

Hanover Open Space Residential Cluster Design (OSRCD) Bylaw

[Insert Section number] Purpose:

The primary purposes for this bylaw are to:

1. Further the applicable goals and policies of the Town Master Plan, Open Space and Recreation Plan, and Housing Production Plan;
2. Encourage the permanent preservation of open space, agricultural land, forestry land, wildlife habitat, other natural resources including aquifers, water bodies and wetlands, and historical and archaeological resources;
3. Encourage the construction of modestly-sized market-rate and deed-restricted homes affordable to most Town residents;
4. Expedite the permitting of projects;
5. Encourage a less sprawling and more efficient form of development that consumes less open land and conforms to existing topography and natural features;
6. Facilitate the construction and maintenance of housing, streets, utilities, and public services in a more economical and efficient manner;
7. Reduce energy consumption and greenhouse gas emissions; and
8. Minimize the total amount of disturbance on the site.

[Insert Section number] Applicability:

- A. Open Space Residential Cluster Design is allowed by right under zoning and subject only to the requirements of the subdivision regulations or Site Plan review as applicable and any other generally applicable land use regulations, and may be proposed anywhere in the Town's Residential Zoning District. Whereby an OSRCD is proposed as a condominium association under Site Plan review, the OSRCD must comply with the dimensional standards set forth as if the OSRCD were a subdivision. All development shall comply with the OSRCD provisions of this section, unless the Planning Board allows a development that deviates from the requirements of this section 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 section as well as or better the requirements set forth in the OSRCD.
- B. Minimum Tract Size. OSRCD shall be permitted under a single tract, or multiple contiguous tracts in one ownership, which has an area of not less than 120,000 square feet. To incorporate the density bonuses permitted under Section X, a minimum area of not less than 200,000 square feet shall be required.
- C. Section #.A above does not apply to lots created through the "Approval Not Required" (ANR) process with frontage on existing ways that meet the standard specified in the Hanover Subdivision Regulations. However, if subdivision approval is not required an applicant may nevertheless voluntarily apply for an OSRCD under this section. In such a case, prior to lot creation via the ANR process the application shall be subject to Site Plan review as described in [cite relevant section of Town zoning].

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- D. If the proposed OSRCD involves density bonuses, shared driveways, and/or any other use that requires a special permit, or Site Plan review for lot configuration or any other purpose, the proceedings for all such special permits and the Site Plan review shall occur in one consolidated special permit proceeding before the Planning Board.

[Insert Section number] Yield: Allowable Residential Units

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

- A. Net Acreage Calculation. The factors named below are included 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:
1. The total acreage of land subject to easements or restrictions prohibiting development, wetlands, and land within a Well Protection Zone; and
 2. Half of the acreage of land with slopes of 20% or greater;
 3. Ten percent of the remaining site acreage after **the areas of 1 and 2 above are removed** to account for subdivision roads and infrastructure.
- B. Unit Count Calculation. The base maximum number of allowable residential dwelling units on the site is determined by dividing the net acreage by the required acreage (allowed density) for a dwelling unit in the district under this bylaw. Fractional units of less than .5 shall be rounded down and .5 or more shall be rounded up.

As an alternative to the utilizing the above calculation for determining the base maximum number of residential units, an applicant may choose to create a conceptual site plan, clearly delineating proposed preserved open space, wetlands, roadways and infrastructure, and which demonstrates the potential number of lots that could result from a conventional subdivision of the site.

[Insert Section number] Design Requirements

Lot size and shape, unit placement, and other dimensional requirements within an OSRCD are subject to the following limitations.

- A. Objectives: Lots/units shall be located and arranged to advance the resource conservation objectives of the master and open space and recreation plans and to protect: views from roads and other publicly accessible points; farmland; wildlife habitat; large intact forest areas; hilltops; ponds; steep slopes; and other sensitive environmental resources.

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B. Monumentation: Industry-accepted monumentation of a type consistent with the use of the open space shall clearly delineate the boundaries of the open space in a manner that facilitates monitoring and enforcement.

C. Dimensional Regulations

Lot Size	10,000 sq. ft. ¹
Lot Frontage	None
Front setback	25
Rear setback	20
Side setback	10
Height	35', 3 stories ²

NOTES: *All measurements are in feet unless otherwise specified.*

All dimensions, except for height, are minimum.

