the Master Plan, or which would otherwise allow the general conditions and requirements of this article to be satisfied.

(d) The Planning Board shall require that such conditions be annotated on the subdivision's recorded plan.

7B.5 - Applicability

All current and future subdivisions of lots in the Residential / Agricultural (R1) District and meeting the provisions stated below are eligible to be developed subject to the requirements of this article and Article 6 in accordance with Table 1 - Table of Dimensional and Area Requirements and Table 2 – Table of Setbacks and No Clearing Buffer Zones.

7B.6 - Definitions

The following definitions shall apply to this article:

7B.6.1 – Fair Market Rate Housing – See Section 7B.3.

7B.6.2 – Gross Living Area (GLA) – For the purposes of this article, GLA shall be defined as enclosed, finished areas that are suitable for year-round habitation or use, including, but not limited to: bedrooms, living rooms, kitchens, home offices, bonus rooms, bathrooms, closets, hallways, stairways, bay windows, four-season porches, and finished lofts. To ensure conformity with the intent of this article, the Planning Board shall have the final determination whether areas not listed here qualify as GLA. Under this article, GLA shall be calculated by measuring the exterior building dimensions.

7B.6.3 – Non-Gross Living Area (NGLA) – For the purposes of this article, NGLA shall include, but not be limited to: three-season porches, decks, and patios. To ensure conformity with the intent of this article, the Planning Board shall have the final determination whether areas not listed here qualify as NGLA.

7B.6.4 - Universal Design – Universal design is the design and construction of a dwelling unit and its immediate surroundings so that the dwelling unit may be accessed and used to the greatest extent possible, by all people regardless of age, size, ability, or disability (see subsection 7B.14.7.2).

All other definitions listed in Article 2 and Article 6 of the Town of Chester's Zoning Ordinance shall also apply.

7B.7 - Permitted Uses

Except for setbacks, buffers and areas designated for conservation, the following uses or housing types shall be permitted in any FMR housing neighborhood:

7B.7.1 - One- and two-bedroom detached dwelling units (single-family dwellings).

7B.8 - Non-Permitted Uses

7B.8.1 – Accessory dwelling units.

7B.8.2 – Accessory structures, such as detached garages or sheds, unless used for utilities or property maintenance equipment used solely on property.

7B.8.3 - Any use not specifically listed above is prohibited, even if allowed in the underlying zone.

7B.9 – Subdivision Application Procedure

Applications for FMR housing neighborhood subdivisions shall follow the procedures set forth in the relevant sections of the Town of Chester Subdivision Regulations. Where there are differences between the requirements of Articles 6.6.1 through 6.6.4 and the Subdivision Regulations, the requirements for Articles 6.6.1 through 6.6.4 shall prevail. The applicant shall comply with any additional requirements set forth in the Subdivision Regulations for the Town of Chester unless specifically addressed in Articles 6.6.1 through 6.6.4. (Note: these regulations formalize the Design Review Phase from Section 3.2.2 of the Town's Subdivision Regulations.)

7B.10 - Determination of Number of Units & Bedrooms Permitted

The first step in the open space subdivision approval process is the determination of unit density. This figure is determined by calculating the allowed number of units and bedrooms based on the parent lot's size and development constraints, and the proposed dwelling unit types.

7B.10.1 - Unit Density Formula - The maximum number of residential dwelling units allowed is calculated by a formula based upon the acreage of unconstrained land on the parent lot. To qualify as a parent lot under this article, the lot must be at least ten (10) acres in size (See Table 1).

7B.10.1.1 - Unconstrained Acreage – The calculation method in Article 6.7.1.1 shall apply.

7B.10.1.2 – Article 7B subdivisions shall be a 50/50 mix of one- and two-bedroom dwelling units to comply with NH's Workforce Housing law.

7B.10.1.3 - Base Number of Allowable Residential Dwelling Units - The calculation method in Article 6.7.1.2 shall apply. However, the required number of acres for this article are one and a half (1.5) acres for a single-bedroom dwelling unit plus a two-bedroom dwelling unit (half an acre per bedroom).

Round down fractional units of zero-point-five (0.5) or less, or round up fractional units greater than zero-point-five (0.5). The resulting number is the "base density" permitted on the site.

7B.10.1.4 – Maximum Number of Residential Dwelling Units – The maximum number of residential dwelling units allowed per FMR housing subdivision shall be sixty (60) units.

7B.10.1.5 - Final Determination of Density - The Planning Board shall make the final determination whether the number of units proposed by the applicant is accurate. During its review of conceptual plans, the Planning Board may adjust the number of units proposed by the applicant to ensure conformity with the intent of this article. The

number of dwelling units permitted in the FMR housing categories shall be stated, and their locations noted, on the final plan.

