

Town of Hamilton Zoning Bylaws

Section 8.0 SPECIAL RESIDENTIAL REGULATIONS

8.1 FLEXIBLE DEVELOPMENT

8.1.1 Purpose. The purpose of a Flexible Development is to:

1. Encourage the preservation of open land for its scenic beauty and recreational use, as well as use of existing and proposed trails and the protection of wildlife habitat and corridors;
2. Perpetuate the Town's traditional New England character, preserve historical and archeological resources, and protect the natural environment, especially water resources;
3. Protect the value of real property, reduce the anticipated negative fiscal impact on the Town associated with conventional residential development, and contribute to the Town's financial stability;
4. Promote the development of affordable housing and provide a variety of housing choices particularly for older persons; and
5. Promote more sensitive siting of buildings and the facilitation of construction in an economical and energy efficient manner.

8.1.2 Administration.¹ The Planning Board shall be the SPGA for this Section. An applicant may file an application with the Planning Board in conformance with this Section and the Planning Board Rules and Regulations.

8.1.3 Planning Board Rules and Regulations.² The Planning Board shall adopt, and from time to time may amend, Flexible Development Special Permit Rules and Regulations to implement this Section. Such regulations shall include, but will not be limited to, submission requirements, fees, including the fees set forth in Section 8.1.9, plan requirements (such as size, form, number and contents), development standards, site standards, and standards for building placement and design. The Rules and Regulations shall set forth how the density incentives set forth Section 8.1.9 are determined, including the size of "compact units" and how that size is calculated, and how "enhanced energy and water efficiency standards are defined. Such Rules and Regulations are required and authorized under G.L. c. 40A, § 9, and shall be adopted after vote by the Planning Board.

¹ See Section 8.2.3 of the Senior Housing Bylaw.

² See Section 8.2.4 of the Senior Housing Bylaw.

8.1.4 Eligible Locations.³ A Special Permit may be granted for a Flexible Development on any parcel in the R-1A, R-1B, RA Districts that equals or exceeds 80,000 square feet and otherwise meets the requirements of this Section and other applicable provisions of this Bylaw.

8.1.5 Limitations on Flexible Development.⁴ The following limitations on Flexible Development projects shall apply:

1. A maximum of one hundred (100) Flexible Development dwelling units may be permitted Town-wide under this Section.
2. A maximum of fifty (50) dwelling units per project shall be allowed.
3. The maximum number of dwelling units permitted in any year shall be fifty (50). For the purpose of this Section, a “year” shall mean a calendar year. Any partial year shall be pro-rated.
4. Dwelling units shall be counted in the calendar year in which the Special Permit is granted, not the year in which the application was filed.
5. If fewer than the maximum number of dwelling units is permitted in a year, the balance shall be carried forward to the next year. However, the maximum number of dwelling units permitted per year shall remain at fifty (50).
6. In the event that substantial use or construction under a Special Permit issued has not commenced within two (2) years of approval and no extensions have been granted, the number of Dwelling Units shall be added back into the number of unpermitted dwelling units, and shall be available to be permitted under this Section.

8.1.6. Permitted Uses.⁵ A Flexible Development may include the following uses:

1. Single Family Dwellings;
2. Two Family Dwellings;
3. Semi-attached Dwellings;
4. Three Family Dwellings;

³ See Section 8.2.2 of the Senior Housing Bylaw.

⁴ See Section 8.2.6 of the Senior Housing Bylaw.

⁵ See Section 8.2.7 of the Senior Housing Bylaw.

5. Four Family Dwellings;
6. Townhouse Dwellings;
7. Multi-family Dwellings;
8. Open space and conservation areas;
8. Passive recreation;
9. Agricultural, equestrian, and horticultural uses;
10. Accessory Uses, such as a tennis court, pool, community building, and other amenities, in the developed area, for the benefit of the development; and
11. Recreational fields.

