

TOWN OF HOPKINTON  
ZONING BYLAW

**ARTICLE XVII**

**Open Space and Landscape Preservation Development**  
[Added 4-15-1988 ATM, Art. 48; amended 4-11-1989 ATM,  
Art. 19; 6-11-1990 ATM, Art. 23; 5-4-1993 ATM, Art. 21;  
5-3-1994 ATM, Art. 25; 5-1-1995 ATM, Arts. 32 and 33;

5-2-2000 ATM, Art. 34; 5-5-2003 ATM, Art. 24;  
5-2-2005 ATM, Art. 27; 5-1-2006 ATM, Art. 35; 5-7-2007 ATM, Arts. 25 and 26]

**§ 210-106. Purpose.** [Amended 5-1-2006 ATM, Art. 35]

As an alternative to a conventional subdivision and in order to provide for the public interest by the preservation of open space and natural and historic landscape features in perpetuity and to promote variety in single-family residential housing patterns by encouraging development which is designed to accommodate a site's physical characteristics, such as topography, vegetation, water bodies, wetlands, open spaces, such as farmlands and meadows, historic resources major scenic views and wildlife habitats, the following regulations are established. It is not the intent of this article to make undevelopable land developable or to permit an increase in the number of building lots that would otherwise be possible on a conventional plan but rather to encourage the preservation of important site features.

**§ 210-107. Applicability.** [Amended 5-3-1994 ATM, Art. 25]

Open space and landscape preservation development shall be allowed within Residence B, Residence Lake Front and Agricultural A zoning districts, subject to the requirements of this Chapter for those districts, and in accordance with the additional requirements specified herein.

**§ 210-108. General requirements.** [Amended 5-2-2000 ATM, Art. 34]

- A. Any parcel of land located within a zone permitting open space and landscape preservation development containing 10 or more acres, or five or more acres if located adjacent to permanent open space which will be expanded by the proposed plan, and which may be developed as a conventional subdivision, may be considered for an open space and landscape preservation development subject to a special permit issued by the Planning Board.
- B. After an open space and landscape preservation development application has been submitted, no tree removal, no utility installation, no ditching, grading or construction of roads, no grading of land or lots, no excavation except for purposes of soil testing, no dredging or filling and no construction of buildings or structures shall be done on any part of the development site until the application has been reviewed and approved as provided by these regulations.

**§ 210-109. Permitted uses.**

Permitted uses shall be as follows:

- A. Detached single-family dwellings, as defined, including all accessory uses as permitted in this Chapter for the district in which the land lies.
- B. Uses permitted within the common open space as described in these regulations.
- C. Recreational facilities consistent with open space and landscape preservation development purposes.

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**§ 210-110. Minimum requirements. [Amended 5-3-1994 ATM, Art. 25; 5-2-2000 ATM, Art. 34]**

- A. Size: The total area of the tract proposed for open space and landscape preservation development shall be at least 10 acres.
- B. Density: The total number of building lots on the tract proposed for open space and landscape preservation development shall be calculated using the following equations. The resulting number of lots shall be a guide, and the total number of lots shall be determined by the Board using the following as guidelines:
- (1) Conventional subdivision plan submitted by the applicant.
  - (2) Information provided by the applicant indicating the development potential of the land.
  - (3) The following equation. The variables for total parcel area and wetlands shall be entered in square feet. When the total number of lots calculated by the equation results in a fraction, the total number of lots shall be rounded down.

(a) In Residence B and Residence-Lake Front Districts:

$$\text{Total Number of Lots} = \frac{\text{Total Parcel Area} - (.5X \text{ Wetlands}) - (.1X \text{ Total Parcel Area})}{45,000}$$

(b) In the Agricultural District:

$$\text{Total Number of Lots} = \frac{\text{Total Parcel Area} - (.5X \text{ Wetlands}) - (.1X \text{ Total Parcel Area})}{60,000}$$

**§ 210-111. Intensity regulations. [Amended 5-1-2006 ATM, Art. 35]**

The Planning Board may grant a reduction of all intensity regulations of the underlying zoning regulations for all portions of an open space and landscape preservation development if the Planning Board finds that such reduction will result in better design, improved protection of historic, natural and scenic resources and will otherwise comply with these regulations, provided that in no instance shall any lot deviate from the following Table of Minimum Requirements.

