

5.4 Transfer of Development Rights

5.4.1 Purpose – The purpose of this Section is to provide a mechanism for transferring development rights between designated districts, in order to achieve the following objectives:

- a) To encourage compact development within defined village centers, reinforcing Acton's traditional pattern of development and providing convenient and attractive commercial and personal service centers for residents of Acton's neighborhoods;
- b) To discourage excessive development in the Great Road corridor, so as to reduce traffic congestion and minimize the need for public spending on infrastructure expansion;
- c) To conserve public funds by concentrating development in areas where public infrastructure and services may be most efficiently provided;
- d) To balance long-term tax revenue reductions in areas planned for limited development with long-term revenue increases in areas planned for concentrated development; and
- e) To accomplish the above objectives in a manner in which landowners are compensated for reductions in long-term development potential, through transfers with other landowners who benefit from increases in development potential.

Thus the provisions of this Section are intended primarily to change the pattern and location of future development within the Town, rather than to change the overall amount or type of such development; and to accomplish such intended changes in a way that is equitable to affected property owners.

5.4.2 Sending Districts and Receiving Districts

5.4.2.1 Development rights may be transferred from Sending Districts to Receiving Districts.

5.4.2.2 The Sending Districts shall include: (a) the Limited Business (LB) District, and (b) all residentially zoned parcels with FRONTAGE on Great Road (excluding those in the Residence A District) for a depth of 500 feet from the layout line of Great Road which were zoned General Business in the year 1989.

5.4.2.3 The Receiving Districts shall include the North Acton Village (NAV) and East Acton Village (EAV) Districts.

5.4.2.4 The objective of the Transfer of Development Rights mechanism is to achieve different development densities than the maximum FLOOR AREA RATIOS set forth in the Table of Standard Dimensional Regulations (Section 5). The preferred target densities are FAR of 0.10 in the Limited Business District, the permitted residential density in the residentially zoned Sending District areas, and FAR of 0.30 in the Receiving Districts.

5.4.3 Special Permit for Transfer of Development Rights – The Transfer of Development Rights shall be authorized by special permit from the Board of Selectmen subject to the requirements of this Section 5.4.

5.4.3.1 Standards for Review – In deciding on the merits of a proposal for Transfer of Development Rights from the Sending District to a Receiving District, the Board of Selectmen shall consider the following criteria and objectives:

- a) Increased density on a LOT in the Receiving District should support a sense of community, through a concentration of a variety of USES;

- b) therefore, density increases in the Receiving Districts should be granted only where such concentrations are compatible with surrounding USES;
- c) The implementation of this provision should tend to facilitate the development of a viable village center, that provides convenient and attractive commercial and personal services for its residents and for the residents of Acton's neighborhoods;
- d) and should generally support the objectives of Section 5.4.1.

The Board of Selectmen shall grant a Special Permit for Transfer of Development Rights from the Sending District to a Receiving District only if it can make appropriate findings that the criteria and objectives of a) through d) are promoted by granting the transfer, and if it finds that all the requirements of Section 5.4 have been met.

5.4.3.2 Procedure for Obtaining a Special Permit for the Transfer of Development Rights

- a) An application for a Special Permit for the Transfer of Development Rights from a LOT in the Sending District to a Receiving District shall be made jointly by the owner of said LOT, willing to sell development rights, and by the prospective purchaser of the development rights. Said prospective buyer shall demonstrate ownership of a LOT in the Receiving District onto which the development rights are to be transferred. The application shall contain sufficient information to permit the Board of Selectmen's determination of the total development rights and of the transferable development rights on a LOT in the Sending District, expressed in number of DWELLING UNITS for residential development rights and in NET FLOOR AREA for nonresidential development rights. The application shall specify the amount of development rights that is requested to be transferred. The Board of Selectmen may forward the application and accompanying plans to other municipal boards and officials for review and comment prior to making its determination.
- b) The special permit issued pursuant to this Section 5.4 shall specify the amount of development rights that may be transferred to the LOT in the Receiving District and the amount of transferable development rights that remain on the LOT in the Sending District after the transfer, if any, expressed in number of DWELLING UNITS for residential development rights and in NET FLOOR AREA for nonresidential development rights. The development rights specified on the special permit shall be equal to the total development rights determined in accordance with Section 5.4.6.1, less any NET FLOOR AREA or built residential LOTS in existence at the time the determination is made. The transferable development rights shall be sold only to the applicant who has signed the application as the owner of the LOT in the Receiving District, and the development rights shall be transferred only to said LOT.
- c) A special permit hereunder shall not authorize the transfer of USES. USES in the Receiving Districts must comply with the USE regulations of Section 3 of this Bylaw.

