

ARTICLE XIX - PLANNED UNIT DEVELOPMENT^{14 47 59}

19-1 STATEMENT OF INTENT

It is the intent of this section that cluster developments may be permitted as a means of creating a well planned living environment within a compact area. To achieve such living environment, it is the intent of the section that flexibility in the design and development of land be permitted by providing certain deviations in requirements from those applying generally in certain residential zones.

19-2 PURPOSE

The purpose of this section is to establish procedures and standards for planned unit development within the corporate limits of the town, in order that one or more of the following objectives may be attained:

(a) Flexibility in design to take the greatest advantage of natural land, trees, historical and other features.

(b) Accumulation of large areas of usable open space for recreation, preservation of natural amenities, and provision of community facilities.

(c) Creation of a variety of residential and compatible neighborhood arrangements that give the home occupant greater choice in selecting types of environment and living units.

(d) Clustering of one residential type for better use of land and open space, as long as the resultant density does not exceed the allowed density.

(e) Allowance of sufficient freedom for the developer to take a creative approach to the use of land and related physical development, as well as for utilizing innovation techniques to enhance appearances.

(f) Efficient use of land which may result in reduction in development and maintenance costs of street and utility systems.

(g) Establishment of criteria for the inclusion of compatible associated uses to compliment the residential areas within the planned unit development.

19-2.1 There are hereby established two types of Planned Unit Developments; type R-2 and Type R-3, each respectively having specific regulations as set forth herein.

19-3 USE REGULATIONS

19-3.1 PRIMARY RESIDENTIAL USES - TYPE R-2

Single family, two-family, and multi-family (not to exceed 4 units) residential dwelling units and apartments in detached, semi-detached, attached and multi-storied structures shall be permitted uses. No planned unit development shall be allowed which does not incorporate a variety of dwelling designs.

19-3.2 PRIMARY RESIDENTIAL USES - TYPE R-3

Single family, two-family, and multi-family residential dwelling units and apartments in detached, semi-detached, attached and multi-storied structures shall be permitted uses. No planned unit development shall be allowed which does not incorporate a variety of dwelling designs.

19-3.3 SECONDARY NON-RESIDENTIAL USES

Nonresidential uses of a religious, public or semi-public, cultural, or recreation character, structures for exclusive use of the owners in maintenance and operation of the development, and laundry facilities, likewise for the exclusive use of the occupants of the development, shall be permitted uses.

In tracts of more than ten (10) acres, limited retail sales uses are permitted if located within the development, if not adjacent to existing R-1, R-1A, R-1M, R-2, or R-3 residential uses and if it is reasonably determined that the retail uses are appropriately located and screened from the residential areas.

Retail uses shall be limited to the following types: grocery stores; convenience stores; drug stores; bake shops; laundromats; barber and beauty shops; banks; restaurants; video stores. The total retail sales area for any single establishment shall not exceed 2,500 square feet and the gross area for one structure utilized for non-residential use shall not exceed 5,000 square feet. Retail uses may be grouped, however, the developer must

show what methods are being used to appropriately integrate the design into the surrounding residential development and how required parking will be provided and integrated. Each retail establishment shall have at least one (1) parking space for each 200 square feet of retail sales area.

Structures for such nonresidential uses shall be compatible in appearance to the residential structures.

19-4 QUALIFYING REQUIREMENTS AND MINIMUM AREA REGULATIONS

A tract or parcel of land proposed for a planned unit development application must be either in one ownership or filed jointly by the owners of all the property included. The holder of a written option to purchase land shall for purposes of such application be deemed to be an owner of such land. Notwithstanding the foregoing, each and every planned unit development must be in single ownership by the time the final development plan is approved.

The minimum required land area for a planned unit development shall be 1.5 contiguous acres.

