

7100. OPEN SPACE RESIDENTIAL DEVELOPMENT

7110. **Purpose.** The purposes of this open space residential development section are:

- To further the goals and policies of the Pepperell Master Plan and Open Space and Recreation Plan;
- To allow for greater flexibility and creativity in the design of residential developments;
- To encourage the permanent preservation of open space, agricultural land, wildlife habitat and wildlife corridors, other natural resources such as aquifers, water bodies and wetlands, and historical and archeological resources; in a manner that is consistent with Pepperell's Comprehensive Plan and Open Space and Recreation Plan;
- To preserve wildlife habitats, water resources and other natural resources in a way that maximizes their ecological value;
- To connect open space created within the OSRD with existing conservation areas when feasible;
- To minimize the total amount of land disturbance on sites undergoing development;
- To facilitate the construction and maintenance of housing, streets, utilities and public services in a more economic, environmentally sound and efficient manner.
- To preserve and enhance ~~the community~~Pepperell's rural character and landscape;
- To preserve and protect significant agricultural land and land with high value agricultural soils;
- To protect existing and potential community water supplies;
- To provide for a diversified housing stock, including providing affordable housing affordable to persons of low and moderate income, as is consistent with the town's Housing Production Plan.

7120. Definitions.

Basic Maximum Number: The number of dwelling units that would be allowed on a site using the standard zoning bylaw provisions and/or subdivision rules and regulations as determined by the yield analysis performed for the special permit plan.

Common Open Space: Land that is set aside for protection from development in perpetuity, usually left in its natural state, for the purposes of natural resource conservation, wildlife habitat, water supply protection, passive recreation and other amenities in conformance with the provisions of this section.

Density Bonus: Additional dwelling units that may be awarded beyond the basic maximum number, as determined through the special permit plan and yield analysis, for the provision of affordable housing units, the setting aside of additional open space beyond the minimum amount required, green stormwater systems or low-impact development and open space that is integrated into a wider network of protected land in the town.

Homeowners Association (HOA): The corporation, trust, or association owned by the unit owners within a development and used by them to manage and regulate their affairs.

including any commonly owned land or facilities.

Major Subdivisions: Major subdivisions are those creating 5 (five) or more lots or residential units, whether for single family, duplex or multi-family development.

Yield Analysis: An analysis, based on the conceptual conventional plan described in section 7150, which determines the basic maximum number of lots and dwelling units that would be possible to develop in a conventional manner following all applicable Pepperell zoning and regulatory requirements.

7130. Applicability. To be eligible for consideration as an OSRD, the parcel of land or group of contiguous parcels located within the Rural Residence, Town Residence and Recreation Residence districts, or any zones of the Water Resource Protection Overlay District (WRPOD), must contain a minimum of ten (10) acres. Where the parcel or group of contiguous parcels is located in the Suburban Residence or Urban Residence districts, the total acreage necessary for an OSRD shall be five (5) acres. Additional criteria for eligibility include:

- To be eligible for consideration as an OSRD, the parcel may be a subdivision or a division of land pursuant to G.L. c.41, sec.81P provided, however, an OSRD may also be permitted when the property is held in condominium, cooperative ownership or other form where the property is not subdivided, which in some cases will require a special permit or site plan application for multi-family development.
- Each lot created in the OSRD shall have adequate access on a public way or approved subdivision road.
- To facilitate the goals of the Pepperell ~~Comprehensive Plan~~ Master Plan and Open Space and Recreation Plan, all major subdivisions (those creating 5 (five) or more lots or residential units) and multi-family special permit developments shall be presented to the Planning Board as Open Space Residential Developments in compliance with the provisions of this section. In all cases it shall be assumed that an OSRD is necessary to meet the purposes of this section, unless the contrary is demonstrated by the applicant to the satisfaction of the Pepperell Planning Board. In cases where the Planning Board determines that a parcel(s) is unsuited to development as an OSRD, it may waive the requirements of this section and permit the subdivision or multi-family special permit plan to be developed for up to eleven lots or residential units in a conventional manner subject to the Pepperell subdivision rules and regulations. Subdivisions and multi-family special permit developments creating twelve or more lots or residential units shall comply with the provisions of this section. An applicant proposing a minor subdivision (those creating four or fewer lots or units) may develop an OSRD at his/her option.

7140. Permitted Uses. Each lot exclusive of the open land shall be used for residential dwellings of the type permitted or allowed by special permit in the applicable zoning district. These lots shall be grouped in clusters, and within each cluster the lots shall be contiguous.