5.4.3.3 Records of Development Rights with the Board of Selectmen – The Board of Selectmen shall keep an official register of the development rights issued hereunder, and said register shall be made available for public inspection in the Town Hall.

5.4.3.4 The Board of Selectmen shall require that upon Transfer of the Development Rights authorized in its special permit, the owner of the LOT in the Sending District shall file with the Middlesex South Registry of Deeds or the Land Court (as applicable) an irrevocable restrictive covenant approved by the Board of Selectmen, running with the land permanently restricting the development of the LOT. The covenant shall restrict the LOT in the Sending District by the amount of development rights transferred to a LOT in the Receiving District, permitting only the amount of development rights that remain on the LOT, if any, all as specified in the special permit authorizing the transfer.

- 5.4.4 Transferring Development Rights
- 5.4.4.1 Development rights shall be considered as interests in real property. A landowner in a Receiving District may purchase some or all of the transferable development rights of a LOT in a Sending District, as authorized in the special permit, at whatever price may be mutually agreed upon by the two parties.
- 5.4.4.2 The Transfer of Development Rights shall have the effect of permitting an increase in the intensity of development of a LOT in a Receiving District; provided that a Transfer of Development Rights from a Sending District shall not result in a FLOOR AREA RATIO for any LOT in a Receiving District greater than the sum of:
- a) the nonresidential NET FLOOR AREA divided by the total NET FLOOR AREA (This is equal to the proposed percent share of nonresidential NET FLOOR AREA divided by 100) multiplied by a FAR factor of 0.25, plus
 - b) the residential NET FLOOR AREA divided by the total NET FLOOR AREA (This is equal to the proposed percent share of residential NET FLOOR AREA divided by 100) multiplied by a FAR factor of 0.40.
- 5.4.4.3 An application for a building permit, indicating a FLOOR AREA RATIO greater than the maximum FLOOR AREA RATIO permitted in the Table of Standard Dimensional Regulations for a LOT in a Receiving District, shall include the approved special permit authorizing the Transfer of Development Rights. An application for a Site Plan Special Permit for such LOT shall include documentation of the proposed Transfer of Development Rights, including the property from which the development rights are derived and the amount of development rights proposed to be utilized in the Receiving District.
- 5.4.5 Recording of the Transfer – Prior to the issuance of any building permit for a LOT in a Receiving District, where the proposed development would result in a FLOOR AREA RATIO in excess of the maximum FLOOR AREA RATIO permitted in the Table of Standard Dimensional Regulations, the following documents must be submitted to the Building Commissioner:
- 5.4.5.1 Deed of Transfer – The owner of land in the Receiving District, who has acquired the transferable development rights specified in the special permit authorizing a transfer shall submit to the Building Commissioner three copies of an executed and recorded deed of transfer of said development rights derived from a LOT in the sending district, along with three copies of the Special Permit authorizing the transfer. The Building Commissioner shall forward one copy of each to the Board of Selectmen and to the Town Clerk.
- 5.4.5.2 Restrictive Covenant – Also, three copies of the recorded covenant shall be submitted to the Building Commissioner who shall forward one copy each to the Board of Selectmen and the Town Clerk. Upon issuance of the Building Permit, the Building Commissioner shall notify the Board of Selectmen that the transferable development rights as specified in the special permit authorizing such transfer have been exercised. The Board of Selectmen shall forthwith make an entry in the official register canceling these transferable development. The Building Commissioner shall keep a record in his files, identifying the LOT in the Sending District as being restricted with regard to future development.
- 5.4.6 Calculation of Development Rights in Sending Districts – Landowners in Sending Districts are allowed to build to the full intensity permitted by the provisions of the

underlying district, subject to certain regulations set forth herein. However, as an incentive to limit the total amount of floor area along Great Road and to encourage the Transfer of Development Rights to the Village Districts, a ceiling is established on the number of parking spaces that may be provided on a LOT in the Sending Districts. Landowners may choose to limit the amount of BUILDING area erected on the site and sell the unused development rights to buyers who may apply these rights to a LOT in a Receiving District in accordance with procedures set forth in Sections 5.4.3, 5.4.4, and 5.4.5.

