

AD HOC SPECIAL PERMIT RESIDENTIAL
DEVELOPMENT BY-LAW COMMITTEE
TOWN OF LEXINGTON



REPORT TO THE 2019 SPECIAL TOWN MEETING
2019-1

Released November 5, 2019

Submitted by:
Jill I. Hai, Chair
Richard Canale
Scott Cooper
Matt Daggett
Heather Hartshorn
Joyce Murphy
Richard Perry
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Betsey Weiss

Executive Summary:

The Committee studied our current Special Permit Residential Development (SPRD) Zoning bylaw and the housing production which has occurred under it, reviewed alternative zoning bylaws, and heard from state and local housing and building experts, residents and stakeholders. The Committee finds that change is warranted in order to produce more of the type of housing we want, as defined by the Town's Value Statement. The Committee has not reached a final conclusion as to whether those changes would be best achieved by alterations to one or more of the Zoning By-law, the Regulations or their administration. As its next step, the Committee expects to retain a zoning expert to draft alternatives based upon the Value Statement and upon a review of zoning practices and by-laws for residential development in other communities. Recommendations are expected to take the form of specific amendment options to the By-law and/or the Regulations and their administration. The Committee will review the recommendations, evaluating them against the desired results described and in alignment with the Town's values. Input will be sought through public listening sessions and meetings or communications with the other stakeholders, elected boards and staff.

A) Definitions and Background

Section 135.6.9 of the Lexington Zoning By law is the current governing provision for Special Permit Residential Developments (SPRDs). (*See appendix for text of existing by-law*) Previously referred to as cluster zoning, SPRDs are an alternative to by-right conventional subdivisions and are available via a special permit from the Planning Board.

Conventional Subdivisions are a "by right" form of development, meaning that they are not subject to requirements from the Planning Board beyond the explicit dimensional and other limits in the Zoning By-law. Conventional subdivisions tend to create a single housing type (large single family homes). They create large impervious surface areas and are often indifferent to historical or geographical context.

Lexington's SPRD By-law offers an alternative to conventional subdivisions, to address the desire for increased diversity of housing type and preservation of buildings or features of historic, architectural or natural significance.

While modifications were adopted at the Annual Town Meetings (ATM) of 2014 and 2016, the Planning Board has discussed additional changes to Section 6.9 for the last several years. At the 2017 ATM both a Planning Board and a citizens' Article were brought to revise Section 6.9. Both Articles were indefinitely postponed by Town Meeting. At the 2018 ATM another citizens' Article was filed. That Article was referred to the Board of Selectmen and from that referral, this Committee was created.

B) Charge of the committee

SPECIAL PERMIT RESIDENTIAL DEVELOPMENT (SPRD) ZONING BYLAW AMENDMENT AD HOC COMMITTEE

Members: Nine (9) voting; 2 non-voting liaisons
Committee membership should be representative of the broad range of stakeholder interests. Members should include residents or individuals working in Lexington who have background or experience in:

- Smart growth residential policy;
- Residential development or construction;
- Residential real estate marketing or sales;
- Affordable housing policy, development or construction;
- Land use planning or engineering;
- Interested residents

The Committee will also include:

- A member of the Board of Selectmen
- A member of the Planning Board

While not part of the Committee, the following committees are invited to recommend a non-voting liaison:

- Capital Expenditures Committee
- Appropriation Committee

Appointed by: Board of Selectmen. The Board of Selectmen will designate the Committee Chair, in consultation with the Chair of the Planning Board.

Length of Term: The length of term will be from formation through the end of the Town Meeting session at which a proposed Bylaw is considered.

Staff Support: Technical consultant, committee facilitator or consultant, Planning Director (limited)

Meeting Times: As determined by the committee. A minimum of three meetings to solicit public comment and input to be held at times geared to maximize community participation.

Committee Goal: Gather and provide stakeholder input, housing data and draft a Statement of Values, so that consultants, under direction of the Committee, Elected Boards, and staff, can develop a draft zoning bylaw amendment and warrant article to either revise or replace Section 135-6.9 of the Zoning Bylaw, Special Permit Residential Development, to provide for the creation of more affordable and diverse residential dwelling units.

