

SECTION 11. Open Space Residential Development (OSRD)

A. Purpose. The purposes of this Section 11 “Open Space Residential Development” include: to encourage the preservation of open land for its scenic beauty; to enhance agricultural, open space, forestry, and recreational uses; to preserve historical and archeological resources; to protect the natural environment; to protect the value of real property; to promote more sensitive siting of buildings and better overall site planning; to perpetuate the appearance of Berkley's traditional New England landscape; to allow landowners a reasonable return on their investment; and to facilitate the construction and maintenance of streets, utilities, and public services in a more economical and efficient manner.

B. Applicability. Parcels of 10 (ten) acres or greater may proceed under this Section pursuant to the issuance of a special permit by the Planning Board. The OSRD special permit application is an option, not a required submittal. This special permit would allow for reduced lots and frontage requirements from the minimum lot dimensions required in standard subdivision submittal. The Planning Board with the consent of the applicant may combine this special permit application, hearings, meetings and decision a subdivision application to the extent permitted by law. Such special permits shall be acted upon in accordance with the following provisions, Town of Berkley Article 21 Section 6.C, and the Rules and Regulations adopted by the Planning Board in accordance with MGL. c. 40a, s. 9.

C. Procedures. Applicants for an Open Space Residential Development (OSRD) shall file with the Planning Board of the following:

1. An OSRD Plan designed in conformance with the process described in Article -21 Zoning, 11.C.3. Such a plan shall:
 - a. Conform to the requirements for a preliminary subdivision plan under the Subdivision Rules and Regulations of the Planning Board.
 - b. Indicate all local, state and federal agency regulatory resource boundaries and buffer zones and all wetland flag locations shall be numbered and placed upon the OSRD Plan.
 - c. Include, unless the development is to be sewerred, the results of deep soil test pits and percolation tests. The Planning Board shall refer data on proposed wastewater disposal and water to the Board of Health for their review and recommendation.
 - d. Include a table showing the requirements and proposed calculations to determine compliance of the OSRD as a whole with the requirements and standards of this Section.
2. The Planning Board may also require as part of the OSRD Plan any additional information necessary to make the determinations and assessments cited herein.
3. Schematic Drawings from the Four-Step Design Process. Each OSRD Plan shall follow a four-step design process, as described below. When the OSRD Plan is

submitted, applicants shall demonstrate to the Planning Board, through schematic drawings, that these four design steps were followed by their site designers in determining the layout of their proposed streets, house lots, and open space.

- a. *Designating the Open Space.* First, the open space is identified. The open space shall include, to the extent feasible, the most sensitive and noteworthy natural, scenic, and cultural resources on the property. Such items may include: specimen trees, stonewalls, unique habitats, distinctive vistas, wetlands and riverine areas, or areas of special conservation interest.
- b. *Location of House Sites.* Second, potential house sites are tentatively located. House sites should be located not closer than fifty (50) feet to wetlands.
- c. *Street and Lot Layout.* Third, align the proposed streets to provide vehicular access to each house in the most reasonable and economical way. When lots and access streets are laid out, they shall be located in a way that avoids or at least minimizes adverse impacts on open space. To the greatest extent practicable, wetland crossings and streets traversing existing slopes over 15% shall be strongly discouraged.
- d. *Lot Lines.* Fourth, draw in the lot lines. These are generally drawn midway between house locations, in a manner that meets the lot requirements in Section 11.D below.

D. Modification of Lot Requirements. The Planning Board may authorize modification through the special permit process of lot size, shape, and other bulk requirements for lots within an Open Space Residential Development, subject to the following limitations:

1. Lots having reduced area or frontage shall not have frontage on a street other than a street created through the Open Space Residential Development application, provided, however, that the Planning Board may waive this requirement where it is determined that such reduced lot(s) are consistent with existing development patterns in the neighborhood.
2. Each lot shall contain not less than thirty thousand (30,000) square feet of area, and have frontage of not less than one hundred (100) feet, except that up to 20% of lots may be lots with a minimum of eighty (80) feet of frontage as long as such lots contain not less than forty thousand (40,000) square feet of area. All lots shall at no point have less than eighty (80) feet of width.
3. Each lot shall have side and rear yards of at least fifteen (15) feet and front setback of at least thirty (30) feet.
4. The lots of an Open Space Residential Development shall contain a minimum of 25,000 sq.ft. of upland.

