

## **ARTICLE V      OPEN SPACE DESIGN** *(amended 2020)*

### **SECTION 5.1    PURPOSE AND APPLICABILITY**

#### **5.1-1      Purpose**

The primary purpose of this Section is to preserve the open space resources of Shutesbury as identified in the Master Plan, especially large contiguous blocks of forested back-land. These large unfragmented tracts provide many ecological benefits. They improve water and air quality, sequester carbon, reduce movement of invasive species, provide wildlife habitat, and support greater biodiversity. Additionally, they help maintain commercial forestry as a viable agricultural activity and offer many recreational opportunities to town residents.

This section is also intended to foster compact development patterns using flexible regulations for density and lot dimensions and to promote and encourage creativity in neighborhood design. The Town wishes to encourage the use of Open Space Design because Open Space Design results in the preservation of contiguous open space and important environmental resources, while allowing design flexibility. Open Space Design reduces development impacts on farmland, forests, wildlife habitats, large tracts of contiguous open space, environmentally sensitive areas, steep slopes, hilltops, and historically significant areas.

To encourage this type of development, Open Space Design is allowed by right, subject only to

the requirements of the Regulations Governing the Subdivision of Land. An Open Space Design that does not require approval as a subdivision is allowed by special permit subject to approval by the Planning Board. In order to encourage small subdivisions to follow Open Space Design principles, there is no minimum parcel size or number of lots required for an Open Space Design.

### **5.1-2 Applicability**

- A. An Open Space Design may be proposed anywhere in Shutesbury, including the TC district. Within the FC, RR, and LW District, all subdivisions shall comply with the Open Space Design provisions of this Article V, unless the Planning Board allows a development that deviates from the requirements of Article V by Special Permit. Such deviations may be approved if the applicant demonstrates that the proposed alternative development configuration provides adequate protection of the site's environmental resources and fulfills the purposes of this Article as well as or better than an Open Space Design.
- B. Subsection A above applies only to subdivisions of land as defined in MGL Ch. 41, § 81L, and not to construction of homes or businesses on individual lots that existed prior to May 3, 2008 or to lots created through the "Approval Not Required" process with frontage on public ways existing as such as of May 3, 2008 described in the Regulations for the Subdivision of Land (the "Subdivision Regulations"). However, if subdivision approval is not required because a new roadway is not proposed, an applicant may nevertheless apply for an Open Space Design under this Article V. In such a case, the application shall be subject to special permit review as described in Article IX, under which the Planning Board may additionally consider the conservation benefits versus detriments of permitting a number of residential units in excess of the base number otherwise possible without the benefit of this Article V. If the proposed Open Space Design also involves one or more common driveways, density bonuses, transfer of development rights, and/or any other use that requires a Special Permit, the proceedings for all such Special Permits and the Site Plan review for the lot configuration shall occur in one consolidated Special Permit proceeding before the Planning Board.

## **SECTION 5.2 DEVELOPMENT IMPACT STATEMENT AND CONSERVATION ANALYSIS**

In order to enable the Planning Board to determine whether or not a proposed Open Space Design (or development by Special Permit that deviates from the requirements for Open Space Design) satisfies the purposes and standards of this Article, an applicant must present sufficient information on the environmental and open space resources for the Board to make such determination. The required information shall be provided in the form of a Development Impact Statement, including a "conservation analysis" as described in Subsection IX of Section VIII of the Subdivision Regulations. In the case of an Open Space Design that is not a subdivision, and that is presented as a special permit application, the applicant shall not be required to submit a full Development Impact Statement.

However, the Planning Board may require the submission of all or part of a conservation analysis as described in the Subdivision Regulations

### **5.2-1 Conservation Analysis and Findings**

- A. Prior to filing an application, an applicant is encouraged to meet with the Planning Board to discuss the conservation resources on the site. At such a meeting, the Planning Board shall indicate to the applicant which land is likely to have the most conservation value and be most important to preserve and where development may be most appropriately located.

- B. In the case of a proposed plan that deviates from the requirements of this Article, if the Planning Board determines that the land with the greatest conservation value cannot be protected except by the use of an Open Space Design plan, the Planning Board shall deny the Special Permit for the deviation and require that the applicant submit a plan that complies with the requirements for an Open Space Design.
- C. The Planning Board, in consultation with the Conservation Commission, and Open Space Committee, if any, shall study the conservation analysis, may conduct field visits, and shall formally determine which land should be preserved and where development may be located. The Planning Board shall make written findings supporting this determination (the “conservation findings”). The Planning Board shall deny any application that does not include sufficient information to make conservation findings or that does not preserve land that the Planning Board determines should be preserved from development as a result of the conservation analysis and findings.
- D. The Planning Board’s conservation findings shall be incorporated into its decision to approve, approve with conditions, or deny an application. The conservation findings shall show land to be permanently preserved by a conservation restriction, as well as recommended conservation uses, ownership, and management guidelines for such land. The conservation findings shall also indicate preferred locations for development if the Plan is denied based upon such findings.