Accessory uses shall be allowed appurtenant thereto as provided in the residential district in which the land is located, with the exception of the keeping of nondomestic animals; and the use as a customary home occupation, as defined in this chapter, shall be further limited, prohibiting any employees who do not reside within the dwelling unit, any retail sales and any business signs.

Commented [JO1]: Consider allowing yield calculations to be based on a formula using net acreage rather than creating a conventional plan. This may save developers the expense of creating the conventional plan. The Massachusetts model Open Space Design/Natural Resource Protection Zoning document has a recommended formula beginning on page 7, and can be found here: <https://www.mass.gov/service-details/smart-growth-smart-energy-toolkit-module-bylaws>

Commented [JO2]: Requires additional follow-up discussion: Master Plan Recommendation 2.8 includes "Consider requiring mandatory OSRD for all subdivisions over a certain size threshold." However, the Master Plan does not recommend a specific threshold.

Common open spaces may be used for noncommercial ~~active and~~ passive recreation, conservation, forestry, agriculture and natural buffers and may contain paved or unpaved recreation trails and access for approved purposes~~structures necessary to approved uses, utilities and other facilities necessary for the convenience and enjoyment of the residents~~, subject to approval by the Planning Board as part of the decision on the special permit or as amendment to the special permit after it has been issued. Paved recreation trails, where permitted, shall be compliant with the Americans with Disabilities Act (ADA) Standards for Accessible Design.

In order to diversify the Town's housing stock and allow for opportunities to provide affordable housing and save additional open space, ~~a small number of~~ duplexes and /or multi-family residential structures are permitted within OSRDs, provided they meet all provisions of this OSRD Bylaw, the multifamily residential development requirements of section 7300, the general special permit criteria of section 9300 and all State of Massachusetts Title 5 and local health requirements. In any OSRD, no greater than ~~10~~25% of the total number of lots, including those that may be permitted under a density bonus per section 7180, can contain duplexes and/or multi-family residential structures ~~where permitted in the underlying districts~~. All calculations shall be rounded down to the nearest whole number. ~~Lots containing duplexes and/or multi-family residential structures may not be contiguous within any one subdivision or OSRD development.~~

7150. Procedure.

Overview of Procedure. For applicable parcels, an OSRD is authorized in three steps; the first of which is optional: 1. Pre-application conference with the Planning Board and/or other Town boards and committees as described below; 2. submittal, review and approval of an OSRD special permit plan by the Planning Board, followed by; 3. submittal, review and approval of a definitive subdivision plan, or site plan, as the case may be, in conformity with the OSRD special permit as approved by the Planning Board.

If the OSRD involves construction of a new subdivision road, the level of engineering detail required at the special permit stage of review is the same as for a preliminary subdivision plan that meets the Town of Pepperell subdivision regulations. An approved definitive subdivision (or site) plan that does provide adequate engineering detail, however, is required prior to the start of any construction and the issuance of building permits for lots / units within the development.

Special Permit Procedures. Applicants for an OSRD special permit shall follow the special permit rules and regulations established by the Pepperell Planning Board in section 9300 of the Town of Pepperell Zoning Bylaw.

Pre-Application Conference. Applicants seeking a special permit for an OSRD are encouraged to request a pre-application conference or conferences with the Planning Board, department heads and/or other boards as appropriate, to review the scope of the project and the site for which it is proposed. At a minimum, the intent of the pre-application conference shall be to:

- Identify the key natural features of the site.
- Identify the historic, archaeological and cultural resources of the site and surrounding area.
- Identify any safety, traffic, or infrastructure issues related to the site and its surrounding area.

Commented [J03]: Both of these recommendations require follow-up discussion. Increasing the total number of lots that allow duplexes and multi-families from 10% of the total lots to 25% of the total lots may encounter resistance.

Deleting "where permitted in the underlying districts" would allow multi-families in five new districts (RR, TR, RCR, SR and UR), provided that the multi-families are within OSRDs.

Commented [J04]: Consider removing this to make the pre-application conference mandatory.

Commented [J05]: Again, consider making the pre-application conference mandatory.

- Identify existing trails on the site or on abutting parcels, and any connections thereto.
- Identify areas that the Town prefers to see protected as open space, viewsheds, wildlife habitat and corridors, water resources, forestry operations or agricultural uses.
- Discuss the proposed plan and any issues relative to the concept plan Special Permit criteria.
- Discuss any design issues relative to this Bylaw and the Planning Board's requirements for definitive subdivision or site plans.
- Assist the developer in understanding the permitting process and issues relative to OSRD.
- Set a timetable for the special permit and definitive plan review processes.
- Schedule a site visit with the Planning Board and other land-use boards, as appropriate.

