

Town of Salisbury

Proposed Open Space Development Ordinance

Article X. OPEN SPACE DEVELOPMENT

1. Authority

This Section is enacted in accordance with the provisions of NH RSA 674:21 (Innovative Land Use Controls) and NH RSA 674: 16-20.

2. Purpose

The purpose of this Open Space Development Section is to further the recommendations of the Salisbury Master Plan by encouraging flexibility in the design and development of land to preserve open space and traditional rural character, retaining and protecting important natural, scenic and historic resources, providing for more efficient use of land and town services, and promoting the development of balanced residential communities in harmony with the natural landscape.

3. Objectives

Open Space Development (OSD) will promote the following objectives:

- a. Maintain rural character through preservation farmland, forests and rural viewsapes and encouraging residential development that is sited in harmony with the environment and promotes a sense of neighborhood.
- b. Preserve those areas of the site that have high environmental or ecological value such as wildlife habitat (as identified in the Salisbury Master Plan and areas of high quality habitat as based on NH Fish and Game’s Wildlife Action Plan) and significant water resource value such as critical watersheds, wetlands, streams and rivers.
- c. Provide for alternative housing opportunities.
- d. Minimize impact of development sprawl by reducing potential for consecutive lot development on major roadways.
- e. Locate buildings and structures on those portions of the site that are the most appropriate for development and avoiding developing in areas not suitable for development such as hydric soil conditions, areas subject to flooding and steep slopes.
- f. Preserve historic, archeological, and cultural features located on the site.
- g. Create a permanently protected contiguous network of open spaces or “greenways” by linking the common open spaces within the open space subdivision and to open space on adjoining lands wherever possible.

- h. Reduce the amount of roads, sidewalks, and stormwater management structures that must be built and maintained.
- i. Preserve undeveloped frontage along existing roads, protecting transportation corridors from encroachment of structures.

4. Definitions

For purposes of this Article, the following terms are defined as follows:

- a. Applicant: The owner of land proposed to be subdivided or his representative.
- b. Landscape Buffer: Land area within which adequate vegetation is maintained or provided to visibly separate or screen one use from another and/or to minimize potentially negative impacts on surrounding areas.
- c. Common Area: Land within or related to a development, exclusive of land dedicated as designated open space, not individually owned, which is designed and intended for the common use or enjoyment of the residents of the development and/or the town and may include such complementary structures and improvements as are necessary, appropriate and approved by the Planning Board.
- d. Conservation Easement: A permanent legal restriction against future development and other activities as specified in the conservation easement deed. An easement may be worded to permit or restrict public access, allow or disallow recreational uses, allow or disallow other uses, such as limited development, agriculture, or forestry. Easements are tied to the title of the land, regardless of subsequent ownership and runs with the land in perpetuity.
- e. Designated Open Space: Reserved land that is permanently protected from further development and remains in a natural condition or is managed according to an approved management plan for natural resource functions, e.g., forestry, agriculture, habitat protection, passive recreation, or limited uses as approved by the Planning Board under this ordinance as part of an open space subdivision.
- f. Homeowners Association: A private corporation, association, or other legal entity organized in accordance with state law and established by the applicant or the member individuals for the benefit and enjoyment of its members, including oversight and management of common open space, designated open space, and/or shared facilities.
- g. Open Space Subdivision: An alternative form of residential development where, instead of subdividing an entire tract into lots of conventional size pursuant to the underlying Zoning District within which the proposed development tract, a similar number of housing units are arranged on lots of reduced dimensions, with the remaining area of the parcel permanently protected as designated open space.
- h. Parent Parcel: Any lot existing as of March 9, 2010, the date of the adoption of this ordinance.

5. Applicability

- a. In furtherance of the goals of the Salisbury Master Plan, any subdivision for residential use that is proposed on a parent parcel within the Agricultural and Residential Zoning Districts of 20 or more acres may be considered for the OSD Option.