Committee Role: This committee will:

- 1) Undertake a comprehensive listening strategy to garner community and stakeholder input on a SPRD Bylaw. Over the life of the committee, a minimum of three meetings to solicit public comment and input should be held at times geared to maximize community participation. Input sought should include that on community housing needs and obligations, goals of Special Permit residential developments, and associated costs and benefits.
- 2) Summarize and contextualize community input in a written report
- 3) Work with Elected board representatives, staff, the public, and appropriate consultants to review the current bylaw, the work from the Residential Policy Committee, and the 2017 and 2018 Annual Town Meetings on the same subject, and draft a revised SPRD zoning bylaw. Bylaw should include consideration for the propriety and cohesiveness of resulting developments within the context of their surroundings. This effort should include input and documentation from the development community.
- 4) Seek input from the Disabilities Commission, the Council on Aging, the Conservation Commission and other relevant stakeholders.

Deliverables:

- 1) Present a progress report to the Board of Selectmen once per month from November, 2018 through completion.
- 2) Draft zoning bylaw amendment warrant article, consistent with specifications above, as soon as practicable.

Prior to serving as a member of this committee, members are required to:

- 1) Acknowledge receipt of the Summary of the Conflict of Interest Statute. Further, to continue to serve on the Committee the member must acknowledge annually receipt of the Summary of the Conflict of Interest Statute. Said summary will be provided by and acknowledged to the Town Clerk.
- 2) Provide evidence to the Town Clerk that the appointee has completed the on-line training requirement required by the Conflict of Interest statute. Further, to continue to serve on the Committee, the member must acknowledge every two years completion of the on-line training requirement.

Reference: Charge adopted by the Selectmen on September 17, 2018
Selectmen designated committee members as Special Municipal Employees on November 5, 2018

Members, appointed November 2018:

Richard Canale
Scott Cooper
Matt Daggett
Jill Hai
Heather Hartshorn
Joyce Murphy
Richard Perry
Taylor Singh
Betsey Weiss

Wendy Manz – Capital Expenditures Committee liaison
Carol Kowalski – Assistant Town Manager, Development

C) Committee Meetings

The Committee held 14 meetings between December 2018 and October 2019. These meetings were public, filmed by Lexmedia and available for viewing OnDemand. The meetings included two public listening sessions where we received comments from citizens, and several sessions where we learned about existing and best practices in Lexington and other communities. Presenters to the Committee included:

Carol Kowalski, Assistant Town Manager, Development
Katy Lacy, Massachusetts Housing Partnership
Gary Larsen, Landscape Architect
John Farrington, Attorney
Richard Waitt, Engineer
David Jay, Landscape Architect
Jim Kelley, Lexington Building Commissioner
Sheila Page, Lexington Assistant Planning Director
Victoria Buckley, Lexington Commission on Disability
Jyotsna Kakullavarapu, Lexington Council on Aging
Anthony Scerio, Lexington Assistant Director Youth and Family Services
Hemali Shah, Lexington Assistant Director Senior Services
Melinda Walker, Housing Partnership Board
Alex Dohan, Lexington Conservation Commission
Bob Creech, Planning Board member, participating as a resident
Charles Hornig, Planning Board member, participating as a resident

D. Public Sessions

Two public sessions were held to solicit input from citizens throughout the community. They were held morning and evening, to optimize residents' availability to participate. Approximately 25 people attended each session. The current bylaw and recent developments under it were all reviewed, as were goals of the existing bylaw. Residents had an opportunity to provide input on what they thought was working, what opportunities existed for improvement, what goals might be added or strengthened via amendment. The full notes from both sessions are posted on the SPRD Committee page.

