

§ 170-29. Transfer of development rights.

- A. Authority. By the authority granted under RSA 674:21, this section creates overlay district(s) for the purpose of transferring development rights (TDR) within said districts.
- B. Purpose and intent. Within the City of Dover, there are certain lands that possess significant conservation features, including but not limited to unsuitable development areas, groundwater recharge zones, forested areas, wildlife habitat, farmland, scenic view sheds, historic landmarks, and linkages to other such areas. Because of their unique assemblages of flora and fauna and their significant contribution to the ecological system and/or the cultural identity of our community, these lands are worthy of special protection. The City of Dover has a finite inventory of land suitable for development. The Master Plan identifies the need to balance expanding housing diversity, including units that are affordable and attainable to a broad range of Dover residents, supporting the workforce needs of local industry and businesses, and preservation of open spaces.
 - (1) The purpose of this overriding district is to promote intensive development on the developable land possessing the least conservation value and to permanently protect lands possessing significant conservation features that provide unique values in their undisturbed condition. Additionally, it is recognized that the City of Dover has an Open Lands Committee and Conservation Commission which is active in protecting and preserving open space. **[Amended 10-13-2021 by Ord. No. 2021.09.08-006]**
- C. Applicability. Upon request by an applicant for development approval and as prescribed in Section J, at the discretion of the Planning Board, the provisions of this section may apply to the district(s) defined in Subsection D below.
- D. Districts. **[Amended 8-22-2018 by Ord. No. 2018.08.08-009; 9-11-2019 by Ord. No. 2019.08.28-012]**

The districts defined below refer to the Zoning Map for the City of Dover, New Hampshire, adopted September 11, 2019.

- (1) The Industrial TDR District is permitted where noted on the non-residential/mixed use Zoning District Tables of Uses and Dimensions.
 - (a) The "sending area" is defined to be open space and related setbacks as defined by the City of Dover Wetland Protection District, § 170-28, which are located in any C, IT or CM Zoning District.
 - (b) The "receiving area" is defined to be permitted as listed per the Zoning Districts Tables of Uses and Dimensions. **[Amended 7-22-2020 by Ord. No. 2020.07.08-007]**
- (2) The Residential TDR District is hereby permitted where noted on the residential Zoning District Tables of Uses and Dimensions.
 - (a) The "sending area" is defined to be any land preserved by the City of Dover through conservation programs primarily in the R-40 or R-20 residential zoning districts but may extend to any other zoning district.
 - (b) The "receiving area" is defined to be all zoning districts which allow residential development, meet the criteria of 170-29 J (9) and the criteria listed on the TDR

section of the Zoning District Tables of Uses and Dimensions.

- [1] The “receiving area” excludes any parcel(s) within 250 feet of a tidal river and the Heritage Residential District.

E. Procedural requirements.

- (1) An applicant seeking development approval within a receiving area of the TDR district shall apply the performance standards specified as follows:
 - (a) Additional performance standards for Industrial TDR districts are outlined in Subsection F.
 - (b) Additional performance standards for the Residential TDR district are outlined in Subsection G.
- (2) For proposals requiring the preservation of land, a certified boundary survey of the associated land in the sending area shall be submitted as a supplement to the site plan or subdivision plan for development within the receiving area. **[Amended 8-22-2018 by Ord. No. 2018.08.08-009]**
 - (a) The owner of the subject open space, within the sending area of the TDR district, shall sign all application materials as a co-applicant of the development application. Proof of an agreement to sell development rights must be provided by the Conservation Commission.
- (3) The application for development approval shall be reviewed in accordance with the standard plan review process and subjected to all applicable development regulations, except as provided in this section. **[Amended 8-22-2018 by Ord. No. 2018.08.08-009; 7-22-2020 by Ord. No. 2020.07.08-007; 8-9-2023 by Ord. No. 2023.07.12-008]**
 - (a) Applicants may choose to first seek Planning Board endorsement of TDR maximum density. They shall submit application materials including but not limited to:
 - [1] A boundary plan indicating approximate location of existing buildings, lot lines, or limited common area lines, parking areas, driveway, wetlands, wetland buffers, conservation districts, burial grounds, drainage infrastructure areas, buffers, and natural features.
 - [2] A sketch plan estimating layout of the development site and identifying the open space associated with the plan. This may be submitted to the Planning Board for review at a regularly scheduled meeting.
 - (i) If the sketch plan requires an environmental conditional use permit per other sections of Zoning Ordinance to develop homes, the applicant must appear before the Conservation Commission for review and endorsement prior to any Planning Board's review. Such endorsement by the Conservation Commission requires a finding that the applicable Conditional Use Permit criteria have been met.
 - [3] The Planning Board, within 60 days of its review of the sketch plan, shall

