

## SECTION 25- LAKE QUASSAPAUG PRESERVATION DISTRICT

### 25.1 Purpose:

The lake Quassapaug Preservation District (LQPD) is an overlay district. The objective of the Lake Quassapaug Preservation District is to encourage and promote:

- 25.1.1 The preservation, conservation and protection of the natural features and resources of Lake Quassapaug and the surrounding area, such as, for example scenic vistas, water recreation, water quality, tree cover, open areas, wetlands and other environmental significant features and resources, and
- 25.1.2 Preservation and enhancement of the existing character of the Lake Quassapaug area.

In order to promote those objectives the purpose of the Lake Quassapaug Preservation District is to afford opportunities (1) for greater flexibility in the design of new or additional single-family residential development and forms of ownership on the land surrounding Lake Quassapaug than would otherwise be allowed if such land were to be developed under other applicable provisions of these Regulations, and (2) for existing single-family development on such land to become in conformance with these Regulations under diverse forms of ownership and thereby to encourage upgrading of such existing development.

### 25.2 Qualifying Standards

No parcel of land or adjoining parcels of land shall be considered for designation under the Lake Quassapaug Preservation District Regulations unless each such parcel complies with the following standards:

- 25.2.1 Each such parcel is located in the area surrounding Lake Quassapaug bounded on the north by White Deer Rock Road, on the east by Tranquility Road, on the south by Middlebury Road and on the west by the Woodbury-Middlebury Town line. If the proposed designation under the LQPD Regulations is approved the parcel or parcels so designated shall be designated on the zoning map as {underlying zone designation}/LQPD with an identifying number assigned to such designation, e.g., R-40/LQPD-1.
- 25.2.2 The minimum size for one or more adjoining parcels to be designated, as LQPD is 20 contiguous acres. There is no maximum size.

### **25.3 Procedure for Obtaining Lake Quassapaug Preservation Designation**

25.3.1 An application for designation of property as LQPD constitutes a petition to amend these Regulations under Section 74 and except as noted herein is subject to the requirements and procedures of Section 8-3 of the Connecticut General Statutes as amended. Property shall be designated as LQPD only in conjunction with and condition upon, approval by the Commission of a Preliminary Plan of Development for the land in question.

25.3.2 Applications for designation of property as LQPD shall include the following:

- A. A completed application for zone change together with the required fee for such application and a statement explaining how the proposed zone designation and proposed development meet the purposes of Subsection 25.1 above.
- B. Ten (10) copies of a proposed set of Special Regulations, consistent with the requirements of Subsection 25.3.4 below, which shall be applicable to the property if the LQPD designation is approved listing the elements of the existing regulations, limitations and conditions that are applicable to the underlying zone or zones in which the subject property is located that are to be modified or eliminated and new regulations, limitations and conditions that are to be applicable to the subject property. The Special Regulations shall specify the maximum density of dwelling units that would be allowed. The proposed maximum density shall not be greater than that which is legally permissible in the underlying zone (with effect given to any pre-existing legal nonconformities). The applicant shall demonstrate to the satisfaction of the Commission that, taking into account all relevant factors, the proposed density meets the applicable purposes and objectives of the LQPD as set forth in Section 25.1. In addition, the Special Regulations shall require that a minimum of 10% of the parcel be reserved for recreation areas and/or open spaces and/or subjected to conservation or preservation restrictions (as defined in Section 47.42a of the Connecticut State General Statutes, as amended) or other deed restrictions. The size, location, shape, topography and general character of the land so reserved and the nature of any proposed restrictions shall satisfy the applicable purposes and objectives of the LQPD as set forth in Subsection 25.1, as determined by the Commission. The Commission may waive or modify the open space requirements to the extent that it determines, in its sole discretion and taking into account all relevant factors, that such a

reservation or restriction is not necessary or desirable to satisfy the applicable purposes and objectives of Subsection 25.1 or that those purposes and objectives are otherwise satisfied. Any open space land shall be offered and subjected to restrictions and covenants as provided in Subsection 4.14 of the Middlebury Subdivision Regulations. The Special Regulations shall also contain a suitable boundary description of the land to which they and the Preliminary Plan of Development shall apply. All words or terms which are defined in Section 9 of the Regulations shall be used as so defined.

