

Executive Summary

In an effort to give large landowners additional options for developing their property beyond the traditional subdivision, the Hamilton Planning Board, working with residents, landowners, and other land use boards, has developed this Estate Overlay District By-law. The goal of this by-law is to create alternate uses for large parcels of property in Hamilton, while maintaining the agricultural heritage and feel of the community. By allowing large landowners the opportunity to develop their homes for other uses, Hamilton residents can continue to enjoy the pastoral landscapes and feel of the Town, while also potentially increases the tax base.

Hamilton is a historically agricultural community with roots of mixed use. This by-law seeks to provide legal options to return to some of those original uses. It should be emphasized that if approved, this will be part of the Special Permit process. That means that landowners who meet the basic requirements for this by-law will not automatically be granted a use they select. The Planning Board, in conjunction with other town boards and resident input, will make a decision on a case-by-case basis taking into account such factors as existing use, setback from abutters, increased traffic, and environmental impacts. Passage of this by-law is not a green light for any type of development, it simply provides landowners with the opportunity to pursue another option.

Along with preserving the Town's rural character, this by-law has the potential to meet other needs in the community as well. Empty nesters, young adults, and people without children are often left without many housing options in Hamilton. If these estate homes were developed into two bedroom dwelling units, these groups would have an alternative to moving outside Hamilton.

Estate Overlay District Draft August 9, 2010

The Estate Overlay District By-law would allow a special district to be created within R1a, R1b and RA districts, in order to preserve and protect the historic estate homes within the Town of Hamilton, to create positive fiscal growth by permitting mixed residential and commercial uses of large estate properties, to protect open space and to provide a diversity in the town's housing stock. The By-law has two distinctive sections:

- Part A – An Estate House Adaptive Reuse Permit, which allows for new commercial uses as well as currently allowed and expanded residential uses in existing estate houses and
- Part B – An Estate House Adaptive Reuse and New Floor Area Construction for Commercial Use Permit, which allows for new commercial and expanded residential uses in the existing estate house and new construction to create space for commercial use in an addition or an associated building.

Both Part A and Part B are allowed by special permit and an applicant may apply for Part A first and choose to file a separate Special Permit Application for Part B at a future date.

1. **Purposes of the Estate Overlay District (EOD):**

- a. encourage preservation and appropriate development of the buildings and land of large estate properties;
- b. encourage efficient use of such land in harmony with the natural features of the district;
- c. protect existing non-vehicular connections through trails and pathways;
- d. provide an alternative to subdivision of an estate property;
- e. preserve open space for conservation or recreation use, and provide appropriate public access to open space;
- f. protect natural features that are important to the character of the town, including public vistas of fields, lakes, and rivers from town roads;
- g. allow a development which has a positive fiscal benefit to the Town;
- h. protect Hamilton's rural and agricultural New England character by permitting a mix of commercial and residential development in a manner which is in harmony with Hamilton's historic development patterns and is less demanding on its natural and cultural resources.

2. **Applicability for the Estate Overlay District (EOD)**

- a. Minimum Lot Size: Ten acres for Part A and 20 acres for Part B.
- b. Contiguous lots may be combined for inclusion in an EOD, provided that:
 - i. at least one of the lots contains an Estate House of over 5,000 square feet of living area, built before December 31, 1950;
 - ii. the parcel as combined has at least ten (10) acres and
 - iii. the parcel is under common ownership prior to July 1, 2010.

Under this By-law parcels may be considered combined regardless of a private or public road dissecting the parcels. Land restricted by conservation easements/restrictions or wetlands will count toward the ten (10) acre threshold.

- c. Minimum Estate House Size: 5,000 square feet of living space. Additions to the original structure may count toward the 5,000 square feet of living space threshold as long as the building permit for the addition was obtained before July 1, 2010.
- d. Minimum Age of Estate House: Built before December 31, 1950

3. **Access and Requirements for the EOD**

- a. Access to the lot must be through either a existing frontage;
- b. An access easement granted by an abutter in conjunction with this special permit application; or

- c. Frontage or an access easement created or amended for the special permit on a private way if all abutters to the entire length of the private way agree in writing to the development proposal.
- d. If possible, trails or pathways will be provided or maintained to connect pedestrian, equestrian, non-motorized-bicycle riders or skiers to sites within the property and to other public trail systems if possible.