- 5.4.6.1 Determination of the Total Development Rights – The total amount of development rights pertaining to the LOT shall be computed as follows:
- a) Nonresidential Districts – The maximum permitted nonresidential NET FLOOR AREA as computed in Section 10.4.3.8 of this Bylaw, less any development rights previously transferred to any LOT in a Receiving District,
 - b) Residential Districts – The maximum permitted number of BUILDING LOTS determined in accordance with the procedures for determining the maximum number of BUILDING LOTS set forth in Section 4.2.3.2 less any development rights previously transferred to any LOT in Receiving District; provided however that the owner of any land which was zoned for nonresidential USES in 1989 shall be permitted to also transfer such nonresidential development rights in accordance with this Bylaw. In calculating the development rights on such LOT, the maximum permitted nonresidential NET FLOOR AREA shall be determined as computed in Section 10.4.3.8 based on a maximum FLOOR AREA RATIO of 0.20, less the maximum permitted number of residential BUILDING LOTS determined in accordance with the procedures set forth in Section 4.2.3.2 (whereby one BUILDING LOT shall be equal to 1000 square feet of non-residential NET FLOOR AREA), less any development rights previously transferred to any LOT in a Receiving District.
- 5.4.6.2 Maximum Number of Parking Spaces Permitted – In addition to the requirements of this Bylaw that a minimum number of parking spaces must be provided for various uses, in Sending Districts the parking spaces required to be provided may not exceed a maximum number. In the Sending District, the number of parking spaces that may be constructed on a LOT shall not exceed one parking space per 3,000 square feet of DEVELOPABLE SITE AREA.
- 5.4.6.3 Calculating Development Rights That May Be Transferred – In lieu of constructing the total permitted NET FLOOR AREA or number of DWELLING UNITS calculated in Section 5.4.6.1, with the maximum number of parking spaces determined in Section 5.4.6.2, an applicant may choose to build at a lower intensity, and the difference in NET FLOOR AREA or DWELLING UNITS between what is permitted and what is actually proposed shall constitute the remaining transferable development rights. The number of parking spaces to be provided shall be determined by the minimum parking space standards of this Bylaw but shall not exceed the maximum number of parking spaces permitted under Section 5.4.6.2.
- 5.4.6.4 Conversion to Other Uses – Development rights may be transferred to a property in a Receiving District as authorized in the special permit issued under Section 5.4. In a Receiving District, nonresidential development rights may be used for nonresidential development in a direct one-for-one relationship, or they may be converted to residential development rights by dividing the nonresidential NET FLOOR AREA in square feet by a conversion factor of 1,000 square feet to yield the number of DWELLING UNITS which may be used in a Receiving District. Residential development rights may not be converted to nonresidential development rights.

- 5.4.7 Mandatory Mix of USES with Increased Floor Area – The Transfer of Development Rights option may not be used solely to increase the allowable NET FLOOR AREA of a single USE permitted in the underlying district. Any LOT which is permitted an increase in NET FLOOR AREA above the maximum NET FLOOR AREA set forth in the Table of Standard Dimensional Regulations must include a mix of residential and nonresidential USES such that:
- a) residential USES shall comprise at least 25% of the NET FLOOR AREA on the LOT;
 - b) nonresidential USES shall comprise at least 25% of the NET FLOOR AREA on the LOT.

Different USES may be apportioned between two or more BUILDINGS provided all the BUILDINGS are functionally integrated through the use of attractive OPEN SPACE design and pedestrian walkways. Combined residential and nonresidential BUILDINGS are permitted provided that the residential portions of such BUILDINGS are located above the nonresidential portions.

5.5 Special Provisions for Village Districts

5.5.1 Purposes – The purposes of this section are to set forth specific provisions regarding development scale and intensity in the Village Districts in order to promote compact development patterns, a mixture of housing and businesses, the preservation and vitality of small businesses, pedestrian amenities and pedestrian-scale environments, and environmentally sustainable design and construction.

5.5A Business Size Limits in Village Districts

5.5A.1 Maximum Floor Area of Businesses and Industries – The maximum NET FLOOR AREA of an individual business or industrial establishment shall not exceed the following (all limits expressed in square feet):

<u>PRINCIPAL USES</u>	<u>VILLAGE DISTRICTS</u>			
	<u>EAV</u>	<u>NAV</u>	<u>SAV</u>	<u>WAV</u>
3.4.11 Commercial Education or Instruction	5,000	NR	NR	NR
3.5.1 Retail Store	7,500	5,000	3,000	5,000
3.5.2 Office	7,500	5,000	3,000	5,000
3.5.3 Health Care Facility	5,000	5,000	3,000	5,000
3.5.5 Restaurant	5,000	5,000	5,000	5,000
3.5.9 Lodge or Club	5,000	NR	5,000	5,000
3.5.10 Veterinary Care	5,000	NR	3,000	3,000
3.5.12 Services	5,000	5,000	3,000	3,000
3.5.13 Repair Shop, Technical Shop, Studio	5,000	5,000	3,000	3,000
3.5.14 Building Trade Shop	NR	5,000	5,000	5,000
3.5.15 Commercial Recreation	7,500	NR	NR	5,000
3.5.16 Commercial Entertainment	5,000	NR	NR	5,000
3.6.3 Manufacturing	NR	NR	5,000	5,000

NR = No Regulation

5.5B Special Provisions for the East Acton Village District