**TABLE OF MINIMUM REQUIREMENTS**  
**[Amended 5-3-1994 ATM, Art. 25; 5-2-2000 ATM, Art. 34;**  
**5-5-2003 ATM, Art. 24; 5-2-2005 ATM, Art. 27]**

|                                   | Zoning Districts |              |                      |
|-----------------------------------|------------------|--------------|----------------------|
|                                   | Residence B      | Agricultural | Residence-Lake Front |
| Minimum area (square feet)        | 25,000           | 30,000       | 30,000               |
| Minimum frontage (feet)           | 75               | 100          | 100                  |
| Minimum front yard setback (feet) | 40               | 50           | 30                   |
| Minimum side yard setback (feet)  | 20               | 20           | 20                   |
| Minimum rear yard setback (feet)  | 20               | 20           | 20                   |

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- A. The lot frontage depth requirement contained in this Chapter, Article I, § 210-4, Definitions, definition of "lot frontage," may be waived by the Planning Board in order to achieve the purposes of this article.
- B. Dead-end streets may be permitted in an open space and landscape preservation development but shall not exceed 1,000 feet in length. No dead-end street shall provide access to more than 10 building lots.
- C. Common driveways may be permitted in an open space and landscape preservation development, provided that each common drive serves no more than two lots. The requirement in this Zoning Bylaw that a driveway providing the principal access to a lot be across the designated frontage of the lot shall not apply when a common driveway is to be utilized in an open space and landscape preservation development; provided, however, that the common driveway must cross the designated frontage of one of the lots it serves.

**§ 210-112. Development standards. [Amended 5-1-2006 ATM, Art. 35]**

- A. Concept plan standards. Prior to the issuance of a special permit for an open space and landscape preservation development, the applicant shall submit the information necessary to demonstrate that the following standards have been met:
  - (1) The development will not cause unreasonable traffic congestion or unsafe conditions both within and outside of the development.
  - (2) The development will provide for and maintain convenient and safe emergency vehicle access to all buildings and structures at all times.
  - (3) The site design shall preserve and, where possible, enhance the historic and natural features of the property, including scenic views, by adapting the location and placement of structures and ways to the existing topography in order to minimize the amount of soil removal, tree cutting and general disturbance to the landscape and surrounding properties.
  - (4) The site design shall identify and ensure preservation of significant and special historic and natural features.
- B. Definitive plan standards. Prior to the approval of a definitive plan based upon the open space and landscape preservation concept plan, the applicant shall submit the information necessary to demonstrate that the following standards have been met. These standards are in addition to the requirements of the Hopkinton Subdivision Rules and Regulations and are in no way intended to replace any portion of those regulations.
  - (1) The nature of the soils and subsoils shall be suited for the intended purposes based upon the Soil Conservation Guidelines. This determination shall focus upon but shall not be limited to the locations, design and construction of roadways, buildings and surface water drainage systems. Soil borings or test pits may be made to provide information on soil texture, color, percolation rates and depth to the groundwater table at its maximum elevation.
  - (2) Anticipated storm water runoff from the site shall not exceed peak runoff from the site prior to development. The applicant shall submit formal drainage calculations by a registered professional engineer for this purpose.

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- (3) Proper soil erosion and sedimentation control measures shall be employed to prevent sedimentation and siltation of existing surface water bodies and wetlands. In areas where the land slopes downward toward any surface water body or fresh water wetland, proposed filling, cutting, clearing or grading shall be minimized and all such development activities shall be carried out in such a way as to retain the natural vegetation and topography wherever possible. The Planning Board may require that an erosion and sedimentation control plan be submitted if significant erosion is anticipated in slope areas.