determine if relief, in the form of a TDR Conditional Use Permit, will be granted as allowed in Subsections F and G below. Relief requests shall be reviewed using the criteria set forth in Subsection K. Although the Planning Board may grant relief from specific requirements of this section, including provisions related to project intensity or density, the fundamental purpose and intent of the Zoning Ordinance, Site Review Regulations, and Subdivision Regulations—particularly those governing open space subdivisions—shall be preserved. Any such relief shall remain consistent with the spirit and intent of the Master Plan, protect public health and safety, and be consistent with the neighborhood context.

[4] Once endorsement has been granted, full Planning Board review of the development plan following procedures set forth in Dover Code Chapters 153 and/or 157 shall be completed as well as Section 170-29.

[5] Endorsement of the use of TDR is not a guarantee and the Planning Board may decrease the density or intensity after reviewing a more detailed site plan or subdivision plat.

(b) Applicants may elect to submit applications for site plan review or subdivision plat approval concurrently with a Transfer of Development Rights (TDR) request. In such cases, the review and approval procedures set forth in Dover Code Sections 153 and/or 157 shall govern. As part of the staff memo for the Planning Board's review of a TDR request, the Planning Department should discuss traffic, existing layout/topography, environmental, and neighborhood context.

(c) Review by the Technical Review Committee (TRC) shall occur for all projects.

[1] For projects resulting in four (4) or fewer new dwelling units, Planning Board review and approval shall not be required unless relief is necessary or the TRC determines that such review is necessary.

[2] For five (5) or more new dwelling units, applicants must obtain TDR endorsement by the Planning Board, TRC review and approval, and Planning Board review and approval per Dover Code Sections 153 or 157. Only once all three approvals are in place, may an applicant apply for building permits.

(4) If not utilizing the purchase option (as noted in Section 170-29.I(2)), a perpetual easement or restrictive covenant shall be recorded at the Strafford County Registry of Deeds that preserves the designated open space within the sending area. Said easement or covenant may allow for the continuance of existing residential and agricultural activities, and may allow for utility and access crossings in accordance with Subsection H below. The designation of the land protection agency to hold the easement shall be approved by the Planning Board.

(5) The development plan shall be laid out in a design that meets the requirements for block length and cul-de-sac length. Private driveways serving four (4) or fewer units are exempt but need to meet the current Fire and Building Code.

F. Industrial performance standards.

- (1) Land within a sending area, when surveyed, approved by the Planning Board and preserved by easement or covenant as specified in Subsection E, above, may be counted for the open space requirement for a development site in a receiving area. The amount of land preserved in a sending area shall equal or exceed the open space requirement for the development site, but in no case be less than one acre.
 - (a) Notwithstanding, development sites within the IT and CM Zoning Districts shall maintain open space or landscaped area on at least 10% of the site. The design of the development site shall locate the open space or landscaped area to maximize the aesthetic value of the site. **[Amended 7-22-2020 by Ord. No. 2020.07.08-007]**
- (2) The minimum lot size requirement may be relieved by the Planning Board for land subjected to the transfer of development rights.
- (3) The minimum frontage requirement may be relieved by the Planning Board for land subjected to the transfer of development rights, provided that paved access to all developed areas suitable for emergency vehicles is approved by the Planning Board.
- (4) Setbacks for parking, paved areas, and buildings may be relieved by the Planning Board and be consistent with the intent to promote intensive development of suitable development sites. Notwithstanding, buildings shall be at least 150 feet from residential structures that exist on the date of enactment of the IT and CM Zoning Districts, and 75 feet from the lot line of a disagreeing residential abutter. **[Amended 7-22-2020 by Ord. No. 2020.07.08-007]**
- (5) The developer shall record covenants that address architectural considerations for structures, signage and lighting that are designed to promote the highest possible aesthetic quality of the development site.
- (6) A landscaping plan shall be submitted with a development application that depicts landscaping or open space around the perimeter of the site, near the proposed buildings, and within the parking lot that promotes the highest possible aesthetic quality of the development.

