



ORDINANCE

Amending the Unified Development Ordinance

The Hillsborough Board of Commissioners ordains the following amendments:

SECTION 3

3.7.3 AUTHORITY TO APPLY

Subject to the limitations of the foregoing statement of intent, an amendment to this Ordinance, including the Official Zoning Map, may be initiated by:

- 3.7.3.1 The Town Board on its own motion.
- 3.7.3.2 The Planning Board.
- 3.7.3.3 The Board of Adjustment.
- 3.7.3.4 Any person or agency. *Rezoning requests to establish the PD (Planned Development) zoning designation must be made by all the owners of the property(ies) to be subject to the PD district.*

3.7.4 PRE-APPLICATION

Applicants seeking to amend the Official Zoning Map shall, before submitting an application for a Zoning Map Amendment, participate in a pre-application meeting with the Planning Director to ensure the application does not require additional, parallel reviews for Land Use Plan amendments.

3.7.5 APPLICATION REQUIREMENTS

Applicants shall refer to the Administrative Manual for the requirements for a complete application to amend this Ordinance or the Official Zoning Map.

3.7.6 NEIGHBORHOOD MEETING REQUIRED – PLANNED DEVELOPMENT MAP AMENDMENTS

Applicants requesting rezoning to the PD district designation must conduct at least one neighborhood meeting prior to an initial application submittal. The meeting may occur prior to the required pre-application meeting. The meeting shall comply with the following requirements:

1. *The meeting must be held by the applicant or their agent and take place within six months of application submittal. A second meeting must be held if more than six months have passed at the time of application submittal.*
2. *The meeting shall be held at a place generally accessible to neighbors residing close to the subject property, virtually with both internet and dial-in options, or a combination of both methods. Applicant shall confirm that member of the Town of Hillsborough Planning staff can be present to observe the meeting.*
3. *The applicant shall mail written notice of the meeting to the Town of Hillsborough Planning Department and all landowners located within 500 feet of the subject property's boundaries. The property owner listing shall be obtained from the Orange County Land Records/GIS*

Division. The notice shall be mailed no later than 14 calendar days prior to the meeting date. The applicant will retain a copy of the list of those that received notice and provide it as part of the after meeting report.

4. *At the meeting, the applicant shall explain the development proposal and application, answer any questions, respond to concerns neighboring property owners have about the application and propose resolutions to these concerns. Applicant shall take detailed notes of this meeting to include in the below Neighborhood Meeting report.*
5. *After the meeting is held, the applicant shall prepare a Neighborhood Meeting report including all the following:*
 - (a) a listing of all persons contacted about the meeting,*
 - (b) the manner and date of contact,*
 - (c) the date, time and location of the meeting,*
 - (d) a roster form identifying the persons in attendance at the meeting,*
 - (e) a summary of issues discussed, and*
 - (f) a description of any changes made by the petitioner as a result of the meeting.*

3.7.6 STAFF REVIEW

Upon receipt of an application to amend this Ordinance or the Official Zoning Map, the Planning Director shall first determine if the application is complete (including the submission of the required application fee).

Applications which are not complete, or which otherwise do not comply with the provisions of this Ordinance, shall not be accepted by the Planning Director, but shall be returned to the applicant with a notation by the Planning Director of the deficiencies in the application.

Once the application is deemed complete, it will be placed on the next available public legislative hearing agenda.

3.7.7 PUBLIC HEARING

The Town Board and the Planning Board generally shall hear applications for amendments to these documents at a quarterly, joint legislative hearing. The Town Board may, in its discretion, schedule legislative hearings on applications at times other than the quarterly legislative hearing. The Administrative Manual includes the schedule of quarterly legislative hearing dates and filing deadlines.

3.7.7.1 Notice of Legislative Hearing

All notices required under this Ordinance shall comply with the North Carolina General Statutes. In addition, all notices shall, unless otherwise specified in this Ordinance, comply with the following.

3.7.7.2 Published Notice

Notice of each legislative hearing shall be given by publishing said notice at least twice in a newspaper of general circulation in the Town, stating the time and place of such hearing and the substance of the proposed amendment, in accordance with the provisions of North Carolina General Statutes, Section 160D-601. This notice shall appear in said newspaper for

two (2) successive weeks prior to the public hearing, the first publication not less than ten (10) days nor more than twenty-five (25) days prior to the hearing.