- C. Ten (10) copies of a proposed Preliminary Plan of Development showing in a schematic fashion the concept of the proposed development. The Commission may charge a fee, as may be amended from time to time, to cover review costs of a proposed LQPD submission. The Preliminary Plan of Development and the Final Development Plan, as contemplated in Subsection 25.4 below, shall be developed by a professional engineer, registered architect, registered landscape architect, registered land surveyor or professional land planner, or any combination of such professionals, each to be limited to his particular area of expertise.
- D. The Preliminary Plan of Development and other application materials shall include the following:
  - 1. Topography at two (2) foot contour levels;
  - 2. General locations of proposed and/or existing dwellings and accessory buildings;
  - 3. Existing and, if any, proposed means of vehicular access from the public street(s) abutting the property and any proposed interior vehicular circulation system;
  - 4. Existing and, if any, proposed pedestrian circulation system showing the interrelationship with the vehicular circulation, open space system and other areas of common use;
  - 5. General landscape plan indicating the proposed treatment of any common areas, usable open space and watercourses;
  - 6. Where the proposal involves the creation of subdivided lots, an indication of the boundaries of such proposed lots, the building envelope thereon and the means of access to such lots that do not have frontage on a public street;

7. A summary table indicating compliance with the standards of these Regulations and the proposed Special Regulations as may be applicable to the proposed development; and
8. Such other information as the Commission deems appropriate for a proper and complete review of the application.

25.3.3 In considering any application for LQPD designation the Commission is acting in its legislative capacity with all discretion associated with acting in that capacity. After the receipt of a complete application, the Commission shall hold a public hearing and take action to approve, approve with modifications or disapprove the proposed zone change and Preliminary Development Plan all in accordance with, and subject to the limits contained in, Section 8-3 and 8-7d of the Connecticut General Statutes as amended.

25.3.4 The Special Regulations may not allow for any use of the property other than for single-family detached residences and accessory uses as are permitted in the underlying zone in which the property is located. However, the Special Regulations may allow for more than one single-family detached residence on a lot or parcel. Notwithstanding the foregoing, however, any use of the land in the area covered by the Special Regulations and/or structures on such land that is existing at the time of the adoption of the Special Regulations and is for other than single family residences and accessory uses shall be allowed to be continued pursuant to and subject to the limitations of Section 10 – Nonconformity of these regulations.

25.3.5 The Commission may approve the proposed zone change, Special Regulations and Plan of Development if it finds after considering all relevant information that:

- A. The proposed zone change, Special Regulations and Preliminary Plan of Development meet the intent and applicable purposes and objectives set forth in Subsection 25.1 as well as the applicable laws and standards for zone changes and are in conformance with the plans and policies of the then current Middlebury Plan of Development as promulgated pursuant to Section 8-23 of the Connecticut General Statutes, as amended:
- B. The property meets the qualifying standards set forth in Subsection 25.2; and

- C. Where applicable, the applicant has properly provided for continued maintenance of private roads, parking areas, stormwater drainage facilities, open space and other amenities not accepted by the Town of Middlebury.

25.3.6 If the Commission approves the proposed zone change, Special Regulations and Preliminary Plan of Development, the Commission shall establish an effective date for the proposed Special Regulations and notice of the approval thereof and the approval of the Preliminary Plan of Development shall be given in the same manner as required for amendments to these Regulations. The Preliminary Plan of Development shall also be endorsed by the Commission and filed in the office of the Middlebury Town Clerk within 90 days of the date of approval, unless extended for good cause shown.

