

Chapter 19
Density
Transfer of
Development Rights

This chapter provides background information for the zoning districts created in this bylaw by explaining how the density or intensity of development is defined, measured, and regulated. This chapter also establishes a voluntary transfer of development rights program.

19.1 Applicability – Definitions

19.1.1 Do the definitions and standards adopted here apply throughout the town? Yes.

19.1.2 What is “density?” Density is the general term used to describe how intensively a parcel of land is, or may be, used. Density is measured differently for different uses and in different situations.

19.1.3 How is density measured? The density of residential development in Williston is measured in the number of dwelling units per acre. For example, the Chelsea Place development has 6.31 dwellings per acre (6.31 du/A). Acreage encompasses everything within the platted boundaries of the development. It includes buildings, streets, sidewalks, stormwater detention ponds, all other improvements, and most types of open space. There are some exceptions, which are explained in WDB 19.1.3.1 and 2.

What is a dwelling unit? A dwelling unit is a building (typically a single-family home) or a separate space within a larger building (typically an apartment, townhouse, or the like) that contains complete housekeeping facilities for one household.

19.1.3.1 Accessory Dwellings. Accessory dwellings permitted by WDB 20.1 are not counted as dwellings when calculating density.

19.1.3.2 Acreage Exceptions. There are three exceptions from the acreage used as a basis for calculating density and one partial exception. These exceptions apply in all zoning districts.

- The acreage on a proposed development site that is included within the watershed protection buffers required by Chapter 29 of this bylaw will not be included in the gross acreage of that site for the purposes of calculating the permitted density.
- The acreage on a proposed development site that has a average slope of 30% or more will not be included in the gross acreage of that site for the purposes of calculating the permitted density.
- The acreage on a proposed development site that has an average slope of 15-30% will be included in the gross acreage of that site, but only at the rate established for development on slopes in the applicable zoning district. That rate is one dwelling unit for every 10 acres in the ARZD (see WDB 31.7.2.6) and one dwelling unit per acre in the RZD and VZD zoning districts (see WDB 39.4.2.2 and WDB 42.4.1).

19.1.3.3 **Rounding.** Residential density calculations often result in fractions. For example, a 17-acre parcel in the ARZD is permitted to have 7.62 dwellings. Does that mean it can have eight? No. Conventional mathematical rounding rules are not used for the density calculations required by this bylaw. A parcel must contain ALL of the acreage required for an additional unit. In the ARZD, a parcel has to contain at least 17.69 acres to be permitted eight dwellings.

19.1.4 How is density measured for nonresidential developments? There is no universally useful measure of the density or intensity of nonresidential developments. The density of nonresidential developments is limited and determined by the standards of this bylaw. There IS a practical minimum area for any given nonresidential development, but that area must be determined case-by-case, based on what is required to comply with the applicable standards. See WDB 19.3.

19.2 Residential Densities. Policies 3.5 and 3.6 of the *Town Plan* provide background materials that you might want to read before going on to the rest of this chapter.

19.2.1 What is the purpose of these residential density standards? The definitions and standards adopted in this chapter are intended to:

- ... implement the open space policies adopted in the *Town Plan*, especially Policies 3.5 and 3.6 and Appendix C, the *Open Space Plan*;
- ... help implement the affordable housing policies adopted in the *Town Plan* (see Chapter 5); and
- ... give landowners and developers the flexibility needed to protect open space while creating compact and amenable neighborhoods.

To achieve these purposes, Williston requires open space residential development, which is defined in WDB 19.2.2. Because it can be difficult to design an open space development on smaller parcels, Williston also permits infill development, which is defined at WDB 19.2.3.

19.2.2 What is an open space development? An open space development is a residential subdivision in which a specified area of open space is protected as a condition of approval. How much open space is required varies with the zoning district. Open space development is required on parcels larger than 10.5 acres in the ARZD and RZD. Parcels in the VZD and smaller parcels in the ARZD and RZD may also be developed using an open space pattern, but where this is proposed, it must be approved by the DRB during pre-application review.

19.2.3 What is an infill development? Some parcels of land are too small to effectively use for open space development. Specifically, all residential developments that include 10.5 or fewer acres and all residential developments within the VZD will be treated as infill developments for the purposes of this bylaw, except where an exception is permitted by the DRB, as provided in WDB 19.2.2. All other residential developments must be open space developments.

19.2.4 So, how do I know how many homes I can build on my land? Each residential zoning district has both a permitted net density and a minimum area per dwelling unit. These standards are shown in Table 19.A.

