

TO SEE IF THE TOWN WILL VOTE TO AMEND THE TOWN OF NEWBURY BYLAWS SECTION 97-47.6.A.1.k, SECTION 97-47.9.A, SECTION 97-47.12.B AND SECTION 97-47-10.B.1 IN ARTICLE XIA OPEN SPACE RESIDENTIAL DEVELOPMENT BYLAW AS FOLLOWS OR TAKE ANY OTHER ACTION REALATIVE THERETO:

REPLACE THE FOLLOWING LANGUAGE TO SECTION 97-47.6.A.1.k:

Official soil percolation tests for the purpose of siting wastewater treatment options are not required for the Concept Plan.

WITH THE FOLLOWING LANGUAGE:

Official soil percolation tests for the purpose of siting wastewater treatment options shall be required as determined by the Planning Board.

ADD THE FOLLOWING LANGUAGE TO THE END OF SECTION 97-47.9.A: Any proposed open space that does not qualify for inclusion in the Conservation Restriction or that is rejected from inclusion in the Conservation Restriction by the State of Massachusetts will be subject to a Restrictive Covenant, that shall be approved by the Planning Board and Board of Selectmen/Town Counsel and enforceable by the town.

DELETE THE FOLLOWING LANGUAGE FROM SECTION 97-47. 12.B:

Multifamily structures of not more than four (4) units are permitted if all units are restricted to occupancy by low or moderate-income persons or families.

CHANGE THE LANGUAGE IN SECTION 97-47.10.B.1 TO READ AS FOLLOWS:

Mix of Housing Types. The OSRD may consist of any combination of single-family and two-family structures. Multifamily structures of not more than four (4) units may also be permitted by the Planning board if they serve the purpose and intent of the Open Space Residential Development Bylaw, as stated in section 97-47.1.

ARTICLE XIA
Open Space Residential Development Bylaw
[Added 4-24-2001 ATM, Art. 27; amended 4-22-2003 ATM, Art. 6]

§ 97-47.1. Purpose and intent.

- A. The Primary Purposes for the Open Space Residential Development (OSRD) bylaw are the following:
- (1) To allow for greater flexibility and creativity in the design of residential developments;
 - (2) To encourage the permanent preservation of open space, agricultural land, forestry land, wildlife habitat, other natural resources including aquifers, waterbodies and wetlands, and historical and archaeological resources in a manner that is consistent with Newbury's open space plan;
 - (3) To encourage a less sprawling and more efficient form of development that consumes less open land and conforms to existing topography and natural features better than a conventional or grid subdivision;
 - (4) To minimize the total amount of disturbance on the site;
 - (5) To further the goals and policies of the open space plans;
 - (6) To facilitate the construction and maintenance of housing, streets, utilities, and public service in a more economical and efficient manner.
- B. The Secondary Purposes for OSRD are the following:
- (1) To preserve and enhance the community character;
 - (2) To protect the value of real property;
 - (3) To provide for a diversified housing stock;
 - (4) To provide affordable housing to persons of low and moderate income.

§ 97-47.2. Eligibility.

- A. Any development that will create more than four lots or units shall submit an application for OSRD to the Planning Board. The applicant shall have the option of development under the conventional subdivision process or under the OSRD.
- B. Contiguous Parcels. To be eligible for consideration as an OSRD the tract shall consist of a parcel or set of contiguous parcels.
- C. Land Division. To be eligible for consideration as an OSRD, the tract may be a subdivision or a division of land pursuant to G.L. c. 41, § 81P provided, however, that an OSRD may also be permitted where intended as a condominium on land not so divided or subdivided.

§ 97-47.3. Special permit required.

The Planning Board may authorize an OSRD pursuant to the grant of a special permit. Such special permits shall be acted upon in accordance with the following provisions.

§ 97-47.4. Pre-application.

