

7463. Suitable recreational space with a minimum cost of one percent of the fair market value of each unit of the Independent Living Facility and one-half of one percent of the construction cost for any Assisted Living and/or any Long-Term Care Facility shall be provided. The best effort shall be made to determine the fair market value of a unit and construction cost. Recreation facilities shall include a clubhouse and no occupancy permit shall be granted until the recreational facilities are completed.

7464. Within a clubhouse facility or structure, up to fifty percent of the clubhouse facility or structure may be allocated to use as an Adult Day Care facility during the hours of 7:00 A.M. to 6:00 P.M.

7470. Accessory Uses. CDPs may also provide optional accessory use services on site including but not limited to local transportation, barber/beauty services, sundries for personal consumption, and other amenities, provided:

7471. such uses serve primarily the residents of the development;

7472. such uses are conducted within and may be entered only from a principal building;

7473. there is no external evidence of such uses; and

7474. the appearance and character of commercial uses are compatible with the project.

7475. Upon approval by the Board, CDP may include Accessory Retail uses. The total amount of gross building floor area used for Accessory Retail uses shall not exceed five percent (5%) of the total gross building floor area for the entire CDP, or 10,000 square feet, whichever is greater.

7476. Upon approval by the Board, a CDP may include Accessory Restaurant uses. The total amount of gross building floor area used for Accessory Restaurant uses shall not exceed five percent (5%) of the total gross building area for the entire CDP, and shall contain a maximum of 100 seats.

7477. Upon approval by the Board, a CDP also may include a Community Center or Community Building(s) intended for use and benefit of the CDP residents, provided that such use(s) shall occupy not more than ten percent (10%) of the gross building floor area constructed within the approved CDP, and only if the Board finds that adequate assurances and covenants exist, to ensure proper maintenance of such facilities by the residents, owners or their agents, and that the residents, owners or their agents will bear all expenses related thereto.

7478. Upon approval by the Board, a CDP also may include an Adult Day Care facility intended for use and benefit of the CDP residents, provided that such use shall occupy not more than ten percent (10%) of the gross building floor area constructed within the approved CDP, and only if the Board finds that adequate assurances and covenants exist, to ensure proper maintenance of such facilities by the residents, owners or their agents, and that the residents, owners or their agents will bear all expenses related thereto.

7480. Rules and Regulations. The Planning Board shall adopt and from time to time amend, rules and regulations not inconsistent with the provisions of this Section or M.G.L. c. 40A or other applicable provision of the General laws, and shall file a copy of said regulations with the Town Clerk. Such rules shall prescribe as a minimum the size, form, contents, style and numbers of copies of plans and specifications, the Town boards or agencies from which the Planning Board shall request written reports, and the procedure of submission and approval of a CDP.

7500. OPEN SPACE RESIDENTIAL DESIGN (OSRD) SPECIAL PERMIT

7510. The Planning Board may grant a Special Permit for an Open Space Residential Design (OSRD) in the:

Residential Districts- R40 and Farming.

7520. PURPOSE AND INTENT

The Purposes for OSRD are the following:

- a. To further the goals and policies of the Town of Tewksbury's Master Plan;
- b. To allow for greater flexibility and creativity in the design of residential subdivision developments;
- c. To encourage preservation of open space, agricultural land, forestry land, wildlife habitat, other natural resources including aquifers, waterbodies and wetlands, and historical resources in a manner that is consistent with Tewksbury's Master Plan;
- d. To encourage a more creative and thoughtful approach to land development that decreases burden on municipal economy, minimizes disturbance and loss of undeveloped open space and utilizes and incorporates existing topography and natural features of the land to achieve a more environmentally sound design than with a conventional subdivision approach;
- e. To control suburban sprawl and maintain the character of the Town by conserving open space, scenic areas, views, streams, increasing recreational opportunities and other community assets;
- f. To promote efficiency and economy of street and utility layout; lessening storm runoff, erosion and sedimentation; retain natural drainage courses and wetlands; and in general promoting the health, safety, convenience and welfare of residential areas and of the Town of Tewksbury as a whole;
- g. To encourage development in harmony with the natural area, and promote alternative construction methods to typical strip residential developments lining roadsides in the Town.

7530. ELIGIBILITY

7531. To be eligible for consideration as an OSRD:

- a. The tract shall be located in the Residential Districts: R40 and Farming,
- b. The minimum tract area shall be three (3) acres.
- c. The tract shall consist of a parcel or set of contiguous parcels.

