

Proposed Ordinance - Transfer of Development Rights

Transfer of Developmental Rights

The Transfer of Development Rights Ordinance is enacted to facilitate the implementation of multiple goals of the Town of Conway master plan adopted April 25, 2024; including the protection of the Saco River watershed, drinking water resources, and encouraging development in locations well served by municipal infrastructure. These goals are accomplished by allowing, under certain conditions, an increased structural lot coverage when development is balanced with permanent protections of the Saco River Watershed and drinking water sources through the payment of development transfer fees used for this purpose.

Increased lot coverage is permitted in the Highway Commercial District which is consistent with future land use recommendations of the master plan. Offsetting land is intended to be within the Saco River Watershed to preserve critical environments, protect against flooding, and safeguard drinking water resources.

A. Authority and Purpose:

The Transfer of Development Rights Ordinance is enacted in accordance with RSA 674:2-5 and under the authority granted by RSA 674:16 (Grant of Power) with specific authority provided 674:21(I) (Innovative Zoning Land Use Controls) and 674:21(II) relative to conditional use permits. Density transfer, as established in this ordinance is a specific application of 674:21(I)(d), “Transfer of density and development rights.” Further, this ordinance is enacted to implement future land use recommendations of the master plan pertaining to the protection of important natural resources, the preservation of open space, and the establishment of efficient development patterns in the community.

- (1) The purpose and intent of the ordinance is further specified as follows:
 - (a) To protect important natural resources including shoreline, floodplains, prime wetlands, waterbodies, and drinking water sources in the Saco River Watershed, within the Town of Conway.
 - (b) To foster a more sustainable pattern of growth by encouraging development within or near existing areas of development and infrastructure.
 - (c) To reduce sprawl and the rate of consumption of undeveloped land.
 - (d) To establish a workable, equitable mechanism to focus development to areas which are serviced by adequate infrastructure and are able to balance potential impacts to the community.

B. Definitions:

- (1) **Density Transfer Credit:** The increase in structural lot coverage afforded to a development, expressed in lot area, which is acquired through the payment of a density transfer fee.
- (2) **Density Transfer Fee:** The fee paid to the town in exchange for an increase in permitted structural lot coverage.

C. Applicability:

- (1) The use of the Transfer of Development Rights Ordinance by landowners is optional. Approval of a specific application is at the discretion of the planning board, granted through a conditional use permit. If the density transfer option is not requested or not approved, the provisions of the underlying ordinance remain in effect.
- (2) The provisions of the TDR ordinance may be utilized for, in-fill development, mixed-use development, and applicable residential or commercial projects which are subject to site plan or subdivision review, provided that:
 - i. The development is to be located within the Highway Commercial District.
 - ii. The landowner or developer will pay a development transfer fee to the town to acquire land, deed restrictions, or easements in areas designated for watershed preservation and drinking water protections. The amount of the transfer fee or acreage conserved shall be determined through the process described in Section F.
 - iii. A conditional use permit is approved.

D. Designation of Area for Density Transfers:

- (1) Transfer of Development Right funds obtained for the purpose of exceeding by-right structural lot coverage may be applied within the Saco River Watershed in the Town of Conway for land or structures within the floodplain; preservation of shoreland, wetland and waterbody buffers; and aquifer or drinking water source protection.
 - i. Funds shall be submitted to the Conservation revolving fund in a specific account referencing the Transfer of Development Rights funds. The Conservation Commission shall administer the funds as specified in this chapter and RSA 36-A:5.

E. Development Transfer Determination:

- (1) Procedure
 - i. Notification: A landowner or developer intending to utilize the density transfer option shall notify the planning board of this intent upon application for preliminary review. The planning board shall determine eligibility of the proposed development to transfer development and review with the applicant the criteria for conditional use approval.
 - ii. Conflicting Provisions: Where provisions of the density transfer ordinance conflict with those of the underlying district, the provisions of this ordinance shall apply, provided that the application is in compliance with the ordinance and any conditions required as part of the conditional use permit.

- iii. Plan Notation: Any subdivision or site plan submitted for approval under the Transfer of Development Rights ordinance must include a plan notation to be filed with the plan at the Registry of Deeds stating that a development transfer fee will be required prior to the issuance of the building permit. The fee shall be determined at the time of building permit issuance based upon the fee schedule defined in Section F(7).

