
DRAFT HUDSON OPEN SPACE RESIDENTIAL DESIGN (OSRD) BY-LAW

This Open Space Residential Design By-law encourages land-sensitive construction, siting and design of significant new residential projects through a cooperative exploration of alternatives which allows relaxation of current zoning and subdivision dimensional standards and which permits increased density in return for achievement of open space preservation targets.

I. PURPOSE AND INTENT

1. The Primary Purposes for this OSRD by-law are the following:

- (a) To allow for greater flexibility and creativity in the design of residential developments;
- (b) To encourage the permanent preservation of open space, forestry land, wildlife habitat, other natural resources including aquifers, waterbodies and wetlands, and historical resources in a manner that is consistent with Hudson's Community Development Plan and Open Space Plan;
- (c) To encourage 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 or grid subdivision;
- (d) To minimize the total amount of disturbance on the site;
- (e) To further the goals and policies of Hudson's Community Development Plan and Open Space Plan;
- (f) To facilitate the construction and maintenance of housing, streets, utilities, and public service in a more economical and efficient manner.

2. The Secondary Purposes for the OSRD by-law are the following:

- (a) To protect the value of real property;
- (b) To protect community water supplies;
- (c) To provide for a diversified housing stock;
- (d) To provide affordable housing to persons of low and moderate income.

II. APPLICABILITY

1. Number of Lots; Area. Any development or construction of new housing (including a condominium) that either (i) will create either four (4) or more buildable lots or four (4) or more new dwelling units, or (ii) is on a tract of 2 acres or more, shall be subject to this OSRD by-law. Any other residential project may elect to be subject to this OSRD by-law.
2. Zoning Classification. This OSRD by-law shall apply only to those tracts (or to the portions thereof) located in one or more Single Residence (SA 5 – 8) residential zoning districts.
3. Tract. A “tract” for the purposes of this OSRD by-law shall consist of a single lot or, if more than a single lot, two or more contiguous lots. Lots separated only by a private or public way shall be considered contiguous for the purposes of this OSRD by-law.

A tract may include either or both of (i) a subdivision, or (ii) a division of land pursuant to G.L. c. 41, s. 81P.

III. **GENERAL DESIGN PROCESS.** During the OSRD site plan pre-application and approval process, and beginning as early as economically feasible, but no later than the time of submittal of the Sketch Plan described below, applicants shall demonstrate to the Planning Board that the following steps, in the order indicated, were (i) performed by a certified Landscape Architect or by a multidisciplinary team one member of which must be a certified Landscape Architect (or in either case, a professional approved in advance by the Planning Board as having similar skills and qualifications) and (ii) followed in determining the layout of proposed streets, buildings, house lots, and open space as shown on the required plans.

1. Step One: Identifying Conservation Areas. Identify preservation land by two steps. First, Primary Conservation Areas (such as wetlands, riverfront areas, and floodplains regulated by state or federal law) and Secondary Conservation Areas (including elements of the natural landscape such as steep slopes, mature woodlands, prime farmland, meadows, wildlife habitats and cultural features such as historic sites and scenic views) shall be identified and delineated. Second, the Potentially Developable Area will be identified and delineated. To the maximum extent feasible, the “Potentially Developable Area” shall consist of land outside identified Primary and Secondary Conservation Areas.

2. Step Two: Locating Housing Sites. Locate the approximate sites of all residential buildings within the Potentially Developable Area and include the delineation of private yards, exclusive easement areas, and shared amenities, with a design that seeks to encourage an integrated community within the proposed development and further the goals of the Community Development Plan and the Open Space Plan. The number of dwelling units (both inside and outside the development) entitled to enjoy the amenities of the development should be maximized.

3. Step Three: Aligning Streets and Access Ways. Align streets in order to access the house lots and residential buildings. Additionally, new access ways should be laid out to

create internal and external connections to existing and/or potential future streets, sidewalks, trails and bicycle paths.

