



JACKLYN R. MORRIS
TOWN CLERK

Office of the Town Clerk

TOWN HALL • 19 WASHINGTON STREET • SHERBORN MA 01770
508-651-7853 • FAX 508-651-0407 • jmorris@sherbornma.org

SHERBORN ANNUAL TOWN MEETING, AUGUST 15, 2020

ARTICLE 20. Amend ZBL Section 4.5 – Open Space Subdivision By-law

To see if the Town will vote to amend the Zoning Bylaws by deleting Section 4.5 (Open Space Special Permit) in its entirety and replacing it with the following:

Section 4.5 Open Space Residential Subdivision

4.5.1 Purpose and Intent:

The primary purposes of this bylaw are to:

A. Further the goals and recommendations of the Sherborn Master Plan and Open Space and Recreation Plan:

- Preservation of open space, forests, and wildlife habitat.
- Protection of clean groundwater resources including aquifers, surface water bodies, streams and wetlands.
- Reduction of energy consumption and greenhouse gas emissions, and mitigation of the effects of climate change.
- Preservation of agricultural land use.

B. Establish Open Space Subdivision design as a preferred alternative to conventional subdivisions, in order to consume less open land and preserve environmental resilience while providing for present and future housing needs;

C. Enable landowners to realize equity from development of a limited percentage of their land while preserving conservation, agricultural, forestry or recreational uses on the majority of the property;

D. Expedite the permitting of projects that fulfill the objectives and requirements of this bylaw;

E. Facilitate the construction and maintenance of housing, streets, utilities, and public services in a more economical and efficient manner while minimizing the total area of disturbance of the site; and

F. Promote the incorporation of Low Impact Development and Green Infrastructure features into development designs.

4.5.2 Definitions:

"Applicant" shall mean an owner, his agent or representative, or his assigns, that are responsible for submission of a subdivision development plan to town officials.

"Approval Not Required (ANR)" shall mean a process of creating building lots in accordance with MGL Chapter 41, Section 81P, as may be amended from time to time, by inter alia division of land on an existing public way, in which each new lot fulfills the minimum frontage requirements of the relevant zoning district.

"Board" shall mean the Planning Board.

"Conventional Subdivision" shall mean a division of land into two or more lots in such a manner as to constitute "subdivision" as defined in MGL Chapter 41, Section 81L, as amended from time to time, and in which minimum lot size is that required for a single family home in the zoning district, as defined in Zoning Bylaw 4.2.

"Dwelling Unit" shall mean a group of rooms or a structure designed, constructed and/or equipped exclusively for use as a complete living unit for one family including living, sleeping, cooking and sanitary facilities, and which is directly accessible from the outside without passing through any other dwelling unit.

"Green Infrastructure" shall mean the vegetation and forests that provide services to the community such as groundwater filtering and retention, aquifer recharge, carbon sequestration and temperature control.

"Homeowners Association" shall mean the corporation, trust, or association owned by the unit owners within an Open Space Subdivision and used by them to manage and regulate their affairs, including any commonly owned land or facilities.

"Low Impact Development" shall mean land development and building practices that minimize environmental impacts by preserving or adding vegetation including trees, and promoting groundwater retention and recharge through design features.

"Low Impact Drainage System" shall mean a stormwater management system that maximizes maintenance of clean groundwater resources through natural filtering, retention and recharge.

"Open Space Subdivision" shall mean a division of land into two or more residential lots in such a manner as to constitute "subdivision" as defined in MGL Ch. 41, Section 81-L, as amended from time to time, and that (a) permanently preserves at least sixty percent of the land in a natural, scenic or open condition or in agricultural, farming or forest use; (b) preserves the significant natural, cultural, and historic features of the land; (c) concentrates residential development, through design flexibility and reduced dimensional requirements, in order to preserve those features; and (d) calculates the number of Dwelling Units allowed up-front by formula.

"Owner" shall mean the owner or owners of record of all land included within the subdivision as shown by the records of the Registry of Deeds for the Southern District of Middlesex County or the Middlesex South Registry District of the Land Court.