Site Visit. The Planning Board and/or its designee(s), along with members from all interested boards and departments, may conduct a site visit prior to or during the special permit public hearing. At the site visit, the Planning Board or its designee(s) shall be accompanied by the applicant and/or its agent(s). With the applicant's permission, interested members of the public may be invited to the site visit.

If a quorum of the Planning Board is anticipated to be present at the site visit, the site visit must be properly noticed per the requirements of MGL Chapter 39, Sec. 23a-24.

Preferred Design Process. Each OSRD special permit applicant should follow a design process similar to that outlined below. When the plan is submitted, the applicant(s) shall ~~be prepared to~~ demonstrate to the Planning Board that this design process was substantially complied with in determining the proposed layout of open space, streets, house lots and other features of the OSRD.

- Understanding the site. The first step is to inventory existing site features, taking care to identify sensitive and noteworthy natural, scenic and cultural resources of the site, and to determine the connection of these important features to each other and similar features on abutting properties, if any.
- Evaluating site context. The second step is to evaluate the site in its larger context by identifying natural (e.g. streams, wetlands, steep slopes), transportation (e.g. roads, woods roads, trails), and cultural (e.g. historic and recreational sites) connections to surrounding land uses and activities.
- Designating the contiguous open space. The third step is to identify the contiguous open space to be preserved on the site. Such open space should include the most ecologically sensitive and noteworthy resources on the site, and, where appropriate, areas that serve to extend existing networks of open space, trails -or land protected under restrictions easements.
- Location of building sites and development areas. The fourth step is to locate building sites, parking areas, paths and other features of the built environment. If applicable, access and parking for open space should be identified.

- Roads and Lot Lines: The final step is to choose road alignments and driveway locations and then draw lot lines around each proposed building lot, which also serves to delineate the open space areas described in section 7160 of this Bylaw.

Submission Requirements. In addition to the information required by the Planning Board Rules and Regulations for Special Permits and Site Plan Reviews, the following additional information shall be submitted as part of a special permit application:

- Special Permit concept plans. For any application for an Open Space Residential Development, the applicant shall prepare two sets of concept plans for the parcel of land to be subdivided or otherwise developed. One plan shall describe a conventional subdivision or development while the second shall describe an Open Space Residential Development.

The principle component of the concept plan is a schematic representation of the proposed development, with sufficient detail about existing and proposed conditions to enable the Planning Board and the public to understand what is being proposed and to be able to respond to the applicant's proposals in an informed manner. This information will also be used by the Planning Board in determining the number of permissible lots.

The concept plans shall include scaled drawings by a registered land surveyor, civil engineer or landscape architect. The concept plans shall be used by the Planning Board in determining the number of lots that would be possible were the parcel to be subdivided in a conventional manner, as well as the general features of the OSRD.

~~Special permit concept plans shall contain the following information, as well as that required in Appendix B of the Special Permit rules and regulations, unless the need for such is specifically waived by the Planning Board after request by the applicant. At a minimum~~ In addition to requirements [numbered x, y and z] included in Appendix A of the Planning Board Rules and Regulations for Special Permits and Site Plan Reviews, the concept plans shall also provide the following information, unless the need for such is specifically waived by the Planning Board after request by the applicant:

- 1. The location of the proposed development. A locus map shall be provided showing the location of the development in relation to the entire town at a scale of one inch equals 1,000 feet.
- 2. Parcel boundaries, north arrow, date, legend, title and scale.
- 3. The size of the parcel(s) being subdivided in acres and square feet.
- 4. The names of the record owner, applicant and the name of the designer or surveyor.
- 5. The existing and proposed lines of streets, ways, easements, and any public areas within the subdivision in a general manner.
- 6. Any zoning district boundaries.
- 7. The names and addresses of all abutters, as determined from the most recent tax list.