G. Residential performance standards. **[Amended 8-22-2018 by Ord. No. 2018.08.08-009]**

- (1) A residential transfer of development rights applicant may either pursue a request to purchase density credits or conserve an acre of land per credit transferring development rights or follow the Industrial option for residential density as outlined in 170-29. I (4).
- (2) Each January, the City shall calculate the value per acre to preserve open space within the City of Dover within a reasonable historic timeframe and factor in an inflation rate to the cost of land. This list shall be kept on file in the Department of Planning and Community Development and reported to the Conservation Commission.
 - (a) This cost shall be included in the proposed Schedule of Fees approved by the City Council.
- (3) Proceeds from the purchase of development rights shall be placed into the Conservation

Fund to be used to reimburse the City for previous conservation efforts, purchase future property or easements, or monitor and/or maintain easements on other conserved land, and not into the general fund for general expenditures.

- (4) Baseline density calculations are determined based upon the underlying zone. In all cases, any unsuitable areas and any areas within 250' of a tidal river, shall be subtracted from the original parent lot size.
- (a) Regardless of the calculation method used below, if the base yield plan requires an environmental conditional use permit per other sections of Zoning Ordinance to develop homes, the applicant must appear before the Conservation Commission for review and endorsement prior to any Planning Board's review.
- (b) For applications proposed on mixed-use or non-residential zoned lots, the base density shall be calculated utilizing the by right density, and not density gained by Special Exception or Conditional Use Permits.
- [1] A realistic yield plan, as defined in Dover 157, shall set the baseline density. Whatever dwelling type used in the calculation is used, shall be constructed (ie, if using two-family density, two family units shall be constructed, if using HUD rent restricted units for the density, then perpetual HUD rent restricted units shall be constructed).
- [2] If converting a single family to a two-family in an existing building is allowed by right and intended to count towards future density, then the conversion shall occur prior to additional units are calculated in the transfer request and shall be included in the yield plan or calculation.
- (c) For applications proposed in primarily residential zoned areas, the baseline yield for the lot to be developed through the following formula:
- [1] The base lot size is then reduced by 15% to account for roadway; this creates the net area.
- [2] The net area is then multiplied by a factor determined by the amount of unsuitable development area over the parent lot. This is the developable area.

(d) Percentage of Parcel That Is Unsuitable Development Area	(e) (f) Factor
(g) 0% to < 10%	(h) 0.85
(i) 10% to < 20%	(j) 0.8
(k) 20% to < 30%	(l) 0.75
(m) 30% or greater	(n) 0.7

- [3] The developable area is then divided by the minimum lot size, and the

whole number value is the base number, with no rounding. **[Amended 7-22-2020 by Ord. No. 2020.07.08-007]**

- (d) If a TDR is requested for a lot located within the RCM Overlay District, the yield plan shall be prepared using the density permitted under the RCM regulations, inclusive of the required non-residential components. A revised Conditional Use Permit (CUP) application shall be submitted for review, and the Planning Board must determine, by majority vote, that the applicable criteria have been satisfied. In addition, an agreement pursuant to Section 170-32 (2)B shall be executed to ensure continued compliance with the required non-residential proportions. Open space shall be provided in accordance with the applicable provisions of Chapter 153, 157, or 170, as determined by the nature of the application.
- (e) Where a subject lot contains land within more than one zoning district, the density of the most restrictive district shall apply to the entire site. Alternatively, density may be calculated separately for each zoning district, provided that such density is confined to the portion of the lot within each respective district boundary and does not rely on the provisions of Section 170-10.E.

