

IX. SPECIAL REGULATIONS

A. Open Space Preservation (Cluster) Zoning (OSPZ)

1. Purpose: The purpose of the Open Space Preservation (Cluster) Zoning Bylaw is to:
 - a. conserve the Town's significant open space and to protect its natural features, including historic farms and landscapes, wetlands, forests, the Ipswich River, and the Area of Critical Environmental Concern (ACEC);
 - b. foster housing patterns which are sensitive to and accommodate a site's physical characteristics;
 - c. encourage the use of open space for agricultural use, conservation and/or passive recreation use;
 - d. promote more efficient provision of streets, utilities and other public services by allowing a concentration of dwelling units without an increase in overall density. (Added by 4/5/99 Special Town Meeting; approved by Attorney General 8/2/99)
2. Applicability: Any proposed development in the Town of Ipswich which would create six or more single-family attached or detached dwellings, on a property or set of commonly-owned contiguous properties containing a minimum of four (4) acres, shall be required to submit a special permit application to the Planning Board for Open Space Preservation (Cluster) Zoning in accordance with the provisions of this subsection. The applicant may also submit a conventional subdivision plan at the same time, in accordance with the Rules and Regulations Governing the Subdivision of Land in Ipswich. The Planning Board shall, in compliance with Massachusetts General Laws Chapter 40A, Section 9, hold a public hearing on the proposed Open Space Preservation (Cluster) application, and a concurrent public hearing on the proposed conventional subdivision, if applicable. In the event both an Open Space Preservation (Cluster) plan and a conventional subdivision plan are submitted, prior to the close of the public hearing, the Planning Board shall recommend which plan it considers most beneficial to the Town, and the applicant shall, also prior to the close of the public hearing, elect which plan he wishes to pursue, and shall inform the Planning Board of his choice in writing. For subdivisions which would create five or fewer lots, on a property or set of commonly-owned properties containing a minimum of five (5) acres, an applicant may submit a special permit application for Open Space Preservation (Cluster) Zoning, in preference to filing a conventional subdivision plan. Any special permit application submitted under the provisions of this subsection, which involves the subdivision of land, shall be subject to the approval of the Planning Board under the Rules and Regulations Governing the Subdivision of Land in Ipswich. (Added by 4/5/99 Special Town Meeting; approved by Attorney General 8/2/99) (Amended by 10/15/01 Special Town Meeting; approved by Attorney General 2/19/02) (Amended by 10/18/04 Special Town Meeting; approved by Attorney General 1/27/05)
3. Permitted Uses: The following principal developed uses of the lots shall be permitted:
 - a. single-family attached
 - b. single-family detached
 - c. community uses
 - d. religious uses
 - e. educational uses
 - f. membership club for the use of residents of the development
 - g. country, fishing, tennis, boating, golf or similar club
 - h. common driveways up to five lots

(Amended by 4/5/99 Special Town Meeting; approved by Attorney General 8/2/99)

4. Density Standards: (Amended by 4/5/99 Special Town Meeting; approved by Attorney General 8/2/99)
 - a. Base Density:

For the purposes of determining the total number of allowable dwelling units an entire tract, the total number of proposed dwelling units in the development shall not exceed the number of dwelling units which would be developed under normal application of zoning requirements for detached single-family dwelling units under the "Town of Ipswich Rules

and Regulations Governing the Subdivision of Land" and in accordance with Section VI. DIMENSIONAL AND DENSITY REGULATIONS of the "Protective Zoning Bylaw of the Town of Ipswich". The developer shall submit a "Yield Plan" which indicates the maximum number of lots achievable under a conventional layout which generally complies with the Town of Ipswich Rules and Regulations Governing the Subdivision of Land, without altering any land areas in which such activity would be precluded by normal application of state and town laws and regulations governing wetlands and riverfront areas, or by the existence of floodplain areas. In unsewered areas, the developer shall provide evidence acceptable to the Planning Board that individual on-site wastewater treatment and disposal systems may be permitted and constructed to serve all the lots proposed under the "Yield Plan" as submitted. This evidence shall include a demonstration of suitable soil and groundwater conditions through representative sampling and testing of the buildable areas of the site by means and methods approved by the Board of Health and shall at a minimum consist of one determination of soil permeability and one observation of maximum ground water elevation per two acres of otherwise buildable land, such tests being distributed with reasonable uniformity over the site. For the yield plan to be approved, all such determinations and observations shall meet the above presumption, except that if more than five determinations and observations are made, only seventy-five percent of said determinations and observations need demonstrate the above presumption. (Amended by 10/16/00 Special Town Meeting; approved by Attorney General 3/8/01) (Amended by 10/18/04 Special Town Meeting; approved by Attorney General 1/27/05)

b. Wetlands/Coastal Exclusion:

For tracts which contain wetlands and/or flood plain, only one-half the area designated as wetlands and/or floodplain may be considered when calculating the total area of the tract. For the purposes of determining lot area(s) the Federal Insurance Floodplain Maps (FIRM), 310 CMR 10.00 and the Town of Ipswich General Wetlands Bylaw shall be used to identify floodplain and wetland areas. (Added by 10/18/04 Special Town Meeting; approved by Attorney General 1/27/05)

c. Maximum Density:

In the RRC District in no circumstances shall the total number of units obtained through application of the above density formulae exceed one hundred twenty (120%) percent of the base density allowed under a. above, except as described below. In the RRA District in no circumstances shall the total number of units obtained through application of the above density formulae exceed one hundred (100%) percent of the base density allowed under a. above, except as follows:

- (1) The Applicant submits an OSPZ application in accordance with the provisions of IX.I. Inclusionary Housing Requirements;
- (2) An OSPZ application submitted in accordance with the provisions of IX.I may be allowed an increase over the overall density that is achievable under said Section, subject to the following conditions and limitations:
 - i. An OSPZ application which provides an open space set aside of greater than the required 50% may be entitled to a density bonus, under the general rule that at least 10% of additional satisfactory open space be provided in order to receive a bonus that is equivalent to an additional house lot. In no instance shall a density bonus awarded under subparagraph i. exceed 125% of the achievable density under IX.I.
 - ii. An OSPZ application which provides greater affordability than that required under IX.I may be entitled to a density bonus, under the general rule that at least 150% of the required affordability be provided in order to receive a bonus that is equivalent to three additional house lots. In no instance shall a density bonus awarded under this subparagraph ii. exceed 125% of the achievable density under IX.I.
 - iii. In no instance shall the overall density be more than two times what can be achieved under conventional two-acre zoning.

(Amended by 10/15/01 Special Town Meeting; approved by Attorney General 2/19/02) (Amended by 10/18/04 Special Town Meeting; approved by Attorney General 1/27/05)

5. Development Requirements:

- a. Town Water: The development shall be served by a water system deemed adequate for fire protection and domestic use by the Water Commissioners and by the Fire Chief.
- b. Sanitary Sewer/Septic: The property shall be served by the Town's sanitary sewer system, by a private central sanitary sewer system, or by individual septic systems. If, however, in the judgment of the Board, the topography and/or soil conditions are such that it would be more efficient to allow the underground common septic system or individual septic systems to be placed in the preserved open space, this configuration may be permitted. All systems are subject to approval by the Board of Health and any other permitting authority of competent jurisdiction.
- c. Open Space Restriction: A minimum of fifty percent (50%) of the lot shall be:
(Amended in its entirety by 10/16/00 Special Town Meeting; approved by Attorney General 3/8/01.) (Amended by 10/15/01 Special Town Meeting; approved by Attorney General 2/19/02)
 - (1) Conveyed to the Town of Ipswich and accepted by it for open space use;
 - (2) Conveyed to the Commonwealth of Massachusetts as part of a state forest, park, or wildlife management area;
 - (3) Conveyed to a non-profit corporation, the principal purpose of which is the conservation of open space, and made subject to a conservation restriction prepared in accordance with the provisions of Section 31 and 33, inclusive, of Chapter 184 of the General Laws of the Commonwealth of Massachusetts; or
 - (4) Conveyed to a corporation or trust owned or to be owned by the owners of lots or residential units within the plot; or
 - (5) Made subject to a conservation restriction prepared in accordance with the provisions of Section 31 and Section 33, inclusive, of chapter 184 of the General Laws of the Commonwealth of Massachusetts running in favor of either the Town or, upon the approval of the Planning Board, a non-profit corporation, the principal purpose of which is the conservation of open space. The conservation restriction shall provide that such land shall be kept, in perpetuity, in an open or natural state, in accordance with the above-noted sections of Chapter 184 of the General Laws.
 - (6) The open space, in its entirety or a percentage thereof, may be held in non-common ownership, if approved by the Planning Board. (Added by 10/23/01 Special Town Meeting; approved by Attorney General 2/19/02)

The method of protecting open space requires the approval of the Planning Board.

