

Section 3.04 Open Space Communities By-Law¹

(a) Purpose and Intent

- (i) To provide for the public interest by encouraging the permanent preservation of open land for its scenic beauty and to enhance ~~agricultural~~agriculture, forestry, and recreation.
- (ii) To perpetuate the appearance of Mendon's rural character and traditional New England landscape.
- (iii) To protect the natural environment, including but not limited to aquifers, wetlands, farmland and Priority Habitats.
- (iv) To protect and increase property values that are reflected in the high value that homeowners place on the amenities of open space.
- (v) To promote the reduction of street construction, town maintenance, site development costs, and to provide public services more efficiently and economically.
- (vi) To promote Low Impact Development practices: smaller lawns to minimize use of pesticides, herbicides, fertilizers and excessive water consumption, and far fewer impervious surfaces to minimize storm water runoff so as to preserve the natural hydrology of the land.
- (vii) To promote development that is in line with goals and objectives as defined by Town of Mendon's Open Space and Recreation Plan.² ~~Amended 6/26/20; AG approved 9/3/20; Effective 6/29/20~~
- (viii) ~~Not intended to make undevelopable land developable. To protect sensitive lands and existing landscape features including forests, farmland, meadows, wetlands, riverfront areas, water bodies, archeological and historic structures or points of interest, rock outcrops, stone walls, cliffs, high points, major land views, major tree groupings, noteworthy tree specimens, and habitats of endangered or threatened wildlife.~~

(b) Definitions

- (i) ~~Common Driveway: a private way that provides access to two (2) single family dwellings.~~
- (ii) ~~Flag Lot: a back lot connected to the road by a driveway that has less than the normally required frontage.~~

¹ [Added 5/2/2008; AG Approved 9/23/2008; Effective 5/2/2008](#)
[Amended 4/10/2012; AG Approved 7/30/2012; Effective 4/10/2012](#)
[Amended 6/24/2015; AG Approved 2/1/2016; Effective 6/24/2015](#)
[Amended 5/8/2021; AG Approved 8/11/2021; Effective 5/8/2021](#)

² [Amended 6/26/20; AG approved 9/3/20; Effective 6/29/20](#)

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- (iii) Low Impact Development: A technique that incorporates environmentally friendly land use planning through a range of techniques that preserve the natural hydrology of the land. Examples would be rain gardens, swales, shared driveways, driveways constructed of permeable paving, bioretention, and alternative landscaping.³ *Amended 6/29/20; AG approved 9/3/20; Effective 6/29/20*
- (iv) Open Space Community (OSC): A method of planning residential development that permanently conserves open space while allowing the same number of homes as would be permissible in a conventionally zoned subdivision.
- (v) Priority Habitat: The geographic extent of Habitat for State-listed Endangered Species as delineated by the Massachusetts Division of Fisheries and Wildlife. If the proposed project falls in any area so designated, the applicant must file directly with the Natural Heritage and Endangered Species Program pursuant to 321 CMR 10.12.
- (vi) Soft Storm Water Management Techniques: Nature-Based Stormwater Management: Non-structural storm-water stormwater management techniques that use passive pre-treatment of storm water stormwater in conjunction with decentralized recharge to achieve a low impact design that attempts to mimic pre-development hydrologic conditions to the greatest practicable extent.

(c) Applicability

- (i) As an alternative to conventional development, Open Space Community projects are the preferred form of residential development in the Town of Mendon. To encourage this type of development, Open Space Communities are allowed by right within residential zoning districts after Major Site Plan Review and approval by the Planning Board. An open space plan that meets with the requirements of this by-law, the additional requirements of any other definitive subdivision requirements specified herein, and the Subdivision Control Law shall go through the same permit and approval process as a conventional subdivision.
- (ii) All other Town of Mendon Zoning By-Laws and Town of Mendon Rules and Regulations for Subdivision of Land and Site Plan Approval apply to applications under this bylaw.
- (iii) The Planning Board shall grant or deny an Open Space Community application based upon the information contained in the Sketch Plan or Conceptual Preliminary Plan, as outlined in Section 3.04(d)(i)(4) below.