7532. Housing Types

- a. Housing Units shall be Single Family detached units.
- b. No common wall or multi- family structures shall be allowed.

7540. SPECIAL PERMIT REQUIRED

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

7541. PRE-APPLICATION

a. Conference.

The applicant is very strongly encouraged to request a pre-application review at a regular business meeting of the Planning Board.

The purpose of a pre-application review is to minimize the applicant's costs of engineering and other technical experts, and to commence negotiations with the Planning Board at the earliest possible stage in the development. At the pre-application review, the applicant may outline the proposed OSRD, seek preliminary feedback from the Planning Board and/or its technical experts, and set a timetable for submittal of a formal application.

b. The Planning Board shall adopt rules and regulations relative to the size, form, number and contents of the plans to be submitted for a pre-application review.

7542. DESIGN PROCESS

At the time of the application for a Special Permit for OSRD in conformance with 7544. SITE SPECIFIC DESIGN STANDARDS, applicants are required to demonstrate to the Planning Board that the following Design Process was performed by a certified Landscape Architect and considered in determining the layout of proposed streets, house lots, and open space.

a. Step One: Identifying Environmentally Sensitive Areas.

Identify Areas of concern.

1. Protected Land Areas (such as wetlands, riverfront areas, and floodplains regulated by state or federal law); environmentally sensitive land areas including unprotected elements of the natural landscape such as steep slopes, mature woodlands, prime farmland, meadows, wildlife habitats; and culturally significant features such as historic and archeological sites and scenic views shall be identified and delineated as determined by the Conservation Commission, the Planning Board or the Department of Environmental Protection.

2. The Potentially Developable Area will be identified and delineated. To the maximum extent feasible, the Potentially Developable Area shall consist of land outside identified as environmentally sensitive areas.

b. Step Two: Locating House Sites.

Locate the approximate sites of individual houses within the Potentially Developable Area and include the delineation of private yards and areas of shared amenities, so as to reflect an integrated community, with emphasis on consistency with the Town's historical development patterns.

c. Step Three: Aligning the Streets.

Align streets and driveways in order to access the house sites.

Common Driveways may be allowed subject to the requirements of the Planning Board's Rules and Regulations.

d. Step Four: Lot Lines.

Establish lot lines for each of the individual parcels and open space.

7543. PROCEDURES

a. Application.

An application for a Special Permit for an OSRD shall include a Sketch Plan as detailed below. The Planning Board shall adopt rules and regulations relative to the size, form, number and contents of the Sketch Plan.

1. Sketch Plan.

The Sketch Plan shall be prepared by a certified Landscape Architect, or by a multidisciplinary team of which one member must be a certified Landscape Architect, and shall address the general features of the land, give approximate configurations of the lots, locations and sizes (footprints) of the houses, examples and elevations of the home types, open space, and roadways, a description of the neighborhood in which the tract lies, including utilities and other public facilities, and the impact of the proposed plan upon them, and include the information listed under the Subdivision Rules and Regulations. The Sketch Plan shall be submitted in accordance to the requirements as set forth in the Planning Board's Rules and Regulations (7542.b.) The Sketch Plan shall incorporate the Four-Step Design Process, according to 7542 above, and the Design Standards according to 7544 below, when determining a proposed design for the development.

2. Relationship Between the OSRD Special Permit and OSRD Definitive Subdivision Plan

The issuance of an OSRD Special Permit allows the applicant to submit an Open Space Definitive Subdivision Plan to the Planning Board for approval under the Subdivision Control Law. Any OSRD Special Permit issued by the Planning Board shall specifically state that the Open Space Definitive Subdivision Plan shall substantially comply with the OSRD Special Permit.

An Open Space Definitive Subdivision Plan will be considered not to substantially comply with the OSRD Special Permit if the Planning Board determines that any of the following conditions exist:

- a. an increase in the number of building lots;
- b. a significant decrease in the open space acreage;
- c. a significant change in the lot layout;
- d. a significant change in the general development pattern which adversely affects natural landscape features and open space preservation;
- e. significant changes to the storm water management facilities; and/or,
- f. significant changes in the wastewater management systems.
- g. significant change or receipt of information which deviates from the information used as a basis for the approval of the OSRD Special Permit issued by the Planning Board.

If the Planning Board determines that the Open Space Definitive Subdivision Plan does not substantially comply with the OSRD Special Permit, the Board may disapprove the OSRD Definitive Subdivision Plan.