8.1.7 Applicable Definitions. The following terms shall have the following definitions for the purposes of this Bylaw.

1. Contiguous open space. An undeveloped tract of land suitable, in the opinion of the Planning Board, for the purposes set forth in this Bylaw. Such open space may be separated by the road(s) constructed within the Flexible Development.
2. Developable Square Feet.⁶ "Developable Square Feet" is defined as the area of the tract of land, exclusive of the area in wetlands subject to G.L. c. 131, § 40, as mapped by the applicant's consultant and approved by the Hamilton Conservation Commission. In addition, land subject to a preexisting Conservation Restriction, except for land area in a defined "building envelope", shall be excluded from the total square feet. This net land area shall constitute "Developable Square Feet."
3. Off-Site Open Space. Open space geographically separate from the subject development owned by the applicant that the Town might accept to satisfy the open space requirements of the development in accordance with the Town's Land Acquisition Policy adopted November 2, 2015.
4. Off-Site Open Space Acquisition Fund. Monetary funds provided to the Town's Open Space Acquisition account by the applicant pursuant to Section 8.1.9.

⁶ This definition is identical to the definition contained in Section 8.2.8 of the Senior Housing Bylaw.

8.1.8 Base Flexible Development Density.⁷ The Base Density per Developable Acre for a Flexible Development Special Permit shall be three (3) dwelling units for the R1-A district, two (2) dwelling units for the R1-B district, and one (1) dwelling units for the RA district.

8.1.9 Incentives to Increase Base Flexible Development Density.⁸ The incentives to increase Base Flexible Development density may be selected and utilized by an applicant to increase the Base Flexible Development density shown in Column B. The percentage shown in Columns C, D, and E, if selected, increase the number of dwelling units per Developable Acre in Column B, up to the amount shown in Column F, Maximum Density per Developable Acre. The following incentives may be utilized and are:

1. The applicant makes a payment to the Off-Site Open Space Land Acquisition Fund for additional dwelling units exclusive of the minimum payment to increase the density allowed under Section 4.1.2 of the Hamilton Zoning Bylaw to the base density under the Flexible Zoning Bylaw, which minimum payments are \$50,000 for R-1A District, \$50,000 for R-1B District, and \$25,000 for RA District as set forth in the Matrix below;
2. 25% of units are “compact units” as defined in the Rules and Regulations of the Planning Board;
3. The applicant utilizes “enhanced water and energy efficiency standards as defined in the Rules and Regulations of the Planning Board;
4. The applicant sets aside additional open space and, where appropriate, provides public access to, connection with, or improvement of existing trails.

[Remaining Space Intentionally Left Blank]

⁷ See Section 8.2.9 of the Senior Housing Bylaw.

⁸ See Section 8.2.10 of the Senior Housing Bylaw.

Flexible Development Matrix

A	B	C	D	E	F	G
Current Zoning: Units/dev. sq. ft.	Base density Under Flex. Bylaw Units/dev. Sq. ft. ¹	Added Units Allowed: as % of Base (B): for “compact units” ²	Added Units Allowed: as % of Base (B): for “efficient units” ³	Added Units Allowed: as % of Base (B) for share of land set aside as open ⁴	Total Allowed Density (Min/Max): B x (1+C+D+E)	Fee paid to OSAF per dev. Sq. ft. for added units in development. 50k x [F-A] ⁵
R-1A (2 units) 20,000, sq. ft.	3	25%	25%	25% - 75%	3 - 6.75	\$50k – 337.5k
R-1B (1 unit) 40,000 sq. ft.	2	25%	25%	25% - 75%	2 - 4.5	\$50k – 225k
RA (.5 unit) 80,000 sq. ft.	1	25%	25%	25% - 75%	1 – 2.25	\$25k – 112.5k

1. Minimum payments of \$50k, \$50k, and \$25k are required to increase the density from the current zoning density in column A to the base density in column B.
2. Minimum 25% of units are “compact units” as defined in Planning Board Rules and Regulations.
3. Meets Enhanced Energy and Water Efficiency standards as defined in Planning Board Rules and Regulations.
4. Extra units (% of B) = set aside share with minimum set aside of 25% and maximum of 75%.
5. Paid to Hamilton Off-Site Open Space Acquisition Fund per development square feet.

Examples: (total units allowed in development will be rounded down to nearest whole number).