- b. Authorization to Issue a Conditional Use Permit:

Notwithstanding other provisions of Salisbury's zoning ordinance, authority is hereby granted to the Planning Board, as allowed under RSA 674:21, II, to issue a Conditional Use Permit to modify the requirements of this section as follows:

- 1) such modifications shall be consistent with the purposes and objectives of this section;
 - 2) all lots comply with the NH Department of Environmental Services for subsurface wastewater management;
 - 3) fall within the standards contained herein, and
 - 4) shall not be detrimental to public health, safety or welfare.
- c. Sequential Subdivisions: The provisions of this ordinance shall apply to the sequenced development of a parent parcel over time through separate successive applications. When a subdivision is proposed that involves part of a larger parcel or includes lots that are capable of further subdivision, the Planning Board may require that a site inventory and a conceptual (non-binding) long-range plan be submitted for the entire parcel and used to evaluate the proposed subdivision.
 - d. Review Process: A subdivision application under this section shall comply with the application and review process specified in the Subdivision Regulations. If there are any conflicts, the provisions of this article shall apply.
 - e. Legal Review: Prior to final approval by the planning board, the applicant shall submit for review by the town counsel any deeds, restrictive covenants, condominium or cooperative agreements, conservation easement, deed restrictions, or other legal agreements proposed for use in the open space subdivision. The town counsel shall advise the Planning Board of the adequacy of such legal provisions. The applicant shall pay all associated costs of the legal review.

6. Permitted Uses

Land within an OSD subdivision may be used for the following purposes:

- a. Single family and duplex residential dwellings, accessory uses and buildings, and minor home occupations as permitted in the zoning district in which the parcel lies.

- b. Uses permitted within the Designated Open Space as described in Section 10 of this Article.

7. Development Density

The total number of dwelling units allowed in an Open Space Subdivision shall not exceed the number of dwellings that would be allowed under a conventional subdivision for the zoning district in which the site is located. In no case shall the density exceed the soils carrying capacity to accommodate a septic system for each dwelling unit as required by the NH DES consistent with RSA 485A:38.

The allowable number of units will be derived from a submission by the applicant of a yield plan. A Yield Plan is a plan for a conventional subdivision for the subject property which complies with the requirements for a conventional subdivision.

8. Procedural Requirements

- a. Except as expressly modified by this section, an Open Space Development Subdivision application under this section shall comply with applicable provisions and the application and review process specified in the Subdivision Regulations.
- b. Prior to the granting of any approval the applicant shall show to the satisfaction of the Planning Board that the proposed development pursuant to this Article X:
 - 1. Meets one or more of the objectives set forth under subsection 3. Of this Article X;
 - 2. That the proposal provides a benefit to both the prospective homeowners and the general public of the Town of Salisbury; and
 - 3. That the benefit of the proposal outweigh any detriments and that the latter, if any, shall not have a negative impact on the community.

9. Lot and Dimensional Requirements

- a. Open Space Developments are subject to the following lot, dimensional and building separation requirements.

Dimension	Residential & Agricultural District
Minimum Lot Area	30,000
Maximum Lot Area	150% ¹
Frontage	100 ft
Front Yard	35 ft
Side Yard	25 ft
Rear Yard	25 ft
Height	35 ft
Minimum Separation Between Buildings--Existing	50 ft
Minimum Separation Between Buildings—New Lots	40 ft

Note:

Unless otherwise required by NH DES for the OSD minimum lot size.

- b. Alternative Lot Sizing: The Planning Board may authorize variations from the minimum lot sizes specified above by Conditional Use Permit, provided the Planning Board determines that the following conditions are met:
 - All lots comply with the New Hampshire Department of Environmental Services requirements for subsurface wastewater management (developments may utilize individual or community wells and/or septic systems); and
 - The objectives and design standards of this article and the Subdivision Regulations are otherwise achieved.
- c. Applicants are encouraged to vary lot sizes, lot dimensions, and the location of building envelopes and structures from the access road and from lot to lot within the subdivision to retain significant, natural vegetation along the access road or existing adjacent public road; provide increased privacy for residents on adjacent lots; and increase the visual variety provided by the arrangement of homes within the subdivision.
- d. Lots may be irregular in size and shape provided they conform to the natural topography and features of the parcel (e.g., the lot lines follow an existing stone wall, stream, or other natural dividing feature).
- e. The Planning Board may authorize variations from the above standards, except for any requirement provided by state regulation or mandated elsewhere in this ordinance, by up to 25 percent by a Conditional Use Permit issued pursuant to Section 5 for the purpose of providing flexibility in the design of the subdivision to meet the objectives of this section.
- f. Driveways—Common driveway providing access to two residential lots shall be allowed.
- g. Landscape Buffer—An Open Space Development shall have a buffer of no less than 100 feet between abutting land uses and the development and a buffer up to 150 feet but no less than 100 feet between any new structure and an existing public road to retain the community’s rural character. The buffer area shall remain free of buildings and whenever possible, the natural vegetation shall remain. The Board may require vegetative plantings to supplement or replace inadequate natural buffers. Only the primary access road may be permitted in the landscape buffer.
- h. Design Standards for Developed Areas--Subdivision plans shall comply with any additional applicable standards governing the location and layout of lots and structures found elsewhere in this ordinance and as set forth in the Subdivision Regulations.