"Protected Open Space" shall mean land that is permanently preserved in a natural, scenic or open condition or in agricultural, farming or forest use, by conservation restriction or other legal means.

"Uplands" shall mean a land area that is are NOT under federal, state or local wetland or floodplain jurisdiction.

"Yield Plan" shall mean a calculation of the number of Dwelling Units allowed in a specific Open Space Subdivision, using the method described in 4.5.4 below.

4.5.3 Applicability:

A. Open Space Subdivisions are allowed by right under zoning and may be proposed anywhere within the R-A, R-B and R-C districts. Open Space Subdivisions shall be subject to the requirements of all Sherborn Zoning Bylaws except as noted otherwise in this (Section 4.5) bylaw and the Subdivision Rules and Regulations of the Sherborn Planning Board as applicable.

B. Subsection A above applies only to subdivisions of land as defined in MGL Ch. 41, Section 81-L, and not to construction of homes on individual house lots that existed prior to the date of adoption of this bylaw, or to house lots created through the "Approval Not Required" (ANR) process with frontage on public ways in existence at the date of adoption of this bylaw.

C. All subdivision applications received after the effective date of this bylaw shall comply with the provisions of this Open Space Subdivision bylaw, unless the Planning Board allows a development that deviates from the requirements of this bylaw by Special Permit. Such deviations, including Conventional Subdivision designs, may be approved if the applicant demonstrates that the proposed alternative development configuration provides protection of the site's environmental resources and fulfills the purposes of this Article as well or better than an Open Space Subdivision.

D. If the proposed Open Space Subdivision involves a special permit(s) for one or more common driveways, or any other use that requires a special permit, the proceedings for all such special permits and the site plan review for lot configuration shall occur in one consolidated special permit proceeding before the Planning Board.

4.5.4 Yield: Allowable Dwelling Units

A. Number of Dwelling Units allowed. The base maximum number of residential units allowed in an Open Space Residential Subdivision is calculated by a formula based upon the net developable acreage of the parcel. This formula takes into account site-specific development restrictions and limitations that make some land unsuitable for development, or less suitable for development than other land. This calculation involves two steps, calculating the net acreage and dividing by the minimum conventional lot acreage in the zoning district.

To determine net acreage, subtract the following from the total (gross) acreage of the parcel:

1. Half of the acreage of land with slopes of 20% or greater;
2. The total acreage of land subject to easements or restrictions prohibiting development, lakes, ponds, vernal pools, 100-year floodplains as most recently delineated by FEMA, Zone I and A around public or private water supplies, and all wetlands as defined in G.L. Chapter 131, Section 40 of the General Laws and any state or local regulations adopted thereunder; and
3. Ten percent of the remaining site acreage after the areas of A.1 and A.2 are removed, to account for subdivision roads and infrastructure.

The factors named above are included for net acreage calculation purposes only and do not convey or imply any regulatory constraints on development siting that are not contained in other applicable provisions of law, including this zoning bylaw.

The maximum number of allowable dwelling units in an open space subdivision on the parcel is determined by dividing the net acreage by the required acreage for a house lot in the zoning district. Fractional units shall be rounded down to the nearest whole number. The required acreage for each district is:

District	Required Acreage per Unit
R-A	1
R-B	2
R-C	3

Section 4.5.4(A):

“An Open Space subdivision shall have no more residential units than the number of units that would be allowed in a Conventional subdivision on the parcel of land that is the subject of the application, documented by a Conventional subdivision general layout as defined in the Planning Board Rules and Regulations, submitted by the applicant.”

B. Parcels in more than one zoning district. For parcels in more than one district, the allowable residential unit count for each district shall be computed separately first. These unit count totals shall be added together and then rounded down to the nearest whole number as above.

4.5.5 General Requirements:

A. Open Space Subdivision layout. The developed areas and protected open space shall be placed within the parcel in a manner that best fits the characteristics of the land and the purposes of this bylaw, in particular the protection of clean groundwater resources and environmental resiliency.

