

**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 Where in Williston are these definitions and standards applicable?** These standards do not apply within the Taft Corners Form-Based Code Zoning District (TCFBC). The TCFBC limits the maximum number of dwellings and square feet of commercial floor area through building form standards (footprint size, building height, block size, etc.).

**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?** WDB 46.3.50 defines a dwelling. The density of residential development in Williston is measured in the number of dwellings per acre. 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?** A dwelling is a building (typically a single-household 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 an 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 for every 10 acres in the ARZD (see WDB 31.7.2.6) and one dwelling 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 dwelling. 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 3.2 and 3.4 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 *Comprehensive Plan*, especially Policies 3.2 and 3.4 and *Chapter 13 – Natural and Cultural Resources*;
- ... help implement the affordable housing policies adopted in the *Comprehensive 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. These standards are shown in Table 19.A.

19.2.4.1 Net Density. The net 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 dwellings. 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 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 outside the Sewer Service Area**	1 dwelling per 80,000 SF (.55 D/A)	15,000 SF (.344 A)	80,000 SF (1.84 A)
ARZD inside the Sewer Service Area**	open space developments: 5.00 D/A developments that meet the density bonus requirements of WDB 19.2.6: 7.00 D/A	5,445 SF (0.125 A)	8,712 SF (0.2 A)
RZD	open space developments: 5.00 D/A developments that meet the density bonus requirements of WDB 19.2.6: 7.00 D/A	5,445 SF (0.125 A)	8,712 SF (0.2 A)
VZD	5.00 D/A developments that meet the density bonus requirements of WDB 19.2.6: 7.00 D/A	5,445 SF (0.125 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 densities established in WDB 19.1.3.2. Slopes of 30% or more are not included in the acreage base for development.			

\*\* The boundaries of the Sewer Service Area are established in the Town Plan and Sewer Allocation Ordinance. See Map 8 of the Williston Comprehensive Plan.

**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 comes in. The combination of an average density with a minimum area per dwelling 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 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. 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 dwellings 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 250 dwellings on that site (50 X 5). 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 dwelling of 5,445 SF, this bylaw would permit all 250 dwellings 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 250 units on, say, 37.5 acres results in roughly the same density as many of Williston’s existing condominium developments: 6.4 D/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.

**19.2.6 Is there a density bonus for building affordable housing?** Yes, where affordable housing is being provided the residential density limitations can be exceeded in some zoning districts.

**19.2.6.1 Which zoning districts have the density bonus?** The density bonus can only be used in zoning districts where residential is an allowed use and that are within the Sewer Service Area. This means it cannot be used in the most of the ARZD or the industrial zoning districts or the Gateway Zoning District North.

19.2.6.2 What do I have to provide for the bonus? The development proposed must include at least 20% of the dwellings or a minimum of 5 dwellings, whichever is greater, as affordable dwellings. An affordable dwelling for the purposes of the density bonus is defined in 24 V.S.A. § 4303. Williston also requires affordable dwellings under the inclusionary zoning requirements of WDB Chapter 11, which are defined differently.

19.2.6.3 How much is the bonus? Those developments that meet the requirement are allowed to exceed the residential density limitations in the zoning district by 40%. This can include exceeding the maximum height limit in the zoning district by one (1) floor.

19.2.6.5 How does the town define 1 floor for the density bonus? Where the WDB defines building height in feet, a building is allowed to exceed the allowed height in the zoning district by 13'. Where the WDB measures building height in stories, as in the Taft Corners Form-Based Code Zoning District, the definition of STORY in the TCFBC shall be used to define 1 floor.

19.2.6.6 How long do the dwellings have to stay affordable? Affordable dwellings shall be subject to covenants or restrictions that preserve their affordability in perpetuity. They shall meet the perpetual affordability requirements of WDB 11.3.5.

19.2.6.7 Are there any other requirements for the affordable dwellings? Yes, they must meet the specific requirements on integration, allowable differences and phasing set out in WDB 11.3.3 and the sale and rental requirements of WDB 11.3.6.

### **19.3 Nonresidential Densities**

***19.3.1 Are minimum lot sizes required for the nonresidential uses that are 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 *Comprehensive 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, GZDW, 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 dwellings 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 dwellings 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 D/A with the transfer of development rights. The transfer of development rights is explained in WDB 19.5.

19.4.2.1 Adaptive Reuse Developments. Dwellings created through the adaptive reuse of an existing non-residential structure, for example, conversion of a hotel to apartments or conversion of office space to apartments, provided that those developments comply with all other applicable provisions of the Williston Development Bylaw, shall not be counted in calculating the residential density of the sites they are located on.

**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 D/A

zoning district	residential/commercial mix	net density	density with TDR or with minimum 20affordable dwellings <sup>4</sup>	minimum density <sup>1</sup>
GZDS <sup>2</sup>	Residential uses are permitted, but not required.	7.5	11	5
MUCZD <sup>2</sup>	Residential uses are encouraged, but not required.	7.5	15	5
MURZD <sup>2</sup>	Must be predominantly <sup>3</sup> residential.	7.5	15	5
TCZD <sup>2</sup>	Residential uses may be required.	7.5	15	5
GZDW	Residential uses are permitted, but not required.	7.5	11	5

<sup>1</sup> Where provided. This does not mean that residential uses have to be built where they are not required.

<sup>2</sup> Only applicable in the portions of TCZD, MUCZD and MURZD outside the TCFBC.

<sup>3</sup> ‘Predominantly residential’ is defined at WDB 38.1.3.1.

<sup>4</sup> As specified in WDB 19.2.6.2

## 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 outside of the Taft

Corners Form Based Code. 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 dwellings 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 D/A, or 75 total dwellings. With a transfer, however, it can have as many as 150 dwellings (15 D/A). The developer could, if you name a reasonable price, purchase your 21 development rights and build 96 of the 150 dwellings permitted with a TDR. This moves development into the growth center in accord with town policy, while helping protect the character of rural Williston.