The Planning Board may conditionally approve an Open Space Definitive Subdivision Plan that does not substantially comply with the OSRD Special Permit. However, such conditional approval must identify where the plan does not substantially comply with the OSRD Special Permit and shall require that the OSRD Special Permit be amended to be in compliance with the significant changes identified by the Planning Board. The Planning Board shall also require that the applicant file an application to amend the OSRD Special Permit within a specified time period.

The public hearing on the application to amend the OSRD Special Permit shall be limited to the significant changes identified by the Planning Board in their conditional approval of the Open Space Definitive Subdivision Plan.

b. General Procedures.

Whenever an application for a OSRD Special Permit is filed with the Planning Board, with a copy filed forthwith with the Town Clerk, applicant shall also file, within five (5) working days of the filing of the completed application, additional copies to be provided according to the Planning Board's Rules and Regulations, accompanying development plan of the entire parcel under consideration, prepared by a professional architect, engineer or landscape architect, and other documentation, to the Board of Health, Conservation Commission, Building Inspector, Department of Public Works, Police Chief, Fire Chief, and Town Engineer for their consideration, review, and report. The applicant shall furnish the copies necessary to fulfill this requirement.

Reports from other boards and officials shall be submitted to the Planning Board within thirty-five (35) days of receipt of the reviewing party of all of the required materials; failure of these reviewing parties to make recommendations after having received copies of all such required materials shall be deemed a lack of opposition thereto.

In the event that the public hearing by the Planning Board is held prior to the expiration of the 35 day period, the Planning Board shall continue the public hearing to permit the formal submission of reports and recommendations within that 35 day period. The Decision/Findings of the Planning Board shall contain, in writing, an explanation for any departures from the recommendations of any reviewing party.

c. Site Visit.

Whether or not conducted during the pre-application stage, the Planning Board may conduct a site visit during the public hearing.

d. Other Information.

The submittals and permits of this section shall be in addition to any other requirements of the Subdivision Control Law or any other provisions of this Zoning Bylaw. To the extent permitted by law, the Planning Board shall coordinate the public hearing required for an application for a Special Permit for a OSRD with the public hearing required for approval of a Definitive Subdivision Plan.

7544. SITE SPECIFIC DESIGN STANDARDS

- a.** Basic Maximum Number of Housing Units shall be determined by one of the following methods:

1. Determination of Yield Formula

The Basic Maximum Number shall be derived from the following calculation to determine the total number of lots (or dwelling units):

$$\text{Total Number of Lots} = \frac{\text{TA} - (0.5 \times \text{WA}) - (0.1 \times \text{TA})}{\text{Existing minimum lot area (1 acre)}}$$

TA = Total Area of Parcel (Acres)

WA = Wetlands and Riverfront Areas of Parcel (Acres)

The calculation of the number of Basic Maximum Number of Housing Units shall be rounded to the next whole number for units equal to 0.5 or greater.

OR:

2. Determination of Yield Plan

The Basic Maximum Number shall be derived from a Yield Plan. The Yield Plan shall show the maximum number of lots (or dwelling units) that could be placed upon the site under a conventional subdivision. The proponent shall have the burden of proof with regard to the Basic Maximum Number of lots (or dwelling units) resulting from the design and engineering specifications shown on the Yield Plan.

b. Dimensional Requirements

Lots sizes may be reduced in area from the requirements of the Zoning Bylaws of the Town of Tewksbury according to the following schedule:

R40 and Farming Districts, 43,560 Sq.Ft. to 10,000 Sq. Ft.

The Planning Board may waive lot size requirements when significant benefit relating to the Purpose and Intent of the OSRD Special Permit are found as determined by the Planning Board.

c. Flexible Frontage

1. The combined frontage of the lots of an Open Space Residential Design shall equal or exceed 50 feet for each lot created. *[For example, in an R40 development, to create a six-lot development, the combined frontage of the parcels must be a minimum of 300 feet, not to include frontage on existing public ways.]*
2. Provided that all other requirements of this bylaw are met, the minimum frontage required for individual lots within an Open Space Residential Design shall be 40 feet with the exception described in 7544.d.3.below. Each lot shall have adequate access on a public or private way which meets the standards in this Section.
3. To the extent feasible, protected open space shall be located adjacent to public ways. Any building lot which fronts on an existing public or private road shall have the frontage normally required in the zoning district.