#### **25.4 Final Development Plan**

25.4.1 The construction and site development and the use, buildings and structures authorized by the Special Regulations and as contemplated in the Preliminary Plan of Development shall only be allowed in accordance with a Final Development Plan for the entire development, or if development is to proceed in phases or stages, a Final Development Plan for the relevant phase or stage, that has been submitted to and approved by the Commission.

25.4.2 A Final Development Plan shall conform substantially to the Preliminary Plan of Development and comply in all material respects with the Special Regulations as approved by the Commission and shall include the following, as applicable:

- A. Where subdivided lots are a part of the development, a final subdivision plan submission in accordance with the Subdivision Regulations;
- B. Site Plans meeting the standards of Section 8 and 51 of these Regulations and, if subdivided lots are a part of the development, the standards for a site development plan required by the Subdivision Regulations, and
- C. Detailed landscaped plans for any common areas, usable open space and perimeter areas including proposed grading, contemplated new plantings and methods of maintenance.

25.4.3 If, in the judgment of the Commission, a proposed Final Development Plan differs in any material respect or if the Commission otherwise determines that it is appropriate to do so, the Commission may hold a public hearing on the approval of the Final Development Plan. Otherwise the Final Development Plan shall be

processed in the same manner as a site development plan approval under this Subsection 25.4 and Section 51 of these Regulations.

25.4.4 If the Final Development Plan is not submitted to the commission for review within one (1) year after the effective date of the Special Regulation, the designation of the property as LQPD, the Special Regulations and the Preliminary Plan of Development shall become null and void. The Commission may, for good cause, extend such deadline for one or more periods not to exceed six (6) months in the aggregate. Where development is to take place in phases or stages as contemplated in the Special Regulations, Final Development Plans shall be submitted for approval at maximum intervals of one (1) year after the approval of the Final Development Plan for the prior phase or stage. Upon failure to adhere to that schedule, the designation of the LQPD, the Special Regulations and the Preliminary Plan of Development for any phases or stages as to which a Final Development Plan has not been approved shall become null and void. The Commission may, for good cause, extend such deadline as to each phase or stage for one or more periods not to exceed six (6) months in the aggregate. Unless the Special Regulations provides otherwise, all of the development contemplated in the Preliminary Plan of Development shall be completed and a certificate of zoning compliance obtained within five (5) years of the effective date of the Special Regulations. If the Special Regulations and Preliminary Plan of Development become null and void as herein provided, any structure that is then actually under construction and such structures as well as previously completed structures shall constitute pre-existing nonconforming uses in accordance with these Regulations. Such lapse shall not prevent a later application for re-designation of the remaining land as LQPD.

25.4.5 Unless the Commission determines otherwise, upon approval of the Final Development Plan and as a condition to the commencement of construction, the applicant shall post a performance bond to insure the completion of all common improvements in the development (or, in the case of contemplated development in phases or stages, the common improvements necessary to service that phase or stage). As used in this Subsection, the term “common improvements” means driveways and/or roadways, parking areas, stormwater drainage facilities, walkways and other improvements contemplated in the Final Development Plan that, in each case, serve more than one building. Common improvements do not include buildings or related improvements that service only one building. The required performance bond may be in the form of an irrevocable letter of credit in the amount set by the Commission and in a form approved by the Town Attorney

and shall be otherwise in accordance with Section 51 of these Regulations and the procedures contained therein. The Commission may from time to time reduce the amount of the performance bond as the common improvements are completed in accordance with the approved Final Development Plan as determined by the Commission.

## **25.5 Special Regulations**

25.5.1 Special Regulations applicable to R-80/LQPD-1. The following Special Regulations shall be applicable to the land included within the boundaries of R-80/LQPD-1:

### **A. Boundaries**

The land included within R-80/LQPD consists of 155.0446 acres shown on the map entitled “North Shore Reserve, Perimeter Survey, White Deer Rock Road, Middlebury, CT” Scale 1” = 200’, Area = 155.0446 acres. Map Date 3-18-96 Rev. 5-23-96 by Bradford E. Smith & Son, Land Surveying and Planning Consultants, which land is more particularly bounded and described as set forth on Schedule A which is attached hereto and made a part thereof.

