

DRAFT FOR 12-21-2020 PLANNING BOARD 1st ZONING PUBLIC HEARING

ARTICLE XV RESIDENTIAL OPEN SPACE SUBDIVISION BY SPECIAL PERMIT

RESIDENTIAL OPEN SPACE SUBDIVISION:

Pursuant to RSA 674:21, Innovative Land Use, the Planning Board is hereby authorized to grant a Special Permit to allow for an OPEN SPACE SUBDIVISION, in accordance with the restrictions and requirements of this article. The Planning Board is further authorized to adopt amendments to the Subdivision Regulations to administer the requirements of this Ordinance.

307-93 Purpose and Intent

Among the goals of this Open Space Subdivision Ordinance is to promote the conservation of undeveloped land and to limit the length of new roads to minimize the impact of their future and ongoing maintenance. Special Permits shall be administered by the Planning Board to ensure that Open Space Subdivision opportunities will not adversely impact neighboring properties, town citizens, or the Town of Pelham. The Planning Board shall consider the following purposes during its review of individual applications:

- A. to maintain and preserve the rural character of the Town of Pelham;
- B. to provide an alternative option for landowners to conserve open space from development while minimizing impacts on environmental resources (such as wetlands, floodplain, and steep slopes) and disturbance of natural or cultural features (such as mature woodlands, hedgerows and tree lines, critical wildlife habitats, historic buildings, and fieldstone walls);
- C. to provide for connected corridors of open land throughout town for the protection of wildlife habitats, environmental resources, and public enjoyment of such corridors for recreational and aesthetic purposes. It is the intent of this ordinance that large blocks of open space resulting from Open Space Subdivisions, particularly those that contribute to trail connectivity and wildlife corridors **may** be offered to the Town of Pelham whenever possible if the gift of open space land is recommended by the Conservation Commission. The Board of Selectmen may vote to accept the open space parcel(s) for the expansion of Town-owned conservation land. Any such open space not offered to or accepted by the Town shall be maintained as open space in perpetuity as described in 307-97 of this ordinance;
- D. to conserve scenic views, unique and aesthetic elements of the town's character while minimizing views of new development from existing roads;
- E. to provide design flexibility and efficiency in the establishment of services and infrastructure, including the opportunity to reduce road lengths, utility runs, and the amount of paving required for residential development;
- F. to reduce erosion and sedimentation by retaining existing vegetation;
- G. to provide for a diversity of lot sizes, building orientation, and proximity in the physical placement of homes while minimizing confusion over issues of property ownership;

307-94 Special Permit

All Open Space Subdivisions shall obtain a special permit from the Planning Board. The special permit shall set forth all conditions of approval and shall list all plans, drawings, and other submittals that are requisite elements of each application. Everything on a plan or submittal that is listed on the special permit shall be considered conditions of approval of a Pelham Open Space Subdivision Application under this innovative land use zoning ordinance. Development shall not deviate from the stated conditions

without first obtaining approval of such modification from the Planning Board or from their designated agent.

307-95 Application Procedure

All applicants shall submit a conventional subdivision yield plan and preliminary Open Space Subdivision plan to the Planning Board as the first step in an Open Space Subdivision application. Once the Planning Board accepts the Yield Plan and Preliminary Open Space Subdivision Plan for consideration it will refer the plans to its Engineering Consultant for review and to the Conservation Commission who shall meet with the Applicant at a publicly noticed Conservation Commission meeting to review the plans. The Conservation Commission will provide a subsequent written assessment and recommendations to the Planning Board. After the yield plan has been approved an application for special permit for an Open Space Subdivision shall be made in accordance with the procedures set forth in the relevant sections of the Subdivision Regulations of the Pelham Planning Board.

307-96 Consideration of Applications

Under its authority over Innovative Land Use (RSA 674:21) the Planning Board may ultimately condition its approval on reasonable conditions necessary to accomplish the objectives of this ordinance, including but not limited to required frontage, setbacks, or any other requirement the Planning Board deems necessary to accomplish said objectives.

307-97 Special Permit Review [Amended 3/8/16 ATM, Art. 3]

When reviewing requests for Special Permits the Planning Board may require the establishment of a Homeowner's Association to fund, maintain and protect the Open Space and common areas including private roads, sidewalks, buildings and utility facilities. Every development shall provide the Planning Board with easements, covenants, or deed restrictions, which shall provide for the perpetual continuation of the Open Space and common areas. Said easements, covenants, or deed restrictions shall apply to all units, shall be reviewed by qualified legal counsel on behalf of the town (at the applicant's expense) and shall be approved by the Planning Board prior to the issuance of any final approval.

