

04/9/08

EXHIBIT 1

(Zoning Bylaw Amendment – Article 10)

§ 185-41.1. Open Space Preservation

A. Purpose and Intent. Consistent with the goals of the Dover Master Plan, the purposes of the Open Space Preservation (OSP) bylaw are to: maintain the rural character of Dover; protect open space, agricultural and forestry land, viewsheds, wildlife habitat and corridors, wetlands and water resources, and historical resources, and allow for more efficient and environmentally sensitive development of open land which respects existing topography and natural features better than a conventional subdivision.

B. Applicability.

In the R-1 or R-2 District, an Open Space Preservation special permit may be granted by the Planning Board for any development of a parcel of land, or contiguous parcels of land under common ownership or control as of the effective date of this section, resulting in a division of land into residential lots. For purposes of this section, a division of land into residential lots shall include any subdivision under the Subdivision Control Law, G.L. c.41, §§ 81K-81GG or lots created after the effective date of this section through the so-called “Approval Not Required” process.

C. Relationship to Subdivision Control. Planning Board grant of a special permit pursuant to this section authorizes the applicant to submit a subdivision plan that conforms to the requirements of the special permit rather than the Schedule of Dimensional Requirements.

D. Permitted Uses. An OSP may only include the following uses:

Within the Required Open Space:

- (1) Undisturbed open space, conservation areas, or passive recreation, including trails for walking, hiking, cross country skiing, horseback riding, picnicking and wildlife observation.
- (2) Agricultural, horticultural, and forestry uses.

Outside the Required Open Space:

- (3) Detached single family homes.

- (4) Accessory recreational uses, such as a tennis court or playground.
- (5) Active recreation uses, such as a park, playground or playing fields, but not a golf course.

E. Dimensional Regulations.

- (1) The maximum number of lots in an OSP shall be determined by the Planning Board, in accordance with Subsection I below. In making such determination, the Planning Board shall seek input from the Conservation Commission, Board of Health, and other relevant Town boards and commissions as it deems appropriate.
- (2) The Planning Board may reduce the minimum dimensional requirements otherwise applicable to lots in an OSP in order to maximize the open space area or facilitate a desired arrangement of buildings and other amenities, except as follows:
 - (a) No residential lot shall be reduced to less than 1 acre in area.
 - (b) Lots having reduced area or frontage shall not have frontage on a street other than a street created by the OSP unless the Planning Board makes a written determination that such reduced lot(s) will further the purposes of this section. In no case shall such reduced frontage be used to increase the total number of building lots relative to conventional development under Town bylaws and regulations.
 - (c) The minimum distance between any homes within the OSP and any boundary with abutting property outside the OSP shall be 100 feet.
 - (d) The minimum setback from any lot line abutting an open space parcel shall be 40? feet.
 - (e) No building shall exceed the maximum height regulations in §185-17.
- (3) Unless reduced by the Planning Board as provided above, all other dimensional requirements of the applicable zoning district shall apply.

- F. Pre-Submission Meeting. Applicants are encouraged to meet with the Planning Board prior to submitting a special permit application. If the applicant requests a pre-submission meeting, the Planning Board shall invite the Conservation Commission and Board of Health. The purposes of a pre-application review are to solicit guidance from the Planning Board at an early stage in the development in order, in part, to minimize the applicant's costs for engineering and other technical experts. At the pre-application review, the applicant should outline the proposed OSP, seek preliminary

feedback from the Planning Board and the public, and set a timetable for submittal of a formal application.¹

G. Design Process. At the time of the application for a special permit under Subsection H below, applicants must demonstrate to the Planning Board that the following four-step design process was carried out by a licensed Registered Landscape Architect in conjunction with a Registered Land Surveyor and used to establish the layout of proposed streets, house lots, utilities and open space:

- (1) Identify resource areas on the site, including wetlands, riverfront areas, and floodplains regulated by federal, state or local law; natural landscape features such as steep slopes, mature woodlands, prime farmland, meadows, wildlife habitats and wildlife corridors or connections thereto; cultural features such as historic sites and scenic views; and recreational features such as established trails used for horseback riding, walking and cross-country skiing. To the maximum extent feasible, these resource areas shall be included within the proposed open space parcels of the development as conservation areas.
- (2) Define and delineate the area(s) that will contain buildings, roadways, other site improvements and amenities for residents of the development. To the maximum extent feasible, any proposed area of disturbance shall consist of land outside the conservation areas identified under (1) above. The location of structures should account for proximity to common open space.
- (3) Identify and delineate the approximate location of roads and trails. Roads should be designed for minimal disturbance to the conservation areas. The layout of new trails should anticipate internal and external connections to existing and/or potential future roads, trails and sidewalks, and, where feasible, to allow for public access to such trails.
- (4) Identify the approximate location of lot lines.