4. **Open Space Restriction for the EOD:**

- a. A minimum of 40% of the parcel must already be or shall be conveyed to the Town of Hamilton and accepted by it for open space use or;
- b. A minimum of 40% of the parcel must be made subject to a conservation restriction prepared in accordance with the provision of Sections 31 and 33, inclusive of Chapter 184 of the General Laws of the Commonwealth of Massachusetts running in favor of either the Town or, upon the approval of the Selectmen with advice from the Planning Board, to a non-profit corporation, the principal purpose of which is the conservation of open space. Land that has already been made subject to a conservation restriction as delineated above shall count toward the 40% threshold.
- c. Unless the application can provide a compelling reason to the Planning Board why public access would be infeasible a portion of the open space shall be available for use by the general public.
- d. No more than 50% of the open space shall consist of areas subject to the Wetlands Protection Act, M.H.L. c 131, Section 40, for reasons other than being subject to flooding, or the Conservancy District as defined by Section V.C. of this By-law.
- e. Land used for common or shared septic systems may not be counted toward the minimum common open space requirement unless authorized by the Planning Board.

5. **Definitions for an EOD**

Additional Floor Space - new square foot area approved as bonus area as determined through the yield plan, rehabilitation, renovation or open space land dedication larger than the 40% open space requirement.

Bonus Square Footage – The addition of building area calculated in square footage that can be added to the original estate house either as an attached or detached building located on the same property. Bonus square footage can be accumulated through (a) a yield plan, (b) rehabilitation of the estate house to historic standards, (c) renovation of the estate house, or (d) open space land dedication above the required 40% open space preservation. Bonus Square Footage space can only be used for commercial purposes.

Combined/Aggregated – not legally joined, but parcels combined to increase acreage to qualify for the Estate Overlay District By-law

Commercial Use – A use that is primarily for profit and a non-residential use, unless used in a hotel, inn or bed and breakfast, or nursing, assisted living or long term care facility that provides residential units for commercial or profitable use. The renting of apartments will not constitute a commercial use.

Estate Overlay District – A special district that overlays a R1a, R1b or RA District within the Town of Hamilton in which the EOD by-law applies in addition to the uses that are currently permitted by right or special permit in each district.

Estate House – A single family residential dwelling that was constructed prior to December 31, 1950 containing more than 5,000 square feet of gross floor area. Additions to the original dwelling that were constructed after 1950 will count toward the 5,000 square foot threshold if they were permitted by the Building Department prior to July 1, 2010.

Common Ownership - Adjacent lots are considered to be in common ownership or within the landowner's legal control or power if one or more is held in an entity such as a limited partnership, trust benefitting the owners or landowner's use of adjoining land, even if the most recent instrument of record prior to July 1, 2010 reveals that the lot was separately owned and a previously recorded plan may reveal that the lot was at one time part of land held in common ownership.

Floor Area Development – new building space calculated in square footage achieved through bonus accumulation as determined through the yield plan, rehabilitation, renovation or land dedication beyond the 40%. [Same as Bonus Square Footage].

Historically, Culturally or Architecturally Significant – A determination made by the Hamilton Historic District Commission that defines the property as one worth preserving to the level of Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings.

New Floor Area - new building space calculated in square footage achieved through bonus accumulation as determined through the yield plan, rehabilitation, renovation or land dedication beyond the 40%. [Same as Bonus Square Footage].

Nursing Home or Assisted Living for Seniors or Infirm – a commercial use for the residential care of those who are infirm or elderly.

Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings - The Standards for Rehabilitation (codified in 36 CFR 67 for use in the Federal Historic Preservation Tax Incentives program), which address the most prevalent treatment. "Rehabilitation" is defined as "the process of returning a property to a state of utility, through repair or alteration, which makes possible an efficient contemporary use while preserving those portions and features of the property which are significant to its historic, architectural, and cultural values." \\hamserver\planning\$\Great Estate\The Secretary of the Interior's Standards for Rehabilitation & Illustrated Guidelines for Rehabilitating Historic Buildings- Standards.mht

Yield Analysis Plan - The Yield Analysis plan is a schematic representation of a conventional subdivision. It shall show the maximum number of lots (or dwelling units) that could be placed upon the site under current zoning for a conventional subdivision plan. That maximum number of lots shall constitute the Base Maximum Density. The Yield Analysis shall determine Base Maximum Density for the EOD, given the presence of natural building constraints on the site such as wetlands, floodplains, Conservancy Districts, steep slopes, and zoning requirements. The proponent shall have the burden of proof with regard to the Basic Maximum Density.

EOD Part A - Estate House Adaptive Reuse

Part A – Estate House Adaptive Reuse allows for the estate owner to choose between using the existing Estate House as a single family home or applying for a special permit for other uses as indicated below. The new uses would be allowed by special permit with the Planning Board acting as the Special Permit Granting Authority. Special permits allow for each application to be considered individually based on their specific location and impact to the existing neighborhood.