**5.2-2 Minimum Preserved Open Space**

The Plan shall show that at least the percentages of the total acreage listed below will be preserved by conservation restriction, based upon the conservation findings.

FC District:	minimum of 80%
RR, LW, TC Districts:	minimum of 65%

**SECTION 5.3 ALLOWABLE RESIDENTIAL UNITS**

The maximum number of residential units in an Open Space Design is calculated by a formula based upon the net acreage of the property. This formula is intended to take into account site-specific development limitations that make some land less developable than other land. This calculation involves two steps, calculating the net acreage and dividing by the base-allowed density.

**5.3-1 Net Acreage Calculation**

The factors named below are included in this subsection for net acreage calculation purposes only and do not convey or imply any regulatory constraints on development siting that are not contained in other applicable provisions of law, including this zoning bylaw. To determine net acreage, subtract the following from the total (gross) acreage of the site:

- A. half of the acreage of land with slopes of 20% or greater (2000 square feet or more of contiguous sloped area at least 10 feet in width); and
- B. the total acreage of lakes, ponds, land subject to easements or restrictions prohibiting development, FEMA 100-year floodplains, and all freshwater wetlands as defined in Chapter 131, Section 40 of the General Laws, as delineated by an accredited wetlands specialist. The wetlands scientist will prepare MA DEP WPA Form 4A, Abbreviated Notice of Resource Area Delineation (ANRAD), that includes a wetland evaluation and map of the site. The ANRAD is submitted to the Conservation Commission, discussed at a public hearing, and a decision is issued on the extent and boundaries of the wetland resource areas.

### **5.3-2 Unit Count Calculation**

To determine the base maximum number of allowable residential dwelling units on the site, divide the net acreage by three (3) in the RR, LW, or TC Districts, or by five (5) in the FC District. Fractional units shall be rounded down to the next whole number.

### **5.3-3 Density Bonuses**

The unit count determined in Section 5.3-2 above may be increased through density bonuses designed to advance important goals of the Shutesbury Master Plan. Density bonuses are given by Special Permit at the discretion of the Planning Board based upon the expected public benefit. They are calculated by first determining the allowable unit count under Section 5.3-2 without rounding fractional units up or down, and then multiplying that number by 100% plus the percentages that follow. Resulting fractional units shall be rounded down as in §5.3-2.

- A. If the applicant allows deeded public access to the open space portion of the property and the Planning Board finds that such public access provides a significant recreational benefit to the Town (such as access to an important natural area or a trail system): a maximum of 10%.
- B. If the applicant permanently restricts ownership and occupancy of units allowed by §5.3-2 as affordable housing (as defined in this bylaw), and makes a binding commitment to construct such affordable residences: a maximum of 25%. For every unit included in the allowable unit count under Section 5.3-2 that is built and dedicated as an affordable unit, two bonus market rate units may be permitted, up to the maximum of 25% of the allowable unit count.
- C. If the applicant preserves as permanent open space more than the minimum required percentage: a maximum 10% density bonus per additional 5% of the whole project area preserved as open space.

### **5.3-4 Density Transfer (Transfer of Development Rights)**

The Town of Shutesbury encourages flexibility in the location and layout of development, within the overall density standards of this Zoning Bylaw. The Town therefore will permit residential density to be transferred from one parcel (the "sending parcel") to another (the "receiving parcel") in Open Space Designs under this Article V. Density transfers may only be permitted from sending parcels in the FC district to receiving parcels in either the FC, RR, or TC districts. If a sending parcel is located in both the FC and another district, only those portions of sending parcel that actually lie within the FC District may be considered in determining the number of units allowed to be transferred. The process of density transfer is as follows:

#### **A. Procedure**

- 1. All density transfers require a Special Permit from the Planning Board.
- 2. The Special Permit application for a density transfer shall be signed by the owners (or their authorized representatives) of both the sending and receiving parcels.
- 3. The Special Permit application shall show a proposed development plan for the receiving parcel (subdivision and/or Site Plan) as well as a base unit count calculation prepared according to the provisions of §5.3-2. For the sending parcel, the applicant may calculate the allowable number of units eligible to transfer by either:
  - a. Calculating the net acreage pursuant to §5.3-1 and dividing by 15; or
  - b. Dividing the total (gross) acreage by 25.