- A. Conference. The applicant is very strongly encouraged to request a pre-application review at a regular business meeting of the Planning Board. If one is requested, the Planning Board shall invite the Conservation Commission, Board of Health, and Historical Commission. The purpose of a pre-application review is to minimize the applicant's costs of engineering and other technical expenses, and to commence negotiations with the Planning Board at the earliest possible stage in the development. At the pre-application review, the applicant may outline the proposed OSRD, seek preliminary feedback from the Planning Board and/or its technical experts, and set timetable for submittal of a formal application. At the request of the applicant and at the expense of the applicant, the Planning Board may engage technical experts to review the informal plans of the applicant and to facilitate submittal of a formal application for an OSRD special permit.
- B. Submittals. In order to facilitate review of the OSRD at the pre-application stage, applicants are strongly encouraged to submit the following information:
 - (1) Site Context Map. This map illustrates the parcel in connection to its surrounding neighborhood. Based upon existing data sources and field inspections, it should show various kinds of major natural resource areas or features that cross parcel lines or that are located on adjoining lands. This map enables the Planning Board to understand the site in relation to what is occurring on adjacent properties.
 - (2) Existing Conditions/Site Analysis Map. This map familiarizes officials with existing conditions on the property. Based upon existing data sources and field inspections, this base map locates and describes noteworthy resources that should be left protected through sensitive subdivision layouts. These resources include wetlands, riverfront areas, floodplains and steep slopes, but may also include mature undegraded woodlands, hedgerows, farmland, unique or special wildlife habitats, historic or cultural features (such as old structures or stone walls), unusual geologic formations and scenic views into and out from the property. Where appropriate, photographs of these resources should accompany the map. By overlaying this plan onto a development plan the parties involved can clearly see where conservation priorities and desired development overlap/conflict.
 - (3) Other Information. In addition, applicants are invited to submit the information set forth in § 97-47.5A in a form acceptable to the Planning Board.
- C. Site Visit. Applicants are encouraged to request a site visit by the Planning Board and/or its agents in order to facilitate pre-application review of the OSRD. If one is requested, the Planning Board shall invite the Conservation Commission, Board of Health, and Historical Commission.
- D. Design Criteria. The design process and criteria set forth below in § 97-47.5 should be discussed by the parties at the pre-application conference and site visit.

§ 97-47.5. Design process.

At the time of the application for a special permit for OSRD in conformance with § 97-47.6A, applicants are required to demonstrate to the Planning Board that the following Design Process was performed by a multidisciplinary team of which one member must be a certified Landscape Architect and considered in determining the layout of proposed streets, house lots, unit placement if treated as a condominium, including designation of all common areas and open space.

- A. Step One: Identifying Conservation Areas. Identify preservation land by two steps. First, Primary Conservation Areas (such as wetlands, riverfront areas, and floodplains regulated by state or federal law) and Secondary Conservation Areas (including unprotected elements

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of the natural landscape such as steep slopes, mature woodlands, prime farmland, meadows, wildlife habitats and cultural features such as historic and archaeological sites and scenic views) shall be identified and delineated. Second, the Potentially Developable Area shall consist of land outside identified Primary and Secondary Conservation Areas.

- B. Step Two: Locating House Sites. Locate the approximate 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, with emphasis on consistency with the Town's historical development patterns. The number of homes or units if a condominium proposal enjoying the amenities of the development should be maximized.
- C. Step Three: Aligning the Streets and Trails. Align streets in order to access the house lots or units. Additionally, new trails should be laid out to create internal and external connections to existing and/or potential future streets, sidewalks, and trails.
- D. Step Four: Draw in the lot lines, if not treated as a condominium.

§ 9147.6. Procedures.

- A. Application. An application for a special permit for an OSRD shall be submitted on the form(s) provided by the Planning Board in accordance with the roles and regulations of the Board. Applicants for OSRD shall also file with the Planning Board eight copies of the Concept Plan. The Concept Plan shall include a Sketch Plan and a Yield Plan [see Subsection A(1) and (2) of this section]. The applicant shall submit both the Site Context Map and Existing Conditions/Site Analysis Map prepared according to § 97-47.5B above. Additional information reasonably necessary to make the determinations and assessments cited herein shall be provided, including existing site contour maps and existing current soil maps.
 - (1) Sketch Plan. The Sketch Plan shall be prepared by a certified Landscape Architect, or by a multi-disciplinary team of which one member must be a certified Landscape Architect, and shall address the general features of the land, and give approximate configurations of the lots, of unit placements if treated as a condominium, of open space, and roadways. The Sketch Plan shall incorporate the Four-Step Design Process, according to § 97-47.5 above, and the Design Standards, according to § 97-47.10 below, when determining a proposed design for the development. The Sketch Plan shall include the following:
 - (a) The subdivision name, boundaries, north point, date, legend, title "Concept Plan," and scale.
 - (b) The name and address of the record owner or owners, the applicant, and the Landscape Architect or other designer that prepared the plan.
 - (c) The names, approximate location, and widths of adjacent streets.
 - (d) The proposed topography of the land shown at a contour interval no greater than two feet. Elevations shall be referenced to mean sea level.
 - (e) The location of existing landscape features, including forests, farm fields, meadows, wetlands, riverfront areas, waterbodies, archaeological and historic structures or points of interest, rock outcrops, boulder fields, stone walls, cliffs, high points, major land views, forest glades, major tree groupings, noteworthy tree species, and habitats of endangered or threatened wildlife, as identified as primary and secondary resources according to § 9747.5A. Proposals for all site features to be preserved, demolished, or moved shall be noted on the Sketch Plan.

