

**Framingham Zoning Bylaws Section V.O TRANSFER OF DEVELOPMENT RIGHTS is amended as follows:**

**By deleting the existing Section 1 Purpose and replacing it with the following:**

**1. Purpose**

The purpose of the Transfer of Development Right (TDR) Ordinance is to allow for the preservation of working farms, open space, and/or properties with historic structures all known as Giving Parcels, in exchange for allowing investment in parcels that contribute to the promotion of economic development in key commercial areas. The guiding principal behind TDR is to preserve designated Giving Parcels by allowing these properties to transfer the ability to develop such land (known as Development Rights) to an appropriate, designated commercial parcel site (Receiving Parcel). Once the ability to develop a Receiving Parcel has been sold to a Receiving Parcel an Agricultural Preservation Restriction (APR) or Conservation Restriction (CR) shall be placed upon the portion transferred from the Giving Parcel's land in perpetuity.

The intent of TDR is to allow for appropriate development on commercial sites while preserving parcels of land that might be lost to development. The TDR Ordinance is a consistent land use application as indicated by the goals and objectives of the Framingham Master Land Use Plan and Open Space & Recreation Plan and may be amended from time to time.

**By deleting the existing Sections 2. Applicability, 3. Application Review and 4. Variance Limitation and replacing them with following new Section 2. Definitions, 3. The Giving Parcel, 4. The Receiving Parcel, 5. Agriculture Preservation Restriction or Conservation Restriction Process, 6. Variance, 7. Application Review and 8. Limitations:**

**2. Definitions**

- a. Definitions associated with Section V.O. of these Ordinances are located in Section I.E. Definitions. Such definitions include Agricultural Preservation Restriction (APR), Conservation Restriction (CR), Developable Farm, Developable Open Space Parcel, Development Rights, Giving Parcel, Receiving Parcel, Transfer of Development Rights (TDR), Transfer of Development (TDR) Rights Priority Development Site, and Transfer of Development Right Yield Plan (TDR Yield Plan).

**3. The Giving Parcel**

Developable Farm and/or Open Space Parcels shall undergo the following process,

as outlined in Section V.O.3 of these Zoning Ordinances.

a. Determination by the Planning Board

i. An owner of a potential Giving Parcel seeking consideration as such under the TDR Zoning Ordinances. shall submit a Giving Parcel Application to the Planning Board for review and determination as to whether the parcel of land qualifies for such designation.

ii. Upon receipt of a Giving Parcel Application, the Planning Board Administrator shall review the Giving Parcel Application submittal for completeness. Giving Parcel Applications require the following documentation:

a) Giving Parcel Application;

b) A TDR Yield Plan

iii. Once a Giving Parcel Application is deemed complete, the Planning Board Administrator shall follow the Giving Parcel Public Notification Procedures outlined in Article 26 of the Planning Board Rules and Regulations.

iv. During the public hearing process, the Planning Board shall make the following determinations and findings:

a) Confirmation of the number of developable lots based on the Giving Parcel Application and the TDR Yield Plan;

Determination of the total allowable Development Rights that the Giving Parcel is eligible to transfer to a Receiving Parcel as shown in the TDR Rights Residential Building Size Chart below. (example: Parcel of land in R-4 that creates five buildable lots: five Lots\*10,000 sq. ft. = 50,000 sq. ft. of Development Rights to be transferred)

b) **TDR Residential Building Size Chart\***

Giving Parcel Zoning District	Number of Giving Parcel Lots	Equals	Development Rights to be Transferred per Lot**

Single Family Residential (R-4)	1	=	10,000 square feet
Single Family Residential (R-3)	1	=	9,000 square feet
Single Family Residential (R-2)	1	=	8,250 square feet
Single Family Residential (R-1)	1	=	7,500 square feet
General Residential (G)	1	=	6,750 square feet

\* The TDR Residential Building Size Chart (Section V.O.3.a.iv.d of these Ordinances) shall be multiplied by the total number of building lots as determined by the Planning Board, resulting in a total amount of Development Rights to be transferred to a Receiving Parcel. The associated lots are then placed under an Agricultural Preservation Restriction (APR) and/or Conservation Restriction (CR).