Fractional units shall be rounded down to the next whole number.

4. Sending parcels existing as such on May 3, 2008 may have development rights calculated by either method a. or b. at the applicant's election. Sending parcels which have been modified by lot line changes since May 3, 2008 must employ method a. The density calculation for the sending parcel shall not include any of the density bonuses available under §5.3-3.
5. In reviewing an application for density transfer, the Planning Board shall first determine the number of allowable residential units permitted on the receiving parcel using all of the relevant standards in §5.3-2 and any density bonuses sought under §5.3-3. The Planning Board shall then determine the number of residential units available to transfer from the sending parcel(s) pursuant to §5.3-4A.3.a or b. The Planning Board may then grant a Special Permit allowing the transfer to the receiving parcel of some or all of the allowable residential units from the sending parcel(s).
6. As a condition of approval of the density transfer, a conservation restriction on the sending parcel(s) satisfying the requirements of §5.6 shall be executed and recorded in the Registry of Deeds. The conservation restriction shall require that the total area of land used in the calculation required under §5.3-4A.3.a or b above be permanently restricted. (For example, if five units are transferred and the calculation is according to §5.3-4A3.b, at least 125 acres of the sending parcel would have to be permanently restricted.). Those portions of the sending parcel(s) not required to be subject to the conservation restriction may be used in accordance with this zoning bylaw.

#### B. Findings Required

The Planning Board shall not approve any residential density transfer unless it finds that:

1. All requirements for the granting of a Special Permit have been satisfied.
2. The addition of the transferred units to the receiving parcel will not increase the maximum allowable unit count under §5.3-2 by more than 25%, and will not adversely affect the area surrounding the receiving parcel.
3. The density transfer will benefit the Town by protecting a substantial area of developable land with conservation value on the sending parcel(s) in a manner that furthers the purposes of the FC District.
4. The density transfer will be consistent with the Master Plan.

#### **5.3-5 Maximum Density Bonus and/or Density Transfer**

The density bonuses and transfers of development rights allowed in §5.3-3 and §5.3-4 above may be combined to result in a total unit count increase not exceeding 25% of that established in §5.3-2 above. Density bonuses and/or transfers may only be used if the resulting development complies with Title 5 of the State Environmental Code as determined by the Board of Health.

#### **5.3-6 Lots in More than One District**

For lots in more than one district, the allowable unit count (excluding bonuses or transfers) and required open space for each district shall be computed separately first. These totals shall be added together and the allowable maximum bonus and transfer of development rights for the entire development shall be calculated based upon this combined total number of units. The permitted location of the units and protected open space shall be wherever the Planning Board determines best fits the characteristics of the land, based upon the conservation analysis and findings.

## **SECTION 5.4 TYPES OF RESIDENTIAL DEVELOPMENT**

The allowable residential units may be developed as single-family, two-family, or multi-family dwellings, provided that applicable Special Permit or Site Plan review requirements for the land use district are satisfied and that the number of dwelling units does not exceed the allowable unit count in §5.3 above. The subdivision approval and Special Permit/Site Plan requirements shall be fulfilled concurrently in one proceeding to the extent practicable. Any Open Space Design application involving two-family or multi-family dwellings shall include a Site Plan that shows the location, layout, height, and setbacks of such dwellings. Accessory apartments shall be permitted in Open Space Designs and shall not be counted toward the total allowable unit count. Such apartments shall comply with the requirements of §4.4-2, except that the requirements of §4.4-2A and §4.4-2B (lot area and setback requirements) shall not apply.

## **SECTION 5.5 DIMENSIONAL AND DESIGN REQUIREMENTS**

### **5.5-1 Minimum Lot Sizes in Open Space Designs**

The limiting factor on lot size in Open Space Designs is the need for adequate water supply and sewage disposal. Therefore, there is no required minimum lot size for zoning purposes. This does not affect the powers of the Board of Health to require areas on a lot for the disposal of sewage and the protection of water supply.

### **5.5-2 Setbacks, Road Frontage, and Road Requirements**

- A. The minimum setback shall be 10 feet from any property line.
- B. There shall be no numerical requirements for road frontage in an Open Space Design, provided that each lot has legally and practically adequate vehicular access to a public way or a way approved under the Regulations Governing the Subdivision of Land across its own frontage or via a shared driveway approved under §8.6.
- C. All dwellings must comply with applicable Board of Health requirements.
- D. The Planning Board may modify the applicable road construction requirements for new roads within an Open Space Design as provided in the Regulations Governing the Subdivision of Land, if it finds that such modifications will be consistent with the purposes of this Article V and the Master Plan.