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- (f) All on-site local, state, and federal regulatory resource boundaries and buffer zones shall be clearly identified, and all wetland flag locations shall be numbered and placed upon the Sketch Plan.
- (g) Lines showing proposed private residential lots, as located during Step Four, §97-47.50, with approximate areas and frontage dimensions, or unit placements and proposed common areas.
- (h) All existing and proposed features and amenities, including trails, recreation areas, pedestrian and bicycle paths, community buildings, and off-street parking areas shall be shown on the plan and described in a brief narrative explanation, where appropriate.
- (i) The existing and proposed lines of streets, ways, common driveways, easements and any parcel of land intended to be dedicated for public use or to be reserved by deed covenant for use of all property owners in the subdivision, or unit development, or parcels of land or lots to be used for any purpose other than private residential shall be so designated within the subdivision in a general manner.
- (j) Proposed roadway grades.
- (k) Official soil percolation tests for the purpose of siting wastewater treatment options are not required for the Concept Plan. However, a non-native explanation shall be prepared by a certified Professional Engineer detailing the proposed wastewater systems that will be utilized by the development and its likely impacts on-site and to any abutting parcels of land. For example, the narrative will specify whether individual on-site or off-site systems, shared systems, alternative to Title V systems, or any combination of these or other methods will be utilized.
- (l) A narrative explanation prepared by a certified Professional Engineer proposing systems for stormwater drainage and its likely impacts on-site and to any abutting parcels of land. For example, the narrative will specify whether soft or hard engineering methods will be used and the number of any detention/retention basins or infiltrating catch basins; it is not intended to include specific pipe sizes. Any information needed to justify this proposal should be included in the narrative. The approximate location of any stormwater management detention/retention basins shall be shown on the plan and accompanied by a conceptual landscaping plan.
- (m) A narrative explanation prepared by a certified Professional Engineer, detailing the proposed drinking water supply system.
- (n) A narrative explanation of the proposed quality, quantity, use and ownership of the open space. Open space parcels shall be clearly shown on the plan.
- (o) All proposed landscaped and buffer areas shall be noted on the plan and generally explained in a narrative.
- (p) A list of all legal documents necessary for implementation of the proposed development including any Conservation Restrictions, land transfers, and Master Deeds or condominium documents, with an accompanying narrative explaining their general purpose.
- (q) A narrative indicating all requested waivers, reductions, and/or modifications as permitted within the requirements of this bylaw.

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- (2) Yield Plan. Applicant shall submit a narrative explanation detailing the results of the determination of any proposed allocation of yield determined according to § 97-47.7, Basic Maximum Number (of lots/units/bedroom).
 - (3) Relationship between Concept Plan and Definitive Subdivision Plan. The Concept Plan special permit shall be reconsidered if there is substantial variation between the Definitive Subdivision Plan and the Concept Plan. If the Planning Board finds that a substantial variation exists, it shall hold a public hearing on the modifications to the Concept Plan. A substantial variation shall be any of the following:
 - (a) An increase in the number of building lots and/or units;
 - (b) A significant decrease in the open space acreage;
 - (c) A significant change in the lot layout or unit placement;
 - (d) A significant change in the general development pattern which adversely affects natural landscape features and open space preservation;
 - (e) Significant changes to the stormwater management facilities; and/or
 - (f) Significant changes in the wastewater management systems.
- B. Procedures. Whenever an application for an OSRD special permit is filed with the Planning Board, the applicant shall also file, within five (5) working days of the filing of the completed application, copies of the application, accompanying development plan, and other documentation, to the Board of Health, Conservation Commission, Historical Commission, Building Inspector, Highway Department, Police Chief, Fire Chief, and Town Engineer for their consideration, review, and report. The applicant shall furnish the copies necessary to fulfill this requirement. Reports from other boards and officials shall be submitted to the Planning Board within thirty-five (35) days of receipt of the reviewing party of all of the required materials; failure of these reviewing parties to make recommendations after having received copies of all such required materials shall be deemed a lack of opposition thereto. In the event that the public hearing by the Planning Board is held prior to the expiration of the thirty-five-day period, the Planning Board shall continue the public hearing to permit the formal submission of reports and recommendations within that thirty-five-day period. The Decision/Findings of the Planning Board shall contain, in writing, an explanation for any departures from the recommendations of any reviewing party.
- C. Site Visit. Whether or not conducted during the pre-application stage, the Planning Board shall conduct a site visit during the public hearing. At the site visit, the Planning Board and/or its agents shall be accompanied by the applicant and/or its agents.
- D. Other Information. 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 Bylaw. To the extent permitted by law, the Planning Board shall coordinate the public hearing required for any application for a special permit for an OSRD with the public hearing required for approval of a definitive subdivision plan.