19-5 COORDINATION WITH SUBDIVISION REGULATIONS

It is the intent of these regulations that subdivision review under the Subdivision Ordinance be carried out simultaneously with the review of a planned unit development under this article. Although many provisions of the Subdivision Ordinance may not be applicable, it is intended that the overall

plan for providing for logical divisions of land and the provision of adequate space for intended uses will be maintained.

The preliminary development plan required in this section must be submitted in a form which will satisfy the applicable requirements of the Subdivision Ordinance for the preliminary and final plans required under those regulations, as determined by the zoning administrator.

Before any final plat will be approved by the Zoning Administrator for units in the planned unit development to be sold, the initial developer and any subsequent developer shall, in lieu of the completion and approval of all construction of all required improvements, furnish a bond guaranteed by a surety company acceptable to and in an amount calculated by the Zoning Administrator to secure the required improvements in a workmanlike manner and in accordance with the standards set forth herein and in the Subdivision Ordinance.⁵⁹

19-6 PERMITTED AREA, MINIMUM STANDARDS, OPEN SPACE AND PERMITTED DENSITIES

19-6.1 PERMITTED AREAS - TYPE R-2

Residential Type R-2 Planned Unit Developments are permitted in the following districts: R-2 Residential; R-3 Residential; R-3 MH Residential; and may be developed in B-1 Business, B-2 Business, B-2 DT Business, and M-1 Industrial zones if it is determined by the Planning Commission and Town

Council that the predominant use adjacent to the proposed development is residential in character and compatible with the proposed development.

19-6.2 PERMITTED AREAS - TYPE R-3

Residential Type R-3 Planned Unit Developments are permitted in the following districts: R-3 Residential; R-3 MH Residential; and may be developed in B-1 Business, B-2 Business, B-2 DT Business, and M-1 Industrial zones if it is determined by the Planning Commission and Town Council that the predominant use adjacent to the proposed development is residential in character and compatible with the proposed development.

19-6.3 MINIMUM STANDARDS - TYPE R-2

Minimum lot size, maximum lot coverage, street width, setbacks, height and distance between buildings shall in general meet health, safety and welfare requirements and be in harmony with good planning practices.

Setback lines on public street shall be a minimum of 20 feet from the right of way if the right of way is 50 feet and 25 feet if the right of way is less than 50 feet. Otherwise, there shall be no required minimum setback lines in a Planned Unit Development with exception that in the area on the outer perimeter of a planned unit development shall be 25 feet. Private streets shall have a minimum right of way of 40 feet and a minimum pavement width of 24 feet and shall be located in such a way that 30' pavement width and 50' right of way can be established in the future. Private streets shall be built to the same construction standards as public streets with the exception of width.

Private streets shall have documentation provided to show responsibility for initial construction and maintenance.

Structures within the Planned Unit Development shall be connected to town water mains and sewer lines where available; and so far as practicable, with exception of major transmission lines, utility wires shall be placed underground. Adequate provisions for on site drainage shall be made, and on site drainage retention may be required to protect downstream properties. Adequate easements for utilities and drainage shall be provided.

Water and sewer lines and appurtenances shall be placed in the public right of way or in utility easement of a minimum of fifteen (15) feet wide. Upon completion of the project, the water and sewer lines shall become property of the Town of Wytheville.

Each dwelling unit shall have a minimum of two (2) outdoor off-street parking spaces. The regulations contained in this ordinance pertaining to minimum off-street parking shall apply. However, the Planning Commission may recommend and the Town Council may approve a deviation in the off-street parking requirements.

All development of roads, streets, utilities, storm water drainage, and street lighting within a planned unit development shall meet the same requirements as those for subdivisions. (See Subdivision Ordinance). The minimum floor area requirements and minimum ground coverage requirements shall be the same as Residential R-2.

19-6.4 MINIMUM STANDARDS - TYPE R-3

Minimum lot size, maximum lot coverage, street width, setbacks, height and distance between buildings shall in general meet health, safety and welfare requirements and be in harmony with good planning practices.