307-98 Definitions

The following definitions apply specifically to this Article of the Zoning Ordinance:

Common Area: Any parcel or area of land and/or area of water set aside as a part of an Open Space Subdivision plan. A common area is designed for the benefit and enjoyment of the residents of an Open Space Subdivision. These areas may contain accessory structures and improvements necessary and appropriate for the educational, recreational, cultural, social or other non-commercial/non-residential / non-industrial uses, plus any utility services utilized by the owners of the common area.

Conservation Easement. A legal agreement between a landowner and a land trust or government agency that permanently limits uses of land to protect its conservation values.

Homeowners' Association: A private, non-profit corporation, association, or other non-profit legal entity established by the developer for the benefit and enjoyment of the residents of the Open Space Subdivision. Membership in said association shall be mandatory for property owners and made a required covenant in any deed issued or passed. It shall provide voting and use rights in the common area, when applicable and may charge dues to cover expenses which may include tax liabilities of the common area, recreational or utility facilities. Articles of association and or incorporation must be acceptable to the Planning Board and reviewed by Town Counsel at the applicant's expense.

Yield Plan: The Yield Plan is the design, acceptable to the Planning Board, showing the number of lots that could be approvable and buildable following the requirements of conventional zoning and subdivision regulations. The Yield Plan provides the baseline buildable lot count that shall not be exceeded in the final plan approved by the Planning Board.

307-99 Strict Adherence

Strict adherence to these provisions shall not be construed as establishing a legal right to a special permit for a Open Space Subdivision.

307-100 Parcel Requirements

Fifteen (15) acres is the minimum size for an Open Space Subdivision development. The minimum frontage for the development shall be a continuous one hundred (100) feet and of sufficient length to provide safe access for a right-of-way of at least fifty (50) feet. At least one access shall be within the minimum frontage. The minimum frontage and access shall be within the Town of Pelham. If, however, the subject parcel has only fifty (50) feet of frontage and was legally created prior to the date of adoption of this ordinance under ordinances and regulations that required at least a fifty (50) feet minimum right-of-way, fifty (50) feet shall be the minimum required frontage for such pre-existing lots. Frontage lands on roads existing at the time of application shall be preserved as buffers to the maximum extent possible in addition to all required setbacks.

307-101 Density

The maximum density for Open Space Subdivisions shall be determined by use of a yield plan. The Planning Board shall adopt subdivision regulations that provide for the generation of a yield plan in accordance with this section. After review of the yield plan the Planning Board shall determine whether the established density meets the Open Space Subdivision regulations. The Board may, at its discretion, and at the developer's expense, require additional engineering or engineering review.

307-102 Lot clearing

To limit unnecessary tree cutting and to prevent clear-cutting and its negative impacts to abutting properties, no Open Space subdivision application shall be considered by the Planning Board within 5 years of any cutting operation that required an intent-to-cut approved by the Pelham Board of Selectmen. The intent of this section is not to regulate timber harvesting operations, rather to insure there are enough remaining trees to contribute to a well-designed subdivision.

307-103 Standards for Approval

All standards below must be met or impacts mitigated to the satisfaction of the Planning Board prior to the granting of a Special Permit:

- A. the permit shall be in compliance with this ordinance or any variance that may be granted there from;
- B. impacts to existing neighborhoods shall not exceed a conventional subdivision;
- C. the Planning Board shall verify the following aspects of the surrounding area:
 - 1. Transportation: Assessment through analysis of the following:
 - a. access for emergency vehicles onto the site, within the site, and to individual houses;
 - b. capacity of nearby and affected intersections, and transportation corridors;

- c. no additional cost for the town to maintain roadways over a conventional subdivision;
 - d. layout, width, and construction of roadways on the site.
- 2. Protection of Natural and Historic Resources: Assessment through analysis of the following:
 - protection of environmentally sensitive areas, including but not limited to, wetlands, shore land buffers, wildlife corridors, significant groundwater resources, etc;
 - protection of viewsheds, stone walls and other visually appealing aspects of the site;
 - protection of historic buildings and significant historical landscapes;
- 3. Protection of existing trail systems;
- D. the granting of the permit shall not result in municipal expense that is in excess of that which is necessary for conventional subdivision development;
- E. existing or planned community facilities and services (including streets and highways) shall not be impacted more than would occur in a conventional subdivision development;
- F. landscaping or other appropriate buffers of sufficient opacity and materials shall be required if deemed necessary for the welfare of neighboring properties or the Town.