§ 97-47.7. Basic maximum number of lots.

The Basic Maximum Number shall be derived from a Yield Plan. The Yield Plan shall show the maximum number of lots (or dwelling units) that could be placed upon the site under a conventional subdivision. The Yield Plan shall contain the information required for a Sketch Plan as set forth above in § 97-47.6. The proponent shall have the burden of proof with regard to the Basic Maximum Number of lots resulting from the design and engineering specifications shown on the Yield Plan.

§ 97-47.8. Reduction of dimensional requirements.

The Planning Board encourages applicants to modify lot size, unit placement, shape, and other dimensional requirements for lots within an OSRD, subject to the following limitations:

- A. Lots having reduced area or frontage shall not have frontage on a street other than a street created by the OSRD; provided, however, that the Planning Board may waive this requirement where it is determined that such reduced lot(s) will further the goals of this bylaw.
- B. At least 50% of the required setbacks for the district shall be maintained in the OSRD unless a reduction is otherwise authorized by the Planning Board. Where structures containing three to four dwelling units are being proposed, the side lot lines between units may be 0 feet, however the distance between structures shall be a minimum of 20 feet.
- C. Minimum Frontage: The minimum frontage may be reduced from the frontage otherwise required in the zoning district; provided, however, that no lot shall have less than 50 feet of frontage.
- D. Setbacks: Every dwelling fronting on the proposed roadways shall be set back a minimum of 20 feet from the roadway right-of-way, and 10 feet from any rear or side lot line. In the event that dwellings are located on exclusive use areas or contain no interior lot lines, a minimum distance of 20 feet between single and two-family dwellings shall be required.

§ 97-47.9. Open space requirements.

- A. Open Space. A minimum of fifty percent (50%) of the upland shown on the development plan shall be open space. Any proposed open space, unless conveyed to the Town or its Conservation Commission shall be subject to a permanent conservation or agricultural preservation restriction in accordance with GL. c. 184 § 31, approved by the Planning Board and Board of Selectmen/Town Counsel and enforceable by the Town, conforming to the standards of the Massachusetts Executive Office of Environmental Affairs, Division of Conservation Services, providing that such land shall be perpetually kept in an open state, that it shall be preserved exclusively for the purposes set forth herein and that it shall be maintained in a manner which will ensure its suitability for its intended purposes.
 - (1) The open space shall be contiguous. Contiguous shall be defined as being connected. Open Space will still be considered connected if it is separated by a roadway or an accessory amenity. The Planning Board may waive this requirement for all or part of the required open space where it is determined that allowing noncontiguous open space will promote the goals of this bylaw and/or protect identified primary and secondary conservation areas.
 - (2) The open space shall be used for wildlife habitat and conservation and the following additional purposes: historic preservation, outdoor education, passive recreation, agriculture, horticulture, forestry, a combination of these uses, and shall be served by suitable access for such purposes. The Planning Board may permit a small portion of the open space to be paved or built upon for structures accessory to the dedicated use or uses of such open space (i.e., pedestrian walks and bike paths) so long as it supports the primary and secondary purposes of the OSRD.
 - (3) Wastewater and stormwater management systems serving the OSRD may be located within the open space. Surface systems, such as retention and detention ponds, shall not qualify towards the minimum open space required.

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- B. Ownership of the Open Space. The open space shall, at the Planning Board's election, be conveyed to:
- (1) The Town or its Conservation Commission;
 - (2) 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;
 - (3) A corporation, homeowners association or trust owned jointly or in common by the owners of lots or units within the OSRD. If such corporation or trust is utilized, ownership thereof shall pass with conveyance of the lots in perpetuity. Maintenance of such open space and facilities shall be permanently guaranteed by such corporation or trust which shall provide for mandatory assessments for maintenance expenses to each lot and unit. Each individual deed, and the deed or trust or articles of incorporation, shall include provisions designed to effect these provisions. Documents creating such homeowners association, trust or corporation shall be submitted to the Planning Board for approval, and shall thereafter be recorded.
 - (4) A private owner for agricultural, horticultural or forestry.
- C. Maintenance of Open Space. In any case where open space is not conveyed to the Town, the Town shall be granted an easement over such land sufficient to ensure its perpetual maintenance as conservation or recreation land. Such easement shall provide that in the event the trust or other owner fails to maintain the open space in reasonable condition, the Town may, after notice to the lot owners and public hearing, enter upon such land to maintain it in order to prevent or abate a nuisance. The cost of such maintenance by the Town shall be assessed against the properties within the development and/or to the owner of the open space. The Town may file a lien against the lot or lots to ensure payment of such maintenance.