(d) Preliminary Submission

(iv)(i) Pre-Application

- (i) A pre-application review meeting between the applicant, the site designer, and the Planning Board is strongly encouraged. Participants could also

³ *Amended 6/29/20; AG approved 9/3/20; Effective 6/29/20*

may include consultants, members of the Board of Health and the Conservation Commission. This meeting is intended to commence discussions with the Planning Board at the earliest possible stage, to introduce the applicant to the standards and procedures of the bylaw, and to schedule site visits and meetings.

(ii) At the pre-application review meeting, the applicant may outline the proposed development, seek preliminary feedback from the Planning Board, and set a timetable for submittal of a formal application. The Planning Board may engage technical experts, at the applicant's expense, to review the informal plans of the applicant and to facilitate submittal of a formal application.

(v) Preliminary Submission Requirements: Submittals: In order to obtain preliminary approval before heavy engineering costs are incurred, facilitate review at this or subsequent meetings, the following submittal materials will be required. These will be in addition to the submittal requirements of the Mendon Planning Board Rules and Regulations. The Planning Board reserves the right to require such further documentation or other evidence, as it deems necessary. The Planning Board may waive any requirements in order to achieve the purpose and intent of this bylaw and to enable a better design.

- (i) Site Context Map. This map shall illustrate the parcel in connection to its surrounding neighborhood. Based upon existing data sources and field inspections, it shall show various kinds of major 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.
- (ii) Existing Resources / Site Analysis Map. This map familiarizes officials with existing conditions on the property. Based upon existing data sources and field inspections, the base map shall locate and describe noteworthy resources that could be protected through sensitive subdivision layouts. These resources include wetlands, riverfront areas, flood plains, and steep slopes, but may also include mature woodlands, hedgerows, farmland, priority wildlife habitats, historic or architectural 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 with a development plan, the parties involved can clearly see where conservation priorities and desired development overlap or conflict. This map is perhaps the single most important document in the design process because it provides the information base on which every major design decision turns.

(iii) Yield Plan / Number of Dwelling Units: The applicant shall submit a yield plan to demonstrate the density potential that would be permitted under a conventional (“grid”) subdivision. The number of OSC dwelling units permitted shall not exceed the number that would be permitted under the conventional subdivision plan. The required documentation shall include, without limitation, the following:

- (i) Soil Analysis: The purpose of the soil analysis is to demonstrate that lots shown in the conventional subdivision layout are suitable for subsurface sewage disposal. The soil analysis shall include an analysis of soil maps and other existing information, a site specific soil survey by a qualified soil scientist and may include some soil testing. The identified lots shall conform to the regulations of the Town of Mendon Board of Health and applicable laws of the Commonwealth of Massachusetts. It is not the intent of this Bylaw to normally require soil testing for each proposed lot shown on a conventional layout. The Planning Board may, however, require testing, at the applicant’s expense, of a subset of lots to verify the soil analysis.
- (ii) A layout for each conventional lot and supporting technical documentation to clearly demonstrate that each conventional lot can also fully comply with all the applicable laws and regulations pertaining to zoning and subdivision requirements for sewage disposal, water supply, wetlands protection, storm water management, and roadway construction.
- (iii) Each conventional lot shall also fully comply with the regulations of the Natural Heritage Endangered Species Program. (NHESP) Should any part of a lot included in the Yield Plan contain Priority Habitat for Rare and Endangered Species as identified in the latest edition of the Natural Heritage Atlas, the applicant shall include the Letter of Determination from NHESP. This is independent of the requirement to submit a copy of a required Notice of Intent to NHESP for a project located within an Estimated Habitat for Rare Wildlife under Mass. Wetlands Protection Act Regulations.
- (iv) ~~The Planning Board reserves the right to require such further documentation or other evidence, as it deems necessary.~~

(iv) ~~Conceptual Preliminary Plan (Sketch Plan): Sketch Plan: (Conceptual Preliminary Plan) This is a preliminarily engineered plan drawn to illustrate initial thoughts about a conceptual layout for greenway lands, house sites, and street alignments. This is the stage where drawings are tentatively illustrated before heavy engineering costs are incurred. These~~

drawings should be prepared by a team that includes a landscape architect and a civil engineer and should be based closely on the Existing Resources Site Analysis Map. The ~~Sketch Plan~~ or Conceptual Preliminary Plan shall follow a four step design process as described below in Section 3.04(e). The Sketch Plan shall contain the following information:

The Sketch Plan shall contain the following information:

- (i) The existing and proposed topography of the land.
- (ii) The location of existing landscape features, including forests, farm fields, meadows, wetlands, riverfront areas, water bodies, archeological and historic structures or points of interest, rock out crops, stone walls, cliffs, high points, major land views, major tree groupings, noteworthy tree specimens, and habitats of endangered or threatened wildlife, as identified in primary and secondary resources according to Section 3.04(e)(i) below. Proposals for all features to be preserved, demolished or altered shall be noted on the Sketch Plan.
- (iii) The existing and proposed lines of streets, ways, common driveways, easements and any parcel of land intended for public use or to be reserved by deed covenant for use of all property owners in the subdivision, or parcels of land to be used for any purpose, other than private residential, shall be so designated within the subdivision in a general manner.
- (iv) Proposed roadway grades.
- (v) Official soil percolation tests for the purpose of siting wastewater treatment shall be required as determined by the Planning Board, Board of Health, and Conservation Commission.
- (vi) A narrative prepared by a Massachusetts Certified Professional Engineer proposing systems for storm water drainage and likely impacts on site and to any abutting parcels of land. For example, the narrative will specify whether Nature-Based Stormwater Management Techniques ~~hard or soft (Low Impact Development)~~ ~~Storm Water Management Techniques~~ will be used and the number of 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 storm-water management structures (detention and retention basins, water quality swales, for

example) shall be shown on the plan and accompanied by a conceptual plan. The Planning Board shall encourage the use of non-structural, Low Impact Development Storm-water management techniques where appropriate. Use of best management practices for Low Impact Development as defined by the Massachusetts Stormwater Handbook are strongly encouraged.⁴ *Amended 6/26/20; AG approved 9/3/20; Effective 6/29/20*

- (vii) 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. All proposed landscape and buffer areas should be noted on the plan and generally explained in a narrative.
- (viii) A list of all legal documents necessary for implementation of the proposed development, including any Conservation Restrictions, land transfers, or condominium documents with an accompanying narrative explaining their general purpose.
- (ix) ~~The Planning Board may waive any requirements in order to achieve the purpose and intent of this bylaw and to enable a better design.~~

(iii) Definitive Submission Requirements

- (i) An Open Space Community Development falls under Major Site Plan Review as outlined in Article IV of these bylaws. See 4.01(g) for additional requirements.
- (ii) In addition to the requirements listed above, the Definitive Submission may require additional documentation as determined by the Planning Board.

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(4)(e) Design Process

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:

- (i) Identifying Conservation Areas: First, identify and delineate Primary Conservation Areas such as wetlands, stream and riverfront areas, priority wildlife habitat, and flood plains regulated by state or federal law. Second, identify Secondary Conservation Areas including unprotected elements of the natural landscape such as steep slopes, mature woodlands, prime farmland, meadows, wildlife habitats, and cultural features such as historic and archeological sites and scenic

⁴ *Amended 6/26/20; AG approved 9/3/20; Effective 6/29/20*

views. The Potentially Developable Area should consist of land outside of these identified Primary and Secondary Conservation Areas.

- (ii) 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. House sites should be located in accordance with the regulations of the Massachusetts Department of Environmental Protection Wetlands Protection Act, Rivers Protection Act, and any additional Town of Mendon regulations.
- (iii) 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 streets, sidewalks, and trails. Wetland crossings on land that is officially designated in the latest edition of the Massachusetts Natural Heritage Atlas as Priority Habitat for Rare Species and Estimated Habitat for Rare Wildlife and streets traversing existing slopes over 15% shall be strongly discouraged.
- (iv) Lot Lines: Draw in the lot lines.
- (v) Lot Yard and Coverage Regulations: See Section 3.04(g) for lot size and density requirements for Open Space Communities.

(ii) Requirements and Standards

(ii)(i) Design Standards. In addition to the design standards found in the Mendon Planning Board Subdivision Rules and Regulations, the following generic and site-specific design standards shall apply to all sketch plans for OSC's and shall govern the development and design process:

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(i) Generic Design Standards:

- (i) 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, 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 development scheme.
- (ii) 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.