d. Groups of House Lots and location of Open Space shall be determined per the requirements of the Planning Board's Rules and Regulations.

e. Open Space Restriction:

1. A minimum of fifty percent (50%) of the development tract shall be Open Space.

2. No more than fifty percent (50%) of the designated open space may be comprised of wetlands, or land having an average grade greater than twenty-five percent (25%).
3. Wastewater and stormwater management systems serving the OSRD may be located within the open space.
4. Open Space Ownership. At the applicant's request and approval of the Planning Board, the open space may be owned by:
 - (a) A private owner for agricultural, horticultural, forestry or any other purpose not inconsistent with a prepared conservation restriction;
 - (b) A non-profit organization or agency of the Commonwealth, with their consent, whose principal purpose is the conservation of open space for any of the purposes set forth herein;
 - (c) The Town of Tewksbury Conservation Commission; or
 - (d) A homeowners association (HOA) with documentation that is provided by the applicant and reviewed and approved by Town Counsel and the Planning Board.

Selection of ownership option (a), (b) or (d) requires:

- i. The conveyance of a conservation restriction as outlined herein; and
 - ii. The granting of an access easement over such land sufficient to ensure its perpetual maintenance as agricultural, 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 of Tewksbury may after notice to the lot owners and public hearing, enter upon such land to maintain it in order to prevent or abate a nuisance. The cost of such maintenance by the Town of Tewksbury shall be assessed against the properties within the development and/or to the owner of the open space. Pursuant to G.L. Chapter 40 Section 58 the Town of Tewksbury may file a lien against the lot or lots to ensure payment for such maintenance. Pursuant to G.L. Chapter 40 Section 57 the Town of Tewksbury may also deny any application for, or revoke or suspend a building permit or any local license or permit, due to neglect or refusal by any property owner to pay any maintenance assessments levied.
5. Open Space Recording. In order to insure that the corporation, non-profit organization or trust will properly maintain the unsubdivided land or open space, an instrument(s) shall be recorded at the Middlesex North Registry of Deeds which shall provide as a minimum the following requirements:
 - (a) A legal description of the unsubdivided land or open space;
 - (b) A statement of the purposes for which the unsubdivided land or open space is intended to be used and the restrictions on its use and alienation;

(c) The type and name of the corporation, non-profit organization, or trust which will own, manage and maintain the unsubdivided land or open space;

(d) Provision for the management, maintenance, operation improvement and repair of the unsubdivided land or open space and facilities therein, including provisions for obtaining and maintaining adequate insurance and levying and collecting from the dwelling owners common charges to pay for expenses associated with the subdivided land or open space, including real estate taxes. It shall be provided that common charges are to be allocated among the dwelling owners in proportion to their ownership or beneficial interests in the corporation, non-profit organization or trust, and that each dwelling owner's share of the common charge shall be a lien against his real estate in the cluster development, which shall have priority over all other liens with the exception of municipal liens and first mortgages of record;

(e) The method by which such instrument(s) may be amended.

7545. PUBLIC HEARING

After the opportunity for review by other boards has taken place, the Planning Board shall hold a hearing under this section, in conformity with the provisions of G.L. Chapter 40A, S9 and of the zoning bylaw and regulations of the Planning Board.

7546. DECISION OF THE PLANNING BOARD

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

- a. whether the OSRD furthers the goals and policies of the open space/master plan.
- b. whether the OSRD achieves greater flexibility and creativity in the design of residential developments than a conventional subdivision plan;
- c. whether the OSRD promotes permanent preservation of open space, agricultural land forestry land, other natural resources including waterbodies and wetlands, and historical and archeological resources;
- d. whether the OSRD promotes a less sprawling and more efficient form of development that consumes less open land and conforms to existing topography and natural features better than a conventional subdivision;
- e. whether the OSRD reduces the total amount of disturbance on the site;
- f. whether the OSRD facilitates the construction and maintenance of streets, utilities, and public service in a more economical and efficient manner.
- g. whether the OSRD and its supporting narrative documentation complies with all sections of this zoning bylaw.
- h. whether the OSRD complies with the recommendations of the Department of Public Works, the Board of Health and the Conservation Commission.
- i. whether it appears that because of soil characteristics, drainage, traffic or other conditions , the granting of such a permit would be detrimental to the health, safety or welfare of the neighborhood or Town or inconsistent with the intent of the OSRD bylaw.