§ 9747.10. Design standards.

The following Generic and Site Specific Design Standards shall apply to all OSRD's and shall govern the development and design process:

- A. Generic Design Standards.
- (1) The landscape 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 individual building sites shall be such as to maintain maximum natural topography and cover. Topography, tree cover, and natural drainageways shall be treated as fixed determinants of road and lot configuration rather than as malleable elements that can be changed to follow a preferred development scheme.
 - (2) Streets 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 or off the subject parcel.
 - (3) Mixed-use development shall be related harmoniously to the terrain and the use, scale, and architecture of existing buildings in the vicinity that have functional or visual relationship to the proposed buildings. Proposed buildings shall be related to their surroundings.
 - (4) All open space (landscaped and usable) shall be designed to add to the visual amenities of the area by maximizing its visibility for persons passing the site or overlooking it from nearby properties.

- (5) The removal or disruption of historic, traditional or significant uses, structures, or architectural elements shall be minimized insofar as practicable, whether these exist on the site or on adjacent properties.

B. Site Specific Design Standards.

- (1) Mix of Housing Types. The OSRD may consist of any combination of single-family and two-family structures. Multifamily structures as permitted under § 97-47.12 may also be included.
- (2) Parking. Each dwelling unit shall be served by two (2) off-street parking spaces. Parking spaces in front of garages may count in this computation.
- (3) Drainage. The Planning Board shall encourage the use of "soft" (nonstructural) stormwater management techniques (such as swales) and other drainage techniques that reduce impervious surface and enable infiltration where appropriate.
- (4) Screening and Landscaping. All structural surface stormwater management facilities shall be accompanied by a conceptual landscape plan.
- (5) On-site Pedestrian and Bicycle Circulation. Walkways, trails and bicycle paths shall be provided to link residences with recreation facilities (including parkland and open space) and adjacent land uses where appropriate.
- (6) Disturbed Areas. Every effort shall be made to minimize the area of disturbed areas on the tract. A disturbed area is any land not left in its natural vegetated state.

§ 97-47.11. Decision of the Planning Board.

The Planning Board may grant a special permit for an OSRD if it determines that the proposed OSRD has less detrimental impact on the tract than a conventional development proposed for the tract, after considering the following factors:

- A. Whether the OSRD achieves greater flexibility and creativity in the design of residential or unit developments than a conventional plan;
- B. Whether the OSRD promotes permanent preservation of open space, agricultural land, forestry land, other natural resources including waterbodies and wetlands, and historical and archaeological resources;
- C. Whether the OSRD promotes a less sprawling and more efficient form of development that consumes less open land and conforms to existing topography and natural features better than a conventional subdivision;
- D. Whether the OSRD reduces the total amount of disturbance on the site;
- E. Whether the OSRD furthers the goals and policies of the [choose] open space/master/comprehensive plan(s);
- F. Whether the OSRD facilitates the construction and maintenance of streets, utilities, and public services in a more economical and efficient manner;
- G. Whether the Concept Plan and its supporting narrative documentation complies with all sections of this zoning bylaw.

§ 97-47.12. Increases in permissible density.

The Planning Board may award a density bonus to increase the number of dwelling units beyond the Basic Maximum Number. The density bonus for the OSRD shall not, in the aggregate, exceed

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fifty percent (50%) of the Basic Maximum Number. Computations shall be rounded to the lowest number. A density bonus may be awarded in the following circumstances:

- A. For each additional ten percent (10%) of the site (over and above the required 50%) set aside as open space, a bonus of five percent (5%) of the Basic Maximum Number may be awarded.
- B. For every one (1) dwelling unit restricted to occupancy for a period in perpetuity by persons or families who qualify as low or moderate-income, as those terms are defined for the area by the Commonwealth's Department of Housing and Community Development, one (1) dwelling unit may be added as a density bonus. Multi-family structures of not more than four (4) units are permitted if all units are restricted to occupancy by low or moderate-income persons or families.
- C. For every historic structure preserved and subject to a historic preservation restriction, one (1) dwelling unit may be added as a density bonus.

§ 9747.13. Severability.

If any provision of this bylaw is held invalid by a court of competent jurisdiction, the remainder of the bylaw shall not be affected thereby. The invalidity of any section or sections or parts of any section or sections of this bylaw shall not affect the validity of the remainder of the town's zoning bylaw.