E. Takeaways

From the public sessions and the presentations the Committee heard significant interest in:

- Conserving open space and natural resources
- Creating more affordable housing
- Creating/maintaining housing for all stages and ages of life (including first time buyers and the elderly)
- Creating "visitability"/accessible housing
- Creating "workforce" housing
- Sustainability
- Improving the predictability and fairness of the special permit process
- Reducing the time required to obtain a special permit
- Maintaining flexibility to develop a project which is best suited to the individual site
- Economically viable standards, so that projects will be built
- Maintaining integrity of community and neighborhoods
- Determining town-wide costs of increased density

F. Value Statement

The Committee then combined the input and synthesized it into a comprehensive statement covering the goals we believe the Town can aspire to achieve with the SPRD bylaw. This statement will form the basis of the work to be done by the zoning consultant who will be engaged to revise or replace the existing Section 6.9 in order to create the necessary incentives to increase production of the housing stock we want. The statement reflects an increased focus on sustainability and accessibility.

The statement reads as follows:

Lexington seeks to encourage greater diversity of housing opportunities to meet the needs of a diverse population with respect to income, ability, accessibility needs, number of persons in a household and stage of life. Lexington seeks to fulfill this goal while preserving its cultural and historical values and promoting growth that is sustainable and sensitive to the natural environment.

Lexington is mindful of supporting development that preserves historically or architecturally significant buildings and landscape. The Town recognizes that not all of these values can be applied to all sites but is committed to evaluating each site as an opportunity to contribute to serving and promoting these values Town wide.

G. Recommendation for RFP

The Committee recommends that a zoning consultant be retained to complete a comprehensive review of best practices in SPRD type zoning and make recommendations to this Committee on how best to achieve the housing stock production consistent with the Value Statement. The recommendations may include revision or replacement of the existing Bylaw, the Regulations, and/or any element of administration or process. Staff will be conducting the RFP process to retain a technical consultant for this purpose and the consultant will work with the Committee and the Planning Department staff to achieve these goals. Additional public comment sessions will be held, and the elected Boards will have opportunity to contribute to the process.

Addendum

SPRD By-Law (Sec. 135.6.9, existing)

6.9 SPECIAL PERMIT RESIDENTIAL DEVELOPMENTS.

6.9.1 Purpose. This section is intended to:

1. Ensure that the development of multiple dwellings does not detract from the livability, scale, character or economic value of existing residential neighborhoods;
2. Encourage greater diversity of housing opportunities in Lexington to meet the needs of a population which is diversified with respect to number of persons in a household, stage of life, and income;
3. Encourage the development of affordable housing;
4. Promote development proposals designed with sensitivity to the characteristics of the site that otherwise might be limited by application of uniform, largely geometric standards;
5. Permit different types of structures and residential uses to be combined in a planned interrelationship that promotes an improved design relationship between new buildings and public facilities and common open space;
6. Preserve historically or architecturally significant buildings or places;
7. Encourage the preservation and minimum disruption of outstanding natural features of open land and to minimize impacts on environmentally sensitive areas;
8. Encourage sustainable development through the use of green building practices and low-impact development techniques;
9. Promote the efficient and economical provision of public facilities such as utilities and streets and facilitate a detailed assessment, by Town officials and the public, of the adequacy of such facilities and services for the proposed level of development.

6.9.2 Applicability. A special permit residential development is a project in which one or more lots, tracts, or parcels of land are to be improved for use as a coordinated site for housing. No special permit residential development shall be initiated without first obtaining a special permit in accordance with the provisions of this section. The purpose of the special permit is to provide detailed review of residential developments that have a substantial impact upon the character of the Town, adjacent residential areas and the provision of public facilities and services.

6.9.3 Types of Special Permit Residential Development.

1. A site sensitive development (SSD) is the development of a parcel with configurations of lots allowing flexibility and creativity in residential development through reductions in minimum lot area and frontage requirements in order to minimize site disturbance, preserve historic and sensitive natural resources, and allow for efficient patterns of construction to lower development cost. The number of dwellings in a site sensitive development may not exceed the number of dwellings that could be constructed in the development of a conventional subdivision. **[Amended 4-9-2014 ATM by Art. 32]**
2. A balanced housing development (BHD) is a development allowing deviation from the dimensional standards that apply to developments in conventional subdivisions in order to achieve a balance of housing choices for a diversity of household types and sizes. Instead of determining density by minimum lot area and frontage requirements, the amount of residential development for the tract as a whole is based on calculations of gross floor area and impervious surface area derived from a conventional development plan for the tract of land. **[Amended 4-9-2014 ATM by Art. 32]**
3. A public benefit development (PBD) is a type of balanced housing development that allows increases in gross floor area and impervious surface area in return for the creation of 10% of the units as affordable housing.

