

#### **18.09.040 Cluster development option.**

##### **A. Purpose.**

1. The purpose of the cluster development option is to provide:
  - a. Unique opportunities for creative site planning and harmonious design with the natural features and constraints of specific sites, and particularly on sites possessing unique or severe topographic or hydrologic features;
  - b. Protection of natural habitat, historic structures and areas of cultural significance;
  - c. Design innovation;
  - d. Flexibility in the siting of structures and roadways;
  - e. More cost-effective development due to decreased grading and more efficient servicing of the development with utilities, roads and other essential services;
  - f. Additional open space for public and private or community purposes;
  - g. Protection of existing neighborhoods through the provision of open space buffers and the location of structures.

##### **B. Definitions.** Certain terms used in this section shall be defined, for purposes of this section only, as follows:

1. "Cluster grouping" means a designed group of residential units and their accessory facilities which may be used as a repetitive motif to form a cluster pattern. Each cluster grouping shall be separated by landscaped areas or natural open space to form the larger cluster development.
2. "Cluster open space" means open space, either natural or functional, provided to compensate for lot size reductions from minimum lot area requirements in the applicable zone.
3. *Repealed by Ord. 2016-107.*
4. *Repealed by Ord. 2016-107.*
5. "Functional open space" means designed public and private open space functioning as an amenity for the direct benefit of the residents of the development. Examples of open space include:
  - a. Landscaped areas that provide visual relief, shade, screening, and buffering;
  - b. Trails;
  - c. Playground and/or fitness equipment;
  - d. Athletic fields, e.g., football, baseball, soccer;
  - e. Picnic areas and facilities; and
  - f. Recreation areas and facilities, e.g., swimming pools, tennis courts.
6. "Natural open space" means any area of undisturbed land, essentially unimproved and not occupied by structures or manmade impervious surfaces, that is set aside, dedicated or reserved in perpetuity, in its natural state, for public or private enjoyment as a preservation or conservation area.

##### **C. Applicability.**

1. The cluster development option is permitted in all rural and residential zones; and
2. Structures shall be subject to all setback requirements of the zone in which they are located.

##### **D. Permitted Uses.**

1. Residential and rural subdivided lots and units.
2. Cluster open space, as defined in subsection B of this section.
3. Functional open space provided:
  - a. Manmade impervious surfaces shall not exceed three percent within areas so designated.

- b. Structures within the functional open space are required to follow the applicable town building codes (STC Title [15](#)).

E. Development Standards.

1. Minimum site area: None.
2. Average site area per dwelling unit as determined by adding the gross site area and dividing by the number of dwelling units proposed. The average site area per dwelling unit must meet the minimum lot area in which the development is located.
3. Minimum area per dwelling unit (minimum allowable lot size): 2,000 square feet.
4. Minimum Setback Requirements.
  - a. At the perimeter of the development, the setbacks of the zoning district apply.
  - b. Minimum distance between cluster groupings: 20 feet.
  - c. Internal structure setbacks: subject to building code requirements.
5. Maximum height: 34 feet.
6. Cluster Groupings.
  - a. All residential units may be common-walled or detached.
  - b. All common-walled units shall not be formed into cluster groupings that exceed seven common-walled residential units each.
  - c. Cluster groupings shall be separated by cluster open space to provide spatial definition between groupings.

F. Open Space Requirements.

1. Cluster Open Space Area and Ratio Requirements. Cluster open space shall comprise at least 30 percent of the gross site area.
2. Cluster open space ownership and control shall include one of the following:
  - a. As part of an individual, private lot with recorded covenants running with the land;
  - b. By a homeowners' association, as specified in this section; or
  - c. By the town of Sahuarita, as legally dedicated to and approved by the town council.
3. Third-party ownership of cluster open space shall not be allowed. The association may enter into contracts or lease agreements to allow third-party operation of uses permitted within functional open space, as defined in this option.
4. Natural open space adjacent to public parks, preserves or town-maintained stream channels may be deeded by the town of Sahuarita as public open space, if approved by the town council.
5. Cluster open space shall be an integral part of the site design and shall be within the boundaries of the cluster development it serves.
6. Phased developments shall provide cluster open space for each phase, so that each phase may stand alone in conformance with subsection I of this section.
7. Cluster open space shall not include public or private streets, driveways, parking areas, channelized drainageways, rip-rap lined detention/retention basins, and disturbed, unvegetated areas.
8. Final plats shall be delineated and annotated to reflect the cluster open space requirements.

