

## **LOT SIZE AVERAGING ONE SIZE DOES NOT FIT ALL**

Use with:      Feature-Based Density

### **I. BACKGROUND AND PURPOSE**

This chapter provides planning boards with a simple approach for achieving certain local master plan objectives while providing landowners with the flexibility needed to shape development to the landscape. The technique discussed here is lot size averaging, the basic concept that provided the foundation for the cluster or conservation subdivision.

Lot size averaging refers to the approach of requiring the average size of all of the lots in a subdivision to be equal to or greater than a specified minimum rather than requiring that each individual lot meet the minimum size threshold. The terms "density zoning" and "area-based allocation" of dwelling units are sometimes used as well. The conventional approach is to require each lot to be equal to or greater than a prescribed minimum lot size. Zoning has evolved to make adjustments to the underlying assumption that all lots in a subdivision should be of the same size. Conservation subdivisions are the most well known approach for enabling flexibility. In this form of lot size averaging, developed lots are typically smaller than the usual minimum lot size and grouped together in one portion of the lot while the cumulative reductions are compiled in one large lot reserved for open space uses. Some communities have required conservation subdivisions in certain situations such as to conserve important farmlands.

Conservation subdivision is often reserved for larger subdivisions. Lot size averaging can be used for minor subdivisions as well. This makes it especially helpful for a forest or farm owner who wants to create just one additional building lot but leave as much productive acreage as possible.

**[A drawing of typical conservation subdivision will be here.]**

One job of the local zoning board of adjustment is to make case by case exceptions to requirements of the zoning ordinance when the underlying assumption that one size fits all proves unworkable. Often the layout of lots on the landscape results in challenging lot topographies making it difficult to meet all of the dimensional requirements of the zoning ordinance. More often than not, requests for variances from the ordinance based on the difficult features of the landscape are granted. Similarly, planning boards often grant waivers from certain requirements of the subdivision regulations when needed to accommodate difficult terrain. Flexibility within the ordinance reduces the temptation for local land use boards to grant inappropriate variances or waivers.

**[A drawing of zoning with no flexibility vs lot size averaging will be here.]**

When zoning ordinances begin with uniform requirements and evolve toward additional considerations and/or flexibility, e.g. with multiple overlays and cluster provisions, they become more and more complex. A lot size averaging approach can greatly simplify the ordinance and

result in more successful implementation of the master plan. Consider, for example, the goal of many small New Hampshire towns to retain rural character. This concept is typically heavily tied to the aesthetics associated with a landscape dominated by agriculture and forest without due regard for the needs of owners of either to maintain economic viability. One of the greatest failures of typical zoning ordinances is that by prescribing large minimum lot sizes in rural areas of the community they are denying landowners the opportunity to subdivide in a manner that will best promote continued forest management and retention of a critical mass of agricultural land. The owner of the farm or forest tract is often required to carve out 5 or 10 acres of productive land to meet minimum lot size requirements. Often the resulting landscape dotted with homes is neither productive nor scenic. Flexible techniques enable residential development to continue in rural areas in a manner compatible with goals of the community to protect open space, agriculture, forest, important habitats and scenic resources. Lot size averaging can make the job of the planning board volunteer much more rewarding as applicants will no longer need to be forced to develop lot configurations that meet the zoning requirements but make little sense on the ground.

The flexibility granted to the landowner through lot size averaging can strengthen the ability of the planning board to ensure that individual subdivision layouts achieve many goals of the local community. These include:

- Conservation of forest, agricultural land, scenic resources, wildlife habitat
- Provision of a range of building lot prices
- Layout of subdivisions in a manner which is conducive to neighborhood dynamics
- Walkability, linkage between areas
- Reducing the cost of roads and utilities to the developer and to the community

## **II. APPROPRIATE CIRCUMSTANCES AND CONTEXT FOR USE**

Lot size averaging is authorized by the zoning ordinance and implemented by the planning board through the subdivision regulations. Whether it is permitted as matter of course or only under certain conditions depends on whether the individual community feels it will typically result in better development, or should only be allowed as an exception when it can be proven to result in a more appropriate layout or have other conservation benefits for the public.

