

ARTICLE 15
Amended to Town Meeting 2004
RESIDENTIAL OPEN SPACE DEVELOPMENT BY
CONDITIONAL USE PERMIT

Pursuant to RSA 674:21, the Planning Board is hereby authorized to grant a Conditional Use Permit to allow for an Open Space development in accordance with the restrictions and requirements of this section.

- 15.1 Purpose – The intent of this ordinance is to provide a flexible method of residential development that is consistent with principles of sound planning and wise land use that are not specifically permitted in the current zoning ordinance. All developments seeking a conditional use permit shall be administered by the Planning Board to insure that Open Space development opportunities do not adversely impact neighboring properties, or the citizens and Town of Epping. The Planning Board shall consider the following purposes and balance them accordingly during review of individual applications:

15.1.1 Maintain and Preserve rural character of the Town of Epping by allowing an alternative residential development option which preserves large areas of open space, provides for visual buffers from existing roads and residential development, and permits farming opportunities on parcels of open space.

15.1.2 Preserve large, contiguous parcels of open space throughout the town and particularly as found in the Epping Master Plan, land determined to be of significant importance for protection and preservation.

15.1.3 Provide for a diversity of housing types, opportunities, and architectural styles.

15.1.4 Encourage road design that will contribute to and enhance a rural atmosphere and maintain minimal safety design.

15.1.5 Provide for connected corridors of open land throughout town for preservation of habitat, environmental resources, and public enjoyment.

15.1.6 As part of an alternative for residential development, to require the ing of homes in a manner that includes proximity in physical location while minimizing confusion over issues of property ownership.

- 15.2 Conditional Use Permits. All Open Space developments shall obtain a conditional use permit from the Planning Board. The conditional use permit shall clearly set forth all conditions of approval and shall clearly list all plans, drawings and other submittals that are part of the approval. Everything shown or otherwise indicated on a plan or submittal that is listed on the conditional use permit shall be considered to be a condition of approval. Construction shall not deviate from the stated conditions without approval of the modification by the Planning Board.

- 15.3 Application Procedure. Applications for conditional use permits for an Open Space development shall be made in accordance with the procedures set forth in the relevant sections of the Subdivision Regulations of the Epping Planning Board.

- 15.4 Approval of Applications. Prior to issuance of a building permit, the applicant shall acquire a conditional use permit as well as any other necessary Planning Board approval. A conditional use permit may only be issued only if an Open Space development complies with all of the requirements of this section. The Planning Board may grant an approval with reasonable conditions necessary to accomplish the objectives of this section or the Epping Master Plan,

Zoning Ordinance, or any other federal, state, town resolution, regulation, or law, including but not limited to; a reasonable reduction in allowed density, a reasonable increase in required frontage, setbacks, or any other requirement if necessary to accomplish said objectives. If an applicant fails to comply with this ordinance, associated regulations or reasonable requests of the Planning Board, the application may be denied.

- 15.5 General. The Open Space development provisions of this ordinance provide applicants with an alternative development approach intended to promote flexibility and innovation in land planning. Within this context, the ordinances that are established are intended to be a minimum consideration of allowable impacts. Each tract of land possesses different, unique development characteristics and limitations, and the Open Space development use allowed on any particular tract will be a function of innovative land planning and subdivision design interacting with the special characteristics and limitations of the site.

The following definitions specifically apply to this Section of the Zoning Ordinance:

- 15.5.1 Common Area: Any parcel or area of land and/or area of water set aside as a result of a plan. The common area is designed for the benefit and enjoyment of the residents of a development. These areas may contain accessory structures and improvements necessary and appropriate for the educational, recreational, cultural, social or other non-commercial/nonresidential/nonindustrial uses, plus any utility services utilized by the owners of the common area.
- 15.5.2 Conservation Land: Land given to a public body dedicated to conservation of forests, park land, etc., or to a private conservation trust, with the intent of preserving in its original ecological condition, safeguarding water supplies, or diminishing flood danger.
- 15.5.3 Mandatory Home Association: A private non-profit corporation, association or other non-profit legal entity established by the developer for the benefit and enjoyment of the residents of the Development. Membership in said association shall be mandatory for property owners and made a required covenant in any deed issued or passed. It shall provide voting and use rights in the common area when applicable and may charge dues to cover expenses, which may include tax liabilities of the common area, recreational or utility facilities. Articles of Association or Incorporation must be acceptable to the Planning Board and by the Town Counsel and any other municipal, county, state agency, body, commission or department required by law to approve of the same.
- 15.5.4 Open Space Easement: Land whose development rights have been legally restricted, either by deed or by public purchase of those rights. The easement may be so worded as to permit or restrict public access, to allow or disallow recreational development, and similar provisions. Easements are tied to the title of the land, regardless of its subsequent ownership.
- 15.5.5 Public Open Land: Land purchased by or given to the Town of Epping for parks, playgrounds, or an undeveloped open space, generally with the intention of making it accessible for public use.
- 15.5.6 Yield Plan: A conventional layout of roadways and lots in accordance with the dimensional requirements of underlying zoning district.
- 15.6 Lot Size and Frontage - The minimum lot size for an Open Space development is 10 acres. The minimum frontage for the development shall be a contiguous 100 feet and of sufficient length to provide safe access for a right-of-way of at least 50 feet. At least one access shall be within the minimum frontage. The minimum frontage and access shall be within the Town of Epping.