G. Cluster. The following shall be submitted to the planning and building department:

1. A tentative subdivision plat for review, in accordance with Chapter [18.69](#) STC;
  - a. Required fees to the planning and building department, along with the required number of copies of the plat, as prepared in accordance with this subsection G;
  - b. An evaluation narrative of the effect of the proposed development on adjacent properties, in accordance with the site analysis;

- c. Calculations indicating the required minimum open space acreage is provided for cluster and open space calculations;
  - d. Architectural renderings, elevations and perspectives, as required, to present the style, color, materials and context of proposed structures;
  - e. Landscape plan, in accordance with Chapter [18.73](#) STC (Landscaping, Buffering and Screening Standards); and
  - f. Any descriptive data that may be appropriate, including drafts of the proposed covenants, conditions and restrictions that will apply to the cluster project;
  - g. Approved cluster arrangements and schematic elevations, keyed to the approved cluster site plan; and
  - h. Documentation outlining the proposed percentage of development to be accomplished prior to the homeowners' association assuming responsibility for the maintenance of common areas and property per subsection (J)(2) of this section;
2. A final subdivision plat for review per Chapter [18.69](#) STC.

#### H. Review Procedures.

##### 1. Cluster Plat Review.

- a. A preapplication meeting with DRC (development review committee) is required.
- b. Review by planning staff is required for all proposals prior to the submittal of a cluster tentative plat.
- c. The developer is required to host a public neighborhood meeting at least 14 days prior to submittal and invite all property owners within 300 feet of the proposed cluster subdivision.

##### 2. Compliance Review. The planning department shall review the plan for compliance with the cluster subdivision checklist, this section and town code, and shall, in writing, either accept or reject the plan for further review within five working days of plan submittal.

##### 3. Substantive Review. The following criteria, in addition to Chapter [18.69](#) STC standard subdivision criteria, are required:

- a. Individual lots, buildings, streets, and parking areas shall be designed and situated to minimize alteration of the natural and historic site features and structures to be preserved.
- b. Cluster open space shall include irreplaceable natural features if located in the site (such as, but not limited to, stream beds, significant stands of vegetation and trees, individual trees and cacti of significant size, rock outcroppings, peaks, ridges and slopes).
- c. Cluster open space intended for a recreation or common use shall be easily accessible to pedestrians, and accessibility shall meet the needs of individuals of all ages and abilities.
- d. Manmade impervious surfaces shall not exceed three percent within the areas designated as functional open space.
- e. The suitability of cluster open space intended for scenic purposes shall be determined by its visual impact and quality as seen from a significant number of units, buildings or by its visibility along the nearest lengths of public or private streets, and shall be validated in the site analysis.
- f. Suitability of individual building types and designs shall be determined by how well they function and relate to the natural constraints of the site.
- g. Individual lots, buildings, and units shall be arranged and situated to relate to surrounding properties, to improve the view of buildings, and to minimize the land area devoted to motor vehicle access.

- h. Individual lots, buildings, units, and parking areas shall be situated to avoid the adverse effects of pollution, noise, lighting and traffic on the residents of the site.
- i. Sites, structures and landmarks having a potential for historic preservation shall be identified and, where possible, be integrated into the development plan as a designed feature of the project.

I. Phased Development.

- 1. Approval may be given for the development of delineated phases of the site, after submittal of a unified cluster site plan for the total project. The phased portions shall be shown on the subdivision plat.
- 2. Open space requirements for each phase shall be the same as stated in subsection F of this section. Separate homeowners' associations with provisions for expansion or consolidation may be created. Prior to the sale of any lot site, unit or dwelling in a phased portion, the open space and recreation areas in that portion shall be designated, recorded and developed or maintained in conformance with the approved development plan.