3.7.7.3 Mailed Notice

In the case of a proposed Zoning Map amendment, in addition to the public notice requirement established in Section 3.7.7.2 above, the Planning Director shall give notice by first class mail to owner of the subject property and to the owners of all parcels any part of which lies within five hundred (500) feet of the property boundaries of the subject property. Mailed notice shall be deemed sufficient if mailed to the property owner as shown on the current Orange County tax roll on the date of the notice. The Planning Director shall certify to the Town Board that such notice was given.

3.7.7.4 Posted Notice

In the case of a proposed Zoning Map amendment, the Planning Director shall post notice on the subject property(ies) notice of the time, date, and location of the legislative hearing, and a summary of the requested amendment in a form established by the Planning Director, at least ten (10) days before the date fixed for legislative hearing. In computing such period, the day of posting shall not be counted, but the day of the hearing shall be counted. The posted notice shall remain in place until after a final decision is rendered on the application. The posted notice shall be placed in a manner to provide visibility from the public right-of-way. The applicant shall ensure that the posted notice is maintained on the land until completion of the legislative hearing on the application.

3.7.8 POST-HEARING PROCESS

The legislative hearing on an amendment to this Ordinance, or to the Zoning Map, is formally closed by a motion and vote of the Board members present at the hearing.

3.7.9 PLANNING BOARD RECOMMENDATION

The Planning Board shall within thirty (30) days after the legislative hearing is closed, prepare and submit for the Town Board a written recommendation concerning the application.

3.7.10 TOWN BOARD ACTION

The Town Board shall not take action on the proposed amendment until thirty (30) days after the date of the legislative hearing or until the Planning Board makes its recommendation, whichever comes first.

3.7.11 CONDITIONS OF APPROVAL – PLANNED DEVELOPMENT MAP AMENDMENTS

The petitioner and/or the Town or its agencies, may propose specific conditions applicable to PD districts. Only those conditions mutually approved by the Town and the petitioner may be incorporated into the PD approval ordinance. Conditions and site-specific standards imposed on a PD district are limited to those addressing conformance of the project's development and use to Town ordinances, Comprehensive Plan or other applicable officially adopted plans, and those addressing reasonably expected impacts generated by the development project. Conditions shall be recorded and outlined in a formal development agreement presented at the time of rezoning submittal.

3.7.12 FORMALIZING THE OUTCOME

The Town Board's action on a proposed amendment shall be in the form of an ordinance amending

the applicable document. An amendment is effective immediately, unless some other effective date is specified in the amending ordinance.

The applicant shall receive written notice of the Town Board's decision on the application, including a copy of the Ordinance adopted by the Town Board if the application is approved, within 30 days of the effective date of the ordinance.

3.7.13 APPEAL

Text and map amendments are legislative actions of the Town Board. Any person seeking to challenge the validity of any amendment to this Ordinance may challenge such amendment by filing an appropriate action in the Orange County Superior Court within the time established by North Carolina General Statutes, Section 160D-1405.

3.7.14 EFFECT OF DENIAL OR WITHDRAWAL

An applicant may withdraw his or her application for an amendment at any time by written notice to the Planning Director.

When the Town Board shall have acted upon an application or the application shall have been withdrawn after the first notice of the public legislative hearing thereon, the Town shall not accept another application for the same or similar text or Official Zoning Map amendment, affecting the same property or a portion of it, until the expiration of a one (1) year period, extending from the date of action or withdrawal. The Town Board may on its own motion, however, initiate an amendment of this nature prior to the expiration of the one (1) year period.

3.7.15 VESTING

3.17.14.1 Amendments to this Ordinance and the Zoning Map do not qualify as site-specific development plans and do not establish statutory vested rights.

3.17.4.2 *The Town Board may approve a rezoning to a PD district conditioned on a development schedule for all or each phase of the PD. If at any time the PD or any phase of the PD has not been developed according to the schedule, the Town Board shall give notice by certified mail to the property owner(s) and applicant for the rezoning request and schedule a public hearing where any of the following actions may be taken:*

- 1. administrative action to extend, remove or determine compliance with the development schedule; or*
- 2. legislative action to cause the property to revert to its former zoning classification or an appropriate general use district; or*
- 3. legislative action to amend the master development plan.*

3.7.16 DEVIATIONS, MODIFICATIONS, REVOCATION, EXPIRATION

Text and map amendments (*except Planned Development district map amendments*) enacted by the Town Board are legislative actions and are not subject to deviations, modifications, revocation, or expiration except through specific Town Board action to further amend these documents.