1. *As required in Section 7.220, any portion of a lot which is located in a Wetlands resource area or in a Well Protection Zone shall not be used to meet any of the dimensional regulations applicable to the OSRCD, except in accordance with Section 8.110 of this Bylaw and except that ten percent (10%) of that area of the lot which is located within the 200 foot riverfront area may be utilized to meet the lot area requirements.*
2. *See Section 7.100 for applicable Height Restrictions.*

D. For the purpose of facilitating lower cost housing, pre-fabricated, factory made or manufactured homes are permitted under the following:

1. Any pre-fabricated, factory made or manufactured homes will be approved through Special Permit. The basis for awarding a Special Permit will be determined by the Planning Board. The Planning Board will award a Special Permit if it deems the dwelling units of the OSRCD enhance the aesthetic character of the Town by utilizing traditional New England-style cottages.
2. To promote the aesthetic qualities of the Town, mobile homes are prohibited.

[Insert Section number] Density Bonuses for Affordable Housing

The Planning Board may award via special permit an increase in the overall density to increase the number of units beyond that otherwise allowed under [SECTION #], subject to the following conditions and limitations:

- A. Objective: The purpose of this Section # is to further the Town's goals of providing housing that is affordable across of range of incomes, including moderately-priced market rate housing, as well as housing deemed affordable according to 760 CMR 56.
- B. Density bonus through additional lots or units

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1. The Planning Board may grant a special permit whereby for each dwelling unit designated as affordable according to 760 CMR 56 in perpetuity, an additional lot or unit in the case of a condominium association for market-rate development may be added.
2. To further encourage clustering and to increase the feasibility of this section, the minimum lot size may be decreased to 7,500 square feet, notwithstanding the limitations placed according to Section 7.220.
3. Under no circumstances shall a special permit under this section be granted in excess of 50% above the calculation of units determined by the OSCRD formula for allowable residential units under this Section #.B.
4. Gross Floor Area. To encourage the production of moderately-priced market-rate units, the average gross floor area for all units in the special permit application shall be a maximum of 1,200 sq ft. The maximum gross floor area for any single unit in the special permit applications shall be 1,500 sq ft.

C. Density bonus through two-unit structures

1. The Planning Board may grant a special permit to allow two-unit townhouses, whereby for each townhouse designated as affordable according to 760 CMR 56, an additional market-rate townhouse may be added.
2. Under no circumstances shall a special permit under this section be granted in excess of 30% above the calculation of units determined by the OSCRD formula for allowable residential units.
5. Gross Floor Area. To encourage the production of moderately-priced market-rate units, the average gross floor area for all units in the special permit application shall be a maximum of 1,200 sq ft. The maximum gross floor area for any single unit in the special permit applications shall be 1,500 sq ft.

D. Inclusion in Subsidized Housing Inventory. Applications may receive a density bonus only if it is demonstrated that the affordable units can be counted toward the Town's subsidized housing inventory as determined by the Massachusetts Department of Housing and Community Development. The applicant shall provide documentation demonstrating that the unit(s) shall count toward the community's subsidized housing inventory to the satisfaction of the Planning Board.

E. The bonuses awarded in Subsection B and C may be additive.

F. Bedroom Unit Mix. Applications for a special permit shall be comprised of a mixture of dwelling types that allow for an economically viable mix of units such that:

1. Not less than one-third (1/3) of the total number of units shall be one-bedroom units.

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2. Not less than one-third (1/3) of the total number of units shall be two-bedroom units.
3. Not more than one-third (1/3) of the total number of units shall be three or more bedroom units.

The foregoing mixture of dwelling types shall apply except to the extent that the requirements of this subsection are reduced, amended, or waived by the Planning Board for good cause shown, consistent with the purposes of Section **TBD (Open Space Residential Cluster Design)** of this Zoning Bylaw.

- G. Buffer from adjacent properties. When incorporating density bonuses into the plan, a buffer area shall be provided around the entire perimeter of the OSCRD in accordance with the following:
 - a. Said buffer area shall be continuous and shall be a width of not less than forty (40) feet.
 - b. The buffer area shall be landscaped with natural vegetation, new plantings, or a combination, which shall include groundcover, shrubs, and trees in accordance with the provisions of Section 8 of this Zoning Bylaw, except to the extent that the requirements of that section are reduced by the Planning Board upon the request of the Special Permit application.
 - c. Access roads or driveways or pedestrian paths may be allowed to cross the buffer area as shown on the approved plans.