4. Step Four: Lot Lines. Draw in new lot lines (as applicable).

IV. PRE-APPLICATION PROCESS

1. Pre-Application Review. Prior to submitting its application for an OSRD site plan approval, and in advance of filing any preliminary or definitive subdivision plan for the proposed development or any portion thereof, the applicant shall participate in pre-application review at one or more regular business meetings of the Planning Board. The Planning Board shall send notice to other appropriate municipal committees and Boards, who may attend or send representatives to attend and speak in an unofficial capacity. The purpose of pre-application review is to minimize the applicant's costs of engineering and other technical experts, and to commence discussions with the Planning Board at the earliest possible stage in the development. At or during the pre-application review, the applicant shall submit at least one "Sketch Plan" (as defined in IV.2 below), shall describe the development and how it furthers the goals of this by-law, seek feedback from the Planning Board and/or its technical experts, and indicate a possible timetable for submittal of a formal application. At the request and at the expense of the applicant, the Planning Board may engage technical experts to review the plans submitted by the applicant and to facilitate submittal of a formal application for OSRD site plan approval. The pre-application review may extend over more than one meeting or session and shall not constitute or require a public hearing; however, the Planning Board may elect to receive limited public input at this stage to assist in the design process.
2. Sketch Plan. At least one plan submitted during the pre-application process shall constitute a "Sketch Plan" as described below. Submission during the pre-application stage of two or more conceptual plans showing alternative development configurations is strongly encouraged. The applicant is also encouraged not to submit a Sketch Plan until the Planning Board and the applicant have discussed alternative development and conservation configurations so that the input of the Planning Board can be taken into account in the creation of a Sketch Plan depicting the preferred configuration.

The Sketch Plan shall address the general features and topography of the land, identify major types and approximate size of vegetation, give approximate configurations of the lots, open space, and roadways, and include other information as appropriate as listed in OSRD Site Plan Rules and Regulations. The Sketch Plan shall incorporate the four-step General Design Process, noted above, and the Design Standards according to Section V.3 below, when determining a proposed design for the development.

3. Yield Plan. Before approval of the Sketch Plan by the Planning Board in the pre-application phase, the applicant shall submit a Yield Plan (as defined in Section VI below).
4. Rules and Regulations. The Planning Board shall adopt rules and regulations relative to the size, form, number and contents of the Sketch plan and Yield plan.

5. Approval of Sketch Plan. A Sketch Plan shall be approved by the Planning Board subject to such conditions as it deems appropriate to achieve the goals of this OSRD by-law. When the Planning Board approves the Sketch Plan, the applicant may then file an application for OSRD Site Plan Approval.

V. SITE PLAN APPROVAL PROCESS

1. OSRD Site Plan. A proposed OSRD Site Plan shall be a fully engineered plan, conforming to the provisions of this OSRD by-law, all the provisions of the OSRD Site Plan Rules and Regulations, and the Town of Hudson Site Plan Approval, Section 7.1.7 of the Zoning By-law. The Site Plan shall incorporate the features and comply with the conditions of the approved Sketch Plan but shall also include stormwater management, wastewater management, utilities, and all other information as required by applicable by-laws, rules and regulations.

2. General Procedures.

- (a) When an application for approval of an OSRD Site Plan is filed with the Planning Board, the applicant shall also file, within five (5) working days of the filing of the completed application, a copy of the full application, including development plan and other documentation, with each of 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 forty-five (45) days of receipt by 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 commenced prior to the expiration of the 45 day period, the Planning Board shall continue the public hearing to permit the formal submission of reports and recommendations within that forty-five (45) day period.

- (b) The Planning Board shall hold a public hearing within sixty (60) days of receipt of a complete application. The decision of the Planning Board shall be upon a majority of its members present at the public hearing. The Planning Board shall make and file its decision with the Town Clerk within sixty (60) days from the close of the public hearing, and shall notify the applicant of its decision. The decision shall contain, in writing, an explanation for any departures from the recommendations of any reviewing party. A copy of the decision, certified by the Town Clerk as free of appeal, shall be recorded by the applicant prior to the commencement of work. The decision shall be binding on the land depicted on the approved Site Plan.

- (c) OSRD Site Plan approval shall lapse after one year from the grant thereof if a substantial use thereof has not sooner commenced except for good cause. Such approval may, for good cause, be extended from time to time in writing by the Planning Board,

without public hearing, upon the written request of the applicant.