1. Permitted Uses in EOD Part A - Estate House Adaptive Reuse

The following uses may be permitted in the Estate Overlay District (EOD) through Part A - Estate House Adaptive Reuse from the Planning Board, as set forth in this subsection of the Zoning By-law. Under the Part A - Estate House Adaptive Reuse Special Permit, a single use or a combination of the following uses may be permitted in the original estate house.

- a. any use listed in the Town of Hamilton Zoning By-law as an allowable use in the zoning district in which the property currently exists, whether by special permit or otherwise or,
- b. multi-family condominium residential dwelling units, provided that:
 - i. The inclusionary by-law will apply for ten or more units and
 - ii. Residential units shall be limited to no more than two bedrooms per unit;
- c. hotel, inn, bed and breakfast;
- d. catering, function hall or conference center;
- e. for profit school for golf, tennis, gymnastics or other sports;
- f. for profit school for holistic arts, culinary arts, art, music, dance, or theatre;
- g. restaurant (not including fast food or drive up);
- h. bakery;
- i. craftsperson, artist shops or studios (including art, music, and film);
- j. business or professional office;

- k. child care facility or adult day care facility;
- l. museum; or
- m. health or fitness spa.

2. **Dimensional Requirements**

A minimum vegetated buffer of three hundred (300) feet shall be provided between the estate house and abutting lots.

3. **Special Permit Application**

- a. **Forms.** All special permit applications for a Part A - Estate House Adaptive Reuse shall include building plans prepared by a registered architect and filed with the special permit application form. For an application to be considered complete, it shall provide all information required by the Hamilton Planning Board Rules and Regulations Governing Special Permits.
- b. **Required Information.** The special permit application shall include a plan of the existing Estate House and nine copies of a site re-use report. The site re-use report should include an outline of how the following issues and impacts will be addressed by the re-use:
 - i. pedestrian and vehicular access to the site including anticipated changes to vehicular traffic patterns;
 - ii. public safety issues;
 - iii. provision of landscaping/buffering;
 - iv. open space and recreation, including trail development and/or maintenance;
 - v. water supply and drainage issues;
 - vi. proposed uses for commercial units, if any;
 - vii. conceptual floor plans for units.

To the extent possible, the information provided in the report shall be shown in building and site plans, accompanied by a written narrative describing the proposed adaptive reuse.

EOD Part B – New Floor Area Construction

Part B – New Floor Area Construction allows for the estate owner to improve the existing Estate House with expanded residential and commercial uses while increasing floor space by construction of an addition to the original estate building and/or constructing an associated building for commercial uses as indicated below. The New Floor Area uses are limited to commercial only. The new uses would be allowed by special permit with the Planning Board acting as the Special Permit Granting Authority. Special permits allow for each application to be considered individually based on their specific location and impact to the existing neighborhood.

1. **Permitted Uses in EOD Part B – New Floor Area Construction**

The following uses may be permitted in the Estate Overlay District (EOD) through Part B – New Floor Area Construction from the Planning Board, as set forth in this subsection of the EOD Zoning By-law. Under EOD Part B – New Floor Area Construction Special Permit, a single commercial use or a combination of the following commercial uses may be permitted in the New Floor Area. The following uses are allowed in the existing house and/or New Floor Area in a new building or addition, provided that residential use is not permitted in any New Floor Area.

- a. residential dwelling use in the original Estate House, provided that
 - i. The inclusionary by-law will apply for ten or more units;
 - ii. Residential units shall be limited to no more than two bedrooms per unit.
- b. hotel, inn, bed and breakfast,
- c. catering, function hall or conference center
- d. outdoor recreational facility or center such as golf course, golf driving range, provided it is affiliated with a golf course, cross country skiing, horseback riding or non-motorized cross country bike riding facility including any on-site trails;
- e. for profit school for golf, tennis, gymnastics or other sports;
- f. for profit school for massage, culinary arts, art, music, dance, or theatre;
- g. restaurant (not including fast food or drive up),
- h. bakery;
- i. craftsman or artist shops or studios (including art, music, and film);
- j. retail shops of up to 8,000 square feet each;
- k. photography studio, decorator, bridal salon;
- l. medical or dental clinic;
- m. nursing home or assisted living for seniors or infirm;
- n. business or professional office;
- o. printing or publishing provided the physical printing services are provided offsite;
- p. research offices/development
- q. biotechnology processing
- r. animal hospital or animal day care;
- s. child care facility or adult day care facility;
- t. museum;
- u. health or fitness spa; or

- v. clean assembly facility.

