Ashby Open Space Residential Development (OSRD) Bylaw

As adopted at the May 2007 Town Meeting

Move to amend the Zoning Bylaw by deleting from section 3, definition number 34, Major Residential Development and definition number 35, Minor Residential Development and deleting from section 4, subsection 4.9 in its entirety and inserting the following in its place:

4.9 Open Space Residential Development

4.9.1. **Purpose.** The purposes of this open space residential development (OSRD) bylaw are to provide for the public interest by the preservation of open space and natural landscape features in perpetuity, ensure that residential development respect the natural features of the land to the maximum extent possible, encourage a more compact and efficient form of development that consumes less open land and conforms to existing topography and natural features better than a conventional grid-style subdivision, facilitate the goals of the Ashby Community Development Plan, encourage innovative land-use and site design techniques such as low impact development (LID), greenway connections, vernacular architecture and contextual response and promote housing patterns that are designed to be sensitive to and accommodate a site’s physical characteristics. Such features include wetlands and water bodies, topography, vegetation, wildlife habitats, scenic views and vistas, the integrity of ancient ways, historic sites, and the remaining rural character of the community which is exemplified by its farmlands, open fields and orchards.

4.9.2. **Applicability.** The Open Space Residential Development bylaw shall apply as follows:

4.9.2.1. **Applicability.** Open Space Residential developments shall be allowed by special permit within the Residential, Residential/Agricultural, and Residential/Commercial Districts.

4.9.2.2. For the subdivision of any parcel or contiguous parcels equal to or greater than ten (10) acres under M.G.L. C.41, sections 81K to 81GG, an application must be made to the Planning Board for a special permit for an Open Space Residential Development. For the division of any other parcel or contiguous parcels an application may be made to the Planning Board for a special permit.

4.9.2.3. For any residential development defined as any division of land proposed under Approval not Required (ANR) control, M.G.L. C.41, section 81P, an application for a special permit for an Open Space Residential Development may be made at the applicant's option.

4.9.2.4. The application for a special permit for an Open Space Residential Development shall be reviewed and acted upon by the Planning Board as the Special Permit Granting Authority in accordance with the requirements of G.L. c. 40A, sections 9 and 11.

4.9.3. **Procedure.** In a Residential District the division of land shall be completed as follows:

4.9.3.1. Applicants seeking a special permit for an OSRD should request a pre-application conference or conferences with the Planning Board, and other boards as appropriate, to review the scope of the project and the site for which it is proposed.

4.9.3.2. For any application for an Open Space Residential Development, the applicant shall prepare two sets of concept plans, as described in the Town of Ashby Planning Board Rules and Regulations for Special Permits, for the parcel of land to be subdivided. One plan shall describe a conventional subdivision while the second shall describe an Open Space Residential Development.
4.9.3.3. The total number of lots shown on the Open Space Residential Development plan shall not exceed the number of lots which could reasonably be expected to be developed under a conventional plan without zoning variances or waivers and in full conformance with zoning, subdivision regulations, the Wetlands Protection Act and Board of Health Regulations. The Planning Board shall use the concept plan described in section 4.9.3.2. as guidance in determining the permissible number of OSRD lots. The number of lots will be specified in the special permit and reflected in the definitive subdivision plan that follows the granting of the special permit.

4.9.3.4. The Planning Board may grant a special permit for an Open Space Residential Development if the Board determines that the Open Space Residential Development plan is superior to the conventional plan in preserving open space for conservation, agriculture or recreation, stormwater management, utilizing the natural features of the land, and allowing more efficient provision of public services, and that the Open Space Residential Development plan is thereby more beneficial to the Town than the conventional plan.

4.9.3.5. A special permit for an OSRD shall remain effective for a period of two (2) years from the date of approval. At its discretion, the Planning Board may grant extensions for good cause shown.

4.9.4. Requirements. In a Residential District a special permit for an Open Space Residential Development shall conform to the following requirements:

4.9.4.1. In issuing a special permit for an Open Space Residential Development, the Planning Board may waive some or all of the area and dimensional requirements of the zoning district in which the Open Space Residential Development is to be located, if the Board finds that the waivers will result in better design and improved protection of natural, cultural, and scenic resources, provided that all the lots within the Open Space Residential Development are at least forty thousand (40,000) square feet in area.

The following additional minimum dimensional requirements shall be adhered to for all building lots within the OSRD:

- Minimum Frontage: 50 feet
- Minimum Lot Width at building line: 80 feet

4.9.4.2. A Buffer Area of twenty-five (25) feet shall be provided along the perimeter of the property being subdivided where it abuts residentially zoned or occupied properties, except for driveways necessary for access and egress to and from the site. No vegetation in this buffer area will be disturbed, destroyed or removed, except for normal maintenance. The area within the perimeter buffer area does count towards the minimum required open space. The Planning Board may waive this perimeter buffer requirement where:

a. The land abutting the site is the subject of a permanent restriction for agriculture, forestry, conservation or recreation, or

b. The land abutting the site is owned by the Town and used for conservation or recreation purposes, or

c. The Planning Board determines that a small buffer will promote improved protection of natural, cultural, and scenic resources.
4.9.4.3. **Open Space Requirements.** An OSRD must provide at least 35% of the total land area as permanently protected open space. The Ashby Open Space and Recreation Plan considers open fields, existing trails, and agricultural land to be the most valuable type of open space to preserve when the parent parcel consists of several landscape types. The open space shall have no structures or parking within it, unless such structures are part of an ongoing or proposed agricultural or forestry operation that is acceptable to the Planning Board.

