

CARVER TRANSFER OF DEVELOPMENT RIGHTS

Approved 2004

Article 1: To be added to Article IV Special Regulations

4900. Transfer of Development Rights

4910. Purpose and Intent:

The purpose of this bylaw is to allow the development potential from one property (sending parcel) to be transferred to another property (receiving parcel). The Transfer of Development Rights (TDR) by-law allows for the maintenance of low-density land uses, open spaces, historical features, critical environmental resources, and other sensitive features of the sending parcel to be preserved while providing compensation to the owner. The TDR program is consistent with the Carver Master Plan to further the conservation and preservation of natural and undeveloped areas, wildlife, flora, and habitats for endangered species; protection of ground water, surface water, as well as other natural resources; balanced economic growth; the provision of adequate capital facilities, including transportation, water supply, and solid, sanitary, and hazardous waste disposal facilities; the coordination of the provision of adequate capital facilities with the achievement of other goals; the development of an adequate supply of affordable housing; and the preservation of historical, cultural, archaeological, architectural, and recreational values.

4920. Applicability: The provisions of Section 4900 shall apply to land identified as follows:

Sending areas: Areas designated as sending areas on the TDR Overlay Map.

Receiving areas: Areas designated as receiving areas on the TDR Overlay Map.

4921. Properties within the designated sending and/or receiving areas may either be developed under existing by-laws and regulations or may file a Transfer of Development Rights (TDR) Special Permit. Applicants seeking a TDR special permit shall own or represent both the proposed sending and receiving areas.

4930. Determination of Development Rights: To establish the development rights available for transfer, the applicant shall file a preliminary plan for the sending parcel(s) with the Planning Board. The preliminary plan with supporting information as deemed necessary by the Planning Board shall comply with all existing density limitations in effect at the time of application. The preliminary plan for the purpose of establishing the development rights of the sending parcel(s) shall also comply with Planning Board's Rules and Regulations.

4931. The applicant shall provide a written report to the Planning Board that identifies the special importance of the sending parcel(s) to remain in a natural state because they contain one or more of the following features: visual prominence, potential vista impairment, ecological significance, fragility, special importance as farmland, value for recreation and/or future Town water supply.

4932. The Planning Board in the Preliminary Plan decision shall note the special importance of the sending parcel. The development rights (number of lots) of the sending parcel(s) as established by the Planning Board from the Preliminary Plan shall be multiplied by .25. The Planning Board shall note in the Preliminary Plan decision the number of lots available under a potential TDR application.

4933. Any lot or lots (from the sending parcel(s)) deemed to meet the standard of qualifying for a transfer must be permanently restricted from future development by way of a permanent conservation restriction in accordance with Massachusetts General Law Chapter 184, Section 31-33 as most recently amended or donated to the Carver Conservation Commission. Draft restriction(s) or donation language on the sending lot(s) shall be submitted to the Planning Board with the application. The Planning Board shall require the restriction or donation language on the sending parcel(s) to be recorded at the Plymouth Registry of Deeds/Land Court prior to the conveyance of any building lot on the receiving parcel(s). On property which will be protected by way of a conservation restriction, a management plan(s) shall be provided to the Planning Board, which describes how existing woods, fields, meadows or other natural areas shall be maintained in accordance with best management practices.

4934. All instruments implementing the Transfer of Development Rights shall be recorded in the manner of a deed(s) in the Plymouth Registry of Deeds for both sending and receiving parcel(s). The instrument evidencing such TDRs shall specify the map and lot number of the sending parcel(s) and the map and lot of the receiving parcel(s).

4935. The clerk of the Registry of Deeds shall transmit to the applicable town assessor(s) for both the sending parcel(s) and receiving parcel(s) all pertinent information required by such assessor to value, assess and tax the respective parcels at their fair market value as enhanced or diminished by the TDRs.

4936. The record owner of the sending parcel(s) shall, within forty-five (45) days of receipt of a special permit authorizing TDRs, record at the Registry of Deeds either: a Conservation Restriction as defined by G.L. c. 184 §§31-33 running in favor of the Town prohibiting, in perpetuity, the construction, placement, or expansion of any new or existing structure or other development, or transferring of the deed to the Conservation Commission, on said sending parcel(s). Evidence of said recording shall be transmitted to the Planning Board indicating the date of recording and deed book and page number at which the recording can be located. The grant of the special permit to transfer development rights

shall be conditioned upon such restriction or donation, and no special permit for a transfer of development rights shall be effective until the restriction or donation noted above has been recorded at the Registry of Deeds.

4940. Approval of Receiving Area(s): After the Planning Board has determined the development rights available to be transferred the applicant shall submit the development plan(s) for the receiving parcel(s). The parcel shall show all existing legal restrictions, easements or limitations on development. The receiving parcel(s) shall have water and septic services available or said services shall be provided as part of the TDR special permit development plan approval.
4950. Criteria: TDR special permits may be granted by the Planning Board upon its written determination that benefits of the proposed transfer of development rights to the receiving parcel(s) outweigh the detrimental impacts off the development, in the receiving area, on the town and neighborhood. The Board shall review and make a positive finding on each of the following criteria:
 4951. The development complies with Master Plan and Open Space and Recreation Plan;
 4952. The development preserves or provides one or more of the following: natural areas, wildlife, flora, and habitats for endangered species; protection of ground water, surface water, as well as other natural resources, visual or vista importance, farmland and/or recreation opportunities;
 4953. The development provides adequate water and sanitary facilities;
 4954. The development design is appropriate to the natural topography, soils and other characteristics of the site;
 4955. The development design integrates into existing village or expansion area as mapped in the Carver Master Plan;
 4956. Projected traffic generation from development onto local roads and intersections is within the capacity of road network and does not create any safety concerns;
 4957. The design and layout of streets, parking and loading of the development is acceptable to the Planning Board;
4960. Governance: Special permit applications and decisions shall be governed by the filing and public hearing requirements set forth in G.L.c. 40A,s.9. The S.P.G.A. shall have the ability to adopt rules and regulations governing the granting of special permits following the procedures set forth in G.L.c.40A.

Article2: To be added to Article VI Definitions

Development Rights: Rights to develop a single-family house lot, expressed as the maximum number of lots permissible on a designated sending parcel(s) under the applicable zoning and subdivision rules and regulations in effect on the date of the transfer of development rights. Development rights (house lots) are computed on a one for-one-basis. Determination of the maximum number of development rights (house lots) available for transfer shall be made by the Planning Board.

Transfer of Development Rights (TDR): A development right (house lot) can be transferred from a sending parcel(s) in the sending area to a receiving parcel(s) in the receiving area. As part of the transfer of the development rights from the sending parcel either a conservation restriction shall be placed on the sending parcel or ownership of the sending parcel shall be donated to the Carver Conservation Commission or its designee.

Sending parcel(s): Land from which development rights, as determined by the Planning Board, may be transferred to a receiving parcel(s).

Receiving parcel(s): Land through the granting of a special permit may receive development rights from a sending parcel.