In designating open space, the Applicant shall apply guidelines entitled CRITERIA FOR EVALUATING OPEN SPACE, adopted by the Planning Board and amended from time to time. The open space shall be available for use by the general public, unless the applicant can provide compelling reasons to the Planning Board why such access would be infeasible in whole or in part. 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%). (Amended by 10/16/00 Special Town Meeting; approved by 3/8/01 by Attorney General.) (Amended by 10/15/01 Special Town Meeting; approved by Attorney General 2/19/02)

d. Dimensional Regulations:

There shall be no lot area, frontage or setback requirements within a tract, except as follows:
(Amended by 10/15/01 Special Town Meeting; approved by Attorney General 2/19/02)

- (1) no building shall be erected within forty (40) feet of a public way or boundary line;
- (2) the area developed for residential use, including buildings, parking and other areas paved for vehicular use, shall not exceed twenty-five percent (25%) of the total area of the OSPZ tract. Foot and bicycle paths and recreational facilities, including buildings wholly devoted to recreation, shall not be counted in the calculation of the

twenty-five percent (25%) limitation. (Amended by 10/16/00 Special Town Meeting; approved by Attorney General 3/8/01) (Amended by 10/15/01 Special Town Meeting; approved by Attorney General 2/19/02)

- (3) For each lot located within any minimum tract, the minimum lot width shall be 75 feet, the minimum lot frontage shall be 50 feet, the minimum front, side and rear setbacks shall be 20 feet, 10 feet (per side) and 25 feet, respectively, and the maximum building coverage shall be 30%. (Amended by 10/16/00 Special Town Meeting; approved by 3/8/01 by Attorney General.) (Amended by 10/15/01 Special Town Meeting; approved by Attorney General 2/19/02)
- (4) Notwithstanding the requirements of Section X. B. of this bylaw, within the RRC district any minimum tract proposed for the Open Space Preservation (Cluster) Zoning shall be subject to site plan review in accordance with the provisions of Section X.
- (5) A vegetated buffer between the tract being built upon and abutting lots shall be required by the Board only if it determines that a buffer is necessary to protect significant natural features and to achieve the harmonious integration of the proposed development with surrounding properties. (Amended by 10/16/00 Special Town Meeting; approved by Attorney General 3/8/01) (Amended by 10/15/01 Special Town Meeting; approved by Attorney General 2/19/02)
- (6) The Planning Board, by special permit, may waive any of the above dimensional requirements if it determines that such action would not be inconsistent with the purpose of this Open Space Preservation Zoning section. (Added by 10/15/01 Special Town Meeting; approved by Attorney General 2/19/02)

e. Application and Review Process:

All special permit applications for Open Space Preservation (Cluster) Zoning shall be made and filed on the appropriate application form. For an application to be considered complete, it shall provide all information required by the Rules and Regulations Governing Granting of Special Permits, available from the Department of Planning and Development.

If a proposed development filed under this subsection also requires subdivision approval, the applicant shall submit, along with the special permit application, a subdivision concept plan. The concept plan should address the general features of the land, and give approximate configurations of the lots and roadways. Imaginative and creative land use planning should be applied, with the aim of preventing damage to the landscape, topography and valuable and nonrenewable natural resources of the Town. The concept plan shall be prepared by a registered professional land surveyor and a registered professional landscape architect, and the plan shall include all information required in the Planning Board's rules and regulations, as described in paragraph 7. of this subsection A.

Within ten days of receipt of a concept plan and/or special permit application, the Planning Board shall transmit a copy of the plan and/or application and to the Open Space Committee, which shall review the application and submit its recommendation to the Planning Board within thirty (30) days of the referral of the application. The approved special permit shall incorporate protection of the natural features to the greatest extent possible. (Amended by 10/18/04 Special Town Meeting; approved by Attorney General 1/27/05)

If the Planning Board approves a Special Permit for an open space preservation development requiring subdivision approval, the applicant shall then submit a definitive subdivision plan to the Planning Board under the Rules and Regulations governing the subdivision of land in the Town of Ipswich. Although the applicant has the option of submitting a preliminary plan instead of a definitive plan, the approved special permit will be considered to have served the purpose of a preliminary subdivision plan.

The Planning Board shall reconsider the aforementioned subdivision concept plan if there is substantial variation between the preliminary or definitive plan and the concept plan. A substantial variation shall be defined as an increase in the number of building lots, a decrease in the open space acreage, a change in the layout which causes dwelling units or road ways to be placed significantly closer to a dwelling unit within five hundred (500) feet of the project, and/or a change in the general development pattern. If the Planning Board finds that

a substantial variation exists, it shall hold a public hearing on the modifications to the concept plan. (Added by 4/5/99 Special Town Meeting; approved by Attorney General 8/2/99)

Construction of streets shall be in accordance with the Rules and Regulations Governing the Subdivision of Land in the Town of Ipswich. Streets may be offered for acceptance as public ways.

- f. Limitation of Subdivision:
No lot shown on a plan for which a permit is granted under this section may be further subdivided, and a notation to this effect shall be shown on the plans.