6.9.4 Scale of Development. An applicant is not entitled to the maximum development, nor is the applicant entitled to approval of a special permit residential development. The amount of development permitted will be based on a fully complying proof plan and the SPGA's evaluation of the extent to which the proposed development complies with the criteria set forth-below.

6.9.5 Dimensional Standards. The requirements of § 135-4.0 are modified as follows:

1. Lot area. There is no minimum lot area required. Individual lot area shall be sufficient to meet off-street parking requirements of this bylaw and the installation of any on-site water supply and sewage disposal facilities.
2. Frontage. There is no minimum frontage required. Frontage for each lot shall be sufficient to provide for adequate access to the building site. Where shared driveways or other circumstances render frontage on a street to be of no importance, none is required.

3. Yard and Height Requirements. Yards required by § 135-4.0 and the height limit of § 135-4.3.5 apply to the perimeter of the site, but are not applicable within the site. **[Amended 3-30-2016 ATM by Art. 39]**
4. Site coverage. There is no maximum site coverage limit for individual lots. Site coverage for the development tract as a whole is limited as described below.

6.9.6 Gross Floor Area Standards.

1. Site sensitive developments (SSD). The total gross floor area (GFA) in an SSD may not exceed the sum of the gross floor area that would be permitted on each of the lots shown on the proof plan under § 135-4.4 of this bylaw. **[Amended 3-30-2016 ATM by Art. 41]**
2. Balanced housing developments. The total gross floor area (GFA) of all structures in a BHD shall be less than the number of lots shown on the proof plan multiplied by 7,200 square feet.
3. Public benefit developments. The total gross floor area (GFA) of all structures in a PBD shall be less than the number of lots shown on the proof plan multiplied by 8,640 square feet.

6.9.7 Dwelling Unit Count and Limitations on Unit Size.

1. Site sensitive developments. The number of dwellings in a SSD shall not exceed the number of dwellings shown on the proof plan.
2. Balanced housing developments. The number of dwelling units permitted in a BHD is not limited. At least 25% of the dwelling units must have a GFA not larger than 2,700 square feet, and at least 50% of the dwelling units must have a GFA not larger than 3,500 square feet.
3. Public benefit developments. The number of dwelling units permitted in a PBD is not limited. At least 25% of the dwelling units must have a GFA not larger than 2,700 square feet, and at least 50% of the dwelling units must have a GFA not larger than 3,500 square feet. In addition, 10% of the total number of dwelling units in the development must be affordable to households earning no more than 80% of the area median income.

6.9.8 Impervious Surface Standards.

1. Site sensitive developments. The impervious surface limit in a SSD is based on the proof plan. The limit for the development as a whole is calculated as follows:

Step 1: Determine the area in square feet of each lot shown on the proof plan. For each lot in a RS or RT District, multiply its lot area by 0.20; for each lot in the RO District, multiply its lot area by 0.12.

Step 2: Determine the total area of the impervious surfaces contained on the proof plan that are not contained within lots, such as roads, sidewalks, and similar surfaces.

Step 3: The impervious surface limit for the SSD is the sum of the impervious surface calculations from Steps 1 and 2.

2. Balanced housing developments. The impervious surface limit in a BHD is calculated in the same manner as that of a SSD.
3. Public benefit developments. The impervious surface limit in a PBD is calculated in the same manner as that of a SSD and increased by 20%, i.e. multiplied by 1.20.

6.9.9 Site Coverage Standards.

1. For site sensitive developments, the site coverage limit is based on the proof plan. The limit for the development as a whole is calculated as follows:

Step 1: For each lot on the proof plan, multiply its lot area in square feet by 0.15 for lots in RS and RT Districts, and by 0.09 for lots in RO Districts.

Step 2: The site coverage limit for the SSD as a whole is equal to the sum of the individual lot site coverage calculations determined in Step 1.