- (iii) All open space shall be designed to add to the visual and ecosystem amenities of the area by maximizing its visibility for persons passing the site or overlooking it from nearby properties, for stormwater mitigation, and enhancing ecological integrity.
- (iv) The removal or disruption of historic, traditional or significant uses, structures or architectural elements shall be minimized insofar as practicable whether these exist on site or on adjacent properties.
- (v) Designs shall include Low Impact Development techniques when feasible.⁵ *Amended 6/29/20; AG approved 9/3/20; Effective 6/29/20*

(iii)(ii) Standards and Dimensional Requirements. The Planning Board encourages applicants to modify lot size, shape and other dimensional requirements for lots within an Open Space Community subject to the following limitations:

(i) Minimum lot size: Single family: 20,000 square feet

(ii) Lot Lines and Frontage

- a. Front and rear lot lines shall not be less than one hundred (100) feet. Driveways shall be wholly contained within said lot frontage. The Planning Board may waive these requirements where it is determined that a lesser amount, as in the case of retreatflag lots, common driveways, and lots fronting on a cul-de-sac, furthers the purpose and intent of this bylaw. WhereIf it is the case that retreatflag lots and common driveways do further the purpose and intent of this bylaw, they may be utilized, where appropriate, on a limited basis.
- b. Driveways shall be wholly contained within said lot frontage.
- c. Lots shall not have frontage on a street other than a street created by the Open Space Community

(iii) Open Space Requirements

- (i) Quantity: A minimum of 55% of the site shall be open space. Since wetlands deserve the highest protection possible, large contiguous wetland areas shall be preserved as open space. Wetlands may count toward the minimum open space area requirement provided, however, that no more than 40% of the calculated minimum area required for open space may be wetland, as defined in M.G.L. Chapter 131, Section 40, and the Resource

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Areas under Section 3a. and c. of Chapter 28 of the Mendon General By-Laws.

- (ii) The open space shall be planned as large contiguous areas whenever possible. Long thin strips should be avoided unless necessary to connect other significant areas. Such open space may be separated by roads constructed within the conservation area.
- (iii) A functional relationship shall exist between the common open space areas and the proposed residential clusters. Such common open space shall be restricted to open space, agricultural uses, recreational uses such as tot-lot, park, playground, playfield, or conservation area. Such common open space shall have suitable access to and from the development's street(s), and shall conform to the requirements of Mendon's Subdivision Rules and Regulations, in effect at the time of application.
- (iv) The access to the open space must be included in the open space land covered by the conservation restriction. An easement not under the conservation restriction is not acceptable.
- (v) Parking must be made by available the access to the open space, made of a permeable cover, such as crushed stone, for at least three cars, location approved by the Planning Board, and the area must be included in the open space and covered by the conservation restriction.⁶ *Amended 6/29/20; AG approved 9/3/20; Effective 6/29/20*

(v)(iv) Permissible Uses of Open Space

Open space shall be used solely for recreation, conservation, outdoor education, and/or agriculture purposes by the public. Where appropriate, multiple use of open space is encouraged. If several uses are proposed, the plans shall specify what uses will occur in what areas. The proposed use of open space shall be specified in the application. The Planning Board shall have the authority to approve or disapprove particular uses of open space.

- (i) Accessory Structures: Up to 5% of the open space may be set aside for construction of structures and facilities accessory to the proposed use of the open space including parking. Non-paved surfaces should be used where possible.
- (ii) Natural State: Use of open space shall be determined by the priorities of the bylaw. For example, if open space land contains Priority Habitat for Rare and Endangered Species, it is not suitable for a baseball field and should be allowed to remain undisturbed. In some cases no use is the best use.

⁶ *Amended 6/29/20; AG approved 9/3/20; Effective 6/29/20*

(iii) Recreation Lands: Where appropriate to the topography and natural features of the site, the Planning Board may allow that at least 10% of the open space or three acres (whichever is less) shall be of a shape, slope, location, and condition to provide an informal field for group recreation or community gardens.

(vi)(v) Monumentation.

Before the first lot release, the boundaries of the entire open space areas shall be surveyed and clearly marked by a qualified surveyor with all cost of the survey and monumentation borne by the developer. The Planning Board shall determine the materials used for the monumentation, location and placement of the monumentation.

(vii)(vi) Ownership Options.⁷ *Amended 6/29/20; AG approved 9/3/20; Effective 6/29/20*

The tract for which an open space residential development is proposed shall be in a single ownership or control at the time of the first lot release and have a clear title. The Planning Board may require that all areas to be protected open space be transferred before the first lot release. All open space areas shall have a conservation restriction as specified below in Section 3.04(m).