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- 8. Photographs of the site at a variety of locations, focusing on possible building sites, unique natural and scenic areas and areas to be set aside as open space. The location of these photographs should be identified on the plan.
- 9. A description of the environmental and natural features of the site, focusing on those features intended for preservation through permanently protected open space.
- 10. The acreage, percentage of the entire parcel and proposed uses of the open space.
- 11. The total number and approximate locations of the proposed buildings, dwelling units and/or lots.
- 12. Topography / contour lines at an interval of two feet.
- 13. A statement on the disposition or manner of ownership of the proposed open space.
- 14. A delineation of jurisdictional wetland resource areas and their buffer zones subject to the Massachusetts Wetlands Protection Act. All resource area flag locations shall be numbered and placed on the plan. The delineation of all wetland resource areas shall be certified by the Pepperell Conservation Commission.
- 15. A general mapping of soil types from existing data sources, such as the Natural Resource Conservation Services (formerly the Soils Conservation Service).
- 16. Lot boundaries with their approximate areas and frontage dimensions, ~~of~~ unit placement, and all proposed common and open space areas.
- 17. Location and extent of all parking, landscaping, stormwater management, ~~utilities~~, water supply and wastewater management service areas that would be required to accommodate all the units in the development proposal.
- 18. If available, the location and results of any test pit investigations for soil profiles, percolation rates and determination of seasonal high water tables.
- 19. A general description of how drainage will be handled, including a soils statement (soil conservation survey is acceptable) and the general area of the site to be used for stormwater management facilities, including whether low impact development (LID) techniques are proposed.
- 20. Surface water, bordering vegetated wetlands and flood hazard area data using the FIRM ~~or Raytheon~~ information, as applicable, demonstrating that each such conventional lot has viable frontage access on a public way without reliance on a common drive.
- 21. Draft of the proposal for the open space for Planning Board approval that includes a provision for maintenance which permits assessments upon individual owners in the event of a default by the organization.

•22. ~~Drafts of any covenants, easements or grants pertaining to the common open space and the maintenance, insurance, tax payments, and other upkeep of the common open space, running with the land, easements or grants which shall be enforceable by the town and/or subsequent owners of the land or buildings and which will oblige in a like manner subsequent holders of all or part of the applicants' interest.~~

•23. After an OSRD concept plan has been submitted, no tree removal, no utility installation, no ditching, grading or construction of roads, no grading of land or lots, no excavation, except for purposes of soil testing, no dredging and no construction of buildings or structures shall be done on any part of the site until a definitive subdivision or site plan (if applicable) for such development has been approved by the Pepperell Planning Board.

7155. Dimensional Requirements and Number of Units

Number of Lots/Units. The basic maximum number of lots and dwelling units shown on the Open Space Residential Development special permit concept plan shall not exceed the number of lots and dwelling units which could reasonably be expected to be developed under a conventional plan in full conformance with all applicable zoning, subdivision and/or site plan regulations, the Wetlands Protection Act and codes of the Town of Pepperell, notwithstanding any density bonus that may be awarded per section 7180. The Planning Board shall use the concept plans described in section 7150 as guidance in determining the basic maximum number of OSRD lots and units. After reviewing all pertinent information, the Planning Board shall make a finding as to the basic maximum number of lots and dwelling units in the OSRD. The basic maximum number of lots and dwelling units is based on the number of lots and dwelling units that can be created without zoning variances or waivers from the subdivision or site plan regulations.

The number of lots and dwelling units will be specified in the special permit and reflected in the definitive subdivision or site plan that follows the granting of the special permit.

Design Standards and Dimensional Requirements. The following design standards and dimensional requirements shall apply in an OSRD.

- There shall be adequate, safe and convenient arrangement of roadways, driveways, pedestrian and other open areas to provide access for emergency vehicles to reach all buildings and structures at all times.
- Each lot shall be of a size and shape to provide a building site, which shall be in harmony with the natural terrain and other features of the land and provide adequate allowance for future accessory buildings or structures. In no instance shall any of the dimensional controls be reduced below the following table of minimum requirements.
- The nature of the soils and subsoils shall be suited for the intended purposes. This determination shall focus upon, but shall not be limited to, the location, design and construction of access ways, buildings, septic systems and surface water drainage systems. Soil borings or test pits shall be required prior to the issuance of any building

Commented [J08]: Much of this list is included in Appendix A. To provide consistency between OSRD regulations and Appendix A, consider requiring some or all Appendix A elements and removing duplicate or unnecessary items from this list.

This list of requirements for concept plans is quite long and could likely be reduced while retaining the necessary items.

Commented [J09]: Master Plan recommendation 2.8 includes revising the OSRD bylaw to "allow for smaller lot sizes for the residential portion of a project". Continue discussions to determine the desired lot sizes and revise accordingly.

permits, unless waived by the Planning Board, to provide information on soil texture, color, percolation rates and depth to the groundwater table at its maximum elevation.