### **5.5-3 Arrangement of Lots**

- A. Lots shall be located and arranged in a manner that protects: views from roads and other publicly accessible points; farmland; wildlife habitat; large intact forest areas; hilltops; ponds; steep slopes; and other sensitive environmental resources, while facilitating pedestrian circulation. Generally, residential lots shall be located the minimum feasible distance from existing public roadways. The Planning Board shall take into consideration the conservation analysis and findings in approving the arrangement of lots.
- B. Lot, roadway, and driveway layouts, land alterations, and placement of structures shall follow applicable portions of the Rural Siting Principles in Section 8.3 and any design guidelines for Open Space Design which may be adopted by the Planning Board.

## **SECTION 5.6 PERMANENT OPEN SPACE**

Open space set aside in an Open Space Design or as a condition of any Special Permit or Site Plan approval (see Article IX) shall be configured as a separate parcel(s) from any building lots

and permanently preserved from development as required by this §5.6. The Planning Board may not require such open space land to be accessible to the public, unless a density bonus is allowed under §5.3-3A. Any development permitted in connection with the setting aside of open space land shall not compromise the conservation value of such open space land, based upon the conservation findings of the Planning Board.

#### **5.6-1 Permanent Preservation of Open Space Land**

All land required to be set aside as open space in connection with any Open Space Design shall be so noted on any approved plans and shall be protected from development by a permanent conservation restriction, as defined in Article XIII, to be held by the Town of Shutesbury, the Commonwealth of Massachusetts, or a non-profit conservation organization qualified to hold conservation restrictions under MGL. Ch. 184, §31 and also qualified to hold tax-deductible conservation easements under Section 170(h) of the Internal Revenue Code, or by other means acceptable to the Planning Board that achieve the conservation goals of this section. Such means may include recorded easements under earlier sections of Chapter 184, recorded zoning or subdivision conditions, or ownership by a conservation organization as described above.

1. The restriction shall specify the permitted uses of the restricted land which may otherwise constitute development.
2. The restriction may permit, but the Planning Board may not require, public access or access by residents of the development to the protected open space land.

#### **A. Ownership of Open Space Land**

1. Protected open space land may be held in private ownership, owned in common by a homeowner's association (HOA), dedicated to the Town or State governments with their consent, transferred to a non-profit organization acceptable to the Planning Board, or held in such other form of ownership as the Planning Board finds appropriate to manage the open space land and protect its conservation value.
2. If the land is owned in common by an HOA, such HOA shall be established in accordance with the following:
  - a. The HOA must be created before final approval of the development, and must comply with all applicable provisions of state law.
  - b. Membership must be mandatory for each lot owner, who must be required by recorded covenants and restrictions to pay fees to the HOA for taxes, insurance, and maintenance of common open space, private roads, and other common facilities.
  - c. The HOA must be responsible for liability insurance, property taxes, the maintenance of recreational and other facilities, private roads, and any shared driveways.
  - d. Property owners must pay their pro rata share of the costs in Subsection (c) above, and the assessment levied by the HOA must be able to become a lien on the property.
  - e. The HOA must be able to adjust the assessment to meet changed needs.
  - f. The applicant shall make a conditional offer of dedication to the Town, binding upon the HOA, for all open space to be conveyed to the HOA. Such offer may be accepted by the Town, at the discretion of the Board of Selectmen, upon the failure of the HOA to take title to the open space from the applicant or other current owner, upon dissolution of the association at any future time, or upon failure of the HOA to fulfill

its maintenance obligations hereunder or to pay its real property taxes. Ownership shall be structured in such a manner that real property taxing authorities may satisfy property tax claims against the open space lands by proceeding against individual owners in the HOA and the dwelling units they each own.

- g. Town Counsel shall find that the HOA documents presented satisfy the conditions in Subsections a through g above, and such other conditions as the Planning Board shall deem necessary.

**B. Maintenance Standards**

1. Ongoing maintenance standards shall be established as a condition of development approval to ensure that the open space land is not used for storage or dumping of refuse, junk, or other offensive or hazardous materials. Such standards shall be enforceable by the Town against any owner of open space land, including an HOA.
2. If the Board of Selectmen finds that the provisions of Subsection 1 above are being violated to the extent that the condition of the land constitutes a public nuisance, it may, upon 30 days written notice to the owner, enter the premises for necessary maintenance, and the cost of such maintenance by the Town shall be assessed ratably against the landowner or, in the case of an HOA, the owners of properties within the development, and shall, if unpaid, become a property tax lien on such property or properties.