19.2.4.1 Net Density. The average density column in Table 19.A tells you the maximum number of homes that can be built. It applies to both open space and infill developments. Applicants may make choices that reduce the average density permitted (see, for example, WDB 15.2.3.1), but the standards of Table 19.A. are the starting point.

For example, if you have a 40-acre parcel in the ARZD that includes no watershed protection buffers and no slopes of 15% or more, Table 19.A shows that you can build 22 dwelling units. See WDB 19.1.3.2 for an explanation of how having watershed protection buffers or slopes on your property affects the permitted density.

19.2.4.2 Minimum Area. The minimum area per dwelling unit may be different for open space and infill developments and is applied in different ways to different types of development. See WDB 19.2.5

Table 19.A - Permitted Residential Densities

zoning district	Net* density	minimum area per dwelling in an open space development	minimum area per dwelling in an infill development
ARZD	1 dwelling per 80,000 SF (.55 DU/A)	15,000 SF (.344 A)	80,000 SF (1.84 A)
RZD	open space developments: 3.00 DU/A	5,445 SF (0.125 A)	14,520 (.33 A)
VZD	2.00 du/A	6,534 SF (0.15 A)	6,534 SF (0.15 A)

*The net density given here is for development on slopes of less than 15%. Development on slopes of 15-29% is permitted only at the lower average densities established in WDB 19.1.3.2. Slopes of 30% or more are not included in the acreage base for development.

19.2.5 But how can I build that many homes if I am required to protect buffers along streams, conservation areas, slopes, wetlands, and other resources? This is where the minimum area per dwelling unit comes in. The combination of an average density with a minimum area per dwelling unit gives landowners and developers the flexibility to protect open space while meeting the demand for housing. It will also help make new residential neighborhoods more compact, and thus more affordable and pedestrian-friendly.

Is this “cluster” development? Yes. The approach the town is taking toward most residential development has been called “cluster” development. ‘Open space development’ is used in the *Town Plan* and this bylaw because it emphasizes the goal of open space protection.

19.2.5.1 Minimum Area, Individual Lots. The minimum area per dwelling unit can be interpreted as a minimum lot size in developments where buyers will get a lot. No lot can be smaller than the minimum area per dwelling unit. Do note, however, that WDB 31.8.3 prohibits developments with uniform lot sizes.

Imagine, **for example**, a 40-acre parcel in the ARZD. This parcel has no slopes or watershed protection buffers, so 22 dwelling units are permitted. But WDB 31.4.1 requires that 75% remain in open space. Can the owner still plat 22 lots? If he or she is willing (and the site is favorable) to install community sewerage systems for each cluster of lots (there is generally a limit of seven home sites per cluster), 22 lots could be approved on the 10 acres that are not set aside as open space. The shape and size of the lots must vary with the terrain, but the smallest lot/s can be as small as 15,000 SF, allowing some flexibility in the proposed subdivision's design.

19.2.5.2 Minimum Area Without Lots. Where the proposed development will be an apartment building or complex that will remain in one ownership or a condominium where the land will be held in common by the homeowners, the minimum area per dwelling unit determines the smallest area that can be used for buildings, parking, and other improvements.

Imagine, **for example**, an 80-acre parcel in the RZD that includes extensive (30 acres) wetlands and a rare plant community (10 acres). Table 19.A permits 240 dwelling units on that site (80 X 3). But given the natural constraints, it would be difficult to plat even that many conventional residential lots. Further, unless the wetlands and rare plants happen to be located in one corner of the parcel, adjacent to another open space) conventional development will have a fragmenting impact on those resources. Better resource protection and better utilization of land and infrastructure, can be achieved by shrinking the footprint of the housing. Using the minimum area per unit of 5,445 SF, this bylaw would permit all 240 units to be placed on less than 40 acres. This leaves ample space for a development that could take the form of flats, town homes, or other attached housing types. Placing 240 units on, say, 37.5 acres results in roughly the same density as many of Williston's existing condominium developments: 6.4 DU/A. **How does all this really work?** Landowners who are unsure about how to comply with the open space development requirements of this bylaw are encouraged to make an appointment with a staff person at Williston Planning. You may also want to seek the advice of an experienced design professional.