\*\*Development Rights shall be sold as a whole Giving Parcel Lot, half of a Giving Parcel Lot may not be sold. (Example – a developer needs 35,000sf from a R-4 Giving Parcel, the developer would need to buy four Lots for a total of 40,000sf)

b. Giving Parcel Inventory

- i. Upon a determination by the Planning Board the Giving Parcel Application shall be placed in the Giving Parcel Inventory.
- ii. Giving Parcel determinations shall be retained in the Giving Parcel Inventory for three years from the date of the Planning Board's Decision.
  - a) If upon expiration of the three-year period the landowner intends to maintain the Giving Parcel's status as a potential Giving Parcel, the applicant shall update the application and/or send a letter confirming that all information on the original application is still accurate and that the intention is to continue such status for an additional three-year period.
  - b) In the event that a Giving Parcel is sold, transferred, or modified in a way that would affect the Giving Parcel's application, then the landowner is required to provide written notification outlining said

changes and/or modifications. At the time of notification, the Planning Board shall make a determination as to whether a modification to the original Decision is necessary.

**4. The Receiving Parcel**

Receiving Parcels shall only include TDR Priority Development Sites, or additional sites as provided for in Section 6. The following information details the procedures required for each type of Receiving Parcel.

a. Use of Development Rights

- i. The owner or proponent of a Receiving Parcel may assemble Development Rights from multiple Giving Parcels. All Giving Parcels must be included in the Receiving Parcel Application.
- ii. Development Rights Use by Receiving Parcels

	Increase in Lot Coverage of an Additional ***	Maximum Increase in FAR***	Maximum Increase in Building Height/Additional Floors***
Receiving Parcels	75%	1.68	35%

\*\*\* No increases in Lot Coverage or Floor Area Ratio (FAR) above the allowed use of Development Rights shall be permitted.

Example: Receiving Parcel is 20,000 sq. ft. With an allowed construction of 0.32 FAR, through the use of Development Rights the parcel can increase the FAR to a maximum of 2.0. If the same property utilizes TDR for an increase in lot coverage, then the property that would be allowed to cover 25 percent (or 5,000 sf) with the building and parking lot would be allowed to cover a maximum of 100 percent of the parcel through the use of Development Rights. Other requirements such as open space and landscaping, setbacks, etc. would still apply.

- iii. Any use of Development Rights that results in demand for off-street parking above what can be accommodated on-site will need to either

construct structured parking on-site, establish a Parking Program (Section IV.B.1.g of these Ordinances), and/or enter into a Cooperative or Shared Parking Agreement (Section IV.B.1.g.1 of these Ordinances).

- iv. Development Rights that are not used by a Receiving Parcel may be sold to another Receiving Parcel owned by the owner of the Development Rights. Prior to the use of the Development Rights, the secondary Receiving Parcel shall be required to seek a Special Permit for the use of Development Rights from the Planning Board, as outlined in Section V.O.4 of these Ordinances.
- v. Prior to the issuance of a building permit, the Giving Parcel and the Receiving Parcel shall place the associated lots of the Giving Parcel under an APR and/or CR as outlined in Section V.O.5 of these Zoning Ordinances. The Planning Board Administrator shall provide written confirmation to the Building Department that the APR and/or CR has been placed on the Giving Parcel by the Receiving Parcel prior to the issuance of any building permits.

b. Planning Board Receiving Parcel Review

A parcel of land defined as a TDR Priority Development shall be reviewed by the Planning Board for use of Development Rights.

i. Filing of a Receiving Parcel Application

- a) A Receiving Parcel shall file an application for a Special Permit with the Planning Board.
- b) The applicant of the Receiving Parcel shall also apply for all other associated applicable applications as determined by the Building Commissioner, such as Site Plan Review (Section VI.F of these Ordinances).
- c) The Planning Board Administrator shall follow the Public Notification Procedures outlined in Article 26 of the Planning Board Rules and Regulations.
- d) During a public hearing of the Planning Board, the Planning Board shall review and consider all the potential impacts for the use of Development Rights as outlined in Article 26 of the Planning Board Rules and Regulations.