[1] The Planning Board may, by majority vote, grant a TDR Conditional Use Permit to allow density to be distributed across zoning district boundaries upon a finding that the proposed layout is appropriate to the context of the project.

H. The transfer shall equate to one of the following calculations:

- (1) One unit per one acre conserved is the result of a transfer made through the purchase of development rights, as described in Subsection G (1), or through the protection of land via a permanent conservation easement as per Subsection E (5).
- (2) One market rate or for sale unit per one density credit paid into the Conservation Fund.
 - (a) If the monthly rent for any unit created through the TDR process shall perpetually conform to the HUD Fair Market Rent rates for Dover, as published annually by the New Hampshire Housing Finance Authority, no TDR fee shall be assessed for any such restricted unit(s).
- (3) If development plan is a village-themed residential/non-residential project, whereby 35% of the total square footage being created is non-residential and which fosters a more compact, walkable development, the transfer shall equate to one unit per 4,000 square feet preserved or purchased.
- (4) Any non-residential development approved by the Planning Board which will create a manufacturing or assembly facility over 40,000 square feet may create and transfer one unit per 2,000 square feet of building approved, above the 40,000 square foot base.
 - (a) The transfer shall not be completed prior to the issuance of the certificate of occupancy for the additional manufacturing or assembly space. If the units are to be placed upon the same lot, the layout must be shown on the site plan for the development.

I. Amendments to previous projects that had a size restriction would need an amendment reviewed and approved by the Planning Board, with necessary updates to any association documents, plan sets, or deeds.

- J. The grant of special permission, at the discretion of the Planning Board, to allow additional density through a transfer requires that the applicant and any successors or assigns comply with the following applicable conditions and restrictions associated with such approval:
- (1) A note shall be placed on the approved development plan, and any building permit certifying the adherence to this section of the Code.
 - (2) A note shall be placed in the property/unit deed citing the restrictions listed above.
 - (3) The plan shall be considered a subdivision application if fee simple lot lines are to be used. The plan shall be considered a site plan if a condominium or multiple principal buildings are placed on a lot or as otherwise determined by the Director of Planning and Community Development in the written staff memo.
 - (a) Prior to submission, a determination, in writing, by the Director of Planning and Community Development shall be made whether to follow the minor or major subdivision regulations.
 - (4) Any Transfer of Development Rights approval with size or HUD rent restrictions before ____ XX, 2026 shall follow said restriction unless a subsequent TDR application is approved by the Planning Board. HUD and size restrictions shall follow the intent of the application including but not limited to: presentation to Planning Board, notes on plan, development agreements, and/or deed restrictions.
 - (5) Regardless of the method utilized, the minimum lot size requirement may be relieved by the Planning Board for land subjected to the transfer of development rights.
 - (6) Regardless of the method utilized, the setbacks shall be as stated on the TDR Criteria section of the Zoning District Tables of Uses and Dimensions or if none are listed, then a minimum of: **[Amended 7-22-2020 by Ord. No. 2020.07.08-007]**

Minimum Building Setbacks for Subdivision Lots		
Abutting a Street	Abutting a Side Lot Line	Abutting a Rear Lot Line
20 feet	10 feet	30 feet

- (7) Regardless of the method utilized, the minimum frontage requirement may be relieved by the Planning Board, to no less than 40 feet. Paved access to all developed areas shall be suitable for emergency vehicles. **[Amended 7-22-2020 by Ord. No. 2020.07.08-007]**
- (8) The development shall provide adequate screening from abutting side and rear properties through fencing, no-cut/no-disturb buffers of existing vegetation, supplemental landscaping, or a combination thereof, as approved by the Planning Board. Screening shall be consistent with the requirements set forth in the TDR section of the Zoning District Tables of Uses and Dimensions and shall reflect the prevailing character of neighborhood lots within 250 feet in each direction, or within a 500-foot radius, as applicable based on the lot's location. This requirement may be relieved by the Planning Board in part or whole. **[Amended 7-22-2020 by Ord. No. 2020.07.08-007]**
 - (a) A note shall be added to any/all deeds regarding the nature of the screening and

need to perpetually maintain it.