H. Procedures.

- (1) General. The special permit application, review and decision procedures shall be in accordance with this section and § 185-52, Special Permits, and MGL c.40A, Section 9. Where an applicant seeks a special permit under this section and the development also requires a special permit under any other section in which the Planning Board has been designated to serve as special permit granting authority, the special permit applications may be combined into a single submission and the Planning Board may grant a single special permit that addresses all applicable requirements.

¹ As provided in §§ 185-52 and 248-25, the Planning Board may retain consultants, at the expense of the applicant, to assist with any such review and any subsequent review hereunder.

- (2) Application Requirements. The special permit application shall include a Concept Plan OSP in accordance with the requirements herein. The size, form, number and contents of the required plans and any supplemental information shall be in accordance with Planning Board OSP regulations.
 - (3) Alternative Application Requirements. Nothing in this section shall prevent an applicant from submitting concurrent applications for a special permit and Definitive Plan approval. However, the applicant shall have the burden of proof to demonstrate that all of the above requirements have been met in the preparation of a Definitive Plan conforming to Subsection L below, including all design and engineering specifications.
 - (4) Site Alterations. After an OSP special permit application has been submitted, no tree removal, no utility installation, no ditching, grading or construction of roads, no grading of land or lots, no excavation, except for purposes of soil testing, no dredging or filling and no construction of buildings or structures shall be done on any part of the tract of land proposed for an OSP until the application has been reviewed and approved or denied as provided by these regulations. Violation of this requirement shall constitute a basis for denying the application.
- I. Determination of Development Capacity. The maximum number of lots permitted in an OSP shall not exceed the number of lots that would result from a conventional development under Town bylaws and regulations without waivers. The applicant shall demonstrate the allowable number of building lots through submission of a Yield Plan showing a conventional subdivision of the same land. The Planning Board, in consultation with the Board of Health, shall require sufficient soil test data to provide a reasonable expectation that all lots shown on the Yield Plan will pass a percolation test. In some cases, it may be necessary to provide percolation test data from each lot. The Planning Board may challenge the status of any lot.
 - J. Open Space Requirement. To qualify for a special permit, the OSP must provide at least 50% of the total area of the site (total acreage) as common open space that is functional for purposes intended by this section and to be protected in perpetuity. The common open space shall have no structures, parking, private yards, patios, or gardens, restricted for the exclusive or principal use by residents of individual homes in the OSP. The following standards apply to the common open space:
 - (1) Use, Shape and Location
 - (a) To the maximum extent feasible, the open space shall be undisturbed, unaltered and left in its natural or existing condition. It shall be appropriate in size, shape, dimension, location, and character to assure its use as a conservation area, or where appropriate, a recreational area.
 - (b) The percentage of the open space that is wetlands normally shall not exceed the percentage of the entire site that is wetlands. However, the applicant may

include a larger percentage of wetlands in such open space if the Planning Board determines that such inclusion promotes the purposes of this section.

- (c) To the maximum extent feasible, the common open space shall be contiguous and linked as a unit, and linked to other existing on-site and off-site open space.
 - (d) Common open space shall be functional for wildlife habitat, passive recreation, resource preservation, forestry, equestrian trails or agricultural uses.
 - (e) Each parcel of common open space shall offer adequate access to residents of the OSP and, where feasible, public access.
 - (f) Land used for septic systems shall not be counted toward the minimum common open space requirement unless authorized by the Planning Board, upon a showing by the applicant that waiving this requirement would further the purposes of this section.
 - (g) Existing utility easements shall not be counted as common open space unless approved by the Planning Board.
 - (h) Recreational parking in compliance with Section 185-34 D of the Zoning Bylaw is allowed.
- (2) Ownership. Any proposed common open space within an OSP shall be conveyed to either (i) the Dover Conservation Commission and accepted for park or open space use, or (ii) a non-profit organization the principal purpose of which is the conservation of open space, or (iii) a corporation or trust owned or to be owned by the owners of lots or homes within the development, as provided by G.L. c. 40A, § 9, and subject to a restriction enforceable by the Town or the Conservation Commission providing that such land shall be kept in perpetuity in an open or natural state. Any such restriction shall be approved, as to form, by the Planning Board and shall be recorded following execution. Wherever possible, previously existing trails shall be kept open for limited recreational use.
- (3) Neither the common open space nor any lots in an OSP shall be further subdivided. A notation to this effect shall be placed on the plan of record, which shall be recorded at the Registry of Deeds.

K. Decision.

- (1) The Planning Board may grant a special permit for an OSP with any conditions, safeguards, and limitations necessary to ensure compliance with this section, only upon finding that conceptual design and layout of the proposed OSP is superior to a conventional development in achieving the purposes stated in Subsection A, as applicable and the OSP complies with the terms of this § 185-41.1.

- (2) The Planning Board may deny a special permit upon finding that the application does not provide sufficient information to demonstrate compliance with the requirements of this section, or does not comply with the provisions of this Bylaw, which finding shall be set forth in detail in a written decision.
- (3) Approval of a special permit under this section shall not be considered approval of any construction. Planning Board issuance of a special permit shall neither obligate the Planning Board to approve a definitive plan under Subsection L below nor serve as a substitute for such approval. The special permit is a preliminary approval, intended to give guidance to the applicant for the development of definitive subdivision plan, and to determine whether the applicant's submittal meets the objectives of this section. Any subsequent application for an OSP definitive plan shall comply with all material aspects of the special permit granted hereunder.