(d) The appeal of any decision of the Planning Board granting or denying Site Plan Approval shall be made in accordance with the provisions of MGL Chapter 40A, Section 17. For this purpose, such action of the Planning Board shall be deemed that of a Special Permit Granting Authority.

3. Design Standards. In approving an OSRD Site Plan, the Planning Board may impose conditions to ensure that the site plan complies with the following design standards.

(a). Generic Design Standards

(i.) The site plan shall promote permanent preservation of open space, agricultural land, forestry land, natural resources and historical and archeological resources better than a conventional subdivision (for purposes of this OSRD by-law a “conventional subdivision” shall mean a subdivision designed in full accordance with applicable subdivision rules and regulations [other than pursuant to this OSRD by-law] without waivers of any kind);

(ii.) The site plan shall consume less open land and shall conform to existing topography and natural features better than a conventional subdivision;

(iii.) The site plan shall have less total amount of disturbance on the site than a conventional subdivision;

(iv.) The site plan shall facilitate the construction and maintenance of streets, utilities, and public service in a more economical, safe and efficient manner than a conventional subdivision and all utilities shall be underground within the proposed development;

(v.) The landscape within the site plan shall be preserved in its natural state, insofar as practicable, by minimizing tree and soil removal. The orientation of building sites shall be such as to maintain maximum natural topography and cover. Topography, tree cover, 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.

(vi.) Streets and other ways within the site plan 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.

(vii.) All open space (landscaped and usable) shall be designed to add to the visual amenities of the area by maximizing its visibility for persons passing the site or overlooking it from nearby properties.

(viii.) The removal or disruption of historic, traditional or significant uses, structures, or architectural elements shall be minimized insofar as practicable, whether these exist on the site or on adjacent properties.

(ix.) Parking areas shall be screened by fencing or landscaping to the extent possible.

(b). Site Specific Design Standards

(i.) Parking. Each dwelling unit shall be served by two (2) off-street parking spaces. Parking spaces in front of garages may count in this computation.

(ii.) Buffer Areas. A buffer area of at least fifty (50) feet (one hundred [100] feet in the case of a tract exceeding two [2] acres) shall be provided at the following locations: (a) perimeter of the property; (b) certain resource areas on or adjacent to the tract like rock outcrops, ledge, agricultural or recreational fields, and land held for conservation purposes, (c) Primary and Secondary Conservation Areas (as defined in III.1 above); and (d) existing public ways. Such buffer areas shall be free of above-ground structures and improvements, except that driveways necessary for access and egress to and from the tract may cross such buffer areas. No vegetation in this buffer area will be disturbed, destroyed or removed, except for installation and normal maintenance of structures and landscapes approved as part of the project. The Planning Board may waive, reduce or increase the buffer requirement in those locations where it determines that a smaller or larger buffer (or no buffer) is necessary, or will suffice, to accomplish the objectives set forth herein; provided always that no buffer requirement herein shall be applied so as to render any tract unusable, and any variation from the required buffer area shall be rationally related to accomplishing the objectives of this OSRD by-law.

(iii.) Drainage. The Planning Board shall encourage the use of “soft” (non-structural) stormwater management techniques (such as swales) and other drainage techniques that reduce impervious surface and enable infiltration where appropriate.

(iv.) Common/Shared Driveways. A common or shared driveway may serve a maximum number of six (6) lots.

(v.) Stormwater Management Facilities. All structural surface storm water management facilities shall be accompanied by a conceptual landscape and screening plan.

(vi.) On-site Pedestrian and Bicycle Circulation. Walkways and bicycle paths shall be provided to link residences with parking areas, recreation facilities (including parkland and open space) and adjacent land uses where appropriate.

(vii) Undisturbed Areas. At least 50% of the total tract shall be undisturbed, whether by initial or subsequent construction or structures. An undisturbed area is any land left in its natural vegetated state.

(viii) Disturbed Areas. Within areas to be disturbed, the applicant shall show all trees of ten (10) inches caliper or greater and present justification for their disturbance or removal.

4. Site Visit.

Whether or not conducted during the pre-application stage, the Planning Board may conduct a site visit during the public hearing. At the site visit, the Planning Board and/or its agents shall be accompanied by the applicant and/or its agents.