B. Housing Types. Subdivision residential Dwelling Units shall be single-family structures. Duplexes may be allowed by special permit, if designed to resemble single-family homes. Duplexes will be considered as two residential Dwelling Units.

Single family structures or duplexes will be located on individual lots. Condominium arrangements on a shared lot, or a combination of individual lots and shared condominium lots, may be allowed by Special Permit in cases where such arrangements best serve the conservation purposes of this bylaw on the specific parcel.

4.5.6 Dimensional Requirements:

With the exception of building height, the dimensional requirements of Section 4.2 of these bylaws do not apply to Open Space Subdivision developments. Lot size and shape, residential unit placement, lot width, and other dimensional requirements within an Open Space Subdivision are subject to the following guidelines and limitations:

A. Objectives. Residential units shall be located and arranged in a way that advances the open space and resource conservation objectives of this bylaw, i.e. to protect: views from roads and other publicly accessible points; farmland; wildlife habitat; large intact forest areas; hilltops and steep slopes; ponds, wetlands and groundwater resources; and other sensitive environmental resources.

B. Monumentation. Monumentation of a type consistent with the use of the open space, and approved by the Planning Board, shall clearly delineate the boundaries of the protected open space in a manner that facilitates monitoring and enforcement.

C. Area. There is no required minimum lot size for zoning purposes. The limiting factors on lot size and placement for each single family structure or specially permitted duplex in an Open Space Subdivision are the need for 1) adequate water supply and sewage disposal for each residential unit, 2) protection of the quality and quantity of current and future groundwater resources on abutting properties, 3) prevention of negative impacts on wetlands on or near the subdivision, and compliance with the other provisions of this bylaw.

D. Infrastructure. Board of Health regulations regarding water supply protection and the disposal of wastewater, and Conservation Commission regulations regarding wetland protection, shall apply. Protection of clean water resources will be a primary factor in Planning Board decisions regarding placement of residential units and overall subdivision design. For any proposed subdivision design, in particular layouts that may require clustered or shared septic systems, the Planning Board shall forward concept sketches and/or preliminary plans to the Conservation Commission and Board of Health for comment. Clustered or shared septic systems are likely to require setbacks greater than standard single family systems to prevent negative impacts on wetlands, drinking water wells and groundwater, or environmental resiliency, and therefore may require specific analyses to help determine such setbacks, and subsequent monitoring to determine their effectiveness.

E. Frontage. On existing public roads, frontage of any Open Space Subdivision house lot shall be as required for a conventional lot in the relevant zoning district. On internal Open Space Subdivision roads, there is no numerical requirement for lot frontage. Each lot must have legal and functional vehicular access to an existing public road or an internal Open Space Subdivision road approved under the Subdivision Rules and Regulations, either directly across its own frontage or via a common driveway approved by special permit.

F. Setbacks. The minimum setback of any building from an existing public road shall be 100 feet. The minimum setback of any building from an internal Open Space Subdivision road shall be 30 feet. The minimum setback of any building from the property line of an abutting property not part of the Open Space Subdivision shall be 60 feet. The minimum distance between residential buildings within the Open Space Subdivision shall be 30 feet. The minimum distance between an Open Space Subdivision residential building and an abutter's residential building shall be 100 feet. Accessory sheds as defined in Zoning Bylaw section 4.1.1 shall be allowed, provided that they are at least 10ft. from the adjacent internal subdivision lot line, and set back from the lot lines of abutting non-subdivision properties as specified in 4.1.1.

4.5.7 Open Space Requirements:

A. Minimum area. A minimum of 60% of the total gross acreage of the land area of the Open Space Subdivision shall be set aside as permanently conserved open space. At least half of the open space shall be "uplands" as defined in section 4.5.2.

No more than 10% of the required open space may be utilized for common water supply wells and associated infrastructure, subsurface leaching fields and other underground components of wastewater systems, rain gardens, constructed wetlands, and other decentralized stormwater management systems consistent with Low Impact Development, that serve the Open Space Subdivision, provided that the land so utilized is contiguous with undisturbed area(s) of protected open space. Treated stormwater may be discharged into the protected open space as part of an approved Low Impact stormwater management plan. All protected land must be shown on approved plans.