**5. Agriculture Preservation Restriction or Conservation Restriction Process**

The Giving Parcel must meet the following requirements:

- a. The APR and/or CR shall be placed upon the respective parcel of land prior to the issuance of a Building Permit from the City of Framingham.
- b. Such parcel shall be placed under an APR and/or CR in perpetuity pursuant to M.G.L. c. 184, Section 32 to ensure that said parcel will remain as agricultural land or open space in perpetuity. Once an APR and/or CR has been placed on the Giving Parcel construction of additional buildings is prohibited and no portion of land be used to yield additional Development Rights in the future, except as per 5d. and 5 j., below, or to satisfy open space requirements for development on adjacent parcels.
- c. No structures are allowed within the APR and/or CR area, except for existing buildings that have been constructed prior to the TDR Yield Plan. Farms shall be allowed to construct structures associated with the typical operations of the farm on up to 5 percent of the APR area. Structures associated with the farm may include, but not be limited to, barns, silos, farm store.
- d. Historic structures that have received such designation by the Historic District Commission or the Historical Commission are not required to be placed under an APR and/or CR but are required to comply with all regulations relative to structures possessing historic designation.
- e. The APR and/or CR may be held by a combination of at least two of the following entities: The City of Framingham, a land trust qualified under Section 170(h) of the IRS code of 1986, as amended, and/or the Commonwealth of Massachusetts. The APR and/or CR is prohibited from being held by the owner of the Giving Parcel or the Receiving Parcel. The terms of the APR and/or CR shall be reviewed by the City Solicitor at the expense of the owner of the Giving Parcel and approved by the Planning Board.
- f. Trail systems for public access intended for passive recreational use shall be developed within APR and/or CR encumbered land of the Giving Parcel(s) except where a waiver has been granted by a four-fifths vote of the Planning Board. Trail systems for public access shall not be required where land is actively in use for livestock and crops.”
- g. Farming rights on any land subject to the APR and/or CR may be sold or leased to another farmer for the purpose of continuing or creating Agricultural and/or Farm use of the land in accordance with State law and statute.
- h. Developable Open Space may be utilized at a future date for Agriculture and/or Farm uses.
- i. Development Rights on a Giving Parcel that have not been transferred to a

- Receiving Parcel shall remain eligible for future transfer for development.
- j. The APR and/or CR placed on the Giving Parcel shall be as follows:
    - (a) For Giving Parcels transferring all Development Rights: The entire Developable Farm and/or Developable Open Space Parcel shall be placed under an APR and/or CR in perpetuity at the expense of the Giving Parcel. The entire Giving Parcel shall include all areas identified as non-buildable areas, wetlands, potential and certified vernal pools, wetland buffers, vernal pool buffers, Moderate Slopes, and easements, in addition to the buildable lots as identified in the TDR Yield Plan.
    - (b) For Giving Parcels transferring only a portion of Development Rights: Developable Farm and/or Developable Open Space Parcel associated with the lot to be transferred shall be placed under an APR and/or CR at the expense of the owner of the Giving Parcel owner or proponent. This shall include all buildable lot areas associated with the residential building unit square footage, infrastructure, and roadways associated with the building lots, and all non-buildable areas, including but not limited to areas identified as non-buildable, wetlands, potential and certified vernal pools, wetland buffers, vernal pool buffers, Moderate Slopes, and easements. For fractions of lots/square footage to be transferred, all fractions shall be rounded up to the nearest whole number. The lots to be placed under an APR and/or CR shall be selected by the owner with the intent of creating contiguous tracts of agricultural or open space land and, where possible, contiguous with abutting farm land and open space land.

## **6. Variance**

The owner of a Receiving Parcel who seeks to increase the development potential of a Receiving Parcel through an increase in height and/or lot coverage and/or an increase in FAR may apply for a Variance under M.G.L. c. 40A, § 10. Any increase in height and/or lot coverage and/or an increase in FAR shall be limited to ten (10) percent of the maximums set forth in Table of Dimensional Regulations in Section IV.E.2 of these Ordinances unless the provisions of this TDR Ordinance are used.

## **7. Application Review**

The review procedure for the TDR Special Permit application shall be in conformance with M.G.L. c.40A, Sections 9 and 11; Section VI.E of the Framingham Zoning Ordinance; Planning Board Rules and Regulations, and other permitting and approval processes as may be applicable.

- a. The Planning Board may at its discretion require the applicant to fund a peer review consultant to assist in the technical review as outlined herein, in

accordance with the Planning Board rules and regulations and MGL 44, section 53D.

#### **8. Limitations**

The provisions of this Ordinance, Section V.O shall not be used for the development of housing in the Receiving Parcels, including Multifamily Developments or Mixed-use Developments with residential.

*2018.07.02 CLEAN TEXT Framingham ZBL May, 2017 -Section V.O TDR - for City Council vote AZ AL v.2 (606-05)*