5. Relationship Between the OSRD Site Plan and Definitive Subdivision Plan

For developments subject to this OSRD by-law, the issuance of an OSRD Site Plan Approval allows the applicant to submit a Definitive Subdivision Plan to the Planning Board for approval under the Subdivision Control Law. Any Site Plan Approval issued by the Planning Board shall specifically state that the Definitive Subdivision Plan shall substantially comply with the approved Site Plan.

Upon written request of the applicant, the Planning Board in its sole discretion, and to the extent permitted by law, may permit the applicant to apply for Definitive Subdivision Plan Approval at the same time as it files its application for OSRD Site Plan Approval, and may conduct the public hearings on the applications concurrently, provided

- (i) by so requesting the applicant shall be irrevocably deemed to have requested extensions from the Planning Board of the timeframes for hearing and final action under the Subdivision Control Law in order to allow Site Plan Approval to proceed as stated in this OSRD by-law, including the provisions of (iii) below;
- (ii) that the Planning Board's decision on Site Plan Approval shall be rendered separately from and prior to taking final action on the Definitive Subdivision Plan; and
- (iii) that the Planning Board shall take final action with respect to the Definitive Subdivision Plan not later than one hundred thirty-five (135) days after the close of the public hearing on the Site Plan Approval. If such hearings are conducted concurrently, they may at any time be severed by the Planning Board and thereafter conducted separately, provided that in no event shall the public hearing on the Definitive Subdivision Plan be closed before the public hearing on the OSRD Site Plan. It is intended that the discretion afforded to the Planning Board in this paragraph shall be exercised primarily in those situations where, due to the thoroughness of the pre-application review, both the proposed OSRD Site Plan and proposed Definitive Subdivision Plan are likely to be straightforward and non-controversial, or the potential for alternative development options is virtually non-existent.

A Definitive Subdivision Plan will be considered not to substantially comply with the approved Site Plan if the Planning Board determines that the Definitive Subdivision Plan displays, in comparison to such approved Site Plan:

- a.) an increase in the number of building lots or dwelling units;
- 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 stormwater management facilities; and/or,
- f.) significant changes in the wastewater management systems.

If the Planning Board determines that the Definitive Subdivision Plan does not substantially comply with the approved Site Plan, the Board may disapprove the definitive subdivision plan for failure to comply with the conditions of the Site Plan requiring that the Definitive Plan substantially comply with the Site Plan.

The Planning Board may conditionally approve a Definitive Subdivision Plan that does not substantially comply with the approved Site Plan. However, such conditional approval must identify where the plan does not substantially comply with the approved Site Plan and shall require that the approved Site Plan 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 Site Plan within a specified time period.

The public hearing on the application to amend the Site Plan shall be limited to the significant changes identified by the Planning Board in their conditional approval of the open space Definitive Subdivision Plan. These are the only considerations that the Planning Board may take into account in deciding whether to amend the Site Plan.

6. Other Information.

The submittals and permits of this section shall be in addition to any other requirements of the Subdivision Control Law, the applicable Subdivision Rules and Regulations or any other provisions of this Zoning By-law.

VI. BASIC MAXIMUM NUMBER (OF LOTS/UNITS)

In order for an OSRD Site Plan to be approved, the number of lots or dwelling units on the tract shall not exceed the Basic Maximum Number, as defined below.

The Basic Maximum Number shall be the maximum number of lots (or, where no subdivision or lot division is involved, number of dwelling units) that could feasibly and reasonably economically be placed upon the site under a conventional subdivision or development plan pursuant to then applicable zoning (other than this OSRD by-law), without variances or waivers of any kind, including from other bodies having regulatory authority over the development or any portion thereof (i.e. Conservation Commission or Board of Health), and accurately depicted on the Yield Plan. The Yield Plan shall display the general features and topography of the land shown on the Sketch Plan, the dimensions, areas, and locations of the lots, open space, and

roadways, and such other information as is required from time to time by the OSRD rules and regulations. The applicant shall have the burden of proof in establishing the Basic Maximum Number of lots (or dwelling units) resulting from the design and engineering specifications shown on the Yield Plan. The Planning Board shall consider at least the following factors in determining if such burden of proof has been met:

(i) the applicant has demonstrated through title insurance or other acceptable evidence that it is the owner of, and in control of, the entire tract depicted within the OSRD Site Plan;

(ii) the existence of wetlands and other environmental or regulatory constraints upon development has been adequately shown and dealt with; and

(iii) the applicant demonstrates that under then current market conditions the number of dwelling units, and their related improvements and infrastructure, as shown on the Yield Plan could be reasonably and economically constructed.