2. **Methods of Achieving New Floor Area**

There are four methods to obtain New Floor Area to construct commercial space on the property in addition to re-using the original Estate House:

a. Historic Rehabilitation of the original Estate House.

An application that proposes to rehabilitate or renovate buildings and supporting structures certified by the Hamilton Historic District Commission as having cultural, historic or architectural significance may increase New Floor Space by five times the amount of square footage contained in all existing buildings that are rehabilitated or renovated as part of the EOD development. The Planning Board shall refer to the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings for guidance when reviewing the buildings which have been, or are proposed to be, rehabilitated or renovated. NOTE: Uses allowed in new floor area may not be residential.

b. Non-historic Rehabilitation of original Estate House

If the Planning Board determines that the reconstruction or replacement of existing buildings or supporting structures that have not been certified by the Hamilton Historic District Commission as being historically, culturally or architectural significant are more consistent with the building's rehabilitation or renovation, then the Applicant may increase new floor space by the amount of square footage contained in all existing buildings that are replaced or reconstructed. The renovated or rehabilitated building or supporting structure may not be torn down. NOTE: Uses allowed in new floor area shall not be residential.

c. Yield plan of developable land: For the purpose of this By-law, 3,000

square feet of New Floor Area may be constructed for each lot that could be created on the property. A yield plan will determine how many lots could be developed under normal application of zoning requirements of the underlying zoning district in which the property lies, under "Town of Hamilton Rules and Regulations Governing the Subdivision of Land" and through the standards as outlined in Section VI. Development Regulations of the "Hamilton Zoning By-law." Land in the Groundwater Protection Overlay District will require 80,000 square feet for each lot calculated. The applicant shall provide with the application for special permit a site plan with verifiable soil tests indicating the number of buildable lots possible under detached single-family zoning, the State Environmental Code, Title V, the requirements of the Board of Health, the Wetlands Protection Act, and the Hamilton Conservation Bylaw and Rules and Regulations. Such soil tests shall be conducted as if they were actually percolation tests in accordance with the above-referenced requirements and shall be verified and attested to by a registered professional engineer. Buildable lot calculation can only apply to land that is not under current

restriction (excluding 61A or B). NOTE: Uses allowed in new floor area may not be residential.

- d New floor area for additional allocation of open space: If the application exceeds 40% dedication of the land for open space per this By-Law, New Floor Area may be created. For each 10% of additional open space above the required 40%, an additional 5% of New Floor Area will be permitted based on the original Estate House floor area and another 5% of New Floor Area will be permitted based on the original Estate House floor area if the open space is used for playing fields. Note: Uses allowed in -New Floor Area may not be residential.

3. **Dimensional Requirements**

- a. Newly constructed or renovated buildings in an EOD must be 35 feet or lower in height unless the original estate house is greater than 35' high in which case, newly constructed or renovated additions or any other new buildings will be limited to the height of the original existing house, but in no case greater than four stories.
- b. A minimum vegetated buffer strip of three hundred (300) feet shall be provided between the buildings of an EOD development and abutting lots, and a vegetated buffer strip with a minimum depth of two hundred (200) feet shall be provided between the EOD and any public or private way. An entry drive, along with a gate house and appropriate signage, may be permitted within the buffer strip. The Planning Board may decrease or increase by not more than twenty (20%) percent any buffer area requirement if, after review by the Board, the Board deems such action to be reasonable and appropriate.

4. **Streets and Further Subdivision**

Any subdivision of the EOD which is subject to MGL C. 41 shall be in accordance with the Rules and Regulations Governing the Subdivision of Land in the Town of Hamilton. After issuance of a EOD Special Permit and establishment of the required open space for the EOD, as a whole, the EOD may be subdivided into lots which may be held in separate ownership, provided that each portion of the subdivided site remains subject to all of the applicable terms and conditions of the EOD Special Permit for the improvements on any portion of the site.

5. **Phasing**

Phasing of the EOD, as approved by the Planning Board, shall be permitted either pursuant to phasing described in the initial special permit application or in a subsequent Special Permit application. The special permit approval shall not be deemed to have lapsed as long as the applicant shall have commenced use of the phasing time frames set forth in the special permit application. The Planning Board shall have the authority to require one or more performance bonds or other similar mechanisms if it determines that such mechanisms are necessary to ensure that the key components or phase of a project are satisfactorily completed.

