

H. Estate Overlay District (EOD) Proposed for Fall Town Meeting, 2010

The Estate Overlay District By-law allows a special district within R1a, R1b and RA districts, in order to preserve and protect the historic estate homes within the Town of Hamilton. 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 must apply for Part A first and choose to file a separate Special Permit Application for Part B after an occupancy permit has been issued for Part A.

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

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

2. Applicability for the Estate Overlay District (EOD)

- a. Minimum Lot Size: Fifteen (15) acres for Part A and twenty 20 acres for Part B.
- b. Contiguous lots may be combined for qualifications for a special permit, 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 fifteen (15) 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 fifteen (15) acre and twenty (20) acre threshold.

3. **Definitions for an EOD Special Permit**

Combined/Aggregated –Parcels combined prior to July 1, 2010 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 building constructed prior to December 31, 1950, originally used as a single family residential dwelling, containing more than 5,000 square feet of residential 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.

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 - 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, or (c) renovation of the estate house. Bonus Square Footage space can only be used for commercial purposes.

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."

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.

4. **Access Requirements for the EOD**

- a. Access to the lot must be through existing frontage on a public way or;
- b. Through existing frontage on a private way if all abutters to the entire length of the private way agree in writing to the development proposal.

5. **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 applicant 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, for example, wildlife corridors, water protection, viewsheds, trails or other access which provides a public benefit. The Planning Board shall take into account the size of the parcel, the customary and agricultural uses, and whether or not it can provide adequate parking and other facilities to allow for public use. If the property size or structure cannot meet public parking requirements, or if public use does not fit with the character of the neighborhood, the Planning Board, may restrict public use.
- d. No more than 50% of the open space shall consist of resource areas subject to the Wetlands Protection Act, M.G.L. c 131, Section 40, (excepting the resource area "isolated land subject to flooding") or the Conservancy District as described in 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.

6. **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.

7. **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.

8. **Vacating of permit**

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

EOD Part A - Estate House Adaptive Reuse

Part A – Estate House Adaptive Reuse allows for the estate owner to apply for a Special Permit from the Planning Board to use the home in accordance with one of the following adaptive reuse criteria. Special permits allow for each application to be considered individually based on their specific location and impact to the existing neighborhood. Throughout this By-law, residential units are limited to two bedrooms each. This is designed to achieve the goal of providing alternative housing for groups that do not currently have housing options within the Town. The Planning Board may, in its sole discretion, allow a developer to increase the number of bedrooms to a maximum of three, provided the developer can demonstrate a compelling reason why such increase serves the stated goals of the EOD.

1. **Permitted Uses in EOD Part A - Estate House Adaptive Reuse (“Part A”)**

The following use or a combination of the following uses may be permitted in the original estate house under “Part A”.

- 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, cooperative, or apartment residential dwelling units, provided that residential units shall be limited to no more than two bedrooms per unit;

- c. for profit function hall, meeting rooms, inn, bed and breakfast, spa, or restaurant (excluding fast food or drive up);
- d. for profit shops or for profit schools;
- e. office;
- f. for profit child care facility, adult day care facility or a 55 plus assisted living center or;
- g. museum

2. **Dimensional Requirements**

A minimum vegetated buffer strip of three hundred (300) feet shall be provided unless the building is nearer to the abutting property line or 100 feet, provided that the Planning Board may increase the vegetated buffer strip based on factors that shall include, but not be limited to: the size and location of the parcel, the character of the neighborhood and the intended use.

3. **Part A Special Permit Application**

- a. **Forms.** All “Part A” special permit applications 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.
 - viii. 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.

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”)

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. Factors that will be considered in the Planning Board’s review of any potential project include, but shall not be limited to: feasibility of the project given the size, location and scope of the property, proximity to abutters, safety concerns, impact on the property, and whether the proposed use is compatible with the character of the Town of Hamilton and the neighborhood the property is located within.

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

Along with those uses allowed in Part A, the following single commercial use or a combination of the following commercial uses may be permitted in the New Floor Area under “Part B.” Note that residential use is not permitted in any New Floor Area under “Part B.”

- a. outdoor recreational facility or center such as cross country skiing, golf, horseback riding, or non-motorized cross country bike riding facility including any on-site trails;
- b. nursing home or assisted living providing continuing residential care for seniors or infirm;
- c. additional uses which are consistent with the objective and intention of this Bylaw and the character of the neighborhood.

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-use of the original Estate House. The methods are intended to promote development which encourages preservation of both Hamilton’s Historic Buildings and open space.

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 three 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.

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 Area by the amount of square footage contained in all existing buildings that are rehabilitated or reconstructed. The renovated or rehabilitated building or supporting structure may not be torn down.

c Yield plan of developable land:

For the purpose of this By-law, 2,000 square feet of New Floor Area may be constructed for each lot that could be created on the property with a maximum of 30,000 of additional square feet of New Floor Area obtained from this section c. 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).

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. Newly constructed buildings shall be clustered within one-hundred (100) feet of the original estate house unless the developer has a specific goal consistent with the purposes of this By-law that allows for placement of the newly constructed buildings outside of this area that achieves the cohesive integration of the new buildings into the whole.
- c. In no event will new construction within the 300 ft buffer be permitted any nearer the property line than the greater of 100 ft or the distance from the

property line of the current building. A vegetated buffer strip with a minimum depth of fifty (50) feet shall be provided between the buildings of an EOD and any public or private way provided that the Planning Board may increase the vegetated buffer strip based on factors that shall include, but not be limited to: the size and location of the parcel, the character of the neighborhood and the intended use. An entry drive, along with a gate house and appropriate signage, may be permitted within the buffer strip.

4. **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.

5. **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. 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.
 - l. 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.

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

Amendments in Conformity if this by-law passes

Amend Section II. Establishment of District, A. Classes of Districts to include the following: “EOD Estate Overlay District Sec. V-H”