- Wherever possible and at the discretion of the Planning Board, a 50-foot wide no-disturbance buffer shall be provided around the entire perimeter of the site. This 50-foot buffer does count towards the minimum required amount of protected open space, subject to the limitations of section 7160.

TABLE OF MINIMUM REQUIREMENTS

Requirement	Served by Town Sewer and Water	Served by Town Water, but not Sewer	Served by Neither Town Water or Sewer
Minimum lot area	20,000 sq. ft.	30,000 sq. ft.	40,000 sq. ft.
Minimum contiguous lot area exclusive of wetland, flood hazard and surface water areas	18,000 sq. ft.	25,000 sq. ft.	30,000 sq. ft.
Minimum lot frontage	75 feet	120 feet	120 feet
Minimum side yard	15 feet	25 feet	25 feet
Minimum rear yard	25 feet	25 feet	25 feet
Minimum front yard	25 feet	25 feet	25 feet

Note: Lots with duplexes (two attached dwelling units) or multifamily units shall require twice the minimum lot area as specified above for single family lots and must comply with all provisions of section 7300, Multifamily Residential Development, of the Pepperell Zoning Bylaw. All other dimensional requirements for duplex and multi-family lots are unchanged from the underlying zoning.

- Streets shall be designed and located in such a manner as to maintain and preserve natural topography, significant landmarks, and trees; to avoid wetland crossings, if possible; to minimize cuts and fills; and to preserve and enhance views and vistas on or off the subject parcel. If the street is to become a public way, all Town of Pepperell design and engineering standards pertaining to new subdivision roads, as described in the Subdivision Rules and Regulations, must be followed.
- The Planning Board shall require connection, at the applicant's expense, of the OSRD to the municipal sewerage system, ~~where when~~ available in conformance with the all provisions of section 8400, Sewer Zoning District, of the Pepperell Zoning Bylaw. ~~For purposes of this requirement, municipal sewerage shall be deemed available when a line comes within a reasonable distance from an access street to the site. Factors which will be used in determining if public sewer is available within a reasonable distance shall~~

Commented [JO10]: Again, Master Plan recommendation 2.8 includes revising the OSRD bylaw to "allow for smaller lot sizes for the residential portion of a project". Continue discussions to determine the desired lot sizes and revise accordingly.

Also consider shorter dimensional requirements to allow for more flexibility and greater density.

Commented [JO11]: Discuss with the Board of Health if current technologies for septic and private wells allow for smaller lots and adjust accordingly.

Commented [BW12]: It is not possible to have compact development and maintain these standards—it is also difficult to encourage affordable and diverse housing

~~include, but are not limited to, the actual distance, the capacity of the existing line, topography, grade from the site to the public sewer, size of the development, effective density of development, ability to obtain easements, permits or license to traverse land of others, environmental constraints and correlation with the Sewer Commission Master Plan.~~

- The applicant shall submit calculations for a surface water drainage ~~design based on a twenty five year storm event~~ performed and certified by a registered professional civil engineer demonstrating that the anticipated storm water runoff from the site shall not exceed peak runoff from the site prior to development. ~~Culverts shall be designed on the basis of a fifty year storm with consideration being given to damage avoidance for a one hundred year storm.~~ Drainage design shall comply with the most recent version of the Massachusetts Stormwater Handbook and Stormwater Standards. Drainage and stormwater calculations shall be performed by a registered professional engineer and shall conform to the Town of Pepperell Rules and Regulations Governing the Subdivision of Land ~~Planning Board Rules and Regulations governing the subdivision of land.~~
- The site shall be preserved in its natural state, as it exists at the time of application, insofar as practicable, by minimizing tree and soil removal until the definitive plan has been approved. Any landscaping added to the site should be comprised of native plant materials. 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, plant cover and solar access. Topography, tree cover, surface water buffers and natural drainage ways 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.
- All main service lines for water, sewer and utilities shall be underground.
- Open Space Residential Developments within the Water Resource Protection Overlay District (WRPOD)
 - ⇒ Notwithstanding the provisions of section 8130. WRPOD Use Regulations, and Appendix A, Table of Principle Uses, of the Pepperell Zoning Bylaw, single-family homes on lots not less than 40,000 sq.ft. and duplexes and/or multifamily residential structures on lots not less than 80,000 sq.ft., are permitted within the Well Protection and Aquifer and Watershed Protection Zones of the Water Resource Protection Overlay District (WRPOD), provided the following standards can be met to the satisfaction of the Planning Board and Pepperell Board of Health:
 - ⇒ All new sewage disposal systems within the above mentioned WRPOD must provide enhanced nitrogen removal to protect public health and safety as well as the environment. The system owner is required to install a recirculating sand filter or equivalent alternative technology or to obtain a groundwater discharge permit in accordance with 314 CMR 5.00 and 6.00. Full compliance with the provisions of 310 CMR 15.000, which includes enhanced nitrogen removal, is presumed to protect the public health, safety, welfare and the environment. Specific site or

Commented [JO13]: Consider prioritizing topography, plant cover or solar access, as maximizing these three elements may require tradeoffs.

design conditions, however, may require that additional criteria be met in order to achieve the purpose and /or intent of 310 CMR 15.000.