L. Definitive Plan Submission.

- (1) Following issuance of a special permit for an OSP, the applicant is eligible to submit an OSP definitive plan to the Planning Board under the Town of Dover Subdivision Regulations and the Subdivision Control Law.
- (2) Relationship to Special Permit.
 - (a) Except as provided in § 185-41.1.L (2) (b) below, the Planning Board shall disapprove a definitive plan for failure to comply with the special permit. The definitive plan will be considered not to comply with the special permit if the Planning Board determines that any of the following conditions exist:
 - [1] Any increase in the number of lots;
 - [2] A decrease in the open space acreage of more than 5%, or in any and case a decrease in the open space acreage to below 50% of the total acreage;
 - [3] A material change in the general development pattern which adversely affects natural landscape features and open space preservation;
 - [4] A material change to the size or location of storm water management facilities;
 - [5] A material change in the location of wastewater management systems; or,
 - [6] The definitive plan does not substantially comply with the plans that were submitted and approved with the special permit.
 - (b) Notwithstanding the foregoing, the Planning Board may conditionally approve an OSP definitive plan that does not substantially comply with the special

permit. However, such conditional approval must identify where the plan does not substantially comply with the special permit and require that the special permit be amended within a specified time period in order to reflect the changes identified and subsequently approved by the Planning Board.

- (c) The public hearing on the application to amend the special permit shall be limited to the changes identified by the Planning Board in their conditional approval of the definitive plan. These are the only considerations that the Planning Board may take into account in deciding whether to amend the special permit.
- (3) Common Facilities, Operations and Maintenance. In addition to requirements that apply to definitive plan approval under Subsection L (1), an OSP shall demonstrate conformance to the following requirements.
- (a) Any approved common facilities, such as trails, footbridges, signage, etc. shall be subject to site plan review regarding location, and aesthetics of such facilities;
 - (b) To ensure that OSP common open space that is not conveyed to the Dover Conservation Commission or to a non-profit organization the principal purpose of which is the conservation of open space, and any common facilities within the OSP will be maintained properly, where necessary, each OSP shall have a Residents Association in the form of a corporation, non-profit organization or trust, established in accordance with appropriate state law by a suitable legal instrument or instruments properly recorded at the Norfolk County Registry of Deeds or Registry District of the Land Court. As part of the definitive plan submission, the applicant shall supply copies of such proposed instruments, and documentation that such Residents Association will have sufficient management and financial authority, to the Planning Board for its review and approval.
 - (c) Minimum Design Standards. The Planning Board shall, by regulation, adopt minimum design standards for both roadway design and buildings in OSP definitive subdivisions that preserve the natural landscape, minimize tree removal, maintain natural topography, and minimize removal or disruption of historic, traditional or significant uses, structures or architectural elements.
 - (d) Buffer Areas. An OSP that abuts residentially zoned and occupied properties shall provide a buffer area of at least 100 feet to the property line of abutting homes that are outside the OSP. Buffers to protect resource areas on or adjacent to the site such as ponds, wetlands, streams and riverfront areas, rock outcrops, ledge, or land held for conservation purposes, shall be in accordance with requirements of the Planning Board or Conservation Commission, as applicable. Within the OSP buffer areas, no vegetation will be disturbed, destroyed or removed, except that normal maintenance of structures and landscapes that are approved as part of the OSP and are located at least 50 feet

from the property line of properties outside the OSP is allowed, and driveways necessary for access and egress to and from the site may cross such buffers.

- (e) Drainage. The Planning Board shall encourage the use of non-structural stormwater management techniques, such as swales, and other Low Impact Development drainage techniques that reduce impervious surface and provide infiltration to the maximum extent feasible.
 - (f) Common/Shared Driveways. Notwithstanding any other provision of the Code and regulations, shared driveways may be allowed, if and as permitted by the Planning Board, in accordance with the specific provisions of this section. A common or shared driveway shall serve not more than four single-family dwelling units unless the Planning Board determines that a common driveway serving more than four units will further the purposes of this section. In no case shall shared driveways be used to increase the total number of building lots relative to conventional development under Town bylaws and regulations.
- M. OSP Regulations and Design Guidelines. The Planning Board may adopt supplemental rules, regulations and/or design guidelines to administer this section and applicable provisions of § 185-46.1, following a public hearing.
- N. Severability. If any portion of this section is declared to be invalid, the remainder shall continue to be in full force and effect.
- O. The provisions of the Code and any regulations of Dover shall govern OSPs, where applicable, except where the provisions of this Section 185-41.1 conflict therewith or provide otherwise. If the provisions of this Section 185-41.1 conflict with any other provisions of the Code or any other regulations of Dover, the provisions of Section 185-41.1 shall control.