J. Homeowners' Association. If common area is proposed by the developer, the applicant shall submit for recording a set of covenants, running with the land, providing for the creation of a homeowners' association. The covenants shall contain the following provisions:

- 1. A hold-harmless clause assuring that the town of Sahuarita is not responsible for maintenance or liability of the private and common areas of the development, which shall include, but not be limited to:
  - a. Cluster open space,
  - b. Parks,
  - c. Buffers,
  - d. Landscaping,
  - e. Recreational facilities,
  - f. Streets and trails, and
  - g. Private sewers, utilities and septic systems.
- 2. The association's structure and its operating rules and regulations must be documented and approved before any lots or residential units are sold. The developer shall present for staff approval a plan for the transfer of all common areas and facilities control to the homeowners. The transfer of control may be based on an elapsed time period or the number or percentage of lots sold.
- 3. All common open space and improvements shall be established and maintained in accordance with the following requirements:
  - a. The applicant or developer shall provide for and establish a nonprofit organization or other legal entity under the laws of Arizona for the ownership, care, and maintenance of all such lands and improvements.
  - b. Such organization shall be governed by covenants running with the land and shall be composed of all persons having ownership within the subdivision. Such organization shall be responsible for the perpetuation, maintenance and function of all common lands, uses, and facilities.
  - c. All common open space and improvements shall be described and identified as to location, size, use, and control in the covenants, and such covenant shall set forth the method of assessment for the maintenance of such land. The covenants shall be written so as to run with the land and be in full force and effect for a period of not less than 25 years, and shall be automatically extended for successive periods of 25 years unless terminated in a manner set forth hereinafter. The covenants shall become part of the deed to each lot or parcel within the development.

- d. Such restrictive covenant and organization shall continue in effect so as to control the availability of the facilities and land thereby provided, to maintain the land and facilities for their intended function, and to protect the development from additional and unplanned densities or uses. Such organization shall not be dissolved, nor shall such organization dispose of any common open space, by sale or otherwise.
- e. No common open space shall be denuded, defaced, nor otherwise disturbed in any manner not previously approved without the approval of the town council.
- f. The covenants shall provide that in the event the homeowners' organization established to own and maintain such common open space and improvements shall at any time after establishment of the development fail to maintain the common open space and improvements in reasonable order and condition in accordance with the approved plans, the town may serve notice in writing upon such homeowners' organization or upon the homeowners within the development setting forth the manner in which the homeowners' organization has failed to maintain the common open space and improvements in reasonable condition, and said notice shall contain a demand that such deficiencies of maintenance be cured within 30 days thereof, and shall state the date and place of a public hearing thereon which shall be held within 20 days of the notice.
- g. At such hearing the town may modify the terms of the original notice as to the deficiencies and may grant an extension of time within which they shall be cured.
- h. If the deficiencies set forth in the original notice or in the modifications thereof shall not be cured within said 30 days or any extension thereof, the town, in order to preserve the taxable values of the properties within the development and to prevent the common open space and improvements from becoming a public nuisance, may enter upon said common open space and maintain the same for one year.
- i. Said entry and maintenance shall not vest in the public any rights to use the common open space and improvements, except when the same is voluntarily dedicated to the public by the owners.
- j. Before the expiration of said one-year period, the town shall, upon its initiative or upon the request of the homeowners' organization responsible for the maintenance of the common open space and improvements, call a public hearing upon notice in writing to such organization or to the homeowners within the development, to be held by the town council, at which hearing the organization shall show cause why such maintenance of the town shall not, at the election of the town council, continue for a succeeding one-year period.
- k. If the town council determines that such organization is ready and able to maintain the common open space and improvements in reasonable condition, the town shall cease to maintain the common open space and improvements at the end of said one-year period.
- l. If the town council determines that such organization is not ready and able to maintain the common open space and improvements in a reasonable condition, the town may, in its discretion, continue to maintain the common open space and improvements during the next succeeding year, and subject to a similar hearing and determination in each year thereafter.
- m. The covenants shall further provide that the cost of such maintenance by the town shall be assessed ratably against the properties within the development that have a right of enjoyment of the common open space and improvements, and shall become a charge on said properties, and such charge shall be paid by the homeowners of said

properties within 30 days after receipt of a statement. [Ord. 2016-107 § 1; Ord. 2015-098 § 1; Ord. 2011-048 § 1; Ord. 1995-06 § 2.]