6. Common Driveways.

Common driveways serving no more than five residential lots may be allowed in Open Space Preservation Zoning Developments, provided that they meet the following requirements:

- a. The common driveway shall satisfy one of the following conditions:
 - (1) The provision of individual driveways to the lots to be served by the proposed common driveway would require curb cuts which are separated by less than sixty (60) feet along the exterior street line.
 - (2) The provision of individual driveways to the lots to be served by the proposed common driveway would allow no alternative but to cross a "Wetland Resource Area", as defined by M.G.L. Chapter 131 Section 40, and/or the Town of Ipswich Wetlands Protection Bylaw, or to cross a "Flood Plain" as described in Section IX. D. of this zoning bylaw.
 - (3) One or more alternative individual driveways which would be necessary in the absence of the proposed common driveway would intersect the roadway at a point of insufficient traffic sight distance, as determined by the Ipswich Planning Board.
 - (4) The provision of driveways to the lots to be served by the proposed common driveway would adversely affect a significant natural feature or vista.
- b. The common driveway complies with Section IX. E. 2., paragraphs a. through d., of this zoning bylaw.
- c. The common driveway shall access the property over the frontage of at least one of the lots being served by the driveway.
- d. The owners of the properties to be served by the common driveway must provide evidence to the Building Inspector that they have rights, either by deed or perpetual easement, to the common driveway.
- e. The common driveways shall provide adequate access and turnaround for vehicles including moving vans, ambulances, fire and police vehicles. To provide such adequate access, the common driveway shall be built to meet the following standards:
 - (1) Width Sixteen (16) feet minimum
 - (2) Turnaround Cul-de-sac having an outside paving diameter of at least 90 feet. As an alternative, the Planning Board may allow a "T" or "Y" shaped turnaround.
 - (3) Pavement Class I, Type I-1 plant-mixed bituminous concrete, in accordance with Appendix 1(A)(5 and 6) of the Rules and Regulations Governing the Subdivision of Land in Ipswich, Massachusetts
 - (4) Grade 14% maximum (Amended by 10/15/01 Special Town Meeting; approved by Attorney General 2/19/02)

- (5) Leveling Area If the grade of the common driveway exceeds six percent (6%) on the approach to an intersection, leveling area with a slope of not more than four (4) percent shall be provided for a distance not less than fifty (50) feet from the intersecting street.

The width, grade and leveling area standards specified above shall apply only to that portion of a driveway which is used in common by more than two (2) lots. Further, the Planning Board may waive strict compliance with the width and pavement requirements if it determines that such a waiver can be granted without adversely affecting public access.

(Added by 10/15/01 Special Town Meeting; approved by Attorney General 2/19/02)

- f. If the terminus of the common driveway is greater than 500 feet from an existing hydrant, as measured along said driveway, an eight-inch diameter water main and hydrant acceptable to the Department of Utilities shall be installed.
- g. The special permit approval shall be subject to a covenant by and between the developer and the Planning Board recorded in the chain of title and running with the land, on a form approved by the Planning Board, acknowledging that the common driveway special permit was granted in consideration of the conditions contained within the special permit and the grant of covenant, and that the common driveway is a private driveway that serves more than one (1) lot, and the owner, his heirs, executors, successors and assigns, agree that the
- h. common driveway shall never be submitted to Town Meeting for a vote to have it become an accepted street. This paragraph authorizes the Planning Board to accept the covenant on behalf of the Town.
- i. The special permit approval shall require the applicant to record with the permit a declaration of covenants and easements which provides for a method of maintenance of the drive, and which obligates that present and future owners of the lots be responsible for the maintenance of the common driveway. (Added by 4/5/99 Special Town Meeting; approved by Attorney General 8/2/99)

7. Adoption of Rules and Regulations:

The Board shall adopt an application form and rules and regulations in accordance with the provisions of this bylaw. Rules and regulations shall specify the application process, type and number of required plans, and general requirements in order to assist the developer in complying with the intent of this bylaw. (Section A. amended by 10/17/92 Special Town Meeting; approved by Attorney General 1/11/93)

B. Wetlands District

(This section deleted by 4/2/90 Annual Town Meeting)

C. Water Supply Protection Districts

(Amended by 10/20/03 Special Town Meeting; approved by Attorney General 1/22/04)

1. Purpose of District. The purpose of this Water Supply Protection District is to:
- promote the health, safety, and general welfare of the community by ensuring high quality and safe drinking water for the residents, institutions, and businesses of the Town of Ipswich; and
 - preserve and protect existing and potential sources of drinking water supplies.
2. Scope of Authority. The Water Supply Protection District (WSPD) is an overlay district, superimposed on the zoning districts, which operates in conjunction with other applicable local and state regulations. The WSPD shall apply to all: (a) new construction; (b) reconstruction or expansion of existing buildings; and (c) new or expanded uses in zones delineated for water supply protection. Specifically exempted from this section is normal household use of hazardous materials. Applicable activities and uses in a portion of one of the underlying zoning districts which fall within the WSPD must additionally comply with the requirements of this district. Uses prohibited in the underlying zoning districts shall not be permitted in the WSPD.