19.3 Nonresidential Densities

19.3.1 Are minimum lot sizes required for the nonresidential uses that permitted in the ARZD, RZD, and VZD? Yes.

19.3.1.1 In the ARZD. A minimum lot size of 80,000 SF is required for nonresidential uses in the ARZD.

19.3.1.2 In the RZD and VZD. A minimum lot size of 20,000 SF is required for nonresidential uses in the RZD and VZD.

19.3.2 Are there minimum lot sizes for nonresidential development in the other zoning districts?

There is no minimum lot size for nonresidential uses in the other zoning districts. The density or intensity of nonresidential development that is permitted in those districts will be a function of the standards of this bylaw, as applicable.

19.4 Mixed-Use Densities. Williston's *Town Plan* emphasizes the desirability of mixed-use development in the growth center, and mixed-use development is permitted, or even required, in the BPZD, GZDS, MUCZD, MURZD, and TCZD. Each zoning district has its own standards for which uses may be mixed and how. Those standards are summarized in Table 19.B. Mixed-uses are also permitted in the VZD, in compliance with the standards established in Chapter 42 of this bylaw.

19.4.1. Is the mix of uses regulated? The mix of residential and nonresidential space may be limited. See the first column in Table 19.B for a summary of the standards adopted in the chapters establishing each zoning district.

19.4.2 How many dwelling units are permitted in a mixed-use development? The net permitted density of the residential component of a mixed-use development is shown in Table 19.B. That table also imposes a minimum density of five dwelling units per acre on residential development in most of the mixed-use zoning districts and shows that the net permitted density may rise to 10 or 15 DU/A with the transfer of development rights. The transfer of development rights is explained in WDB 19.5.

19.4.3 How much nonresidential development is permitted in a mixed-use development? The density of the nonresidential component of a mixed-use development will be a function of the limit, if any, on the mix of uses in the zoning district, the space that remains after the residential component is established, and the standards of this bylaw.

Table 19.B - Mixed Use Residential Densities

All numbers are DU/A

zoning district	residential/commercial mix	net density	density with TDR	minimum density*
BPZD	Residential uses are permitted, but not required.	5	not allowed	--
GZDS	Residential uses are permitted, but not required.	7.5	10	5
MUCZD	Residential uses are encouraged but not required.	7.5	15	5
MURZD	Must be predominantly** residential.	7.5	15	5
TCZD	Residential uses may be required.	7.5	15	5

* Where provided. This does not mean that residential uses have to be built where they are not required. ** 'Predominantly residential' is defined at WDB 38.1.3.1.

19.5 Transfer of Development Rights

19.5.1 What is the transfer of development rights? A transfer of development rights occurs when the right to develop on one parcel of land is used on a noncontiguous parcel. The parcels involved may be in the same or different ownerships.

19.5.2 Is the transfer of development rights permitted in Williston? Yes. Residential development rights may be voluntarily transferred from lands in the ARZD or from conservation areas shown in the *Open Space Plan* in other zoning districts to lands within the growth center. Development rights may be transferred one-to-one up to the maximum density permitted in the receiving zoning district by Tables 19.A and 19.B.

19.5.3 Is special permission required for a transfer of development rights? No. Transfers are permitted within the density limits established in Tables 19.A. and 19.B. The resulting development must, of course, comply with all requirements of this bylaw.

19.5.4 What are the mechanics of a transfer of development rights? A transfer of development rights is a private transaction. While it is enabled and encouraged by this bylaw, the town does not require TDRs.

19.5.4.1 TDRs at Pre-Application. An applicant who proposes to use TDRs in a development must make this clear in the pre-application materials.

19.5.4.2 TDR's and Growth Management. A TDR does not exempt the proposed dwelling units from growth management review, as required by Chapter 11 of this bylaw.

19.5.4.3 TDR's at Permit Review. Drafts of the instruments of conveyance for the TDR must accompany the application for a discretionary permit.

19.5.4.4 TDR's in Final Plans. The signed instruments of conveyance for the TDR must accompany the final plans. They must be recorded after approval of the final plans and before an administrative permit for any work on the site is approved.

Can you give me an example of how the transfer of development rights works? Yes. Suppose that you have a small farm in the ARZD. You could, if able to comply with all requirements of this bylaw, create 22 home sites on 40 acres. But really, you only want to build a home for yourself. Can you use the other 21 development rights in another way? Possibly. Suppose that a developer in the Tafts Corners area wants to build a mixed-used project on 10 acres. Without a transfer of development rights, Table 19.B says that this project can have 7.5 du/A, or 75 total units. With a transfer, however, it can have as many as 150 units (15 du/A). The developer could, if you name a reasonable price, purchase your 21 development rights and build 96 of the 150 units permitted with a TDR. This moves development into the growth center in accord with town policy, while helping protect the character of rural Williston.