

SECTION XX: Open Space Design Bylaw

Town of Rehoboth

1) Open Space Design Bylaw

- a) Purpose – The purposes of the Open Space Design Bylaw **Section XX** Open Space Design (OSD) include: to encourage the preservation of open land for its scenic beauty; to enhance agricultural, open space, and recreational uses; to preserve historical and archeological resources; to protect the groundwater resources and 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 Rehoboth’s traditional New England landscape. The Town wishes to encourage the use of OSD because open space design results in the preservation of contiguous open space and preserves important environmental resources, while allowing design flexibility, and to encourage the provision of diverse housing opportunities, especially housing that is affordable to Town residents.
- b) Applicability – Parcels of 10 acres or greater may proceed under this Section pursuant to the issuance of a special permit by the Planning Board. Such special permits shall be acted upon in accordance with the following provisions, Town of Rehoboth Zoning Bylaws **Article XX Section XX** and the Rules and Regulations adopted by the Planning Board in accordance with MGL. C. 40a, s. 9.
- c) Pre-Application Review – The applicant is strongly encouraged to request a pre-application review with the Town boards, commissions and staff. The purpose of this review is to outline the applicant’s preliminary plan and receive comments from the member of the town staff listed above so as to minimize the applicant’s costs for engineering and other technical experts that may arise throughout the development process.
- d) Procedures – Applicants for a Open Space Design special permit shall file with the Planning Board the following:
 - i) Number of Dwelling Units – Plan Submittal. The maximum number of dwelling units allowed shall be equal to the number of lots which could be reasonably expected to be developed upon that parcel under a conventional plan in full conformance with all zoning, subdivision regulations, health regulations, wetland 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.

- (1) Conform to the requirements for a preliminary subdivision plan under the Subdivision Rules and Regulations of the Planning Board.
 - (2) 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 Open Space Design plan.
 - (3) Include, unless the development is to be sewered, 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.
 - (4) Include a table showing the requirements and proposed calculations to determine compliance of the Open Space Design plan as a whole with the requirements and standards of this Section.
 - (5) Relation to Other Requirements – The submittals and permits of this section may 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 (bylaw) with the public hearing required for approval of a definitive subdivision plan.
- e) The Planning Board may also require as part of the Open Space Design plan any additional information necessary to make the determinations and assessments cited herein.
- f) Design Process - Schematic Drawings from the Four-Step Design Process. Each Open Space Design plan shall follow a four-step design process, as described below. When the OSD 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.
- i) *Designing 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, agricultural and cultural resources on the property. Such items may include: specimen trees, stonewalls, unique habitats, distinctive vistas, steep slopes, prime agricultural soils, isolated trees over ten (10) inch caliper, wetlands and riverine areas, rare and endangered species, or areas of special conservation interest.
 - ii) *Location of House Sites.* Second, potential house sites are tentatively located. The building site shall be located not closer than fifty (50) feet to wetlands.

Locate the appropriate sites of individual houses within the Potentially Developable Area and include the delineation of private yards and shared amenities, so as to reflect an integrated community. 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 determinants of road and lot configurations.

- iii) *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. (See Planning Board Rules and Regulations for reduced right of way (ROW) and street width requirements)
- iv) *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 1.g below.
- g) *Modification of Lot Requirements* – The Planning Board may authorize modification of lot size, shape, and other bulk requirements for lots within an Open Space Design plan, subject to the following limitations:
 - i) 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 thirty-five thousand (35,000) square feet of area. All lots shall at no point have less than eighty (80) feet of width.
 - ii) Each lot shall have side and rear yards of a least ten (10) feet and front setback of at least thirty (30) feet.
- h) *Open Space Requirements* – A minimum of forty (40%) within the Open Space Design 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 Design plan. Not more than 40% of such open space shall be wetlands, as defined pursuant to MGL c. 131, s. 40.
 - i) The required open space shall be used for conservation, historic preservation, education, outdoor education, recreation, wildlife and plant habitat, aquifer recharge and protection, park purposes, agriculture, horticulture or for a combination of these uses, and shall be served by suitable access for such purposes. The open space shall be arranged so as to achieve the preservation of other objective for which it is intended.

- ii) The required open space shall remain unbuilt upon, provided that up to ten (10) percent 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.
- iii) The open space shall be preserved in its natural state, insofar as practicable.
- iv) Applicant shall provide a management open space plan that will conform to the Town of Rehoboth's Rules and Regulations.
- v) Existing and proposed utility easements and other easements placed on the property prior to an Open Space Design subdivision submittal shall not be counted towards the minimum open space requirements.
- vi) Stone or concrete bounds shall be used to define open space areas.
- vii) 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.
- viii) 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.

The required open space shall, *at the Planning Board's election*, be conveyed to

- (1) A nonprofit organization, the principle purpose of which is the conservation of open space and any of the purposes for such open space set forth above;
- (2) The Town or its Conservation Commission;
- (3) A corporation or trust owned jointly or in common by the owners of lots within the Open Space Design. 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 or 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.

- i) 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 Rehoboth Rules and Regulations governing the Subdivision of Land.
- j) Criteria for the Board’s Decision – No approval for a special permit application shall be given unless the opinion of the Planning Board, the application complies with the following criteria:
 - i) 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.
 - ii) The proposed development shall be consistent with the intent and purposes of this bylaw.
 - iii) 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 water and natural resource, wildlife habitat, farmland, or forestry land.
 - iv) 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.
 - v) The required protected open space in the (bylaw) shall, to the greatest extent possible, be linked to any existing protected lands on adjacent parcels.