Frontage lands on roads existing at the time of application shall be preserved as buffers to the maximum extent possible in addition to all required setbacks.

- 15.7 Density – Development density shall be determined by the Planning Board through review and approval of a yield plan. The yield plan shall be approved by the Planning Board in accordance with the following:

15.7.1 The review of the yield plan shall be administered by the Planning Board in accordance with this section. The Board shall adopt subdivision regulations, in accordance with RSA 6774:35-36, specifically tailored to provide for the review of yield plans in accordance with this section.

15.7.2 The yield plan shall incorporate soils information sufficient to determine estimated lot sizes by soil type, roads and rights-of-way that provide for a layout that corresponds with existing state and federal laws, town ordinances, and subdivision regulations, including but not limited to minimization of wetland crossings, road length requirements, right-of-way widths, and safe sight distance for entrances.

15.7.3 The yield plan is meant to be conceptual in nature but must be realistic and not show potential house sites or streets in areas that would not ordinarily be legally permitted in a conventional layout.

15.7.4 In addition to the above, the yield plan shall include, basic topography, wetlands, floodplains, steep slopes (greater than 25%), soils subject to slumping, and contiguous non-wet areas, and other areas of land where it is not feasible to accommodate building sites and individual septic systems.

15.7.5 In order to show that the yield plan is reasonably achievable, up to 20% of the lots, randomly distributed throughout the yield plan, shall indicate one test pit which complies with all local, state, and federal requirements, including but not limited to, depth to estimated seasonal high water table, setbacks to lot lines and structures, and wetland setbacks. These lots shall be selected by the applicant, however, the Planning Board, at its discretion, may seek additional lots for testing if doubts arise.

15.7.6 The yield plan shall comply with conventional subdivision standards and shall not require a variance or waiver from the existing ordinances or regulations in order to achieve the layout supporting the proposed density unless the waiver meets the requirements of the regulations and would reasonably be considered as part of a conventional design.

- 15.8 Development Yield – The total yield for residential Open Space- development shall be determined by the yield plan. The resulting number multiplied by a factor of four (4) shall indicate the number of bedrooms allowed. In no event shall the total density exceed the soil-based carrying capacity for the entire parcel.

- 15.9 Standards for approval - All standards below must be met or impacts mitigated to the satisfaction of the Planning Board prior to the granting of a Conditional Use Permit.

15.9.1 The permit is in compliance with this ordinance and is in the public interest.

15.9.2 That there are no existing violations of the Epping zoning ordinance on the subject property.

15.9.3 That the character of the area shall not be adversely affected. This determination, to be made by the Planning Board, shall be made by considering the following aspects of the surrounding area.

a) Transportation, determined through analysis of the following:

- Access for safety vehicles onto the site, within the site, and to individual houses;
- Capacity of nearby and affected intersections, and transportation corridors;
- Cost for municipality to maintain roadways.
- Layout, width, and construction of roadways on the site.

b) Protection of natural resources, determined through analysis of the following:

- Protection of environmentally sensitive areas, including but not limited to, wetlands, shoreland buffers, wildlife corridors, significant groundwater resources, etc.;
- Maintenance of viewsheds and other visually appealing aspects of the site;

c) Protection of cultural resources, determined through analysis of the following:

- Establishment of new and protecting existing trailways for travel;
- Protection of historic buildings or significant historical landscapes;
- Establishment, protection and promotion for agricultural uses of the site.

15.9.4 That granting the permit will not result in undue municipal expense.

15.9.5 That the proposed development will be constructed in a manner compatible with the spirit and intent of the Epping Master Plan and Zoning Ordinance.

15.9.6 That the capacity of existing or planned community facilities and services (including streets and highways) will not be adversely impacted. Mitigation of these impacts by the developer can be properly considered in granting of a conditional use permit.