Setback lines on public streets shall be a minimum of 20 feet if the right of way is 50 feet and shall be 25 feet if the right of way is less than 50 feet. Otherwise, there shall be no required minimum setback lines in a Planned Unit Development with exception that in the area on the outer perimeter of a planned unit development shall be 25 feet. Private streets shall have a minimum right of way of 40 feet and pavement width of 24 feet and shall be located in such a way that 30' pavement width and 50' right of way can be established in the future. Private streets shall have documentation provided to show responsibility for initial construction and maintenance.

Structures within the Planned Unit Development shall be connected to town water mains and sewer lines where available; and so far as practicable, with exception of major transmission lines, utility wires shall be placed underground. Adequate provisions for on site drainage shall be made, and on site drainage retention may be required to protect downstream properties. Adequate easements for utilities and drainage shall be provided. Water and sewer lines and appurtenances shall be placed in the public right of way or in utility easement of a minimum of fifteen (15) feet wide. Upon completion of

the project, the water and sewer lines shall become property of the Town of Wytheville.

Each dwelling unit shall have a minimum of two (2) outdoor off-street parking spaces. The regulations contained in this ordinance pertaining to minimum off-street parking shall apply. However, the Planning Commission may recommend and the Town Council may approve a deviation in the off-street parking requirements.

19-6.5 OPEN SPACE OR COMMON SPACE REQUIREMENTS

A minimum of forty (40) percent of the entire planned unit development tract shall be devoted to open space and recreational facilities. At least 1/4 of this area shall be developed for public/community use such as parks or playgrounds. In calculating the minimum area for open space and recreational facilities to be provided, the area of any parking areas, street, and alleys are not to be included. If the park or playground is proposed to become public, the developer shall provide all improvements to the park or playground, and upon acceptance of the deed in fee simple and the completed improvements, maintenance will be the responsibility of the Town. The park area shall be considered as "open space" for purposes of compliance with this section.

19-6.6 PERMITTED DENSITIES - TYPE R-2

The gross density within a planned unit development shall be computed by dividing the total number of proposed dwelling units within the

development by the gross development area. The maximum gross density shall not exceed ten (10) units per acre.

19-6.7 PERMITTED DENSITIES - TYPE R-3

The gross density within a planned unit development shall be computed by dividing the total number of proposed dwelling units within the development by gross development area. The maximum gross density shall not exceed fourteen (14) units per acre.

19-6.8 All construction within the Planned Unit Development shall meet the same development standards as are required for subdivisions with the exceptions of setback, lot size, and street widths. (See Subdivision Ordinance).

19-7 PRELIMINARY DEVELOPMENT PLAN

(1) An applicant shall make application for approval of a planned unit development to the Town Council, which will, if it deems appropriate, refer the matter to the Planning Commission for study and recommendation.

(2) A preliminary development plan must include a written statement (delineated below #4) and must show enough of the area surrounding the proposed planned unit development to demonstrate the relationship of the planned unit development to adjoining uses, both existing and proposed, and also include all of the following information:

(a) A plan showing the layout of roads, streets, utility systems, plot lines and plot designs.

(b) Areas proposed to be conveyed, dedicated or reserved for parks, parkways, playgrounds, school sites, public buildings and similar public and semipublic uses.

(c) A plot plan for each building site and common open space showing the proposed location of all buildings, structures and improvements and indicating the open space around buildings and structures.

(d) Plans and elevations of all proposed structures and improvements except single-family residences. The drawings do not need to be the final contract documents, however, they must be in adequate detail to convey general design and appearance of the structures.

(e) A preliminary engineering report (PER), performed by a licensed civil engineer, which addresses streets, roads, water, sewer, storm water, other utilities, their availability, and the impact of the development on the existing infrastructure and neighborhood.

(f) A development schedule indicating (1) the approximate date when construction of the project can be expected to begin; (2) the stages in which the project will be built and the approximate date when construction of each stage can be expected to begin; (3) the anticipated rate of development; (4) the approximate dates when the development of each of the stages in the development will be

completed; and (5) the area and location of common open space that will be provided at each stage.