6. **EOD Special Permit Application Process**

- a. **Pre-Application Conference.** The applicant shall request and attend an EOD pre-application review at a regular business meeting of the Planning Board. The Planning Board shall invite the Board of Health, Building Inspector, 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 pre-application conference. The primary purpose of the EOD Special Permit 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, 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 shall outline the proposed Estate Overlay District proposal, 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 an Estate Overlay District Special Permit.
- b. **Estate Overlay District Special Permit Design Process.**
 - i. **Identification of conservation areas.** The first step in the design process requires identification of conservation areas on the site, including wetlands, areas located in the Hamilton Conservancy District, riverfront areas, and floodplains regulated by state, federal, or local law; unprotected natural landscape features such as steep slopes, mature woodlands, prime farmland, meadows, wildlife habitats and wildlife corridors or connections thereto; cultural features such as historic and archeological sites and scenic views; and recreational features such as established trails used for horseback riding, walking and cross-country skiing. To the maximum extent feasible, conservation areas shall include areas identified by the Planning Board during the pre-application conference.
 - ii. **Identification and delineation of the proposed development area.** The second step in the design process is to define and delineate the area that will contain buildings, roadways, other site improvements and amenities for the development. To the maximum extent feasible, the proposed development area shall consist of land outside the identified conservation areas.

- iii. Location of dwelling and commercial units. The third step in the design process is to identify and delineate the approximate location of dwelling units or commercial units in the existing house or commercial units in the proposed development area. The location, height, density, and architectural treatment of all buildings proposed for construction, renovation or re-use should be included.
 - iv. Location of open space. The fourth step in the design process is to identify and delineate the open space to be dedicated along with any potential uses.
 - v. Roads and trails. The fifth step in the design process is to identify and delineate the approximate location of roads, parking area and trails. Roads shall be aligned to access the dwelling and commercial units. The layout of new trails should anticipate internal and external connections to existing and/or potential future roads, trails and sidewalks.
 - vi. Utilities. The type and probable location of the proposed utilities should be included.
 - vii. Lotting. If applicable, the next step in the design process is to identify the approximate location of lot lines if the property is intended to be subdivided after special permit approval.
 - viii. Certification. The special permit plan should be accompanied by a certification or letter from the Hamilton Historical District Commission of all historically, culturally and/or architecturally significant buildings, landscape features and supporting structures located on the site if the applicant intends on using this determination as a way to obtain new floor area.
- c. Special Permit Application
- i. Forms. All special permit applications for an EOD shall be made and filed with the special permit application form. For an application to be considered complete, it shall provide all information required by the Hamilton Planning Board Rules and Regulations Governing Special Permits.
 - ii. Required Information. The special permit application shall also be accompanied by a certification from the Hamilton Historical Commission of all historically, culturally and/or architecturally significant buildings (if applying for the bonus square footage for renovation under section Part B 2.a.), a plan of all existing and proposed buildings, landscape features and supporting structures located on the site and by nine copies of a site development report. The site development report should include, at minimum, an inventory of natural resource features, wildlife and their habitat; a

general inventory of all buildings and structures; and an outline of how the following issues and impacts will be addressed by the development:

- a. pedestrian and vehicular access to the site;
- b. public safety issues;
- c. provision of landscaping/buffering;
- d. protection of wildlife habitats;
- e. provision of utilities;
- f. open space and recreation, including trail development and/or maintenance;
- g. water supply and drainage issues;
- h. layout and density of site development;
- i. the preservation and rehabilitation of the exterior features, character and structural integrity of the estate house, and the open space, vistas, stonework, gardens, and other historic features and supporting structures;
- j. building design and materials, including exterior elevations of existing and proposed buildings and additions;
- k. Proposed uses for commercial units.

To the extent possible, the information provided in the report shall be shown in plans and map form, accompanied by written narrative.

7. **Review Criteria**

The Planning Board shall apply the Special Permit General Conditions described in Section V.A.8 of the Hamilton Zoning By-law and conditions contained in this section. The Planning Board shall review the special permit application in accordance with the following criterion: the proposed EOD will, by its design and layout, succeed in fulfilling the purposes as outlined in Section 1. Special Permit applications for an EOD will be exempt from the requirements of the Open Space Farmland Preservation Development (OSFPD) regardless of their acreage.

8. **Advisory Opinions**

Within ten days (10) of receipt of a special permit application for an EOD, the Planning Board shall transmit copies of the application to the Economic Development Committee, Historical District Commission, Board of Health, Department of Public Works, Conservation Commission, Zoning Board of Appeals, Fire and Police Departments for their review and advisory opinions, which shall be submitted within 30 days.

9. **Vacating of permit**

In the event that the uses permitted under the special permit are no longer being utilized, the property may return to a single family use without amendment to the

permit. Any new use or change of use will require an amendment of the EOD Special Permit by the Planning Board.