2. For balanced housing developments, there is no site coverage limit.
3. For public benefit developments, there is no site coverage limit.

6.9.10 Common Open Space Standards.

1. Minimum common open space. At least 33% of the developable site area in a BHD or PBD shall be set aside as common open space. A maximum of 20% of common open space may be devoted to parking or structures used for, or accessory to, active outdoor recreation, provided such parking or structures are consistent with the open space uses of such land.
2. Location; condition. Where required or provided, common open space shall be land that may be in one or more parcels of a size and shape appropriate for the intended use and available for use by all occupants of a development.
3. Easement. When such open space is conveyed to persons or entities other than the Town, an easement over such land shall be granted to the Town to ensure its perpetual use as open space, conservation, recreation or park land.

6.9.11 Ownership of Open Space. Common open space may be conveyed to:

1. The Town, subject to acceptance, to ensure its perpetual use as open space, conservation, recreation or park land; or

2. A legal association comprised of the owners of the development, which may include homeowners or owners of condominium or cooperative units; or
3. A nonprofit organization, the principal purpose of which is the conservation of open space.

6.9.12 Streets and Drives. The objective of this section is that adequate access for fire-fighting, medical and other emergency operations be provided from the public street system to each site sensitive, balanced housing, or public benefit development, as follows:

1. Connection to public street system. Each street and interior, drive, or system of streets or interior drives, shall connect to a public street.
2. A dead-end interior drive will be treated in the same manner as a dead-end street, and is subject to the provisions governing a dead-end street that are found in the Subdivision Regulations. **[Amended 3-23-2016 ATM by Art. 37]**
3. In a development served by a dead-end street or dead-end interior drive, a secondary means of access may be required in order to provide adequate access for fire-fighting, medical and other emergency vehicles. The Fire Chief will be consulted as to the adequacy of the access.

6.9.13 Compliance with Other Rules and Regulations. The construction of community services, such as utilities, and of streets and interior drives shall comply with the requirements of the Planning Board's Subdivision Regulations. **[Amended 3-23-2016 ATM by Art. 37]**

6.9.14 Modification by Special Permit. The SPGA may, as part of the grant of a special permit, modify the requirements of §§ 6.9.8 and 6.9.9, and the following provisions, as they may apply to individual dwellings or lots within a special permit residential development:

Bylaw Provisions	SSD	BHD	PBD
Number of dwellings on a lot	No	Yes	Yes
Lot width	Yes	Yes	Yes
Contiguous developable site area	Yes	Yes	Yes
Location of off-street parking spaces	Yes	Yes	Yes
Setbacks required for parking spaces and driveways	Yes	Yes	Yes

Bylaw Provisions	SSD	BHD	PBD
Subdivision of land in relation to lots or buildings that are nonconforming or would not comply with this bylaw as a result of the proposed development	Yes	Yes	Yes

6.9.15 Types of Dwellings. The SPGA may, as part of the grant of a special permit, allow the following types of dwellings:

Type of Dwelling	SSD	BHD	PBD
One-family detached	Yes	Yes	Yes
Two-family (*Yes in RT District)	No*	Yes	Yes
Townhouse	No	Yes	Yes

6.9.16 Accessory Apartments. The SPGA may authorize accessory apartments, as described in § 6.7 of this bylaw, to be created within a site sensitive development. **[Amended 4-9-2014 ATM by Art. 32; 3-30-2016 ATM by Art. 40]**

6.9.17 Conversion. The SPGA may authorize an existing structure, that was constructed at least 10 years prior to the date of application for approval of the special permit, to be converted to a residential use not otherwise permitted. The special permit shall incorporate by reference the building design and definitive site development plans filed with the application for a special permit, and, where applicable, any legally binding document that has been submitted to ensure the completion and continued availability of any proposed improvement or compliance with special conditions. In order to grant the permit the SPGA shall determine that:

1. The structure can be modified for a residential use that does not have adverse impacts on any adjacent one-family neighborhood;
2. The exterior character of the structure is maintained and is compatible with any adjacent neighborhood of one-family dwellings;
3. Modification of the existing structure maintains more of the site as open space than the alternative of removal of the structure and further subdivision of the lot into house lots.