Zone R-1A: 80,000 square feet, efficient units, 25% open space set aside: total allowed units = $2 \times 3 \times (1 + .25 + .25) = 9$, total fee = \$250k

Zone R-1B: 200,000 square feet, efficient units, 25% open space set aside: total allowed units = $5 \times 2 \times (1 + .25 + .25) = 15$, total fee = \$500k

Zone RA: 400,000 square feet, efficient units, 50% open space set aside: total allowed units = $10 \times 1 \times (1 + .25 + .50) = 17.0$, total fee = \$600k

8.1.10 Minimum Distance between Projects.⁹ In order to mitigate the impact of multiple developments on surrounding neighborhoods, a proposed project must be located at least the distance established in the Minimum Distance between Projects Table below from any other existing or approved Flexible Development project, any existing or approved project including multi-unit residential buildings under G.L. c. 40B, or any existing or approved project including multi-unit residential buildings under any other provision or Bylaw, including the Senior Housing Bylaw. Excluded from this calculation and this Section are any existing multi-family projects approved prior to January 1, 2003, and apartments under Sections 3.4, 3.6 or 3.7. The minimum distance between projects shall be calculated using the following Table:

Combined Total Dwelling Units in Proposed Project and in Existing or Approved Projects	Minimum Distance between Projects
Up to and including 50 total Dwelling Units	0.33 mile
Exceeds 50 total Dwelling Units	0.66 mile
Exceeds 75 total Dwelling Units	1.0 mile

1. The distance between projects shall be measured from the closest property boundary. A project shall be deemed to be existing or approved if it has been constructed or if a special or comprehensive permit, or a site plan approval, has been granted; or if a special or overlay zoning district which allows multi-family housing has been approved.

2. The determination of the required separation between projects shall be made at the time the Special Permit is issued under this Bylaw, in order to assess the most up to date existing project status.

3. If a Chapter 40B housing proposal is filed and approved while an application for Flexible Development Special Permit has been filed and is under review by the Planning Board, that Flexible Development project shall be exempt from the distance requirement of this Section.

8.1.11 Modification of Lot Requirements.¹⁰ The Planning Board encourages applicants for Flexible Development projects to modify lot size, shape, and other dimensional requirements for lots within a Flexible Development, subject to the following limitation:

Except where the Planning Board determines that reduced-sized lot(s) on a public way is consistent with existing development patterns in the neighborhood where the project is to be located, lots having reduced area or frontage shall not have frontage on a public way but rather on a street created by the Flexible Development that shall be private and maintained as such in perpetuity unless so determined by the Planning Board.

⁹ See Section 8.2.11 of the Senior Housing Bylaw.

¹⁰ See Section 11.1.4 of Wenham's Bylaw.

8.1.12 General Requirements.¹¹ Regardless of whether the applicant elects to utilize the density incentives set forth above, the following requirements shall apply.

1. Low Impact Development. The use of low-impact development techniques is required, where applicable. The applicant shall employ meaningful low impact techniques which will result in less impervious area, direction of roof runoff toward rain gardens and swales, and plantings indigenous to the area. The use of recycled or recaptured rainwater is encouraged. A Low Impact Development Handbook and other references are available from the Planning Board Office.
2. Minimizing Disturbance. The applicant is encouraged to maintain as much of the site as possible in its natural state. The applicant is urged to incorporate horticultural and landscape design that reduces the need for supplemental irrigation and chemical fertilization, e.g., minimizing lawn area.
3. Location of Wastewater Treatment. All wastewater shall be treated and discharged on-site. Off-site wastewater treatment is not allowed. An exception to this is for parcels located in the Business District, where wastewater treatment may be located off-site.
4. Paths and Trails. All existing paths and trails shall be connected and preserved, absent compelling circumstances, and increased when possible.
5. Conversion to Apartments. Dwelling units constructed by Special Permit under this Section shall not be eligible for subsequent conversion to add apartments under Sections 3.4, 3.5, 3.6, or 3.7.
6. Reuse of Existing Buildings. Existing Buildings and dwelling units may be reused and rehabilitated for the purposes of this Section provided all standards and requirements are met.
7. Homeowners Association and/or Condominium Documents. Prior to submitting an application to the Building Commissioner and prior to construction of infrastructure, the applicant shall submit to the Planning Board and receive approval of all homeowner's association and/or condominium documents. The Planning Board or legal counsel shall review and approve the documents to ensure that the intent of this Section and the relevant sections of the decision of the Planning Board are incorporated into the documents.

8.1.13 Building and Design Standards.¹² In order to achieve a development that reflects the residential character of the neighborhood in which it is located, the following minimum building and design standards shall be applied to all structures constructed in a Flexible Development:

¹¹ See Section 8.2.13 of the Senior Housing Bylaw.