3.13.1 APPLICABILITY

Site Plan review is the general term used to describe review of projects other than (a) the construction of or addition to single-family dwellings on lots zoned for single-family uses and (b) uses requiring a Special Use Permit, as Site Plan review is built into the Special Use Permit review process.

The Site Plan Review process is applicable only to proposed development involving:

- 3.13.2.1** The disturbance of 10,000 square feet or more of land and/or:
 - 3.13.2.1.a** the construction of new structures consisting of more than 5,000 square feet of gross floor area, or
 - 3.13.2.1.b** additions to existing structures consisting of more than 2,500 square feet of gross floor area
 in any general purpose residential or non-residential zoning district.
- 3.13.2.2** The construction of attached dwelling units in any general-purpose zoning district that does not otherwise exceed a threshold established by subparagraphs a or b above.
- 3.13.2.3** *All development located within the PD (Planned Development) zoning district.*

SECTION 4

4.6.1 PLANNED DEVELOPMENT (PD)

4.6.1.1 Intent

In return for greater flexibility in site design requirements, PDs (Planned Developments) are expected to deliver exceptional quality community designs that preserve critical environmental resources; provide above-average open space and recreational amenities; incorporate creative design in building, open space and circulation layout; assure compatibility with surrounding land use and neighborhood character; and provide greater efficiency in the layout and provision of roads, utilities and other infrastructure. This will be accomplished through application of performance standards ensuring:

- 1. integration and mixing, rather than separation of uses, so that retail, office, recreational and educational facilities are conveniently located in relation to housing;*
- 2. interconnectivity between uses and adjoining developments;*
- 3. design of development occurs at a scale that is consistent with Hillsborough's character;*
- 4. establishment of land use patterns that promote and expand opportunities for public transportation and efficient, compact networks of streets and utilities that lower development and maintenance costs and conserve energy;*
- 5. preservation of natural features and the natural environment;*

6. *public facilities are available to serve the proposed development.*

4.6.1.2 Application Criteria

This district will usually be applied where the following conditions exist:

4.6.1.2.a *The property is classified as Attached Residential, Employment, Mixed Residential, Mixed Use, Neighborhood mixed Use or Suburban Office on the Town's adopted Future Land Use Map. However, application of the PD district may be allowed within other land use categories at the discretion of the Town Board.*

4.6.1.2.b *The property is six acres or greater in area. Application of the PD designation to properties less than six acres may be considered where the Town Board, upon recommendation of the Planning Board, finds:*

(a) the project qualifies as "infill development"; or

(b) unusual physical or topographic features of importance to the area as a whole or the Town in general exist on-site or within the surrounding neighborhood that will contribute to and be protected by the PD; or

(c) the property or surrounding area has an historic character of community importance that the PD will protect; or

(d) the proposed PD is adjacent to an approved, completed PD and will contribute to the amenities and values of the neighboring PD.

4.6.1.2.c *The property has direct access to streets classified by the North Carolina Department of Transportation or the Town as arterial or collector.*

4.6.1.2.d *Public water and sewer service are available or capable of being extended to the property.*

SECTION 5

5.2.39 PLANNED DEVELOPMENT

5.2.39.1 Standards of Evaluation

The following specific standards shall be used in evaluating applications for PDs (Planned Developments):

5.2.39.1.a Master Development Plan: *The plan shall divide the PD into land-use categories and/or pods, and indicate density and specific uses permitted in each area for projects 6 acre and larger. For projects 1-5 acres in size a site development plan may be submitted with uses assigned more specifically to buildings or areas of the site.*

5.2.39.1.b Compliance with Ordinance Requirements: *Unless specified otherwise in this subparagraph, PDs shall comply with all applicable standards of Section 6, Development Standards.*

5.2.39.1.c Permitted Uses: *PDs may include residential and nonresidential uses; cluster housing; common areas; unusual arrangements of structures on site; or other combinations of structures and uses that depart from standard development layouts. Uses permitted in a PD are those designated in the approved master development plan. Density limits will be used to determine the maximum number of permitted dwelling units.*

5.2.39.1.d Mix and Arrangement of Uses Required:

- (1) Required Mix of Uses: *PDs shall contain a mix of at least two or more residential uses (e.g., single-family dwellings and attached dwellings) or residential and nonresidential uses (e.g., attached dwellings and offices).*
- (2) Use Arrangement: *Uses may be arranged horizontally or vertically within the PD as follows:*
 - (a) *Residential uses must be separated from major vehicular traffic flows and other disquieting influences, and*
 - (b) *Non-residential uses must be concentrated at areas within the PD for maximum pedestrian convenience and accessibility.*

5.2.39.1.e Density Allowances:

- (1) *Overall maximum residential density is 13 persons per acre of gross residential and associated commercial areas.*
- (2) *The following factors will be used in computing density: A factor of 3.0 persons per single-family detached dwelling; 2.5 persons per single-family attached dwelling or stacked townhouse; and 2 persons per multiple-family dwelling.*
- (3) *Residential densities in a PD must be designated as low, medium, or high on the approved master development plan. "Density area" as used herein means a development unit within an area designated on the approved development plan for low-, medium- or high-density.*
 - (a) ~~Low: Maximum overall density within the entire area of a PD is 3.8 persons per acre of gross residential area.~~ *The maximum density in any one low-density area is 5 dwelling units per acre.*
 - (b) ~~Medium: Maximum overall density within the entire area of a PD is 14 persons per acre of gross residential area.~~ *The maximum density*

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in any one medium-density area is 15 dwelling units per acre.

(c) ~~High: Maximum overall density within the entire area of a PD is 55 persons per acre of gross residential area.~~ The maximum density in any one high-density area is 25 dwelling units per acre. An application that proposes housing that is affordable to households making 80% AMI or less at the time of construction may propose up to 40 units per acre as a maximum density (subject to rounding as defined in Section 9.1.4). Where affordable housing is proposed the preference is that this housing type be dispersed throughout the planned development instead of clustered together in one area.

(3) In computing average density on any development plan, subsequent PD plan or final plat of a part of a PD, the density may include any excess in land area over that required to support an average density of 13 persons per acre in any previously recorded final plat. As each plan and subsequent final plat is submitted, the overall density of all areas shown on recorded final plats within the PD is recomputed so that average density within the recorded plats of sections of the PD will never exceed a density of 13 persons (see sub-paragraph 5.2.39.1.j(2), Density Variation Between Phases, below).

5.2.39.1.f Development at Perimeter of PD: Where a PD district is 25 acres or more and adjoins a residential district without an intervening street or permanent open space:

- (a) Densities and intensities within 200 feet of the perimeter of the development shall be stepped down 20% from the average density and intensity of the PD; or
- (b) An area of 200 feet in width shall be planned and developed only for uses compatible with the adjoining residential district and in accordance with the lot area, width, setbacks/yards, and height requirements of that district; or
- (c) Open space with a depth of at least 50 feet shall be provided, and no intensive recreational use or off-street parking permitted within 100 feet of the district boundary.

5.2.39.1.g Dimensional Requirements: Dimensional requirements for interior lots and buildings shall be governed by the approved development plan, subject to the following exceptions:

- (1) Compliance with State Building Code: There are no setbacks or yards for interior lots provided requirements of the State building code are met.
- (2) Garage/Carport Access: If access to a garage or carport is provided from the front or side of a lot, then the garage/carport shall maintain a 15 foot setback from the back of the sidewalk, or curb if there is no sidewalk, as measured along the centerline of the driveway.

5.2.39.1.h Infill Projects: *PDs designed on smaller tracts located within developed neighborhoods are permitted. Applicants are encouraged to design projects with architecture and building materials consistent with adjacent neighborhoods and to locate such developments close to existing schools, retail, entertainment and employment centers.*

5.2.39.1.i Nonresidential Component Completion: *Nonresidential portions of PDs may not be occupied until all residential portions of the development are completed, or their completion assured by any of the mechanisms provided in paragraph 3.14.12, Authorizing Occupancy Before Completion of Development, guaranteeing their completion.*

5.2.39.1.j Phasing, Density Variation and Abandonment:

- (1) Phasing: *Generally, all PDs shall be phased so the density/intensity of any phase, when combined with previously constructed phases, does not exceed overall project density/intensity.*
- (2) Density Variation Between Phases: *A greater concentration of density/intensity of land uses within a phase, whether it is earlier or later in the development than other phases, may be allowed provided it is offset by:*
 - (a) *a smaller concentration in any completed prior phase, or*
 - (b) *a dedication or reservation of open space on the remaining land by grant of an easement or covenant in favor of the Town, County, State, or land trust. The precise location of the dedication or reservation shall be deferred until an application for final approval is filed so flexibility of development can be maintained.*
- (3) Abandonment Before Project Completion: *Applicants for PDs shall provide agreements, contracts, covenants, deed restrictions and sureties acceptable to the Town Attorney for:*
 - (a) *completion of the development according to the approved development plan and other documents of record, and*
 - (b) *maintenance of such areas, functions, and facilities as are not to be provided, operated, or maintained at public expense.*

Covenants shall be placed on the property binding any successors in title to any commitments made as part of the project approval.

SECTION 6

6.12 OPEN SPACE

6.12.1 PURPOSE AND INTENT

~~It is the intent of this subsection to protect and promote the public health, safety, and general~~

~~welfare by requiring the dedication or reservation of a portion of conserve open land, for the purpose of preserving open space and the protection of significant including those containing unique and sensitive natural features and/or cultural resources-, by setting them aside from development.~~

6.12.2 APPLICABILITY

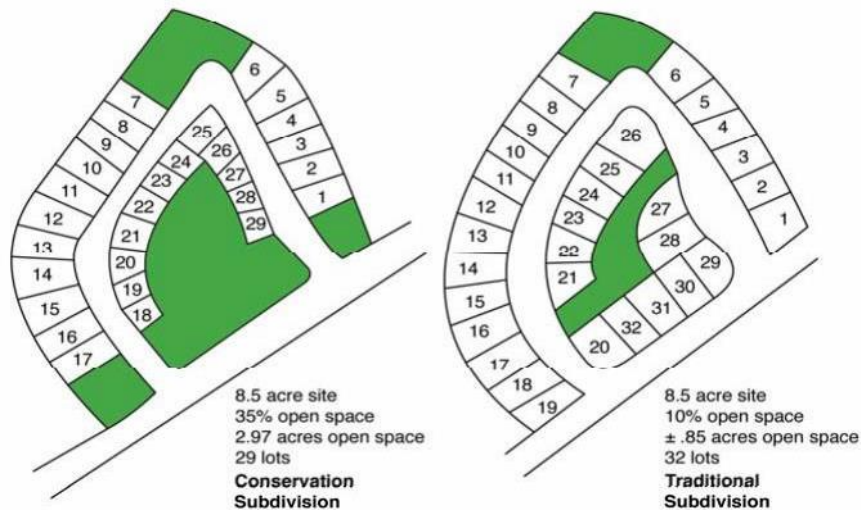
~~Every applicant for a Special Use Permit for residential and/or non-residential purposes involving the creation of multiple lots from a parent parcel shall be required to dedicate a portion of the parcel for the purpose of preserving open space, and to preserve significant natural features and/or cultural resources. This subsection's requirements shall apply to any development subject to the following approvals:~~

- ~~(a) Conservation Subdivision,~~
- ~~(b) Major Subdivision,~~
- ~~(c) Special Subdivision subject to a Special Use Permit, and~~
- ~~(d) Planned Development.~~

6.12.3 DEDICATION/RESERVATION REQUIREMENTS

~~Minimum Amount:~~ ~~The applicant shall provide land for open space within the proposed development equal to 10% of the gross parcel (development tract) area unless the development is a conservation subdivision, in which case the requirement is 35% of the gross parcel (development tract). Open space dedication/reservation shall be required in the following amounts:~~

6.12.3.1.a Table: REQUIRED OPEN SPACE DEDICATION/RESERVATION	
<i>Development Type</i>	<i>Required Open Space (Gross Parcel Area)</i>
<i>Conservation Subdivision</i>	<i>35%</i>
<i>Major and Special Subdivision</i>	<i>10%</i>
<i>Planned Development</i>	<i>15%</i>

Figure 6-7: Open Space Illustrations

6.12.3.1 ~~Open space shall be accessible to all lots in the development through a combination of direct access to the street and sidewalks, walkways or connecting paths.~~

Contiguity: Sixty percent (60%) of required open space shall be in a contiguous tract with a minimum width of 30 feet. "Contiguous" includes any common open space bisected by any residential street.