**§ 210-113. Open space use and design standards.**

- A. Within an open space and landscape preservation development, no less than 50% of the land area shall be devoted to common open space. The common open space shall not include land set aside for roads and/or parking uses. The Planning Board may reduce the common open space requirement to 30%, if it is demonstrated that a minimum lot area of 45,000 square feet is required because of soils and topographical conditions. No more than 50% of the common open space shall contain wetlands as defined by MGL c. 131, § 40.
- B. The common open space shall be designed and maintained in accordance with the following standards:
- (1) Areas to remain as naturally existing woods, fields, meadows and wetlands shall be maintained and may be improved in accordance with good conservation practices.
  - (2) Common open space shall be planned as large, contiguous units wherever possible. Strips of narrow parcels of common open space shall be permitted only when necessary for access or as vegetated buffers along the site's perimeter.
  - (3) Common open space may be in more than one parcel, provided that the size, shape and location of such parcels are suitable for the designated uses.
  - (4) No more than 20% of the common open space shall be covered by man-made impervious surfaces.
  - (5) Common open space may be used for active and passive recreation, conservation, forestry, agriculture, natural buffers, structures necessary for approved uses, utilities and other facilities necessary for the convenience and enjoyment of the residents, subject to approval by the Planning Board.
  - (6) If detention and/or retention ponds are necessary for the construction of the improvements shown on the subdivision plan, such detention and/or retention ponds shall not be located within the common open space shown on such plan. The Planning Board may waive this requirement if the Board finds that the integrity and significance of the open space and the benefit of the open space to the Town are not compromised, and that the open space created conforms with the intent and purpose of this article. In no case, however, shall permanent clearing for drainage improvements or utilities, including detention and/or retention ponds, exceed 5% of any common open space parcel. **[Added 5-1-1995, ATM, Art. 32]**
- C. Buffer areas.
- (1) There shall be a buffer at the perimeter of the site consisting of trees, shrubs, vegetation and topographic features sufficient to separate and/or screen the development from abutting properties. This buffer shall be no less than 100 feet in width. The buffer shall be

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considered common open space. Upon a finding by the Planning Board that a buffer of lesser width would be sufficient to screen and/or separate the development from adjacent property, the buffer may be reduced. If, however, the perimeter of the site abuts a Business (B), Downtown Business (BD), Rural Business (BR) or Industrial A (IA) or Industrial B (IB) zoning district, the Planning Board may require the buffer area abutting a B, BR, IA or IB District to be greater than 100 feet in order to ensure adequate separation and/or screening from the abutting commercial zoning districts. **[Amended 5-7-2007 ATM, Art. 25 and Art. 26, 5-4-2009 ATM, Art. 25]**

- (2) The Board may require no-cut easements, conservation restrictions or the like where the buffer requirement has been reduced. These easements and restrictions shall be on private property, shall not be considered a buffer and shall not be included in common open space calculations.
- (3) Retention and/or detention ponds may be permitted in the buffer area upon approval of the Planning Board. Structures shall not be permitted in the buffer area. **[Amended 5-1-1995, ATM, Art. 32]**
- (4) Buffer areas shall remain in their current natural state. If in the opinion of the Planning Board the current natural state is insufficient to adequately separate and/or screen the site from abutting properties, additional trees, shrubs and/or plantings shall be required.

**§ 210-114. Common open space ownership and management. [Amended 5-1-1995 ATM, Art. 33; 5-2-2000 ATM, Art. 34]**

- A. Common open space in any open space and landscape preservation development shall be conveyed a) to the Town and may be accepted by it for park or open space use; b) a nonprofit corporation, the principal purpose of which is the conservation of open space; or c) a corporation or trust owned or to be owned by the owners of lots within the development. If a corporation or trust owned by the owners of lots is utilized, ownership thereof shall pass with the conveyances of the lots. In any case where such land is not conveyed to the town, a conservation restriction enforceable by the Town shall be recorded, which shall provide that such land shall be kept in an open or natural state and shall not be built upon for residential use or developed for accessory uses, such as parking or roadway.
- B. If the common open space is not to be conveyed to the town, then the applicant shall include, as part of the covenant, a provision that the common open space will be deeded as approved by the Planning Board. In addition, the covenant shall not be released until proof of ownership has been provided to the Planning Board.
- C. If the common open space is not to be conveyed to the town, the applicant for an open space and landscape preservation development special permit must include a program describing how the common open space will be maintained in perpetuity to standards satisfactory to the Planning Board. The applicant shall also provide as part of the common open space proposal an agreement empowering the Town to perform maintenance of the common open space in the event of failure to comply with the program included in the application pursuant to the preceding sentence, provided that, if the Town is required to perform any maintenance work, the owners of lots within the open space and landscape preservation development shall pay the cost thereof and that the cost shall constitute a lien upon their properties until said cost has been paid.
- D. The Planning Board may require that all or such part of the common open space as the Planning Board deems appropriate shall be clearly identified and marked on the ground prior to the commencement of any construction activity.

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**§ 210-115. Application and review process. [Amended 5-5-2003 ATM, Art. 24]**

The application process for an open space and landscape preservation development is comprised of two steps. In the first step, the applicant submits a concept plan, as outlined below, which describes the overall development plan. The Planning Board shall grant or deny a special permit based upon the information contained in the concept plan. If the special permit is granted, the applicant then submits a definitive plan, as described below, based upon the concept plan. The Planning Board then reviews the plan as a definitive subdivision plan. Two separate public hearings, one for the special permit and one for the definitive plan, must be held.