E. Number of Dwelling Units –Plan Submittal. The maximum number of dwelling units

allowed shall be equal to the number of lots which could reasonably be expected to be developed upon that parcel under a conventional plan in full conformance with all zoning, subdivision regulations, health regulations, wetlands regulations and other applicable requirements. The proponent shall have the burden of proof with regard to the design and engineering specifications for such conventional plan. A preliminary plan, with appropriate documentation, shall be submitted to demonstrate the allowable number of units.

F. Open Space Requirements. A minimum of 50% of the parcel shown on the OSRD Plan shall be contiguous open space and exclude required yards. Such open space may be separated by the road(s) constructed within the Open Space Residential Development. Not more than 25% of such open space shall be wetlands, as defined pursuant to MGL c. 131, s. 40.

1. The required open space shall be used for conservation, historic preservation, education, outdoor education, recreation, wildlife and plant habitat, aquifer recharge, park purposes, agriculture, horticulture, forestry, or for a combination of these uses, and shall be served by suitable access for such purposes. No commercial use shall be made of the required open space. The open space shall be arranged so as to achieve the preservation or other objective for which it is intended.
2. The required open space shall remain unbuilt upon, provided that up to ten percent (10%) of such open space may be paved or built upon for structures accessory to the dedicated use or uses of such open space, such as pedestrian walks, and bikepaths, and agriculture.
3. The open space shall be preserved in its natural state, insofar as practicable, by minimizing tree and soil removal. Any grade changes shall be in keeping with the general appearance of the neighboring developed areas. The orientation of the individual buildings sites shall be as to maintain maximum natural topography and cover. Topography, tree cover, and natural drainage ways shall be the determinants of road and lot configurations consistent with the four-step design process of Section **11 8.C** above.
4. Stormwater management systems serving the Open Space Residential Development may be located within the open space. Surface systems, such as retention and detention ponds, shall not qualify towards the minimum open space required.
5. Existing and proposed utility easements and other easements placed on the property prior to an OSRD subdivision submittal shall not be counted towards the minimum open space requirements.
6. Physical markers or barriers (such as planted trees, fences and or monuments) to define open space areas from active use areas or residential lots shall be required to identify trails, public areas and/ or protected areas.

7. Wastewater management shall take the form of septic systems installed on individually owned lots, with individual wells sited to meet state and local Board of Health regulations. Wells may be located within the required open space, with minimal disturbance to the vegetation. Where this preferred arrangement cannot be met, alternatives such as cluster septic designs or community wells can be proposed, in consultation with the Board of Health. In the case of such alternatives, the wastewater system(s) and/or well(s) may be located in the open space, when the Planning Board finds such arrangement will enhance the purpose of the OSRD. If any portion of the open space is used for the purpose of a community well or leaching area, the Planning Board shall require adequate assurances and covenants that such facilities shall be maintained by the lot owners within the OSRD.

8. The required open space shall be placed under a Conservation Restriction in accordance with the provisions of MGL. c. 184, s. 31-33 as amended.

9. The required open space shall, *at the Planning Board's election*, be conveyed to
 - a. a nonprofit organization, the principal purpose of which is the conservation of open space and any of the purposes for such open space set forth above;

 - b. the Town or its Conservation Commission;

 - c. a corporation or trust owned jointly or in common by the owners of lots within the Open Space Residential Development. If such corporation or trust is utilized, ownership thereof shall pass with conveyance of the lots in perpetuity. Maintenance of the open space and facilities shall be permanently guaranteed by such corporation or trust that shall provide for mandatory assessments for maintenance expenses to each lot. Each such trust or corporation shall be deemed to have assented to allow the Town to perform maintenance of the open space and facilities, if the trust or corporation fails to provide adequate maintenance, and shall grant the town an easement for this purpose. In such event, the town shall first provide fourteen (14) days written notice to the trust or corporation as to the inadequate maintenance, and, if the trust or corporation fails to complete such maintenance, the town may perform it. The owner of each lot shall be deemed to have assented to the town filing a lien against each lot in the development for the full cost of such maintenance, which liens shall be released upon payment to the town of same. Each individual deed, and the deed or trust or articles of incorporation, shall include provisions designed to effect these provisions. Documents creating such trust or corporation shall be submitted with the application to the Planning Board for approval, and shall thereafter be recorded in the Registry of Deeds. Said covenants shall be re-recorded every thirty years.