7160. Common Open Space. All land identified as open space in section 7150 of this Bylaw shall be set aside as common open space, and this land shall be preserved in essentially its natural condition. An OSRD must provide at least ~~40~~50% of the total tract area as permanently protected open space. ~~Common open space that has been approved for recreational use, and is not owned by a homeowners association, shall include access for town residents to the extent practical. The common land shall be, to the extent practical, adequately distributed throughout the parcel so that it is accessible to residential lots without crossing through private property and separates residential lots from abutting properties. Though the open space will be primarily protected for its natural resource and wildlife habitat values, a small area, totaling no more than 10% of the required open space, may be set aside as a playground or other area for “active” recreation by the residents and/or the town, depending on the ownership of the open space as discussed 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.~~

The following lands shall not constitute more than fifty percent (50%) of the minimum required common open space:

- Lands identified as wetland resource areas in accordance with G.L. c. 131, s. 40;
- Lands with slopes greater than twenty-five percent (25%)
- Lands within the 100 year floodplain as shown on F.I.R.M. maps.

Further subdivision of common open land or its use for other than recreation, conservation or agriculture, ~~except for easements for underground utilities,~~ shall be prohibited. ~~Structures or buildings accessory to recreation, conservation or agricultural uses may be erected, provided that there shall be a minimum setback of one hundred (100) feet between any common open space structures and all property lines on the site, and provided that the total of impervious surfaces shall not exceed ten percent coverage of the total area of the common open land.~~ Existing rights of way and utility easements may not be counted towards the required percentage of minimum open space.

Stormwater management ~~and shared septic and well~~ systems may be located within the common open space when necessary, provided such systems meet all applicable state and local codes, and are approved by the Pepperell Planning Board, Conservation Commission and Board of Health. The Planning Board ~~may~~ shall require that ~~such utilities~~ stormwater management systems be covered by ~~a utility or an~~ access easement and management agreement prior to the issuance of certificates of occupancy. The area devoted to ~~shared septic and large~~ surface stormwater systems, such as retention and detention ponds, shall not, however, qualify towards the minimum required amount of open space.

The design of the common land open space shall provide for linkage with existing or future planned open space lands in abutting developments or in publicly owned or controlled open space lands, and shall be planned as large contiguous units whenever possible, ~~with~~ no Strips or narrow parcels (minimum fifteen foot minimum width) ~~shall only be~~ permitted when necessary for access or as vegetated buffers along the site's perimeter, and may be in more than one (1) parcel, provided that the size, shape and location of such parcels are suitable for the designated uses. Contiguous shall be defined as being connected. Open space in abutting properties will still

be considered connected if it is separated by a roadway, shared driveway or paved or unpaved trail or accessory amenity.

7165. Ownership and Management of the Open Space. The land set aside as common open land shall be owned and/or managed by one (1) of the following arrangements, ~~as and~~ shall be ~~determined~~approved by the Planning Board:

1. Conveyed to an ~~an homeowners~~ -association (HOA), ~~corporation or trust~~ owned or to be owned by the owners of lots or units within the development. If such association is utilized, the following shall apply:

a. ~~ownership thereof shall pass with conveyances of the lots in perpetuity. The documents organizing the HOA shall be approved by the Planning Board before final approval of the OSRD, recorded prior to the issuance of building permits, comply with all applicable provisions of state law, and pass with conveyances 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.~~

b. 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.

c. The HOA shall be responsible in perpetuity for liability insurance, property taxes, the maintenance of recreational and other facilities, private roads, and any shared driveways.

d. 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 OSRD.

e. The HOA must be able to adjust the assessment to meet changed needs.

f. The applicant shall make a conditional grant to the Town of Pepperell, 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 Town of Pepperell, at the discretion of the Board of Selectmen, upon the failure of the HOA to take title to the open space from the applicant or other current owner, upon dissolution of the association at any future time, or upon failure of the HOA to fulfill its maintenance obligations hereunder or to pay its real property taxes.

g. 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.

h. Pepperell 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.