A. Concept plan.

- (1) The applicant for an open space and landscape preservation development special permit shall first submit 10 copies of a concept plan as outlined below. The applicant shall also submit a sketch plan at the same scale showing how development of the parcel would be achieved by a conventional subdivision plan, in accordance with all applicable land use regulations. All applications for a special permit under this section shall be referred by the Planning Board to the Board of Health, Conservation Commission and other board/agency/department for its review and comments within 14 days of its submission to the Planning Board. Any such board or agency to which applications are referred for comment shall make its recommendations and send copies thereof to the Planning Board and the applicant within 35 days of receipt of the referral request from the Planning Board or there shall be deemed to be no opposition or desire to comment. The Planning Board shall not act upon said special permit until either comments from referred boards or agencies have been received or said 35 days from the date of the referral request have elapsed, whichever is sooner. A public hearing shall be held in conformance with MGL, c. 40A, § 9.
- (2) Concept plan. All applicants for open space and landscape preservation development special permits shall submit a concept plan prepared by a professional landscape architect registered in Massachusetts. The concept plan shall contain the following information, in addition to the requirements of a preliminary plan as specified in the Hopkinton Subdivision Rules and Regulations, Section 5.2, and information sufficient to illustrate and establish that the concept plan standards and special permit criteria of this section have been met: **[Amended 5-4-2009 ATM, Art. 25]**
  - (a) Existing landscape features, such as steep topography, including a delineation of areas with slopes over 25%, wetlands, springs, lakes and ponds, streams, rock outcrops, boulder fields, stone walls, cliffs, forest glades, drumlins, high points, hilltops and ridges.
  - (b) Existing open areas, such as forests, farm fields, meadows and major long views.
  - (c) In the event the parcel includes previously disturbed land, the applicant shall include a reclamation plan.
- (3) Special permit criteria. The special permit shall be granted only if the Planning Board finds each of the following:
  - (a) The development meets the purpose of an open space and landscape preservation development as described in § 210-106.
  - (b) The development standards contained in § 210-112A(1) through (4) have been met.

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- (c) The common open space is designed in accordance with the standards set forth in § 210-113B.
- (d) The common open space is designed in accordance with the standards set forth in § 210-113C.
- (e) The parcel could be developed as a conventional subdivision under existing local, state and federal land use regulations.
- (f) The open space and landscape preservation development provides for efficient use and delivery of municipal and other services and infrastructure.

B. Definitive plan.

- (1) If the open space and landscape preservation development special permit is granted, the applicant shall submit a plan in conformity with the requirements and procedures for definitive plan submission and review under the Subdivision Rules and Regulations of the Planning Board. In accordance with MGL c. 41, § 81R, the applicant may request a waiver from the Subdivision Rules and Regulations if such action is in the public interest and consistent with the intent and purposes of this article, the Subdivision Control Law,<sup>1</sup> and the special permit. The Planning Board then shall review the aspects of the open space and landscape preservation development with regard to its compliance to the Subdivision Control Law, and hold a public hearing as required by MGL c. 41, § 81T. The overall concept shall only be reconsidered if there is substantial variation between the definitive plan and the concept plan. A substantial variation shall be defined as an increase in the number of lots, a decrease in the open space acreage, a change in the layout which causes dwelling units or roadways to be placed closer to a dwelling unit within 500 feet of the project and/or a change in the development pattern which adversely affects natural landscape features and open space. If the Planning Board finds that a substantial variation exists, it must hold a public hearing on the modifications of the concept plan.
- (2) The concept design review fee will be calculated as the preliminary plan design review fee in the Hopkinton Subdivision Rules and Regulations. The definitive plan design review fee will be calculated as the definitive design review fee in the Hopkinton Subdivision Rules and Regulations.

**§ 210-116. Duration of approval.**

Notwithstanding anything to the contrary within/without this article, any special permit granted by the Planning Board for an open space and landscape preservation development shall become void within two years from the date of issue, which two years shall not include time required to pursue or await determination of an appeal referred to in MGL c. 40A, § 17, unless any construction work contemplated thereby shall have commenced and proceeded in good faith continuously to completion, except for good cause. All open space shall be dedicated at the time the permit holder proceeds with construction under a building permit.

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<sup>1</sup>Editor's Note: See MGL c. 41, § 81K et seq.