¹² See Section 8.2.16 of the Senior Housing Bylaw.

1. Buildings shall be designed to be consistent with the residential character of the Town and shall be complementary in exterior design with each other and, where applicable, with the existing neighborhood in which the development is located.

2. A mixture of sizes of dwelling units is encouraged, in order to create a range of selling price levels, and to address the needs of various members of the population.

3. Accessory structures shall comply with all setback requirements and shall be designed with architectural detailing of similar nature to the principal Buildings located thereon.

4. Other Building and Design Standards in applicable Planning Board Rules and Regulations shall apply

8.1.14 Lighting.¹³ All lighting fixtures shall be integrated into the architectural style of the development. All exterior structural and site lighting (not including access road lighting) shall be localized and of full cut-off design, with light which shall be retained on site and shall not create a nuisance to abutting properties and streets. All exterior light sources shall be appropriately shielded from off-premises viewing. Access road lighting shall be designed to prevent nuisance to abutting properties by reason of light and glare.

8.1.15 Signs.¹⁴ The need for an identifying sign is very site dependent. Accordingly, the Planning Board shall determine if a sign is needed based on the size, location, and visibility of a project. If the Planning Board determines that a sign is needed, one (1) sign to identify the property, no greater than three (3) square feet in size, and mounted on posts with total height (including the sign) of not more than four (4) feet above the ground, shall be allowed at the intersection of the project's access road or driveway with the abutting public way. Signage may be illuminated with targeted lighting that minimizes light spill-over, but it shall not be backlit or internally illuminated.

8.1.16 Site Access, Roadway Design and Management.¹⁵ All Structures located within a Flexible Development shall be accessed by: (a) an existing driveway or an existing private way, subject to Planning Board determination as to adequacy of the access, and/or (b) by a new driveway or a new private way. If access to a proposed development is derived from a private way, then the applicant shall submit a legal opinion, acceptable to Town Counsel, establishing the right of access from the private way to the development as proposed.

1. All access roadways and associated infrastructure improvements shall be considered private, under the ownership of the property owner and/or a homeowner's association

¹³ See Section 8.2.17 of the Senior Housing Bylaw.

¹⁴ See Section 8.2.18 of the Senior Housing Bylaw.

¹⁵ See Section 8.2.19 of the Senior Housing Bylaw.

established pursuant to G.L. c. 183A, and shall not be owned or maintained by the Town of Hamilton.

2. The Planning Board shall pay special attention to the suitability of the location of the site access road relative to abutting properties when evaluating the Special Permit Application.

8.2.17 Stormwater Management and Erosion Control.¹⁶ The peak rate of storm water runoff from a Flexible Development shall comply with Department of Environmental Protection Stormwater Management Policy. General soil erosion of the proposed development site shall be minimized by integrating the development into the existing terrain and by reasonably retaining natural grades and soil cover. During grading and construction of all improvements, including all Structures and infrastructure improvements, erosion of soil shall be minimized using best management practices.

8.1.18 Parking.¹⁷ All Flexible Developments shall provide for adequate off-street parking which will protect the health, safety and welfare of the residents and guests. A minimum of two (2) off-street parking spaces shall be provided per Dwelling Unit. Each garage unit shall be counted as a parking space.

1. Visitor parking spaces shall be provided at a rate of one (1) per five (5) required parking spaces, and shall be clearly marked.

2. A minimum of two (2) parking spaces shall be provided for postal delivery accessory structures, if provided.

3. In all parking areas, the use of low impact development techniques is required, as appropriate, in order to reduce impervious area and runoff.

4. No parking spaces or parking lots shall be located within the required minimum yard setback requirements for principal structures from access roads and property lines except that the parking of vehicles shall be allowed within driveway areas providing access to a principal structure, as long as the driveway is designed at a proper width for parking.

5. No parking areas, parking lots or access drives shall be located within the minimum twenty-five (25) foot separation area between structures.

8.1.19 Setbacks and Landscape Buffers.¹⁸ Building setbacks shall remain vegetated and undisturbed to the extent possible in order to maintain the existing natural features. The Planning

¹⁶ See Section 8.2.20 of the Senior Housing Bylaw.

¹⁷ See Section 8.2.21 of the Senior Housing Bylaw.

¹⁸ See Section 8.2.22 of the Senior Housing Bylaw.