VII. PERMITTED REDUCTION OF DIMENSIONAL REQUIREMENTS

The Planning Board encourages applicants to modify lot size, shape, and other dimensional requirements for lots within an OSRD Site Plan, in order to further the goals of this OSRD by-law, subject to the following limitations:

1. Lots having reduced area or frontage shall not have frontage on a street other than a street created by the OSRD; and
2. Reduction of otherwise applicable setback requirements shall not be permitted with respect to those setbacks measured from any exterior boundary of the tract.
3. Nothing in this section shall permit, or be deemed to permit, the construction or use of more dwelling units per lot than is otherwise permitted in the applicable zoning district.

VIII. OPEN SPACE REQUIREMENTS

1. Open Space. A minimum of fifty percent (50%) of the tract shown on the OSRD site plan shall be open space meeting the following criteria:
 - A. All proposed open space, unless conveyed to a Conservation Entity (as defined below), shall be subject to a recorded conservation restriction enforceable by a Conservation Entity, which restriction provides in accordance with MGL Chapter 184, Sections 31 and 33, that such land shall be perpetually kept in an open state, that it shall be preserved exclusively for the purposes set forth herein, and that it shall be maintained in a manner which will ensure its suitability for its intended purposes.

B. Not more than 25% of the area shown as proposed open space shall consist of either

- (i) Resource Areas or Buffer Zones, as those terms are defined M. G. L. c. 131 §40 and its implementing regulations found at 310 CMR 10.00 et seq., or
- (ii) areas having a slope of more than twenty percent (20%); however, the Planning Board may reduce such open space requirement in any instance where the strict application thereof would render a tract unusable.

C. The open space sufficient to meet the minimum requirements shall be contiguous. Open space shall be considered contiguous if a roadway or an accessory amenity separates it.

D. The open space shall be used for wildlife habitat and conservation and the following additional purposes: historic preservation, education, outdoor education, recreation, park purposes, agriculture, horticulture, forestry, a combination of these uses, and shall be served by suitable access for such purposes. The Planning Board may permit up to five percent (5 %) of the open space to be paved or built upon for structures accessory to the dedicated use or uses of such open space (e.g., pedestrian walks and bike paths).

E. Wastewater and storm water management systems serving the OSRD may be located within the open space; however surface systems, such as retention and detention ponds, shall not qualify towards the minimum open space required.

2. Ownership of the Open Space. The open space shall, at the Planning Board's election, be conveyed to, and shall be held as Open Space, in perpetuity by one or more of the following (each a "Conservation Entity"):

(a) the Town, acting by and through its Conservation Commission;

(b) a nonprofit organization, the principal purpose of which is the conservation of open space and any of the purposes for such open space set forth above;

(c) a corporation or trust owned jointly or in common by the owners of lots within the OSRD. If such corporation or trust is utilized, ownership thereof shall pass with conveyance of the lots in perpetuity. Maintenance of such open space and facilities shall be permanently guaranteed by such corporation or trust which shall provide for mandatory assessments for maintenance expenses to each lot. Each such trust or corporation shall be deemed to have assented to allow the Town to perform maintenance of such open space and facilities, if the trust or corporation fails to provide adequate maintenance, and shall grant the Town an easement for this purpose. In such event, the Town shall first provide fourteen (14) days written notice to the trust or corporation as to the inadequate maintenance, and, if the trust or corporation fails to complete such maintenance, the Town may perform it. Each individual deed, and the deed or trust or articles of incorporation, shall include provisions designed to effect these provisions. Documents creating such trust or corporation shall be submitted to the Planning Board for approval, and shall thereafter be recorded.