(g) Agreements and the provisions of the covenants which govern the use, maintenance, and continued protection of the planned development and any of its common areas. In the event streets within the Planned Unit Development will not be constructed to meet the standards for inclusion into the system for the Town to receive state highway street maintenance monies, the planned unit development plat and all approved planned unit development deeds, or similar instruments, must contain a statement that the streets in the planned unit development do not meet Town or State standards and will not be maintained by the Town of Wytheville. Grantors of any lots to which such statement applies must include the statement on each deed of conveyance thereof. (See ' 15.1-466.D). In addition, the agreements and covenants shall clearly describe which, if any, of the streets within the development are private and explain that such private streets have not been accepted into the Town of Wytheville=s rights of way system and will not be maintained by the Town of Wytheville. The agreements and covenants shall also clearly explain that the Town has no obligation whatsoever to pay for any grading or paving, or for sidewalks, sanitary or storm sewers, water lines, curb and gutter improvements, or construction to the private street (See

' 15.1-479) and further is under no obligation to accept these private streets into its public street system. The Town would, however, consider the issue of acceptance of the private street into the public street system upon receipt of a petition submitted by a majority of the planned unit development property owners. During their deliberation of such a petition, the Town Council may or may not, at its discretion, accept these private streets into the Town=s rights of way system. The Town Council shall only consider acceptance of private streets into the public street system when the streets which are under consideration meet all the applicable standards of the Town of Wytheville and the Virginia Department of Transportation for right of way width, pavement width, and construction standards as set out in the VDOT Urban Manual. The agreements and covenants shall also explain that neither the submitting of a petition nor the fact that the private street(s) within the planned unit development meets the aforementioned standards are cause for the Town to accept the street(s) into the public street system.

(3) The following plans and diagrams, insofar as the Planning Commission finds that the planned development creates special problems of traffic, parking, landscaping or economic feasibility:

(a) An off-street parking and loading plan.

(b) Layout of roads, streets, walks, and bikeways with a circulation diagram indicating the proposed movement of vehicles, goods and pedestrians within the planned development and to and from existing thoroughfares. Any special engineering features and traffic regulation devices needed to facilitate or insure the safety of this circulation pattern must be shown.

(c) A landscaping and tree planting plan with common names of the proposed plants, trees, and shrubs identified.

(d) An economic feasibility report or market analysis verifying the need for the development.

(4) The written statement to accompany the preliminary development plan must contain the following information:

(a) An explanation of the character of the planned unit development and the manner in which it has been planned to take advantage of the planned unit development regulations.

(b) A statement of proposed financing.

(c) A statement of the present ownership of all of the land included within the planned unit development.

(d) A general indication of the expected schedule of development.

(5) As a part of the Preliminary Approval Process, the developer shall submit to the Planning Commission a plan specifying the municipal services that are desired to be utilized or not to be utilized

within the boundaries of the planned unit development. This plan should discuss such services as fire protection, police services, solid waste services, and any other municipal services that are provided as a matter of a normal course to non-private residential areas but which may be different within the planned unit development. Following review of this plan and negotiation with the Planning Commission, the Developer will prepare for the Town Council=s review, a Memorandum of Understanding@ which must be approved by the Council. When the Memorandum of Understanding@ is approved by the Council, the provisions shall be mandatory on the planned unit development until such time that the Council, in its own discretion, deems it appropriate or necessary to amend. The provisions agreed upon in this document shall be identified to property owners in the planned unit development covenants.

19-8 APPROVAL OF PRELIMINARY DEVELOPMENT PLAN

Within thirty days after the filing of the preliminary development plan, the Planning Commission shall forward the plan to Town Council with a written report recommending that the plan be disapproved, approved, or approved with modifications, and giving the reasons for these recommendations.