B. Contiguity of Open Space. Preserved open space shall be contiguous to the greatest extent practicable. Noncontiguous areas of open space may be allowed if they are shown to provide better protection of areas of high conservation value or to provide continuity with open space on adjacent lands. In such cases, applicants shall attempt to connect these resource areas to the greatest extent practicable through the use of vegetated corridors. Open Space will still be considered contiguous if it is crossed by a shared driveway, roadway, or an accessory amenity such as a paved pathway or trail, as long as a functional wildlife corridor is maintained. If the open space is maintained for agricultural uses, open space areas will be considered contiguous if separated by a barn or storage shed.

C. Permanent Conservation of the Required Open Space. Any land required to be set aside as open space, voluntarily preserved in excess of that required, or conserved as a condition of site plan approval, shall be permanently protected pursuant to Article 97 of the Articles of Amendment to the Constitution of the Commonwealth of Massachusetts or a 27 perpetual restriction under G.L. Chapter 184 Section 31-33. Unless conveyed to the Conservation Commission, the required open space shall be subject to a permanent Conservation, Watershed, or Agricultural Preservation Restriction conforming to the standards of the Massachusetts Executive Office of Environmental Affairs, Division of Conservation Services, or Department of Agricultural Resources in accordance with G.L. Chapter 184 Section 31-33, approved by the Planning Board and Select Board and held by the Town of Sherborn, the Commonwealth of Massachusetts, or a non-profit conservation organization qualified to hold conservation restrictions under G.L. Chapter 184, Section 31-33. Any proposed open space that does not qualify for inclusion in a Conservation Restriction, Watershed, or Agricultural Preservation Restriction or that is rejected from inclusion in these programs by the Commonwealth of Massachusetts shall be subject to a Restrictive Covenant in perpetuity under G.L. Chapter 184, Sections 26-30, which shall be approved by the Planning Board and Select Board and held by or for the benefit of the Town of Sherborn.

The restriction shall specify the prohibited and permitted uses of the restricted land, which would otherwise constitute impermissible development or use of the open space, consistent with the Allowable and Prohibited Uses subsections of this bylaw and any permits. The restriction may permit, but the Planning Board may not require, public access or access by residents of the development to the protected land.

D. Timing. Any restriction or other legal document necessary to permanently conserve open space as required herein shall be recorded prior to the release of any lots in a subdivision or prior to the issuance of any building permits.

E. Allowable Use of the Open Space. Such land shall be perpetually kept in an open state, preserved exclusively for the purposes set forth herein and in the deed and/or in the restriction, and maintained in a manner which will ensure its suitability for its intended purposes. Proposed use(s) of the open space consistent with this section shall be specified in the application.

1. The open space shall be used for wildlife habitat and conservation and/or the following additional purposes or a combination of these uses to the extent allowed by Massachusetts General Laws, and shall be served by suitable access for such purposes: historic preservation, outdoor education, forestry and passive recreation. Agriculture or horticulture shall be allowed if the land was in such use at the time of approval of the Definitive Plan. A portion of the open space may be used for new agriculture, horticulture or community gardens, provided that only organic methods are employed.
2. The Planning Board may permit a small portion of the open space, not to exceed 5%, to be paved or built upon (using permeable pavement and other means of retaining natural hydrology) for purposes accessory to the dedicated use or uses of such open space, so long as the conservation values of the open space are not compromised. Examples of such purposes are parking to facilitate public access for passive recreation, informational kiosks, pedestrian walks, ADA access features, and bike paths. Construction of barns or other farm structures will be allowed on 5% of the protected open space that is in agricultural or horticultural use as defined by G.L. Chapter 128, Section 1A.
3. The open space may be used as the land subject to a restriction for the purpose of an aggregate calculation under Title 5, 310 CMR 15.000 of the State Environmental Code, G.L. Chapter 21A.