F. Development Transfer Standards:

- (1) Increases in development density permitted under this ordinance shall only apply in the Highway Commercial District.
- (2) The allowable increase to structural development area that may be transferred to an eligible development is determined by the planning board as part of the Subdivision or Site Plan approval process.
- (3) No developmental increase shall be permitted above that which would fall below minimum required wetland, shoreline, or other applicable environmental setbacks.
- (4) All standards, including greenspace requirements, shall be met as stated in Chapter 110, Site Plan Review
- (5) The planning board may approve a smaller density increase than requested, based on site characteristics, neighborhood context, or other considerations to mitigate impacts to the community.
- (6) Density Transfer Credits
 - i. The mechanism for implementing development transfers established under this ordinance is a development transfer credit. In order to utilize an increased structural lot coverage, the appropriate number of transfer credits must be acquired by the payment of a development transfer fee.
 - ii. Density transfer credits shall be calculated based on the percentage of proposed structural lot coverage subtracted by the lot coverage permitted by right or development incentive.
- (7) Development Transfer Fee: The development transfer fee required to purchase development transfer credits shall be based on the percentage of structural lot coverage and assessed at the time of the issuance of the building permit. The fee schedule shall be established by the planning board, published in the town site regulations and updated periodically to reflect changing market conditions. The objective of the fee structure shall be to generate sufficient funds to offset the additional lot coverage with the permanent protection of developable land within the Saco River Watershed.

G. Conditional Use Permit

- (1) Approval of a development proposal utilizing the development transfer option is subject to a conditional use permit approved by the planning board (RSA 674:21(II)). This approval shall be based on compliance with the standards of

approval set forth below. The board shall issue findings and conditions which shall be filed with the plan if approved.

- (2) Standards for Approval. The following standard must be met or mitigated to the satisfaction of the planning board prior to granting the conditional use permit. These standards should be reviewed within the scope of impacts caused specifically by the increase in structural lot coverage sought under the provisions of this ordinance.
- (3) Compatibility with Existing Use: The proposed development is compatible with existing character and setting. This standard shall consider design and function; architectural compatibility, including roof type and pitch, style of units, and building materials; screening and privacy; and other factors as appropriate to fit in with the surrounding community.
- (4) Traffic Impact: The higher developmental use will not unreasonably impact nearby intersections and corridors, nor result in added future costs for the town beyond that for a development of standard density.
- (5) Historic and Cultural Resources: Increased development will not result in the loss or impairment of historic buildings, settings or landscapes beyond that for a development of standard density.
- (6) Municipal Facilities and Services: Increased density of the proposed development will not exceed the capacity of required municipal services beyond that which will be mitigated as a normal condition of approval.
- (7) General Considerations: The proposed development is consistent with the town master plan and the purpose and intent of the Density Transfer Ordinance. The increased density of development, when also considering the offsetting conservation of developable land, will not result in undue future expenses to the town. The proposed development will not create a hazard to the general public health safety and welfare of the community.
- (8) Conditions. The planning board may impose additional conditions in its approval of the conditional use permit as deemed necessary to accomplish the goals of the development transfer ordinance, including, but not limited to, the reduction in the maximum structural lot coverage.

H. Use and Disposition of Development Transfer Fee:

- (1) Establishment and Use of Development Transfer Credit. Development transfer fees collected pursuant to this ordinance shall be deposited into a separate non-lapsing development transfer fund account administered by the town treasurer (RSA41:29). The account is established for the purpose of collecting, holding and disbursing funds for the acquisition of fee interest in, or conservations easements on, potentially developable land. Such acquisitions shall be made within the Saco River Watershed within the Town of Conway. The fund may also be used to offset costs for property appraisals and the preparation of deed restriction and easements documents or other such costs directly related to the acquisition of such lands. The development transfer fund may be used in conjunction with other town, state,

federal or private funds to acquire such land provided that the land will remain permanently undeveloped and is located within a designated area.

- (2) Disposition of Protected Land. Any land acquired using development transfer fees shall be permanently restricted from development by easement or covenant, which shall run with the land. Such land shall be used only for, watershed management, drinking water protections, surface water habitat protection or restoration. The fees may also be used to purchase structures within the floodplain which would be removed and the underlying land placed in conservation. Ownership of the land may be held by the town under management of the conservation commission, or may be transferred, upon the approval of town meeting, to a recognized conservation organization or land trust provided that the land will remain permanently undeveloped and subject to use restrictions defined within this chapter, and that ownership will be returned to the town upon dissolution of the organization.