307-104 Subdivision Regulations

The Planning Board shall adopt sections of the Subdivision Regulations not preempted by this ordinance which shall apply to the Open Space Subdivision, including the right to waive such regulations. Where not specifically pre-empted by the provisions of this ordinance, the requirement that is more restrictive shall apply.

307-105 Minimum Open Space Requirements

The Planning Board shall adopt Subdivision regulations in consultation with the Conservation Commission that specify the criteria for Open Space based on the following standards:

- A. a minimum of forty percent (40%) of the total land in the parcel must be dedicated as open space and a minimum of fifty percent (50%) of the open space must be uplands (not wetland soil types);
- B. the minimum required open space is land not to be built upon except that up to twenty-five percent (25%) of the open space may include recreational facilities, and water supply facilities, and drainage structures, but no more than 10% of the open space may accommodate stormwater treatment infrastructure.
- C. the dedicated Open Space shall be protected in perpetuity through deed restriction or conservation easement and designated on the approved and recorded plan. The open space cannot be subjected to current use taxation or discretionary easements;
- D. the open space and/or common area within an Open Space Subdivision shall be owned and bound by one or more of the following:
 - 1. a Homeowners' Association, Condominium Association or Planned Urban Development (PUD);
 - 2. a Public Body;
 - 3. a Private Entity (e.g. Land Trust, Society for the Protection of NH Forests, the Nature Conservancy, etc.)

Any such designation or combination of designations must be made prior to approval of the subdivision by the Planning Board.

307-106 General Requirements

- A. Only single family detached residential units shall be permitted.
- B. The minimum building lot size is thirty-thousand square feet (30,000 sf). The Planning Board may require larger lot sizes if soil types and depths to seasonal high-water table or ledge do not support lots as small as 30,000 square feet.
- C. Setbacks and Other Dimensions:
 - 1. The following road frontage requirements shall apply:
 - a. A minimum of one-hundred twenty-five (125) feet of frontage for each building lot on interior roadways;
 - b. A minimum of two-hundred (200) feet for each lot or unit proposed along an existing town or state road. Such "frontage" lots are also required to be one (1) acre in land area with 35,000 square feet of contiguous non-wetland area as required in conventional zoning.
 - 2. All developments shall contain some form of lot or limited common area delineation or lines that designate the amount of land attributable to each unit.
 - 3. The following minimum setbacks shall apply to all residential structures within the development excluding existing historic buildings:
 - a. twenty-five (25) feet from exterior property lines of the initial Conversation Subdivision parcel;
 - b. thirty (30) feet from the right of way of roads;
 - c. fifteen (15) feet from side and rear lot lines of individual unit lots if applicable;
 - d. thirty (30) feet from any other residential unit within the development.
- D. All Open Space subdivisions proposing community well systems must demonstrate to the Planning Board's satisfaction that their Homeowner's documents prohibit property owners from drilling private irrigation wells.
- E. Roads constructed as part of an Open Space subdivision may be private roads.
- F. Existing trail connectivity must be protected. Should the trail need to be relocated, the relocated trail must remain within the limits of the initial subdivision and be constructed by the applicant. The relocated trail may be located within the open space or the setbacks at the discretion of the Planning Board but its location must be determined as part of the Planning Board's approval and depicted on the recordable plan with any required easements recorded.

307-107 Expiration

Any Special Permit shall expire if there has not been active and substantial development or construction on the site by the owner or the owner's successor in interest in accordance with the approved plan within twelve (12) months after the date of approval. As part of its approval of a plan, the Planning Board may, with due regard to the scope and details of a particular project, specify the threshold level of work which

shall constitute "active and substantial development or construction" for purposes of complying with this paragraph.

307-108 Conditions

The Planning Board may impose stricter standards than allowed by this Article if it should determine that an adverse impact would result from the Open Space Subdivision.

307-109 Savings Clause

If any provision of this ordinance is found to be invalid or unenforceable such a result shall not be construed to invalidate the remainder of the ordinance which shall remain in full force and effect.