2. Conveyed to the town, at no cost, and accepted by it for park or open space use, prior to the issuance of certificates of occupancy. Such conveyance shall be at the option of the

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town and shall require the acceptance of the land by the Conservation Commission and the approval of the Board of Selectmen.

- 3. Conveyed to a nonprofit organization, the principal purpose of which is the conservation or preservation of open space, prior to the issuance of certificates of occupancy.
- 4. In any case where such land is not conveyed to the town, a conservation restriction, enforceable by the town under MGL Ch. 184, Sections 31-33, shall be required ensuring that such land shall be kept in an open or natural state and not be built upon for residential use or developed for any use other than open space, conservation, recreation, archaeological or historical preservation, water quality protection, or agriculture.
 - a. The conservation restriction may allow for the installation of kiosks or similar informational signage, as well as a small portion of the open space, not to exceed 5%, to be paved for walkways, trails, bike paths, or parking to complement the approved use of the open space, so long as the conservation values of the open space are not compromised. ~~for uses such as parking or roadways.~~
 - b. ~~Such-The~~ restrictions shall further provide for maintenance for the common land in a manner which will ensure its suitability for its function, the appearance, cleanliness, proper maintenance of drainage utilities and the like, and empower the town to perform maintenance in the event of failure to comply with the program, and including a provision that the owners of lots or units within the cluster development shall pay the cost thereof and that the cost shall constitute a lien upon their properties until said cost has been paid.
 - c. This restriction shall be recorded within sixty (60) days of the granting of the special permit, unless the sixty day time limit is ~~waived and~~ extended to a date certain-determined by the Planning Board, or the special permit shall be null and void.

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7170. Decision. In addition to the findings required by the Pepperell Special Permit rules and regulations, the Planning Board shall consider the following criteria and make the following additional findings for any OSRD:

- The reduction in dimensional controls will result in improved protection of natural and scenic resources.
- The application includes a program satisfactory to the Planning Board describing how the common open space will be maintained in perpetuity.
- The degree to which the design and layout of the OSRD is better than a conventional development in preserving open space for conservation and recreation, preserving natural features of the land, achieving more efficient provision of streets, utilities and other public services, and providing a high degree of design quality.
- The degree to which the OSRD promotes permanent preservation of open spaces, natural landscapes and vistas, agricultural land, forestry land, existing and proposed trails, other natural resources including water bodies, wetlands and drinking water source areas, and historic and archeological resources.

- The degree to which the OSRD preserves the site’s natural resources with the highest ecological value.
- The degree to which the OSRD utilizes native plant materials.
- The degree to which the OSRD achieves sustainable design through a more efficient form of development that consumes less land and conforms to existing topography and natural features as compared to a conventional subdivision or comparable development.
- The degree to which the OSRD reduces the total amount of land disturbance and clearing on the site.
- The degree to which the OSRD furthers the goals and objectives of the Pepperell Master Plan, Affordable Housing Plan-Housing Production Plan, Open Space Plan and Recreation Plan, Stormwater Management Plan and other planning documents, as determined by the Planning Board.
- The degree to which the OSRD and its supporting documentation complies with the provisions and sections of this Bylaw.
- The Planning Board may find that the proposed location of the OSRD is better suited for a conventional subdivision or land development, and therefore authorize the applicant to submit a conventional plan in compliance with the Pepperell subdivision or site plan regulations.
- The degree to which the OSRD designed layout is not more-less detrimental than a conventional development in protecting the water quality and quantity of Town wells.

Conditions.

- A special permit for OSRD granted by the Planning Board shall lapse, except for a good cause, two (2) years from the date of issue unless a substantial part of the proposed construction work shall have been commenced and is proceeding continuously toward completion. This two year period shall not include the time required to pursue or await determination of an appeal referred to in G.L. c. 40A, s. 17. The recording of the special permit and subsequently approved Definitive Plan shall constitute commencement of substantial use.
- At any time before, during or after the commencement of construction of the proposed development the special permit may be amended by following the special permit procedures for the amendment.
- The Planning Board may impose a performance guaranty to insure construction in accordance with the plan.
- The Planning Board approval of a special permit hereunder shall not substitute for compliance with the Subdivision Control Law nor oblige the Planning Board to approve a related definitive plan for subdivision.