10. Any proposed open space, unless conveyed to the Town or its Conservation Commission, shall be subject to a recorded restriction enforceable by the Town,

providing that such land shall be perpetually kept in an open state, that it shall be preserved for exclusively conservation, agricultural, horticultural, educational, park or recreational purposes, and that it shall be maintained in a manner which will ensure its suitability for its intended purposes. Failure to maintain the open space in reasonable order and condition in accordance with the special permit, the planning Board may serve notice in writing upon such organization or upon the residents of the development setting forth the manner in which the organization has failed to maintain the open space in reasonable condition, shall contain a demand that such deficiencies of maintenance be cured within thirty (30) days thereof, and shall state the date and place of a public hearing thereon which shall be held within twenty (20) days of the notice. If the deficiencies set forth in the original notice or in modifications thereof, the Planning Board or agent of the board, in order to preserve the taxable values of the properties within the development and to prevent the open space from becoming a public nuisance, may enter upon said open space and maintain the same until the organization theretofore responsible for the maintenance of the open space demonstrates, to the Planning Board's approval, that they can adequately maintain the open space.

The covenants creating such organization shall further provide that the cost of maintenance, including all administrative costs, by the Town, the Board or agent shall be assessed against the properties within the development that have a right of enjoyment of the open space, and shall become a charge of said properties, and such a charge shall be paid by the owners of said properties within thirty (30) days after receipt of a statement therefore.

G. Buffer Areas. The OSRD plan shall provide a twenty-five (25) foot buffer to adjacent property lines. Buffer areas shall be retained in their natural vegetative state to the maximum extent feasible. Where conservation objectives, or other legitimate reasons consistent with the intent of this bylaw, prevent obtainment of the buffer in all pertinent areas, the Planning Board may approve variations.

H. Streets, Drainage, and Utilities. All streets and ways, whether public or private, drainage facilities, and utilities shall be designed and constructed in compliance with the Town of Berkley Rules and Regulations governing the Subdivision of Land. Variations shall be permitted by the Planning Board on a finding that the objectives of this section are better served with such variations.

I. Decision. The Planning Board may approve, approve with conditions, or deny an application for an Open Space Residential Development, after assessing whether the Open Space Residential Development better promotes the objectives herein than a conventional subdivision development. A denial of an OSRD special permit application does not restrict an applicant from applying for a standard subdivision.

J. Criteria for the Board's Decision.

No approval for an OSRD application shall be given unless in the opinion of the Planning

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Board, the application complies with the following criteria:

1. The proposed development shall, to the greatest extent possible, be compatible with respect to the objectives and recommendations of the Open Space and Recreation Plan.
2. The proposed development shall be consistent with the intent and purposes of this bylaw.
3. The portion of the parcel placed in open space shall, to the greatest extent possible, be that which is most valuable or productive as a natural resource, wildlife habitat, farmland, or forestry land.
4. The proposed development shall be designed and located in such a manner as to maintain and preserve natural topography, significant landmarks, and trees; to minimize cut and fill; and to preserve and enhance views and vistas on and off the subject parcel.
5. The required protected open space in the OSRD shall, to the greatest extent possible, be linked to any existing protected lands on adjacent parcels.

K. Relation to Other Requirements. The submittals and permits of this section shall be in addition to any other requirements of the Subdivision Control Law or any other provisions of this Zoning By-Law. To the extent permitted by law, the Planning Board shall coordinate the public hearing required for any application for a special permit for a Open Space Residential Development with the public hearing required for approval of a definitive subdivision plan.