### **B. Applicable Regulations**

1. Except as provided in paragraph (b) (2) below, all of the presently effective regulations that apply to land located within the R-80 zoning District and all future regulations that may be adopted that affect land located within the R-80 Zoning District, with effect given to Section 10 of the Zoning regulations or any future regulation relating to the continuance of existing non-conforming uses, shall be applicable to the land included within R-80/LQPD-1 and the uses thereof.
2. Within R-80/LQPD-1 the following special regulations shall apply notwithstanding any of the provisions of any other regulation that may affect land within the R-80 Zoning District.
  - a. Set Back from Other Property Line

With respect only to the easterly property line of Lot 8 as shown on the map entitled “North Shore Reserve, Preliminary Plan of Development, White Deer Rock Road, Middlebury, CT” Scale 1” = 200’, Area = 155.0446 acres, Map Date 3-18-96 Rev. 5-23-96 and 6-6-96 Bradford E. Smith & Son, Land Surveying and Planning consultants (the

“Preliminary Plan”), the set back from other property line shall be a minimum of 32 feet (and not 40 feet) for the existing structure on said Lot 8 as said existing structure may be altered, reconstructed or enlarged. With respect only to the westerly property line of Lot 9 as shown on the Preliminary Plan, the set back from other property line shall be a minimum of 31 feet (and not 40 feet) for the existing structure on said Lot 9 as said existing structure may be altered, reconstructed or enlarged.

b. Frontage and Minimum Access

With respect only to Lots 6, 7, 8, 9, 10 and 11 as shown on the Preliminary Plan, respectively, if such lots are configured as shown on said map, they need not have frontage on a public street and access between each such Lot and White Deer Rock Road by means of a common driveway with individual branches to the respective Lots to be constructed in the area shown on said map as “Common Area for Driveway” shall be sufficient and to be constructed in accordance with applicable provisions of the Middlebury Road and Drainage Regulations.

c. Density

Each lot to be created from the land within R-80/LQPD-1 shall have the minimum lot size and dimensions as shown on the Preliminary Plan. Except with respect to existing structures and uses which shall be governed by Section 10 of the Zoning Regulations or any future regulation relating to the continuance of existing non-conforming uses and except to the extent otherwise provided under Section 21 relating to Permitted uses in Residence Districts, a single detached dwelling for one (1) family and not more than one (1) such dwelling shall be permitted on each of Lots 1 through 11, inclusive and respectively, as shown on the Preliminary Plan.

d. Open Space

The land shown on the map referred to in paragraph 1 as “Open Space to be Deeded to the Middlebury Land Trust, Inc. 32.8267 Ac.” Shall be offered and subjected to restrictions and covenants as provided in Section 4.14 of the Middlebury Subdivision Regulations.

e. Conservation and Other Restrictions

In order to achieve further the objectives of the Lake Quassapaug Preservation District and, in particular, to preserve, conserve and protect water quality, tree cover, wetlands and other environmentally significant features and resources of the land within R-80/LQPD-1, all of such land shall be subjected to restrictions that shall constitute a “conservation restriction” within the meaning of Sections 47-42a through 47-42c of the Connecticut General Statutes, as amended, providing, at a minimum, for the following:

- (i) The conservation restriction shall run in favor of the Town of Middlebury or other agency or entity acceptable to the Middlebury Planning and Zoning Commission that will accept the restriction.
- (ii) Construction of houses and septic systems on Lots 1, 2 and 3 inclusive, shall be restricted to the areas indicated on the Preliminary Plans of Development (the “building envelopes”)
- (iii) Filing and excavation, mining, drilling or removal of topsoil, sand, gravel, rock, minerals or other earth materials, the construction of driveways or roadways and any change in the natural topography of the land in the portions of Lots 1, 2 and 3, inclusive, that are outside of the building envelopes shall be prohibited unless specifically approved by the Middlebury Conservation Commission or any successor agency having similar jurisdiction (the “Conservation Commission”).
- (iv) Proper sedimentation and erosion control acceptable to the Conservation Commission shall be maintained during all construction activities. No portion of the land shall be re-graded unless appropriate measures acceptable to the Conservation Commission are taken to eliminate any unacceptable resulting concentration of drainage or runoff. Appropriate ground cover shall be provided as soon as practicable in any disturbed areas.

- (v) Use of pesticides, herbicides and other chemicals for lawn and grounds care shall, to the extent reasonably practicable, be limited to those that will not have a material deleterious effect on Lake Quassapaug or other wetlands and watercourses on the land unless otherwise approved by the Conservation Commission where warranted by special circumstances.
- (vi) Use of sand and salt on the common driveway and individual driveways shall be limited to that reasonably required for safety.
- (vii) No use activity or operation that is defined as a “Regulated Activity” under the Inland Wetlands & Watercourses Regulation of the Town of Middlebury or otherwise regulated under any other law, statute, ordinance or regulation of similar import shall be conducted on the land except for obtaining any necessary license, permit or approval from the governmental authority having jurisdiction and then only in conformity with such license, permit or approval. The Preliminary Plan of Development depict the current wetlands and watercourses and the fifty-foot buffer from the limits of each that constitutes the current regulated area under the Inland Wetlands Watercourses Regulation. The Final Development Plan shall more precisely locate the limits of this buffer area.

## 25.6

### **Special Requirements for West Shore At Lake Quassapaug Area.**

The West Shore at Lake Quassapaug Area (hereinafter “WSALQ Area”) shall be subject to the Special Requirements of this Section 25.6, which shall not constitute a designation under the Lake Quassapaug Preservation District. The WSALQ Area consists of the Middlebury portion of 41.0506 acres of land lying on the West side of Lake Quassapaug, conveyed by the Harris Whittemore, Jr. Trust by Deed dated May 15 , 2000 and recorded in Volume 166 at Page 813 et seq. of the Middlebury Land Records (and a duplicate copy recorded in the Town of Woodbury), all of which became owned by a certain condominium association known as “The West Shore at Lake Quassapaug” (hereinafter the “West Shore Condominium”) organized pursuant to a “Declaration of the West Shore at Lake Quassapaug, Middlebury, CT, Woodbury, CT” dated May 15, 2000 (hereinafter the “Declaration”) and recorded in Volume 166 at Page 868 et seq. of the Middlebury Land Records (and a duplicate copy recorded in the Town of

Woodbury), thereby continuing single ownership of said Middlebury and Woodbury land areas in the West Shore Condominium. The WSALQ Area, which is only the Middlebury portion of the land included in the West Shore Condominium, is thus bounded on the West by the Woodbury town line and on the East by Lake Quassapaug plus a short portion of Old Woodbury Road. The lake shore portion of all the West Shore Condominium land and one interior Unit includes 30 Condominium Units, rather than lots, 26 of which each has a dwelling located thereon. Units 2 through 5 and portions of Units 6, 7 and 8 lie in the Town of Woodbury and therefore are not subject to these Zoning Regulations, except those portions lying in Middlebury. Unit 1 is not in the West Shore Condominium, and is part of Woodbury open space. Units 9 through 26, Unit 27 and portions of Units 6, 7 and 8, together with non-residential Units C-1, B-1 and B-2 and that portion of Unit A-1 lying in Middlebury are subject to these Zoning Regulations, but these Middlebury Condominium Units shall not be subject to the provisions of Section 11 of the Middlebury Zoning Regulations.