Board may require designated “No Cut Zones” in order to minimize disturbance and impacts to abutting properties. Buffering from the Street and abutting properties in order to minimize visibility is desirable. A landscaped buffer shall be provided along the perimeter of the property. For said landscaped buffer, natural vegetation shall be supplemented with the planting of evergreen trees and shrubs. A Landscape Plan shall be required.

8.1.20 Open Space and Natural Resources.¹⁹ Open space in a Flexible Development must provide the land is permanently protected, usable, common open space that is functional for purposes 1 and 2 set forth in Section 8.1.1.1 and the open space must be maintained in a manner which will ensure its suitability for those intended purposes. A minimum of twenty-five percent (25%) of the parcel shown on the Flexible Development plan shall be contiguous open space, unless the Planning Board in its discretion determines that non-contiguous open space, together with contiguous open space, satisfies the requirement of this Bylaw.

8.1.21 Use, Shape, and Location of Open Space.²⁰ To the maximum extent feasible, open space, whether contiguous or noncontiguous, shall be undisturbed, unaltered and left in its natural condition or existing condition. It shall be appropriate in size, shape, dimension, location, and character to assure its use as a conservation area, or, where appropriate, a recreational area, and serve as a visual and natural amenity for the development and the Town.

1. The common open space shall be Contiguous Open Space to the maximum extent possible.
2. Common open space shall be functional for wildlife habitat, passive recreation, resource preservation, agriculture, or equestrian uses consistent with the purposes set forth in Section 8.1.1.
3. The location(s) and configuration of the common open space shall be subject to approval by the Planning Board.
4. Each parcel of common open space shall be accessible to residents of the Flexible Development and, where appropriate, to the public.
5. Land used for common or shared septic systems and required reserve area may not be counted toward the minimum open space requirement unless authorized by the Planning Board.
6. Not more than fifty (50) percent of the open space in a Flexible Development shall consist of areas subject to the Wetlands Protection Act, G.L. c. 131, § 40, for reasons other than being subject to flooding.
7. Existing utility easements may not be counted as common open space.
8. Up to five (5) percent of the minimum required open space may be used for gravel roadways, pavement or structures accessory to the dedicated use or uses of the open

¹⁹ See Section 8.2.23 of the Senior Housing Bylaw.

²⁰ See Section 8.2.24 of the Senior Housing Bylaw.

space, provided, however, that the common open spaces shall have no structures, parking, private yards, patios, or gardens that are restricted for the exclusive or principal use by residents of individual dwelling units. Principal or accessory structures and access roads essential to an agricultural use are exempt from this requirement, except for indoor/covered riding rings

8.1.22 Ownership and Maintenance of the Open Space.²¹

1. Any open space within a Flexible Development shall be conveyed to a corporation or trust owned or to be owned by the owners of lots or residential units set forth in the Flexible Development plan, as provided by G.L. c. 40A, § 8 and ownership of open space within a Flexible Development shall pass with a conveyance of the lots or dwelling units in perpetuity. Alternatively, any proposed contiguous or noncontiguous open space within a Flexible Development may be conveyed to the Town and accepted for park or open space use, if it satisfies the provisions set forth in the Town's Land Acquisition Policy adopted November 2, 2015; or it may be conveyed to a non-profit organization, the principal purpose of which is the conservation of open space. Unless the open space is conveyed to the Town or a nonprofit organization, the principal purpose of which is the conservation of open space, it shall be subject to a recorded restriction enforceable by the Town or the Conservation Commission, providing that such land shall be perpetually kept as open space and not built for residential use or developed for accessory uses such as parking or roadways.²²

2. In the event the open space is conveyed to a corporation or trust owned by the owners of the lots or dwelling units, maintenance of the open space to prevent hazardous conditions that threaten health and public safety, wild life habitat and corridors, and the Town's water resources shall be permanently guaranteed by such corporation or trust which shall provide, where applicable, for maintenance expenses associated with the open space, including, but not limited to, mowing, trail maintenance, and land management activities, either through monthly home owner's association fees or mandatory annual assessments to each lot. In the event that the Town is required to perform any work associated with the open space, it shall have a lien on any improvements to the property which it may enforce pursuant to its Planning Board Rules and Regulations. Each individual deed, and the deed of trust or articles of incorporation, shall include provisions designed to effectuate these provisions. Documents creating either a trust or corporation shall be submitted to the Planning Board for approval, and shall thereafter be recorded.