The open space shall be:

(i) Conveyance. The open space shall be:

(i) Conveyed to the Town:

(i)a. _____ Land left in its natural state or used for passive recreation or outdoor education shall be placed under the care, custody and control of the Conservation Commission.

(i)b. _____ Land used for a park, playing field, or other active recreational use shall be placed under the control of the Parks Department, or other appropriate town entity in accordance to Article 97, Land Disposition Policy, of the Massachusetts Constitution, or

(ii) Conveyed to a non-profit organization, the principal purpose of which is conservation or preservation of open space. Such organization shall be acceptable to the town as a bona fide conservation organization, and/or

(iii) Conveyed to a corporation, homeowners association or trust owned or to be owned jointly or in common by the owners of lots or units within the Open Space Community. If such corporation or trust is utilized, ownership thereof shall pass with the conveyance of the lots in perpetuity. Maintenance of such open space and facilities shall be permanently guaranteed by such corporation or trust which

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shall provide for mandatory assessments for maintenance expenses to each lot and unit. Each individual deed, and the deed of trust or articles of incorporation, shall include provisions designed to affect these provisions. Documents creating such homeowners association, trust or corporation shall be submitted to the Planning Board for approval, and shall thereafter be recorded.

(iv)(ii) Encumbrances: All areas to be set aside as open space shall be conveyed free of any mortgage interest, security interest, liens, or other encumbrances.

(viii)(vii) Maintenance of Open Space

- (i) In the case of a homeowner's association, corporation or trust, maintenance shall be permanently guaranteed. The corporation or trust shall provide for mandatory assessments for maintenance expenses to each lot. Each such corporation or trust shall be deemed to have assented to allow the Town to perform maintenance of the open space and facilities, if the trust or corporation fails to complete such maintenance.
- (ii) The owner of each lot shall be deemed to have assented to the Town filing a lien against each lot in the development for the full cost of such maintenance, which lien shall be released upon payment of same.
- (iii) Any proposed open space shall be subject to a recorded restriction enforceable by the Town, providing that such land shall be perpetually kept in open state, that it shall be preserved for exclusively agricultural, horticultural, educational or recreational purposes, and shall be maintained in a manner which will ensure its suitability for its intended purposes.
- (iv) 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 lot owners and public hearing, enter upon such land to maintain it in order to prevent or abate 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.
- (v) Open space protected in perpetuity shall be monitored to ensure that land designated as open space continues to meet requirements. Cost of developing the conservation restriction and monitoring shall be borne by the developer; this includes, but is not limited to legal fees, development of the conservation restriction, baseline survey, stewardship defense and

maintenance funding, and permanent marking of boundaries of the open space.⁸ *Amended 6/29/20; AG approved 9/3/20; Effective 6/29/20*

(ix)(viii) Permanent Restriction

All open space shall have a permanent conservation restriction or agricultural preservation restriction in accordance with M.G.L. c 184 Section 31, approved by the Planning Board and Select Board. Depending upon the ownership of the open space, these restrictions shall be enforceable by the Town or an outside non-profit organization, the principal purpose of which is conservation or preservation of open space. In all cases of ownership, these restrictions shall also conform to the standards of the Massachusetts Executive Office of Environmental Affairs, Division of Conservation Services; shall be recorded to ensure that such land shall be kept in an open and natural state and not be built for residential use, or developed for accessory uses such as parking or roadways except as permitted by this bylaw and approved by the Planning board. Restrictions shall provide for periodic inspection of the open space by the Town. Such restrictions shall be submitted to the Planning Board prior to approval of the project and recorded at the Registry of Deeds/Land Court simultaneously with recording of the definitive subdivision plan. If conservation restriction is not complete at the recording of the definitive plan, the Planning Board can allow the developer to submit a check to the town (amount determined by the Planning Board) to cover the costs of developing the conservation restriction, monitoring and related costs. Before any lots are released, the open space needs to be deeded to the town or other entity as described in Section 3.04 (k) And the developer must mark the open space boundaries with signs, approved by the Planning Board as described in Section 3.04 (j).⁹ *Amended 6/29/20; AG approved 9/3/20; Effective 6/29/20*

(x)(ix) 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 this bylaw shall not affect the validity of the remainder of the town's zoning bylaw

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