Lot size averaging is appropriate in any size community and in any zoning district where the current minimum lot size is based more on the overall resulting density desired in the area than on requirements relating to the size of individual lots such as the minimum needed for the provision of on-site water supply and wastewater disposal.

## **III. LEGAL BASIS AND CONSIDERATIONS FOR NEW HAMPSHIRE**

### **A. Enabling Statutes**

RSA 674:16, Grant of Power, provides the foundation of a municipality's right to zone. Lot sizes and the density of the population are among the aspects of land use a zoning ordinance "shall be"

designed to regulate. The lot size averaging approach complies with RSA 674:20, Districts, requiring that "regulations shall be uniform for each class or kind of buildings throughout each district." Although it has become commonplace, nowhere in the enabling statutes is it stated or implied that lot size and density need to be synonymous.

For the planning board member looking for further reassurance, RSA 674:16 clarifies that the power to adopt a zoning ordinance "...expressly includes the power to adopt innovative land use controls which may include, but which **are not limited to**, the methods contained in RSA 674:21." Among the techniques listed in 674:21 are "flexible and discretionary zoning" and "environmental characteristics zoning," both of which enable a lot size averaging approach.

## **B. Local Considerations**

It is important for planning boards to carefully consider the municipality's ability to implement and enforce an ordinance prior to proposing a particular approach. A simple lot size averaging subdivision plan does not require any more expertise or follow-up than a subdivision plan where all lots are the same size. However, to ensure that municipal records are clear regarding lots restricted from further development, the planning board's filing system must be carefully organized by parcel number and cross-referenced with other municipal records. If the ordinance is going to allow development rights to be held in reserve for future use, some additional careful record keeping is required.

Subdivision application fees should be reviewed to ensure that they cover the costs of administering the ordinance, including any special studies or outside assistance routinely utilized such as a regional planning commission circuit rider planner.

## **IV. EXAMPLES**

Several communities in New Hampshire allow lot size averaging. Lyme, in the Upper Valley Lake Sunapee Region, has had a lot size averaging provision in the zoning ordinance for many years. Lot size averaging is permitted for residential subdivisions in any district where residential uses are permitted. The ordinance grants the Planning Board the authority to approve reduced lot sizes, frontage and setbacks. The minimum dimensions are to be determined by the Board based on the character of the land, soils, traffic safety, and other issues. The ordinance also authorizes the Planning Board to approve a density bonus of up to 25% for subdivisions of 20 acres or more where open space permanently protected by a conservation easement to the town or a conservation organization comprises at least 75% of the lot. Lyme's lot size averaging approach is used by many applicants and the Board has found it quite simple to administer.

In the late 1990s, the Acworth Planning Board sought a mechanism for providing for more protection of the town's working landscape while also allowing landowners more flexibility. There was interest in the benefits of the conservation subdivision approach and in applying them to the smaller subdivisions typical in town. The Planning Board also felt that the typical Acworth home buyer was interested in the privacy associated with a small rural town more than the social

opportunities and amenities of a typical conservation subdivision. The Upper Valley Lake Sunapee Regional Planning Commission staff worked with the Planning Board to develop and achieve adoption of a simple lot size averaging approach. Acworth's ordinance enables the Planning Board to approve reduced lot sizes, frontage requirements, and setbacks for subdivisions involving 10 acres or more in the town's rural district. The rural district encompasses most of the land in town and provides for a 3 acre minimum lot size in conventional subdivisions and 1 acre minimum when lot size averaging is used. A ten percent density bonus is permitted for subdivisions which result in the permanent protection of twenty acres or more.