²¹ See generally Sections 8.2.23. of the Senior Housing Bylaw and Section 8.1.14 of the OSFPD Bylaw.

²² See Section 8.2.23.1 of the Senior Housing Bylaw.

8.1.23 Public Access to Open Space within a Flexible Development.

1. Liability. In the event the applicant, or the corporation or trust owned jointly or in common by the owners of lots within the Flexible Development, elect to create pathways or trails through the open space, or there are existing trails through the open space that connect to trails on abutting properties, and the lot owners permit the public to use the open space and pathways and trails for recreation, conservation, educational, or other lawful purposes, the lot owners shall be afforded the protections set forth in G. L. c. 21, § 17C(a).

2. Maintenance of Trails. In the event of public access to trails, the lot owners are encouraged to grant easements to nonprofit organizations whose primary purposes are the protection of open space and the maintenance of trail networks through Hamilton and adjacent towns in Essex County, thereby obviating maintenance costs required by Section 8.1.22.2.

8.1.24 Flexible Development Pre-Application Conference.²³ The applicant shall request and attend a pre-application review at a regular business meeting of the Planning Board. The Planning Board shall invite the Board of Health, Building Commissioner, Conservation Commission and Open Space Committee, Department of Public Works, Fire Chief, Police Chief, Historic District Commission, Office on Disability, and Zoning Board of Appeals to attend. The primary purpose of the pre-application conference is to identify the site's natural or historically important features, riding or walking trails on the site and abutting parcels, public safety, traffic or infrastructure issues, and areas the Town prefers to see preserved as open space or for agricultural or equestrian uses. The secondary purpose of a pre-application review is to minimize the applicant's cost of engineering and other technical experts, and to commence discussions with the Planning Board at the earliest possible stage of development. Meetings may be held by mutual agreement of the Planning Board and the applicant. At the pre-application review, the applicant may outline the proposed Flexible Development, seek preliminary feedback from the Planning Board, and set a timetable for submittal of a formal application. At the expense of the applicant, the Planning Board may engage technical experts to review the informal plans of the applicant and to facilitate submittal of a formal application for the Special Permit.

Each development plan shall follow the design process outlined below.²⁴ When the Flexible Development plan is submitted, applicants shall be prepared to demonstrate to the Planning Board that the Design Process was considered in determining the layout of proposed streets, house lots, and contiguous open space.

²³ See Section 81.7 of the OSFPD Bylaw.

²⁴ See Section 11.1.15.1 of Wenham's Flexible Development Bylaw. This provision is similar to Section 8.1.11 of the OSFPD.

1. Understanding the Site. The first step is to inventory existing site features, taking care to identify sensitive and noteworthy natural, scenic, and cultural resources on the site, and to determine the connection of these important features to each other.

2. Evaluating Site Context. The second step is to evaluate the site in its larger context by identifying physical (e.g., stream corridors, wetlands), transportation (e.g., road and bicycle networks), and cultural (e.g., recreational opportunities) connections to surrounding land uses and activities.

3. Designating the Open Space. The third step is to identify the contiguous and non-contiguous open space to be preserved on the site. Such open space should include the most sensitive and noteworthy resources of the site, and, where appropriate, areas that serve to extend neighborhood open space networks.

4. Location of Development Areas. The fourth step is to locate building sites, streets, parking areas, paths and other built features of the development. The design should include a delineation of private yards, public streets and other areas, and shared amenities, so as to reflect an integrated community, with emphasis on consistency with the Town's historical development patterns.

5. Lot Lines. The final step is simply to draw in the lot lines (if applicable).

8.1.25 Definitive Subdivision Plan.²⁵ If a Definitive Subdivision is proposed, a Definitive Subdivision Plan shall be filed in conformity with G.L. c. 41, §§ 81K-81GG, and the Town of Hamilton Subdivision Regulations, along with an application for a Flexible Development Special Permit. To the extent possible, hearings will be held concurrently.

If a Definitive Subdivision is not proposed, an application shall be filed which includes a Flexible Development Design Plan, which shall conform to Planning Board Regulations. A Design Plan shall be considered neither a subdivision plan under the Subdivision Control Law nor a site plan subject to the provisions of Section 10.6. Such plan shall comply with applicable Stormwater Management regulations.