F. Prohibited Use of the Open Space. The open space within an Open Space Subdivision shall be perpetually kept in an open state, preserved exclusively for the purposes set forth in Section 4.5.7.E of this bylaw, and maintained in a manner that will ensure its suitability for its intended purposes. Expressly prohibited uses, if not specifically permitted as an allowable use, include but are not limited to the following:

1. Constructing or placing of any temporary or permanent building, tennis court, landing strip, mobile home, swimming pool, asphalt or concrete pavement, sign, billboard or other advertising display, antenna, utility pole, tower, conduit, line or other temporary or permanent structure or facility on, above, or under the open space that is not in conformance with an authorized use of the open space (e.g. fencing, barn or other structure associated with agriculture);
2. Mining, excavating, dredging, or removing soil, loam, peat, rock, gravel or other mineral resource or natural deposit, unless necessary to install infrastructure that is part of the approved plan;
3. Placing, filling, storing, or dumping of soil, refuse, trash, vehicles or parts thereof, rubbish, debris, junk, waste, or other substance or material whatsoever or the installation of underground storage tanks;
4. Cutting, removing, or destroying of trees, grasses or other vegetation unless in conformance with an allowed use such as agriculture, forestry, recreation, maintenance of healthy natural ecosystems and suppression of invasive species, or installation of infrastructure that is part of the approved plan;
5. Subdivision; neither further division of the protected open space into lots or the use of the protected open space toward any further building requirements on this or any other lot is permitted;
6. Activities detrimental to drainage, flood control, water conservation, water quality, erosion, soil conservation, or archeological conservation;
7. Purposefully introducing or allowing the introduction of species of plants and animals recognized by the Executive Office of Energy and Environmental Affairs to pose a substantial risk of being invasive or otherwise detrimental to the native plant and animal species and plant communities on the property;
8. The use, parking or storage of motorized vehicles, including all-terrain vehicles (ATVs), snowmobiles, motorcycles, and campers, except in conformance with an authorized use of the open space, ADA accessibility, or as required by the police, firefighters, or other governmental agents in carrying out their duties; and
9. Any other use or activity which would materially impair conservation interests unless necessary in an emergency for the protection of those interests.

4.5.8 Ownership of the Open Space:

A. At the applicant's discretion and the grantee's acceptance, the open space may be owned in fee by:

1. A private owner for agricultural, horticultural, forestry or any other purpose not inconsistent with the conservation or agricultural restriction;
2. A non-profit organization or agency of the Commonwealth, with their consent, whose principal purpose is the conservation of open space for any of the purposes set forth herein;
3. The Town of Sherborn, with the consent of the Select Board, under management of the Town Forest or Conservation Commission, with their consent; or
4. A homeowners association (HOA) as defined herein, owned jointly or in common by the owners of lots or units within the Open Space Subdivision.

B. If ownership option four is selected the following shall apply:

1. The documents organizing the HOA shall be drafted by the applicant and approved by the Planning Board before final approval of the Open Space Subdivision development, recorded prior to the issuance of building permits, comply with all applicable provisions of state law, and pass with conveyance of the lots or units in perpetuity. Each individual deed, and the deed, trust, or articles of incorporation, shall include language designed to effect these provisions.
2. Membership must be mandatory for each property owner, who must be required by recorded covenants and restrictions to pay fees to the HOA for taxes, insurance, and maintenance of common open space, private roads, and other common facilities.
3. The HOA must be responsible in perpetuity for liability insurance, property taxes, the maintenance of recreational and other facilities, preservation of the open space in accordance with this Bylaw, private roads, and any common driveways.