4.9.4.4. **Open Space Limitations:** Shared or community water wells and stormwater management facilities may be placed within open space areas, if needed to safely and adequately serve the residents of the OSRD. Areas cleared for installation of wells and stormwater management facilities, shall not, however, count towards the minimum required amount of permanently protected open space. The following additional standards apply to the minimum required common open space in an OSRD:

a. Other than any area(s) devoted to wells, stormwater management and active recreation, as described in this section, open space shall be maintained in its natural condition. It shall be appropriate in size, shape, dimension, location, and character to assure its use as a conservation, recreation, or agricultural area and serve as a visual and natural amenity for the subdivision and the Town.

b. At least 50% of the required open space shall be contiguous and linked as a unit, with links no less than fifty (50) feet wide. Open space that is contiguous to permanently protected lands outside the boundaries of the OSRD, such as town or state conservation lands, shall also be considered contiguous for the purpose of this bylaw.

c. The location of the common open space shall be subject to approval by the Planning Board.

d. The percentage of marginal or unbuildable areas that can count towards the minimum required amount of permanently protected open space shall be directly proportional (1:1) to the amount of such land in the parent parcel. For example, if 50% of the parent parcel consists of marginal lands, then 50% of the minimum required amount of permanently protected open space can be marginal lands. Marginal or unbuildable lands consist of areas covered by wetlands and a fifty (50) foot buffer there from, rivers and a one-hundred (100) foot buffer there from, floodplains and slopes greater than 25%.

e. Existing rights of way and utility easements may not be counted towards the required percentage of minimum open space, unless the rights of way or easements are dedicated as trails.

f. Though the open space will be primarily protected for its natural, cultural, and/or scenic resources, a small area, totaling no more than 10% of the required open space, can be set aside as a playground or other area for “active” recreation by the development’s residents and/or the town, depending on the ownership of the open space as discussed in section 4.9.6. below. The location and size of such active recreational area(s) shall be approved by the Planning Board prior to final action on the plan. Active recreational areas must be built and completed prior to the issuance of any certificates of occupancy for housing units in the OSRD.
4.9.4.5. Section 4.2.6 of the Ashby Zoning Bylaw, which addresses minimum non-wetland area, shall not apply to lots in an approved Open Space Residential Development.

4.9.4.6. If the Planning Board approves a Special Permit for an Open Space Residential Development, the applicant may thereafter submit preliminary and final subdivision plans for the Open Space Residential Development for approval in accordance with the provisions of the Planning Board's Rules and Regulations. If the Planning Board denies a Special Permit for an Open Space Residential Development, the applicant may submit subdivision plans based on the conventional plan.

4.9.4.7. Any OSRD special permit issued by the Planning Board shall specifically state that the subsequent definitive subdivision plan shall substantially comply with the special permit plan in terms of the number of dwelling units, road and lot layout, open space percentage and layout, and stormwater management systems. If the Planning Board determines that the definitive subdivision plan for the OSRD does not comply with the provisions of the special permit, the Planning Board shall require the applicant to submit a revised subdivision plan that does comply with the provisions and conditions of the special permit, or to seek another special permit.

4.9.5. **Planning Board Regulations**

The Ashby Planning Board may adopt regulations to assist in the administration of this section. These regulations may address, but not be limited to, the following considerations: plan submittal requirements, provisions for combined special permit and subdivision hearings, site landscaping and buffering standards, open space use restrictions, architectural design, common or shared driveways, road design and shared driveways, and alternative stormwater systems such as low impact development.

4.9.6. **Common Open Space Ownership and Management**

Common open space in any approved Open Space Residential Development shall be conveyed to one or more of the following:

1. a Land Trust or any other non-profit corporation approved by the Planning Board, the principal purpose of which is land preservation subject to covenants, enforceable by the Town, to keep the dedicated common space open or in a natural state as approved by the Planning Board: and/or

2. a corporation, trust or association owned or to be owned by the owners of the lots in the development, hereafter referred to as the "Homeowners Association", provided that the land shall be conveyed to the "Homeowners Association" subject to covenants, enforceable by the Town, to keep the dedicated common space open or in a natural state as approved by the Planning Board: and/or

3. the Town and may be accepted by it for conservation and/or recreational use subject to covenants to keep the dedicated common space open or in a natural state as approved by the Planning Board.

All common open space shall be dedicated and recorded with covenants at, or prior to, the time the permit holder receives a Building Permit.

4.9.7. **Subsequent to Approval**

Subsequent to approval of such Open Space Residential Development, no land therein shall be sold and no lot line shall be changed in such a way as to increase the number of lots or the extent of non-conformity with the provision of the dimensional requirements of the underlying district.