10. Permissible Uses of Open Space

- a. The total area of Designated Open Space shall equal at least 50 percent of the Open Space Development's gross tract area. Not more than 50 percent of the Designated Open Space may consist of non-buildable areas. Such Designated Open Space shall consist of as much contiguous area as possible.
- b. The following shall not count toward the calculation of the Designated Open Space. Portions of the parcel that comprise part of:
 - an individual house lot,
 - roadway,
 - driveway,
 - access road,
 - roadway right-of-way,
 - other new or existing right-of-way,
 - utility easement,
 - private or community leach fields or
 - other components of a wastewater management system,
 - storm water management structures,
 - or parts of a required buffer between any new structure and an existing right-of-way
- c. The following uses generally are permitted in the Designated Open Space, unless specifically prohibited or restricted as a condition of subdivision approval for the purposes of protecting important natural features or characteristics of the parcel:
 - 1) Forest management activities and agricultural cultivation and pastures provided that all applicable best management practices are employed.
 - 2) Passive (non-motorized) trails and recreational uses such as walking, hiking, bird watching, skiing and snow shoeing.
 - 3) Snowmobile trails.
 - 4) Horseback Riding and Cycling.
- d. Up to 50 percent of the Designated Open Space may be considered the Common Area and may be permitted by Conditional Use Permit to be used for the following. The Planning Board may impose specific criteria or restrictions on such uses as deemed necessary to support the goals of this section:
 - 1) Agriculture involving animal husbandry and/or boarding.
 - 2) Active outdoor recreation uses, including formal playgrounds and fields.
 - 3) Parking areas for access to the designated open space.
 - 4) Individual or community wells provided that this use was approved as part of the subdivision plan and that appropriate legal arrangements are established and approved by the Planning Board for the maintenance and operation of these facilities.
- e. The removal of soil, trees and other natural features from the designated open space is prohibited, except as consistent with conservation objectives or permitted uses as provided above.

- f. The Designated Open Space shall be retained in a natural, undisturbed state, except for those activities permitted and approved as provided above, or as required for active management according to a conservation agreement and management plan written by a qualified natural resource professional.

11. Protection and Management of Open Space

At the developer's option and subject to approval by the Planning Board, all areas to be protected as open space shall be:

- a. Conveyed to the town to be placed under the care, custody and control of the Conservation Commission, and be accepted by it for a park or open space use. Land conveyed to the town shall be open for public use; and/or
- b. Conveyed to a non-profit organization, the principal purpose of which is the conservation or preservation of open space, with a conservation restriction as specified in §3 below. Such organization shall be acceptable to the town as a bona fide conservation organization; and/or
- c. Conveyed to a corporation or trust owned or to be owned by the owners of lots or residential units within the development (i.e. "homeowners association") and placed under conservation restriction. If such a corporation or trust is used, as indicated herein, ownership thereof shall pass with conveyance of the lots or residential units. The developer is responsible for the maintenance of the open space and other facilities to be held in common until such time as the homeowners association is capable of assuming such responsibility. Thereafter, the members of the association shall share the cost of maintaining the open space. The Planning Board shall require the applicant to provide documentation that the homeowner's association is an automatic (mandatory) association that has been established prior to the conveyance of any lots within the subdivision.
- d. Design Guidelines for Designated Open Space. The location and layout of the open space shall conform to the standards and process set forth in the Subdivision Regulations.

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