7B.10.1.6 – Density Bonuses – There are no density bonuses for Article 7B subdivisions.

7B.11.2 - Bedrooms Permitted

7B.11.2.1 - One-Bedroom Dwelling Units – A maximum of one (1) bedroom per unit.

7B.11.2.2 - Two-Bedroom Dwelling Units – A maximum of two (2) bedrooms per unit.

7B.11 - Identification and Selection of Conservation Areas

Article 6.8 shall apply to Identification, Selection and Calculation Methods, Waiver for Reduction of Unconstrained Acreage, Tract Resource Map, Permitted Uses within Conservation Areas (excluding the factors of the unit density calculations that are exclusive to this article), Conservation Area Design, Conservation Commission Advisory Review, Ownership Provisions for Conservation Areas, and Conservation Areas in Private Ownership.

7B.12 - Selection of Development Area

Article 6.10 shall apply.

7B.13 - Integration with Subdivision Regulations Procedures

Article 6.11 shall apply.

7B.14 - Additional Requirements

7B.14.1 - External Perimeter Setbacks and Buffers - Article 6.12.1 shall apply.

7B.14.1.1 – Setback - Article 6.12.1.1 shall apply.

7B.14.1.2 – Buffer - Article 6.12.1.2 shall apply. The fifty (50) foot buffer shall be open space and may contribute to the calculation of the required amount of open space.

7B.14.2 - Internal Dimensional and Design Requirements - Article 6.12.2 shall not apply because the rental units will be under single ownership.

7B.14.2.1 – Maximum Building Height: The maximum building height shall not exceed eighteen (18) feet.

7B.14.3 – Perimeter Setbacks and Buffers - Article 6.12.3 shall apply. No interior lot lines, common areas or limited common areas shall extend into the conservation area or the buffer of the parent lot(s). To provide design flexibility the water supplies and distribution systems may be placed in the conservation area.

7B.14.4 - Infrastructure

7B.14.4.1 - Water - Article 7B subdivisions shall be served by community-type water

supply systems including, but limited to, shared wells, in compliance with NH DES regulations.

7B.14.4.2 - Sanitary Protection Requirements - Article 6.12.4.2 shall apply, however, the Board may allow exemptions from Article 6.12.4.2.1 on a case-by-case basis.

7B.14.4.3 – Utilities – Utilities as defined in Article 6.12.4.3, may be, but are not required to be, installed underground.

7B.14.4.4 – Roads – Roads under this article may be designated as private roads. To meet the lot compatibility and affordability objectives of this article, the Planning Board may approve modifications to the Town of Chester's street design guidelines set forth in the subdivision regulations. For example, the Board may consider waiver requests for narrower road widths or tighter turn radii for the road design to better suit the individual design constraints of special parent lots. The Board shall have final determination authority over whether the requests are appropriate and, upon advice of the board's professional engineer and Chester's Fire Chief, may approve or deny such requests. I would caution granting waivers as the Fire Dept. is still going to need to navigate these roads.

7B.14.4.5 - Drainage Systems – FMR housing subdivisions shall be required to have closed drainage systems. Closed drainage systems shall be constructed pursuant to the standards specified in Subsection 4.7.6 of the Subdivision Regulations.

7B.14.5 – Dwelling Unit Size Limitations – The maximum square footage of this subdivision article is intended to be conservative to promote and maintain the affordability of these single- and two-bedroom dwellings.

7B.14.5.1 – These single-bedroom dwellings shall not exceed a maximum of four hundred and fifty (450) square feet of GLA.

7B.14.5.1 – These two-bedroom dwellings shall not exceed a maximum of five hundred and fifty (550) square feet of GLA.

7B.15.5.2 – To maintain the affordability objectives of this subdivision article, the GLA of the dwelling units shall not be expanded by additions or interior modifications.

7B.14.6 – Notice of Prohibition of Expansion of Gross Living Area and Other Prohibitions - Prior to a Certificate of Occupancy being issued, the subdivision owner shall record an approved Notice of Prohibitions and Restrictions at the Rockingham County Registry of Deeds. The notice shall record all prohibitions and restrictions associated with the units, such as, but not limited to: size restrictions on unit GLA, prohibition against accessory dwelling units, prohibition against sheds or other detached structures (See 7B.9.2). All expenses for the recording of this notice at the Registry shall be borne by the subdivision owner.

7B.14.7 – Dwelling Unit Design Requirements – The dwelling unit design requirements of this subdivision article are intended to promote the habitability and accessibility of these dwelling units.