6.9.18 SPGA. The Planning Board shall be the special permit granting authority for all special permit residential developments. The Planning Board may grant any special permits that are required for the special permit residential development, notwithstanding provisions of this bylaw designating a different special permit granting authority.

6.9.19 Criteria. The SPGA may only grant a special permit if it makes a determination that the proposed development is consistent with the standards and criteria set forth in § 9.4.2 and the following additional criteria:

1. Where there is common open space, it shall include, as applicable:
 - a. Some, or all, of the outstanding natural features of the site and of the man-made features, including but not limited to stone walls, that enhance the land form;
 - b. Land that increases visual amenities for residents of the development and of the adjacent neighborhood;
 - c. One or more paths or entry points specifically designed for access purposes.
2. The dwellings are sited and oriented in a complementary relationship to: each other, the common open space, and the adjacent properties with respect to scale, mass, setback, proportions and materials;
3. Negative visual impacts of the development, if any, are screened from adjacent properties and nearby streets by landscaping or other site planning techniques;
4. Where opportunities exist, improved access is provided to, or additional links and connections are developed to, a Town system of public facilities, such as open space, recreation facilities, footpaths or bicycle paths;
5. Any building which contains more than one dwelling unit is designed so that either:
 - a. The building has the exterior appearance of a one-family dwelling; or
 - b. If two-family dwellings and/or townhouses are constructed, each individual dwelling unit has access to ground level and an opportunity for a private yard, patio, or other private outdoor space;
6. There are provisions for common facilities, such as recreation or parking, or for services such as the maintenance of streets, walkways or paths, utilities, landscaping or recreation facilities;
7. Where there are sufficient dwelling units, the layout of the street(s) and interior drive(s) will accommodate vehicles, other than automobiles, that are used in local transportation services.
8. To the extent practicable, sustainable development techniques, including green buildings, have been utilized.
9. A public benefit development shall meet the following criteria:
 - a. There are sufficient benefits to the adjacent neighborhood and the Town generally to warrant an increase in the maximum development otherwise permitted; and

b. Legally binding documents have been submitted that insure that affordable units will continue to be available to eligible households in perpetuity. An affordable unit shall be subject to maximum household income established for that unit, based on the area median income (AMI) as annually determined by the U.S. Department of Housing and Urban Development, assuming one more person in the household than the number of bedrooms in the unit. Eligible households shall have incomes no greater than 80% of the AMI.

2014 Housing Production Plan

Goal 1: Maintain Lexington's SHI above 10% through 2020 and beyond

Goal 2: Provide more housing options for Lexington's low-income households earning less than 80% of area median income

Goal 3: Provide housing options for Lexington middle-income households earning 80% to 120% of area median income

Goal 4: Provide housing options tailored to the needs of seniors and those with disabilities

Goal 5: Plan affordable housing to incorporate sustainable building practices and to support Lexington's economic goals

Goal 6: Coordinate Lexington's affordable housing development with regional housing strategies

2003 Comp Plan

The Town of Lexington strives to promote and maintain the socioeconomic diversity of Lexington by managing and implementing the Town's efforts to meet the housing needs of low- and moderate-income residents and develop initiatives to preserve and expand the Town's stock of affordable housing. Our primary task in this arena is monitoring the more than 1,300 affordable units.

We also work with private developers and owners to offer access to affordable units created through local permitting processes.

Lexington seeks to have a socially and economically diverse community, both over the whole of the community and within its neighborhoods. In support of that fundamental social goal, a basic housing goal is to provide housing opportunities supportive of the population diversity we seek. This will require attention both to the needs of lower income groups and also to the needs of a growing segment of middle-income households who also are being priced out of Lexington. The potential beneficiaries of our efforts to accommodate diversity are not only those who otherwise could not live here but are all of us, enriched by having a more complete community for ourselves and for our families. We need to achieve that diversity of opportunity through appropriate means – without sacrificing the qualities of existing residential environs through unreasonable density departures, introduction of disruptive traffic or other impacts, or building in a way that is inconsistent with its context. (Comp plan Executive Summary, Page xi)