15.10 Other Regulations Applicable. The Planning Board shall adopt sections of the Subdivision Regulations not pre-empted by this ordinance to implement Open Space development, including the right to waive such regulations. This shall include additional provisions for the design and approval of a yield plan. Where not specifically pre-empted by the provisions of this ordinance, the requirement that is more restrictive shall apply. The Planning Board shall determine if pre-emption is intended by the provisions of this ordinance, and/or what requirement that is to apply, is more restrictive.

15.11 Minimum Open Space Requirements

15.11.1 The parcel must contain a minimum of 40% of the total land in the parcel dedicated as open space. If any multi-unit structures or joined-array units are utilized, the minimum open space shall be 60% of the total land in the parcel.

- 15.11.2 Such land shall be preserved in perpetuity through deed restriction or conservation easement, and designated on the approved and recorded plat. Such restriction shall be approved by the Planning Board and reviewed by Town Counsel.
- 15.11.3 The open space within a development shall be owned by and bound by one or more of the following:
- a) Mandatory Homeowners Association, which may use it for common recreational facilities or may designate it as Open Space, or may grant a public body an Open Space Easement.
 - b) A public body which shall use it as Conservation Land or Public Open Land.
 - c) Such designation must be made prior to approval of the subdivision application by the Planning Board; such lands shall be held in such type of legal entity as the Planning Board deems appropriate.

15.13 Open Space Criteria. -

15.13.1 The minimum required open space shall not contain more than 50% of total of areas of the following kinds of unbuildable land

- a) Wetlands as defined elsewhere in this ordinance, or if not so defined, as found in state law.
- b) Slopes exceeding a grade of 25%, or soils subject to slumping.
- c) Floodways, and floodway fringe within the 100-year floodplain as shown on official FEMA maps.

15.13.2 No portion of public utility easements, of any kind, may be considered part of the minimum required open space.

15.13.3 Open Space Layout. Open space land shall be designated as undivided parcels to facilitate easement monitoring, enforcement, maintenance, and to promote appropriate management by a single entity according to approved land management standards.

15.13.4 As part of the application, an open space plan shall be submitted showing clear delineation of parcels of open space land that is not to be developed. The open space plan shall be recorded at the Registry of Deeds and shall indicate that development is restricted from the open space in perpetuity.

15.13.5 Open space shall be directly accessible to the largest practicable number of lots within the development.

15.13.6 Safe and convenient pedestrian access to open space shall be provided from all lots not adjoining the open space

15.14 General Requirements

15.14.1 Uses – Only residential uses shall be permitted in Open Space Developments.

- a) Single-family detached homes are permitted.

b) Townhouse units shall be permitted up to a unit count of 4 per building or structure. These are units must structurally joined and share walls with no yard between units. The walls shall meet all code requirements for firewalls. (Amended Town Meeting 2008).

c) Manufactured housing units as defined in RSA 674:31 are not permitted.

15.14.2 Exclusive-use Frontage – The following frontage requirements shall apply.

a) Each single-family lot or unit shall have 15' of frontage on interior roadways.

b) Duplex units, sharing a common wall shall have 25' of frontage.

c) Townhouse unit structures, sharing a common wall shall have 75' of frontage for three (3) unit structures and 100' of frontage for four (4) unit structures

15.14.3 Setbacks – The following setbacks shall apply to all residential structures within the development.

a) Setbacks from exterior property lines of the entire parcel shall be 35' for single-family detached units, with an additional 10' per unit for multi-unit structures (e.g. 4 unit attached = 75').

b) 10' setback from the edge of right-of-way for public roadways within, and part of, the development.

c) 20' structural separation for all single-family unit structures within the development.

d) 50' structural setback for multi-family units from all other structures.

e) 10' structural setback from all exclusive use lot lines.

15.14.4 All developments shall contain some form of reasonably identifiable lot delineation or exclusive use designation that provides for a reasonable amount of land attributable to each particular structure.

15.14.5 Utilities – All utilities serving the development shall be underground. The Planning Board shall retain exclusive authority to approve utilities for water and septic in accordance with the subdivision regulations, including rejection of community-style systems that do not provide for adequate protection for residents of the development and water quality and quantity.

15.14.6 Parking – Off-street parking shall be provided for two (2) cars per unit plus a minimum of a one-car garage for each unit.

15.14.7 Internal Frontage – All newly created lots and units shall front on the new roadway and be internal to the site.

15.15 Expiration – Any Conditional Use Permit shall expire if active and substantial development or building has not begun on the site by the owner or the owner's successor in interest in accordance

with the approved plat within 12 months after the date of approval. As part of its approval of a plat or plan, the Planning Board may, with due regard to the scope and details of a particular project, specify the threshold level of work which shall constitute "active and substantial development or building" for purposes of fulfilling this paragraph. In such cases, a new application for a Conditional Use Permit must be completed.