The Town Council shall make known through its published agenda its intention to review the preliminary development plan. After reviewing the

plans and pertinent information and accepting citizen comments, Town Council shall have 30 days to approve, disapprove or approve with modifications the preliminary development plan. The Town Manager shall, by the end of the 30 day period, notify the developer the decision of the Town Council giving reasons for their decision. If the plans are approved with modifications, the developer shall reflect the modifications in the final development plans.

19-9 APPROVAL OF FINAL DEVELOPMENT PLAN

Within six months following the approval of the preliminary development plan, the applicant shall file with the Town a final development plan. Final development plans need not be construction documents, however, they shall be adequately detailed to determine compliance with standards of the Town of Wytheville, the Virginia Department of Transportation, the Virginia Department of Health for water and sewer systems, the Virginia Department of Conservation and Recreation, and any other agency for which approval may be required. In its discretion, and for good cause, the Town Council may extend for six months the period for the filing of the final development plan.

The Town Council shall give notice and provide an opportunity to be heard on the final development plan to:

- (a) Any person who appeared of record at the review by Town Council of the preliminary development plan.

(b) Any other person who has indicated to the Town Council in writing that he wished to be notified.

The Town Council shall review the final development plan, and shall approve it if it is deemed to be in compliance with the approved preliminary development plan. The clerk of the court in whose office deeds are conveyed will record the final development plan in the manner provided for recording plats of subdivision.

19-9.1 Permission to proceed with construction will not be granted until all approvals are obtained.

19-10 FAILURE TO BEGIN PLANNED UNIT DEVELOPMENT

If no construction has begun and no use established in the planned development within one year from the approval of the Final Development Plan, the plan shall lapse and be of no further effect. In its discretion and for good cause, the Town Council may extend for one additional year the period for the beginning of construction or the establishment of a use. If a Final Development Plan lapses under the provisions of this section, it shall be considered void and of no further effect.

19-11 CHANGES IN THE FINAL DEVELOPMENT PLAN

No changes may be made in the approved final plan during the construction of the planned development except upon application to the Town Manager for the following:

(a) Minor changes in the location, siting and height of buildings and structures may be authorized by the Planning Commission if required by engineering or other circumstances not foreseen at the time the final plan was approved. No changes authorized by this section may increase the cubic volume of any building or structure by more than one percent.

(b) All other changes in use, any arrangement of lots, blocks and building tracts, any changes in the provision of common open spaces, and all other changes must be submitted to the Planning Commission for review. The Planning Commission shall forward the plan to Town Council with a report recommending action be taken. Town Council, after reviewing the plans and pertinent information, shall approve, disapprove, or approve with modifications the development plan.

No amendments may be made in the approved final plan unless they are shown to be required by changes in conditions that have occurred since the final plan was approved or by changes in the development policy of the community.

19-12 RATE OF CONSTRUCTION; CONVEYANCE OF COMMON SPACE

The construction of all of the common open spaces and public and recreational facilities which are shown on the final development plan must proceed at the same rate as the construction of dwelling units. At least once every six months following the approval of the final development plan the Town Manager shall review all of the building permits for the planned

development and examine the construction which has taken place on the site. If he shall find that the rate at which common open spaces and public and recreational facilities have been constructed and provided is not satisfactory, he shall forward this information to Town Council which may revoke the building permit. The Town Manager shall not issue a permit for any building or structure shown on the final development plan unless the common space to be conveyed has been adequately assured in a manner satisfactory to the Town Council. This may be a bond, corporate surety or other acceptable financial guarantee, including escrow agreements.

19-13 CONTROL OF PLANNED UNIT DEVELOPMENT FOLLOWING COMPLETION

The Town Manager shall issue a certificate certifying the completion of the planned unit development and the clerk shall note the issuance on the recorded final development plan.

After the certificate of completion has been issued, the use of land and the construction, modification or alteration of any buildings or structures within the planned unit development will be governed by the approved final development plan rather than by other provision of this chapter.