6.12.3.2 Buffer Adjacent to Public Parks and Greenways: A 30-foot-wide/deep natural buffer shall be provided along a development's common boundary with a public park or greenway. No new structures shall be constructed, and no clearing of trees or understory growth shall be permitted except as necessary for street or trail construction. Where this buffer is unwooded, the applicant shall either:

- (a) install vegetation meeting Type B buffer standards as provide in Section 6.5, Buffers, or
- (b) arrange for buffer management to encourage natural forest succession through "no-mow" policies and periodic removal of invasive plant and tree species.

6.12.3.3 Ownership: Open Space shall generally remain undivided and shall be owned and maintained by a homeowners' association, public or private land trust, or other conservation organization recognized by the Town, County, or State. These ownership options may be combined so different parts of the open space may be owned by different entities.

6.12.4 PERMITTED USES WITHIN OPEN SPACE

All open space shall be permanently restricted from future subdivision and development. Under no circumstances shall any development be permitted in the open space at any time, except for those

uses listed as follows. Uses not listed are prohibited.

6.12.4.1 *Buffers required in by Ssubsection 6.5, Buffers, and riparian buffers required by paragraph 6.20.16, Riparian Buffers.*

6.12.4.2 ~~Riparian buffers required in Section 6.20.16, Riparian Buffers~~ *Undeveloped, open land without a designated purpose held by a property owners association or non-profit conservation entity in its natural state (e.g., woodland, fallow field or managed meadow).*

6.4.12.3 *Agricultural and horticultural uses, including raising crops or livestock, and associated structures specifically needed to support the use. Residential structures, wholesale and commercial nurseries, and commercial livestock operations involving swine, poultry, mink and other animals likely to produce highly offensive odors are prohibited.*

6.4.12.4 *Pastureland for horses used solely for recreational purposes. Equestrian facilities are permitted but may not consume more than one-half of the minimum required open space land.*

6.4.12.5 *Forestry, in keeping with established best management practices for selective harvesting and sustained-yield forestry.*

6.4.12.6 *Neighborhood open space uses such as village greens, commons, picnic areas, community gardens, trails and similar low-impact, passive recreational uses. Motorized off-road vehicles, rifle and shooting ranges, and other uses similar in character and potential impact are prohibited.*

6.4.12.7 *Active non-commercial recreation areas, such as playing fields, playgrounds, courts and bikeways, provided such areas do not consume more than one-half the minimum required open space or five acres, whichever is less. Playing fields, playgrounds and courts shall not be located within 100 feet of abutting properties.*

~~**6.4.12.8** *Golf courses, including their parking areas and associated structures, may comprise up to one-half the minimum required open space land. Driving ranges or miniature golf facilities are prohibited.*~~

6.4.12.9 *Water supply and sewage disposal systems, and stormwater detention areas designed, landscaped, and available for use as an integral part of the open space.*

6.4.12.10 *Easements for drainage, access, sewer or water lines, or other public purposes.*

6.4.12.11 *Underground utility rights-of-way. Above-ground utility and street rights-of-way may traverse open space areas but shall not count toward the minimum required open space.*

6.12.5 PROHIBITED USES WITHIN OPEN SPACE: DESIGN REQUIREMENTS

6.12.5.1 ~~Stormwater management ponds, swales, conveyances, and treatment areas~~

Prioritized List of Resources to be Conserved

Open space shall be laid out to ensure an interconnected network of open space is provided. Open space design shall, to the fullest extent possible, incorporate all the following resources if they occur on the tract (listed in order of significance):

- 1. Stream channels, riparian buffers, 100-year floodplains, wet soils/wetlands, swales, springs and other lowland areas, including adjacent buffer areas required to insure their protection.*
- 2. Significant natural areas of species listed as endangered, threatened, or of special concern, such as those listed with the North Carolina Wildlife Resources Commission.*
- 3. Slopes above 25% in a contiguous area of at least 25,000 square feet.*
- 4. Slopes between 15% and 25%, particularly those adjoining water courses and ponds, where disturbance and resulting soil erosion and sedimentation could be detrimental to water quality.*
- 5. Healthy woodlands, particularly those performing important ecological functions such as soil stabilization and protection of streams, wetlands, and wildlife habitats.*
- 6. Areas where precipitation is most likely to recharge local groundwater resources because of topographic and soil conditions affording high rates of infiltration and percolation.*
- 7. Hedgerows, groups of trees, individual canopy trees and trees of botanic significance.*
- 8. Historic structures and sites.*
- 9. Visually prominent topographic features such as knolls, hill tops and ridges, and scenic viewsheds as seen from public roads (particularly those with historic features).*
- 10. Existing trails connecting the development parcel with other locations in the Town, County or State.*