Some examples from other states:

Franklin, Michigan  
Prince George County, Maryland  
Bedminster Township, New Jersey  
Colts Neck, New Jersey  
Far Hills Boro, New Jersey  
Holmdel, New Jersey  
Mendham Township, New Jersey  
Pleasant Grove, Utah  
Hartland, Vermont  
Bothell, Washington  
Snohomish County, Washington

Some are simple lot size averaging approaches. Others place restrictions on the percentage of lots that may be reduced in size. The approach used must be tailored to meet a community's objectives.

## **V. MODEL LANGUAGE, ILLUSTRATIONS, AND GUIDANCE FOR IMPLEMENTATION**

In [name the zoning districts where lot size averaging will be allowed], the Planning Board may approve reduced [list requirements which the community feels are appropriate to reduce in the district such as lot sizes, frontage requirements, and/or setbacks] in accordance with the following provisions:

### **1. Purpose.**

[State the community's objectives to be achieved through lot size averaging, for example:]  
Lot size averaging permits flexibility in subdivision design to promote the most appropriate use of land and the protection of productive agricultural or forest land, scenic views, historic sites, shorelines, wetlands, important habitat areas, and other resources of importance to the community, while minimizing the alteration of the natural topography of the land, in accordance with the goals and objectives of the Master Plan.

### **2. Applicability.**

The minimum acreage for a lot size averaging subdivision plan shall be [insert the minimum size parcel your planning board feels is appropriate for application of lot size averaging. This will depend partly on the minimum lot size in the district, and whether the lots are served by public water supply and/or wastewater disposal.]

### **3. Density.**

The total number of lots approved will be determined based on the number which would be otherwise approved under a conventional subdivision plan. The applicant may choose to either:

(1) submit a concept plan showing lots, road rights-of-way, and stormwater management areas, and any other areas which would not be incorporated in individual lots as necessary to meet the usual minimum standards for the District without the need for any lot area or lot dimension variances, and accounting for development limitations such as steep slopes, wetlands, septic suitability, available water supply, adequate driveway access to each lot, and compliance with the [Town/City] Subdivision Regulations, or

(2) after accounting for areas which must be subtracted from the acreage figure utilized to calculate the developable area pursuant to other sections of this Ordinance if any, subtract a percentage of the property in accord with the table below to account for roads, drainage and other utilities prior to dividing by the minimum acreage required per unit for the district.

[Table: Percentages for each zoning district in your community should be developed based on a review of the average number of lots approved in previous subdivisions of various sizes. These can come from both your own community and other communities with similar topography and zoning requirements.]

**Margin Note:** The Planning Board needs to have a mechanism for keeping track of the development and conservation of a parcel over time when the maximum permissible number of lots is not created with the first subdivision. For example, Landowner A has a 20 acre parcel in a 5 acre district. In the community's zoning ordinance, lot size averaging enables lot size to be reduced to 1 acre. Because Landowner A wishes to provide a building lot for their child but keep as much of the land as possible in the existing hayfield, they want to create a 1 acre lot and permanently protect 4 acres of the remaining 19 in exchange for the reduced lot size. Over time, 2 more lots of between 1 and 5 acres can be subdivided from the original parcel. Clear records of decisions in the planning board files and notations on plans and in the deeds are essential.

**[This will have a drawing to illustrate.]**

Optional: A density bonus of up to [percentage] will be permitted for subdivisions which result in the permanent protection of [number or percentage] acres or more for the protection of resources identified in the master plan as important to the community. The protected land must be appropriately sized, configured and located to achieve the resource protection goals. The planning

board's determination of appropriateness may include consideration of features of adjacent properties.

**Margin Note:**

Some examples of types of adjacent open space the planning board might consider are a stream corridor, trail, water supply protection area, or conserved farm or forest land.

**Margin Note:**

With lot size averaging, a landowner not wishing to create the maximum number of permitted lots today can either set aside the area to be conserved all at once and reserve the right to create additional lots in the future, or restrict from development only the area needed to balance the reduced size of each lot being created at the time. From both an administrative point of view and relative to conservation values, there is an advantage to setting aside all of the land to be conserved at one time and in larger pieces with an easement to a conservation organization to provide stewardship in the future. To provide an incentive to the landowner to choose this option, a community may want to consider granting a density bonus, e.g. one additional residential unit for each x acres conserved with a conservation easement.