4. Property owners must pay their pro rata share of the costs in subsection c above, and the assessment levied by the HOA must be able to become a lien upon individual properties within the Open Space Subdivision.
5. The HOA must be able to adjust the assessment to meet changed needs.
6. The applicant shall make a conditional grant to the Town of Sherborn, Sherborn Conservation Commission, binding upon the HOA, of the fee interest to all open space to be conveyed to the HOA. Such offer may be accepted by the Conservation Commission, at the discretion of the Select Board, upon the failure of the HOA to take title to the open space from the applicant or other current owner, upon dissolution of the HOA at any future time, or upon failure of the HOA to fulfill its maintenance obligations hereunder or to pay its real property taxes on the open space.
7. Ownership shall be structured in such a manner that real property taxing authorities may satisfy property tax claims against the open space lands by proceeding against individual property owners in the HOA and the dwelling units they each own.
8. Sherborn Town Counsel must find that the HOA documents presented satisfy the conditions in Subsections a through g above, and such other conditions as the Planning Board shall deem necessary.

C. Selection of ownership option one, two, or four requires:

1. The conveyance of a conservation restriction as outlined herein; and
2. The granting of an access easement over such land sufficient to ensure access for Sherborn town officials to ensure its perpetual integrity and maintenance as agricultural, conservation, or recreation land.

Such easement shall provide that in the event the owner fails to maintain the open space in reasonable condition, town officials may, after notice to the lot owners and any grantee of a restriction, and after Select Board public hearing, enter upon such land to maintain it in order to prevent or abate a nuisance.

4.5.9 Maintenance:

A. Maintenance standards. The Planning Board shall require the establishment of ongoing maintenance standards as a condition of development approval to ensure that utilities are properly maintained and the open space land is not encroached upon, or used for storage or dumping of refuse, junk, or other offensive or hazardous materials. Such standards shall be enforceable by the Town against any owner of open space land, including an HOA.

B. Enforcement of maintenance standards. If the Select Board finds that the maintenance provisions are being violated to the extent that the condition of the utilities or the open land constitutes a public nuisance, it may, upon 30 days written notice to the owner/grantee, enter the premises for necessary maintenance, and the cost of such maintenance by the Town shall be assessed proportionally against the landowner or, in the case of an HOA, the owners of properties within the subdivision, and shall, if unpaid, become a property tax lien on such property or properties.

Pursuant to G.L. Chapter 40 Section 58, Sherborn may file a lien against the subdivision lot or lots to ensure payment for such maintenance. Pursuant to G.L. Chapter 40 Section 57, Sherborn may also deny any application for, or revoke or suspend a building permit or any local license or permit, due to neglect or refusal by any property owner to pay any maintenance assessments levied.

4.5.10 Submission Requirements:

In order to enable the Planning Board to determine whether or not a proposed Open Space Subdivision design (or alternative subdivision development requiring a Special Permit that deviates from the requirements for Open Space Design) satisfies the purposes and standards of this Open Space Subdivision section of the Zoning Bylaw and the Subdivision Rules and Regulations of the Planning Board, an applicant must present sufficient information on the environmental and open space resources for the Board to make such a determination.

Or take any other action relative thereto. (*Select Board for the Planning Board*)

MOTION: Steven Tsai moved, duly seconded by Stephen Leahy, favorable action that the Town vote to amend the Zoning Bylaws by deleting Section 4.5 (Open Space Special Permit) in its entirety and replacing it with a new Section 4.5 (Open Space Residential Subdivision) as printed in the Warrant with the following additional sentence being added to the end of Section 4.5.4(A):

“An Open Space subdivision shall have no more residential units than the number of units that would be allowed in a Conventional subdivision on the parcel of land that is the subject of the application, documented by a Conventional subdivision general layout as defined in the Planning Board Rules and Regulations, submitted by the applicant.”

As duly qualified Clerk of the Town of Sherborn, I hereby **CERTIFY** that, at the regular session of the Annual Town Meeting of the Town of Sherborn, held at the Sherborn DPW Garage, 7 Butler Street, on Saturday, August 15, 2020, duly called, and held pursuant to the Warrant therefor issued by the Select Board on July 9, 2020, and duly served in accordance with the Town's By-laws, at which meeting a quorum was present and voting throughout, the foregoing **VOTE AND AMENDMENT TO ADD SECTION 4.5.4 (A)** was **PASSED WITH A 2/3 VOTE COUNT OF 84 YES, 24 NO.**

Jacklyn R. Morris
Sherborn Town Clerk