6.12.5.2 Recreation space

Open Space Design Standards

Open space land shall comply with the following design standards:

- 1. No portion of any non-open space lot or street may be used in meeting the minimum open space requirement.*
- 2. It shall be free of all structures except historic buildings, stone walls and structures related to uses permitted within open space. The permit-issuing authority may grant approval of structures and improvements required for storm drainage, sewage treatment and water supply provided such facilities will not be detrimental to the open space. The acreage of lands required for such uses shall not be credited towards*

minimum open space acreage requirements for the development parcel unless the land they occupy is appropriate for passive recreational use.

3. *Open space parcels must be at least three acres in area and have a length-to-width ratio of at least 4:1 or be at least 75 feet in width. Lands specifically designed as neighborhood greens, playing fields or trail links are not subject to this requirement.*
4. *It shall be directly accessible to the largest practicable number of lots within the development. Non-adjoining lots shall be provided with safe and convenient pedestrian access to open space land.*
5. *It shall be suitable for active recreational uses to the extent deemed necessary by the permit-issuing authority, without interfering with adjacent dwelling units, parking, driveways and streets.*
6. *It shall be interconnected wherever possible to provide a continuous network of open space within and adjoining the development.*
7. *It shall provide buffers to adjoining parks, preserves or other protected lands.*
8. *It shall contain pedestrian pathways for use by the residents of the development. Consideration shall be given to providing for public access on such trails if they are linked to other publicly accessible pathway systems within the Town, County or State. Provisions must also be made for access to the open space for land management and emergency purposes.*
9. *It shall be undivided by public or private streets, except where necessary for proper traffic circulation.*
10. *It shall be suitably landscaped either by retaining existing natural cover and wooded areas and/or according to a landscaping plan to protect open space resources.*
11. *It shall be subject to conservation easements duly recorded in the Orange County Register of Deeds office, if required by the permit-issuing authority, for the purpose of preserving the open space for such uses.*
12. *It shall be consistent with the Comprehensive Plan.*

6.12.5.3 ~~Reserved rights of way~~

Access to Open Space

Pedestrian and maintenance access, excluding those lands used for agricultural or horticultural purposes in accordance with paragraph 6.12.4, Permitted Uses Within Open Space, shall be provided to open space land subject to the following requirements:

- (a) *Each development shall provide one centrally located access point of 35 feet in width for every 15 lots or dwelling units.*

(b) Access to open space used for agriculture may be appropriately restricted for public safety and to prevent interference with agricultural operations.

6.12.5.4 ~~Utility, drainage, or access easements~~

6.12.5.5 ~~Any land held in private ownership rather than commonly held by a property owners association or non-profit conservation entity~~

6.12.6 ~~ADDITIONAL PERMITTED USES WITHIN OPEN SPACE AREAS~~ OPEN SPACE OWNERSHIP

6.12.6.1 ~~Open space has no purpose that requires the construction of structures or modification of the existing landscape or grade. An applicant may propose fences, community gardens, and passive uses including walking trails, available to the public or restricted to occupants of the development, at the time of development review. The applicant shall construct any trails proposed, which may count toward a recreational requirement in Section 6.15, Recreation Sites.~~

Open space shall be protected in perpetuity by one of the following methods:

(a) A deed of conveyance of title to the Town, County, State or land trust that states the restrictions governing its use, improvement, maintenance and preservation as conditions to the deed of conveyance.

(b) A deed of conveyance to a homeowners'/property owners' association.

(c) A permanent conservation or development easement in favor of the Town, County, State or land trust; a permanent restrictive covenant for conservation purposes; or prohibiting development in favor of the Town, County, State or land trust.