#### **4. Dimensions and Arrangement of Lots.**

The [factors which the provision allows to be reduced, such as minimum lot size, frontage and setbacks] shall be determined by the Planning Board based on the character of the land and neighborhood, the adequacy of the soils to support on-site wastewater disposal and wells [unless on public water supply and/or wastewater disposal], safety of access, traffic and pedestrian circulation, impervious surface, and other issues relating to the future use and enjoyment of the property.

The factors considered by the Planning Board when evaluating the proposed arrangement of lots shall include, but not be limited to, the following:

- arrangement of roads, stormwater facilities, wastewater and other utilities in conformance with the natural features of the parcel, minimizing changes to the topography
- minimization of impervious cover
- protection of stream corridors and other important habitat areas
- protection of wetlands
- feasibility of continued or future agricultural use
- feasibility of continued or future forest management
- relationship to neighboring property, including conservation easements, or natural, cultural, recreational or scenic features

In no case will lots smaller than [state smallest acceptable lot size] be permitted. The setbacks from abutting properties not part of the application shall not be reduced. Front setbacks may be reduced only when on an internal subdivision road approved by the Planning Board as part of the

subdivision application. When frontage requirements are reduced, the Planning Board may require shared driveways.

**Margin Note:** The Planning Board should review the subdivision regulations and amend as needed to ensure that the information required to determine appropriate lot dimensions and layouts is provided early on in the review process.

## **5. Permanently Protected Area.**

The lot size averaging plan will concentrate development away from the most important resource areas and from those areas of the property which are most environmentally sensitive as described in Section 1.

For each lot less than the minimum size normally required for the district, one or more lots larger than the minimum shall be provided in order to maintain an average lot size no smaller than the minimum lot size normally required for the district. Permanent protection from further development shall be provided for an area equal to or exceeding the sum of the areas by which individual lots are reduced below the minimum normally required for the District. Further subdivision, or use for other than one dwelling unit, noncommercial outdoor recreation, conservation, agriculture, forestry or other principle use or building as otherwise permitted by the zoning ordinance, shall be prohibited. The protected land shall be shown on the final plat and the conservation restriction recorded with the Register of Deeds.

## **6. Management of Permanently Protected Area.**

Pursuant to RSA 674:21-a, Planning Board approval of a final lot size averaging subdivision plan shall result in the creation of a conservation restriction incorporating the conditions of approval, including the maximum number of lots and the location, size and permissible uses of the land area which is to remain undeveloped. If the undeveloped area is to be held in common, all covenants, deed restrictions, organizational provisions for a homeowner's association or equivalent, and any other agreements regarding the method of ownership, management or maintenance of the protected area shall be established prior to Planning Board approval of the subdivision plan. By mutual agreement of the Planning Board and subdivider, the conservation restriction may take the form of a conservation easement to the Town/City or private conservation group, or other instrument approved by the Planning Board.

**Margin Note:** The planning board should take care to review the definitions section whenever amending the zoning ordinance to ensure that terms are appropriately and consistently defined.

## **VI. References**

Readings on related topics:

Arendt, Randall. 1998. "Connecting the Dots," *Planning*, August.

Meshenberg, Michael J. 1976. *The Administration of Flexible Zoning Techniques, Planners Advisory Service Report 318*.

Nellis, Lee, and Karen Van Gilder. 2003. *The Planning for Results Guidebook*. National Association of Counties.

New Hampshire Association of Regional Planning Commissions. 2004. *Planning Principles for New Hampshire*. October.

Nicholson, Dave, and Jim Breuckman. 2004. *Smart Growth Tactics*. Michigan Society of Planning May.

Pivo, Gary, Robert Small, and Charles R. Wolfe. 1990. "Rural Cluster Zoning: Survey and Guidelines," *Land Use Law*, September.

Examples:

[www.smartgrowthgateway.org](http://www.smartgrowthgateway.org)