- (9) Regardless of the method utilized, any other provision in this chapter to the contrary, the density or intensity of development of a receiving parcel may be increased by the transfer of development rights so long as the increase in density or intensity meets the following criteria and any TDR criteria listed on the Zoning District Tables of Uses and Dimensions. A narrative shall be submitted indicating how the following criteria are met: **[Amended 7-22-2020 by Ord. No. 2020.07.08-007; 8-9-2023 by Ord. No. 2023.07.12-008]**
- (a) The request is consistent with the Vision Chapter of the Master Plan regarding housing diversity in the city or conservation of natural areas.
 - (b) The request is compatible with the look and perception of land uses on neighboring lots (e.g., a multi-family building/parking areas blending in within a single-family neighborhood). The applicant shall provide in their narrative an explanation of their neighborhood analysis.
 - (c) The proposed development shall be located on property currently served by public drinking water and sanitary sewer, or shall connect to such public utilities within the maximum extension distance measured from the original subject property line as specified in the applicable Zoning District Tables of Uses and Dimensions. The Planning Board may authorize but is not obligated to authorize a greater extension distance upon granting a TDR Conditional Use Permit.
 - [1] Water and sewer investment fees will still be assessed.
 - [2] If a waiver is requested, the Dover Utilities Commission must review and endorse, prior to Planning Board review.
 - (d) Adequate parking shall be provided, averaging one parking space per unit with more or less allowed at the discretion of the Planning Board or Director of Planning and Community Development if no Planning Board review is required. Walkability, proximity to transit, market studies, or intended residents would be reviewed in increases or decreases in amount of parking provided.
 - (e) Any other criteria noted on the Zoning District's Table of Use and Dimensions.

K. Where a conditional use permit is being requested for relief by use or standards as allowed by §170-29, the following criteria shall be met.

A. Notwithstanding any other language herein, the relief granted in Chapter 153, Site Review Regulations, § 153-17C, shall apply to any use as defined in § 170-11B of this chapter.

1) Neighborhood Compatibility

- (a) The scale, massing, and height of the proposed development, as increased through TDR, does not substantially deviate from the established character of the surrounding neighborhood;

- (b) Adequate transitions, screening, or step-downs are provided where the project abuts lower-intensity residential areas; and
- (c) Development impacts, including traffic, lighting, noise, and service functions, are mitigated to avoid adverse effects on nearby properties.

2) Architectural and Site Design

- (a) The project incorporates architectural design features, including materials, façade articulation and roofline variation to fit in with the surrounding neighborhood;
- (b) Service areas, mechanical equipment, and parking are effectively screened from public view and adjacent properties;
- (c) The development advances pedestrian walkability

3) Site Characteristics and Environmental Response

- (a) The development respects the site's natural and built features, including topography, mature vegetation, stone walls, and historic elements;
- (b) Stormwater management, grading, and drainage are designed to avoid off-site impacts and incorporate low-impact development practices where feasible.
- (c) Building placement and massing avoid unreasonable shadowing or loss of solar access on adjacent properties.

4) Consistency with TDR Ordinance Intent

- (a) The development is consistent with the Master Plan and future neighborhood or corridor plans;
- (b) The development advances goals of housing diversity and attainable housing;
- (c) The development advances the ability to conserve in areas of environmental importance and provide density in areas that are more urban and have the capacity for the density; and
- (d) The applicant demonstrates that the project will not result in a substantial diminution of surrounding property values.

5) Compliance with Applicable Regulations

- (a) The project complies with all other applicable zoning, site plan, and overlay district requirements, except where expressly modified by the TDR provisions or received relief from.