8.1.26 Application Process.²⁶ The applicant shall furnish a copy of the application to the Town Clerk, which shall be time stamped as the official submittal. The applicant shall furnish sufficient copies of the Special Permit application to the Planning Board to distribute for review to the Board of Health, Board of Selectmen, Building Commissioner, Conservation Commission and Open Space Committee, Department of Public Works, Fire Chief, Police Chief, Historic District Commission, Office on Disability, and Zoning Board of Appeals. The size, quantity, form, and content of plans shall comply with Planning Board Rules and Regulations. Reports from the above-named boards and officials are not mandatory, and if officials wish to comment, reports shall be submitted to the Planning Board within thirty (30) days of receipt by the reviewing

²⁵ See Section 8.2.26 of the Senior Housing Bylaw.

²⁶ See Section 8.2.27 of the Senior Housing Bylaw.

party. In the event that the Public Hearing by the Planning Board is held prior to the expiration of the thirty (30) day period, the Planning Board shall continue the Public Hearing to permit the formal submission of reports and recommendations within that thirty (30) day period. Planning Board Members shall conduct a site visit with the applicant prior to or during the Public Hearing.

8.2.27 Prohibition.²⁷ Once a Flexible Development Special Permit application has been submitted, the following activities are prohibited on any part of the site until the application has been reviewed and decided as provided by this Section: tree removal, utility installation, ditching, grading or construction of roads, grading of land or lots, excavation, except for purposes of soil testing, dredging or filling, and construction of buildings or structures.

8.1.28 Conditions of Approval.²⁸ The Planning Board may impose conditions, safeguards, requirements, and other standards as part of its approval.

8.1.29 Employment of Outside Consultants.²⁹ The Planning Board may employ outside consultants, at the applicant's expense, under the terms of G.L. c. 44, § 53G, and Planning Board Rules and Regulations Governing Special Permits, to assist in its permit decision, including but not limited to plan review, drainage and stormwater analysis, to determine conformance with this Section and other requirements, and for construction, inspection, etc.

8.1.30 Planning Board Findings.³⁰ In addition to the criteria set forth in Section 8.2.24, the Planning Board must make written findings on the following standards for the proposed use, buildings and structures for a Flexible Development. The proposed Flexible Development must:

1. Be compatible with adjacent land uses and with the character of the neighborhood in which it is located;
2. Mitigate impact to abutting land and natural resources by reason of air or water pollution, noise, dust, vibration, or stormwater runoff;
3. Provide safe and convenient access to the site from existing or proposed roads, and to proposed structures, with particular reference to pedestrian and vehicular safety, traffic flow and control, and access in case of fire or emergency;
4. Provide for adequate capacity for public services, facilities, and utilities to service the proposed development such as water pressure and sewer capacity;
5. Provide for visual and noise buffering of the development to minimize impact to abutting properties;

²⁷ See Section 8.2.28 of the Senior Housing Bylaw.

²⁸ See Section 8.2.29 of the Senior Housing Bylaw.

²⁹ See Section 8.2.30 of the Senior Housing Bylaw.

³⁰ See Section 8.2.31 of the Senior Housing Bylaw.

6. Provide for the perpetual preservation and maintenance of open space, trails, and recreation areas; and

7. Demonstrate compliance with the purposes and intent of this Bylaw in order to encourage similar development.

8.1. 31 Expansion.³¹ Once any Flexible Development has been permitted under this Bylaw, further expansion shall not be permitted, and no subdivision of the property or change in property lines shall be allowed. A notation to this effect shall be written on the plan.

8.1.32 Payment of Fees. Unless otherwise authorized by the by the Planning Board or secured by a performance bond or mortgage, the payment of all fees required to be paid under Section 8.1.9 shall be paid in full upon the issuance of building permit, unless other payment terms and conditions are approved by the Planning Board prior to the issuance of the permit.

8.1.33 Remedies. In the event that the applicant obtains a Special Permit utilizing the incentives set forth in Section 8.1.9 and the Planning Board determines, either before or after the completion of construction of the units in the development, that the requirements for compact units and/or enhanced energy and water efficiency standards have not been satisfied, the Planning Board reserves its rights to any and all forms of legal or equitable relief, including, but not limited to, an order requiring demolition of the units in the project.

³¹ See Section 8.2.32 of the Senior Housing Bylaw.