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Commented [JO14]: Section 9370 of the Zoning Bylaw states: “Special permits shall lapse if a substantial use thereof or construction thereunder has not begun, except for good cause, within 24 months following the filing of the special permit approval”. Recommend removing this sentence and adding a definition of substantial use to section 1000, Definitions, of the Zoning Bylaw.

Relationship between the Special Permit Plan and Definitive Subdivision or Site Plan. Any OSRD special permit issued by the Planning Board shall specifically state that the subsequent definitive subdivision plan or site plan shall substantially comply with the special permit concept 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 or site 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 or site plan that does comply with the provisions and of the special permit, or to seek another special permit.

Any special permit for an OSRD that is granted by the Planning Board which shows a subdivision must be followed by the submittal of a Definitive Subdivision Plan in accordance with the Subdivision Rules and Regulations of the Town of Pepperell. The OSRD Special Permit shall be reconsidered if there is substantial variation between the Definitive Subdivision Plan and the Special Permit Plan.

If the Planning Board finds that a substantial variation exists, it shall hold a public hearing on the modifications to the Special Permit plan. A substantial variation will be found to exist when any of the following conditions apply:

- An increase in the number of building lots and/or dwelling units;
- A significant decrease in the open space acreage or percentage;
- A significant change in the lot layout or units placement;
- A significant change in the general development pattern which adversely affects natural landscape features and open space preservation;
- Significant changes to the stormwater management facilities;
- Significant increase in land disturbance and disruption to environmental resource areas; and/or
- Significant changes to the wastewater management systems.

Planning Board Regulations. The Pepperell Planning Board may adopt regulations to assist in the administration of this OSRD Bylaw. 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, low impact development and other site specific planning features. Failure of the Planning Board to adopt such regulations shall not serve to invalidate any provisions of this Bylaw.

Waivers from the Provisions of this Bylaw

The Planning Board may waive strict compliance with any of the provisions of this section when, it-in its judgment, doing so is in keeping with the spirit and intent of this section, is in the public interest and is not inconsistent consistent with the Pepperell Zoning Bylaw.

7180. Bonuses for Additional Open Space and Affordable Housing. The Planning Board may award a density bonus to increase the number of dwelling units beyond the basic maximum allowed, as determined through the yield analysis, which equals in excess of the number of dwelling units that could be developed in a conventional manner. The density bonus for the OSRD shall not, in the aggregate, exceed 20% (twenty percent) of the basic maximum number. Computations for all density bonuses shall be rounded down to the nearest whole number. Density bonuses are not allowed within the water resource protection overlay districts

Commented [JO15]: Consider raising this number to 30%.

(WRPODs) because of the overriding necessity of protecting such areas from undue encroachment and the risk of groundwater contamination. A density bonus may be awarded in the following circumstances:

- For each additional ten percent (10%) of the site (over and beyond the required ~~40~~50%) set aside as permanently protected open space, a bonus of five percent (5%) of the basic maximum number of dwelling units may be awarded.
- For every two (2) dwelling units restricted in perpetuity to occupancy by Moderate-Income Households, or for every one (1) dwelling unit restricted in perpetuity to occupancy by Low-Income Households, one (1) market rate dwelling may be added to the basic maximum number of dwelling units. Affordable housing units may be used toward density bonuses only if they can be counted towards the Town's ~~affordable housing inventory~~ Subsidized Housing Inventory (SHI) as determined by the Massachusetts Department of Housing and Community Development and outlined in the town's Housing Production Plan. The applicant shall provide documentation demonstrating that the unit(s) shall count towards the community's affordable housing inventory to the satisfaction of the Planning Board, in that the units meet the eligibility criteria outlined under Chapter 40B.
- Bonus for Low Impact Development and Innovative / Environmentally-progressive land development techniques
 - The Planning Board may award a density bonus for OSRDs that use Low-Impact Development (LID) / Better Site Design Practices for stormwater management in place of the standard structural methods such as detention basins and piped systems. LID or "soft" or "green" stormwater management systems use vegetative and small, decentralized building lot scale systems to decrease impervious surfaces and encourage the infiltration of ~~clean-stormwater water~~ into the ground. When the Planning Board determines that an OSRD is proposing a well-planned LID system, it may award one additional market rate or affordable housing unit to the basic maximum number of units.
 - The Planning Board may also award one additional market rate or affordable housing unit over the basic maximum number when it finds that the OSRD plan is most effective in connecting or linking its open space to existing conservation or permanently protected open space lands in Pepperell.
 - ~~that are permanently protected from development.~~

7190. 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 of this bylaw shall not affect the validity of the remainder of the Pepperell Zoning Bylaws.