7B.14.7.1 – One-story living – All dwelling units shall incorporate the main bedroom, the bathroom, kitchen and other living areas on the accessible, ground floor entry level.

For two-bedroom units, the construction of lofts is permitted if accessible by a proper staircase, and the loft has an emergency escape and rescue opening installed such that the base of the opening is not more than forty-four (44) inches above the loft floor, and the egress roof access window complies with the minimum opening area requirements of the 2018 *International Residential Code* Section R310.2.1 as adopted by the NH Building Code and as may be amended from time to time.

The construction of basements and attics shall not be permitted.

7B.14.7.2 – All dwelling units shall incorporate “universal design” components and/or adhere to the current “Standard on Accessible and Usable Buildings and Facilities” otherwise known as “ICC/ANSI A117.1” published by the International Code Council and American National Standards Institute, Inc.

No-step entry - No use of steps or stairs shall be required to enter a universal home or the home's main rooms.

Wide doorways – The doorways shall be thirty-four to thirty-six (34-36) inches wide for wheelchair passage.

Wide hallways – The hallways shall be thirty-six to forty-two (36-42) inches wide for wheelchair passage.

Thresholds shall be flush with the floor – To make it easy for wheelchairs to get through doorways and prevent walking people from tripping.

Some additional examples of universal design components are:

Floors and bathtubs with non-slip surfaces – To help everyone stay on their feet.

Good lighting – To help people with poor vision.

Lever door handles and rocker light switches - For people with poor hand strength.

7B.15 - Suggested Subdivision Components

7B.15.1 – Shared Facilities – These components are intended to reduce the financial burden of the subdivision's operating expenses, and to reduce space requirements on the parent lot.

7B.15.1.1 – FMR housing subdivisions may include, subject to Planning Board approval, shared infrastructure such as:

- i. Shared driveways and/or community parking lots.
- ii. Shared water systems.
- iii. Shared septic systems.
- iv. Rain gardens or other drainage systems that promote onsite infiltration.
- v. Community solar systems.

7B.15.1.2 – FMR housing subdivisions may include, subject to Planning Board approval, shared recreational amenities such as:

- i. Outdoor gathering places for recreation and social engagement.
- ii. Onsite trail network to allow for walking and exercise.

- iii. Community garden areas located in the open space.

7B.15.2 – Ownership and Management

7B.15.2.1 – All units of an Article 7B FMR housing subdivision shall have a single owner. Management of the rental of the units and the year-round maintenance needs of the subdivision may be contracted out.

7B.15.2.2 – Renters shall be prohibited from subletting their units.

7B.15.3 – Practices

7B.15.3.1 – Infrastructure systems shall follow Best Management practices where practicable.

7B.15.3.2 – Efforts should be made to maximize the energy efficiency of these FMR housing dwelling units, including the architectural design elements, the siting and orientation of structures, and the choices of HVAC systems and construction materials. These must meet current NH energy codes and standards as adopted in RSA 155-A:2.

7B.15.3.3 – Recreational and infrastructure amenities should be shared to help to achieve the size and affordability goals of this article, and to increase the attractiveness of the neighborhood in general.

7B.16 – FMR Subdivision Documents

Every FMR housing subdivision and all units within shall remain in perpetuity under a single owner. Furthermore, the units of these subdivisions shall be permanently restricted to the HUD Fair Market Rental Rate for one (1) and two (2) bedroom dwelling units located in the Lawrence MA-NH HMFA as published by HUD each year. This restriction shall be enforceable by the Town of Chester Planning Board per Section 7B.17.

Is any additional “boiler-plate” language from the paragraph below required?

~~or other obligations enforceable by a homeowners’ association and/or individual unit owners in a form acceptable to the Planning Board, to insure compliance with the subdivision’s approval and the requirements of this article, including the open space requirements of Articles 6.8.6 and 6.8.7, and to create legal obligations on the part of all owners in the development to share the costs of maintenance, repair and replacement of the subdivision’s infrastructure, including, but not limited to, sewage disposal, water supply, roads, drainage, and other such systems as applicable. The covenants, restrictions and other obligations shall, at the sole discretion of the Town of Chester, be enforceable by the Town. The Town shall, in addition to any other available legal or equitable relief, be entitled to recover all costs and expenses, including attorney fees and court costs, incurred in the enforcement of any such covenants, restrictions, or other obligations.~~

7B.17 – Annual Reporting Requirements

Annually, by November 1st, the Applicant shall provide, in writing; to the Planning Board an updated and verifiable lease documenting that the monthly rental rate for the units are at, or below, the HUD Fair Market Rental Rate for one (1) and two (2) bedroom units in the Lawrence MA-NH HMFA as published by HUD each year, for the following 12 months.