6.12.6.2 ~~Utility easements may cross common open space if necessary to connect to the area network. To the maximum extent practicable, utility easement intersections with open space shall be perpendicular to minimize land disturbance. In no case shall a utility easement run coincident with an area of common open space for a length of more than 50 feet without specific authorization by the permit issuing authority and a plan for mitigating the impact of the disturbance on the intent of the open space.~~

If open space is deeded to a homeowners'/property owners' association, a declaration of covenants, conditions and restrictions shall be recorded with the Orange County Register of Deeds office before any property is sold. The recorded document shall include, but not be limited to, all the following:

(a) The homeowners'/property owners' association shall own, manage, maintain, preserve and govern the open space and restrict its uses to those specified in this ordinance and in the approved development plans;

(b) The association shall be self-perpetuating and adequately funded by regular assessments, special assessments, or both, to accomplish its purposes, and the association shall be authorized to adjust assessments to meet changing needs;

- (c) The association shall not be dissolved, and shall not dispose of any open space or associated facilities, by sale or otherwise, except to an organization conceived and established to own and maintain the open space and facilities, and the conditions of a transfer shall conform to the approved development plans and be subject to the dedicatory or reservation instrument(s);*
- (d) Association membership shall be mandatory for each property owner and successive owner;*
- (e) The association shall be responsible for liability insurance and local taxes for the open space and facilities;*
- (f) Property owners shall pay their pro rata share of the cost of managing and maintaining the open space, and assessments levied by the association shall be a lien on their property;*
- (g) A lien on the open space to secure collections of assessments levied by the homeowners association;*
- (h) They shall grant the Town the authority to maintain open, assess the cost of maintenance against the owners of the property jointly and severally, and enforce the recorded covenants, conditions and restrictions;*
- (i) Control shall be transferred to the property owners when the development project is 75% complete;*
- (j) They shall run with the land in perpetuity; and*
- (k) They shall be filed with the approved development plan.*

6.12.6.3 Design Requirements

~~All residential developments shall provide walkways connecting residences and open or common areas. This may be accomplished with sidewalks along street frontages or walkways through recorded access or utility easements.~~

6.12.7 LAND CHARACTERISTICS

6.12.7.1 ~~To prevent open space from becoming a nuisance, all open space within a development shall be accessible from a public right of way.~~

6.12.7.2 ~~Open space shall be arranged to have both contiguity and connectivity within the development dedicating the open space and to any surrounding dedicated open space. For the purposes of this paragraph, contiguity shall mean that the parcel being offered as open space is of sufficient area to be meaningful in achieving the intent of open space and connectivity shall mean that the parcel being offered as open space shall be located so that a~~

~~person or wildlife can move between open space parcels without traveling across private property or along a public road or sidewalk.~~

SECTION 9

9.2 DEFINITIONS

Master *Development Plan*

A plan for the development of ~~20 or more acres of~~ land approved as part of a rezoning request to a ~~SPECIAL use~~ *Planned Development district*, that defines basic development uses, intensities, and a transportation network for the sites.

Open Space

~~That area within a development that is not covered with a structure or impervious surfaces, which has been set aside for resource protection, amenity, and/or buffers (including water quality buffers on streams and required land use buffers), legal title to which may be held by the developer, property owners' association, unit of government, or non profit entity. Buffers and building setbacks that are privately held on individual lots are not included in the definition of open space. Stormwater control devices, including swales and ponds, recreation areas, reserved rights of way, and easements for above ground activities or utilities are not considered open space. Open space shall be designated as such on the preliminary and final plans.~~

That portion of a lot, parcel or tract of land that is set aside for the protection of sensitive natural features, farmland, scenic views and other unique features. Open space may be accessible to the residents of the development and/or the Town.

Phased Development Plan

Plan for development of property to be completed in distinct sections or phases, the distinction between phases usually involving different uses of land. ~~A phased development plan is typically subject to a SPECIAL use permit process.~~

Planned Development

One or more lots, tracts or parcels of land to be developed as a single entity. Plans for such developments may propose, among other things, density or intensity transfers, density or intensity increases, mixing of land uses or any combination of the above. Plans for such developments may and often will deviate from the lot size, bulk, type of dwelling or building, use, density, intensity, lot coverage, parking, required common open space or other standards otherwise applicable to the area in which it is to be located.

Site-specific Development Plan

A plan of land development which has been submitted to the town with an application for a ~~CONDITIONAL use permit or SPECIAL~~ *special use permit*, describing with reasonable certainty the type and intensity of use for a specific parcel or parcels of land.

The foregoing ordinance having been submitted to a vote, received the following vote and was duly adopted this 10th day of October in 2022.

Ayes:

Noes:

Absent or excused:

Sarah E. Kimrey, Town Clerk