The West Shore Condominium is governed by an Executive Board elected by the condominium members (the “West Shore Executive Board”), which administers dwelling replacements, enlargements or related structures pursuant to the above referenced Declaration. There shall be no additional dwellings constructed in the WSALQ Area. Accordingly, any of the 18 dwellings in Middlebury, the Middlebury portions of Units 6, 7 and 8 (including the Middlebury portion of any dwelling) and any structure covered below, located within the WSALQ Area, including the dwelling formerly located on Unit 10, may be replaced or enlarged, subject to the following standards:

25.6.1 Footprint:

“Footprint” means the actual square footage area of a dwelling determined by measuring along the outside of the foundation at ground level, or, in the case of a dwelling built on stone, concrete, or wood piers, measured from the outside edge of each pier, and in either case, including the square footage of any enclosed porch or framed and roofed open porch attached to the dwelling. The existing dwelling footprint may not be increased more than thirty percent (30%), but the resulting dwelling must conform to the size limitations set forth in Section 25.6.2 below.

25.6.2 Size Limit:

The maximum size of the replacement dwelling or reconstructed dwelling, calculated in accordance with the Connecticut Building Code, shall be as follows:

No dwelling shall exceed 35 feet in height;

No dwelling shall exceed 2,500 square feet of floor area;

No dwelling shall exceed 2 ½ floors of floor area;

No dwelling shall have more than 3 bedrooms.

25.6.3 Location and Setbacks Standards:

The existing dwelling footprint shall be permitted. The following location setback standards shall apply with respect to expansion of the existing dwelling footprint:

15 feet from street or common driveway line;

15 feet from vertical condominium unit boundary (side yard), or the existing distance if less;

No closer to Lake Quassapaug than existing dwelling;

No increase in impervious surfaces, unless approved by the Conservation Commission.

25.6.4 Design:

The design must be compatible with dwellings on neighboring Units, i.e. design elements will not adversely affect characteristics of the West Shore Condominium Community. If the West Shore Executive Board adopts design criteria the Commission will utilize such criteria in approving a proposed design. If, however, the West Shore Executive Board fails to adopt design criteria, the Commission in its discretion will make its own determination.

25.6.5 Utilities:

- a) Each dwelling shall connect to the common water supply system and the common sanitary septic system in accordance with West Shore Condominium and Town Standards.
- b) Water supply and sewage disposal must be designed to be compatible with the West Shore Condominium common water and septic systems in accordance with accepted engineering standards.

c) Electrical service may: 1) stay where it is or 2) if relocated, cannot cross other Condominium Units.

25.6.6 Drainage/Water Runoff:

No Unit Owner shall divert water from their Unit onto other Condominium Units. The Building Site Plan shall contain a drainage plan.

25.6.7 Porches/Decks/Patios/Sheds/Docks:

Porches, decks, patios, sheds and docks may be located outside the footprint set forth herein, subject to sideline and setback standards of Section 25.6.3, and subject to any approvals required from the Planning & Zoning Commission and the Conservation Commission. Existing sheds and similar structures may remain and be replaced, remodeled or converted to another permitted use.

25.6.8 Garages:

A one (1) car or two (2) car garage may be permitted subject to sideline and setback standards of Section 25.6.3 and approvals provided for in Section 25.6.7. No garage may be higher than twelve (12) feet, and no living space may be included.

25.6.9 Waiver:

A waiver from one or more of these standards may be approved by the Planning & Zoning Commission; provided the Application for Waiver contains written consent of all abutting Condominium Unit owners, consent of the West Shore Executive Board, and further subject to any reasonable conditions that the Planning & Zoning Commission may attach to the Waiver.

25.6.10 Approvals:

All Applications for replacement or reconstruction of a dwelling, or other condominium unit improvement covered in this Section 26.6 shall be filed with the Planning & Zoning Commission, and be accompanied by evidence of approval by the West Shore Executive Board. All approvals for dwelling replacement or reconstruction shall be appropriately documented and recorded on the Land Records of the Town of Middlebury.