After the certificate of completion has been issued, no changes may be made in the approved development plan except upon application to the appropriate agency under the procedures provided below:

(a) Any minor extensions, alterations or modifications of existing buildings or structures may be authorized by the Town Manager if they are consistent with the purposes and intent of the final plan. No change authorized by this section may increase the cubic volume of any building or structure by more than ten percent.

(b) A building or structure that is totally or substantially destroyed may be reconstructed only in compliance with the final development plan unless an amendment to the final development plan is approved by Town Council. Change in the use of common open space may be authorized by an amendment to the final development plan, as approved by Town Council.

(c) All other changes in the final development plan must be made by Town Council under the procedures authorized by this article. No changes may be made in the final development plan unless they are required for the continued successful functioning of the planned unit development, or unless they are required by changes in conditions that have occurred since the final plan was approved or by changes in the development policy of the community.

19-14 FEE

A fee of three hundred dollars shall be charged for processing a planned unit development application. This fee shall be payable at the time of submittal of the application.

19-15 MANAGEMENT, OWNERSHIP

19-15.1 MANAGEMENT OF COMMON OPEN SPACE, PROPERTY AND FACILITIES

(a) All private streets, parking areas, recreational areas and other common open space, properties, and facilities shall be preserved for their intended purpose as expressed in the approved plan. The developer shall provide the establishment of an association or nonprofit corporation of all individuals or corporations owning property within the planned unit development to insure the maintenance of all common open space, properties and facilities. If ownership of the Planned Unit Development is retained by the developer, the association or nonprofit corporation may be the developer. In any event, the intent of these provisions is to insure the preservation and maintenance of all common open space, properties and facilities.

(b) All privately owned common open space, as described above, shall continue to conform to its intended use and remain as expressed in the site plan through the inclusion in all deeds of appropriate restrictions to insure that the common open space is permanently preserved according to the site plan. The deed restrictions shall run with the land and be for the benefit of present as well as future property owners and shall contain a prohibition against partition.

(c) All common open space as well as public and recreational facilities shall be specifically included in the development schedule and be

constructed and fully improved by the developer at a proportionately equivalent or greater rate than the construction of residential structures.

(d) The nonprofit corporation or association established to own and maintain common open space properties and facilities shall conform to the following requirements, and the developer shall obtain the approval of the Town Attorney as to acceptability of incorporation documents:

(1) The developer must establish the association or nonprofit corporation prior to the final approval, recording and sale of any lot.

(2) Membership in the association or nonprofit corporation shall be mandatory for all owners within the planned unit development and the association or corporation shall not discriminate in its members or shareholders.

(3) The association or nonprofit corporation documents shall set forth the purposes of the permanent organization under which common ownership is to be established, including its purposes; how it shall be governed and administered; the provisions made for permanent care and maintenance of the common property including necessary bonds when required by the Town, and the method of assessing the individual property for its share of the cost for administering and maintaining such common property.

(4) The incorporation document shall set forth the extent of common interest held by the owner of each individual parcel in the tract held in common with others.

(5) In addition, a bond guaranteed by a surety company acceptable to the Zoning Administrator, or other form of security satisfactory to the Zoning Administrator, shall be posted in an amount determined by the Zoning Administrator to insure the performance of the homeowner's association and the maintenance of all common open space properties and facilities until such time as the initial developer, and any subsequent developer, in his/her capacity as developer no longer has any ownership interest in the planned unit development.⁵⁹

19-15.2 OWNERSHIP OF DEVELOPMENT

All property in a planned unit development shall remain under single entity ownership of a developer or group of developers, and shall not be leased or sold unless provision is made which insures participation by the properties leased or sold in the retention and maintenance of common open space and community facilities in accordance with this article. A certificate of compliance, indicating that such arrangements have been made, shall be issued by the director of planning prior to the sale or lease of the property by the developer.

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