[Insert Section number] Open Space Requirements

- A. Minimum: A minimum of 50% of the land area of the OSD shall be set aside as permanently conserved open space. At least 50% of the area of required open space shall be upland. These requirements may be reduced by the Planning Board upon the request of the Special Permit application,
- B. Contiguity of Open Space: Preserved open space shall be contiguous to the greatest extent practicable. Where noncontiguous pockets of open space are preferable to protect conservation areas, applicants shall attempt to connect these resources area to the greatest extent practicable through the use of trails and/or vegetated corridors. Open space will still be considered contiguous if it is separated by a shared driveway, roadway, or an accessory amenity (such as a barn, paved pathway or trail, or shed for the storage of recreational equipment).
- C. Permanent Conservation of the Required Open Space: Any land required to be set aside as open space, voluntarily preserved in excess of that required, conserved as a condition of Site Plan approval, or protected in exchange for additional density pursuant to a special permit, shall be permanently protected pursuant to Article 97 of the Articles of

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Amendment to the Constitution of the Commonwealth of Massachusetts or a perpetual restriction under G.L. Chapter 184 Section 31-33. Unless conveyed to the Town of Hanover Conservation Commission, the required open space shall be subject to a permanent Conservation, Watershed, or Agricultural Preservation Restriction conforming to the standards of the Massachusetts Executive Office of Environmental Affairs, Division of Conservation Services, or Department of Agricultural Resources in accordance with G.L. Chapter. 184 Section 31-33, approved by the Planning Board and Board of Selectmen and held by the Town, the Commonwealth of Massachusetts, or a non-profit conservation organization qualified to hold conservation restrictions under G.L. Chapter 184, Section 31-33. Any proposed open space that does not qualify for inclusion in a Conservation Restriction, Watershed, or Agricultural Preservation Restriction or that is rejected from inclusion in these programs by the Commonwealth of Massachusetts shall be subject to a Restrictive Covenant in perpetuity under G.L. Chapter 184, Sections 26-30, which shall be approved by the Planning Board and Board of Selectmen and held by or for the benefit of the Town.

The restriction shall specify the prohibited and permitted uses of the restricted land, which would otherwise constitute impermissible development or use of the open space, consistent with the Allowable and Prohibited Uses subsections of this bylaw and any permits. The restriction may permit, but the Planning Board may not require, public access or access by residents of the development to the protected land.

- D. Timing: Any restriction or other legal document necessary to permanently conserve open space as required herein shall be recorded before lots are released or building permits are issued, whichever comes first.
- E. Allowable Use of the Open Space: Such land shall be perpetually kept in an open state, preserved exclusively for the purposes set forth herein and in the deed and/or in the restriction, and maintained in a manner which will ensure its suitability for its intended purposes. Proposed use(s) of the open space consistent with this section shall be specified in the application.
 - 1. The open space shall be used for wildlife habitat and conservation and the following additional purposes: historic preservation, outdoor education, passive recreation, aquifer protection, agriculture, horticulture, forestry, or a combination of these uses, and shall be served by suitable access for such purposes.
 - 2. The Planning Board may permit a small portion of the open space, not to exceed 5%, to be paved or built upon (preferably using permeable pavement and other means of retaining natural hydrology) for structures accessory to the dedicated use or uses of such open space (i.e. barns or other farm structures, parking to facilitate public access for passive recreation, informational kiosks, pedestrian walks, ADA access, and bike paths) so long as the conservation values of the open space are not compromised.
 - 3. The open space may be used as the land subject to a restriction for the purpose of an aggregate calculation under Title V.

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F. Prohibited Use of the Open Space: The open space within an OSRCD shall be perpetually kept in an open state, preserved exclusively for the purposes set forth in the Allowed Uses section of this bylaw, and maintained in a manner that will ensure its suitability for its intended purposes. The following uses are expressly prohibited except in conformance with an allowed use:

1. Constructing or placing of any temporary or permanent building, tennis court, landing strip, mobile home, swimming pool, fences, asphalt or concrete pavement, sign, billboard or other advertising display, antenna, utility pole, tower, conduit, line or other temporary or permanent structure or facility on, above, or under the open space that is not in conformance with an authorized use of the open space (e.g. a barn or other structure associated with agriculture);
2. Mining, excavating, dredging, or removing soil, loam, peat, rock, gravel or other mineral resource or natural deposit;
3. Placing, filling, storing, or dumping of soil, refuse, trash, vehicles or parts thereof, rubbish, debris, junk, waste, or other substance or material whatsoever or the installation of underground storage tanks;
4. Cutting, removing, or destroying of trees, grasses or other vegetation unless in conformance with an authorized use such as agriculture, forestry, or recreation;
5. Activities detrimental to drainage, flood control, water conservation, water quality, erosion, soil conservation, or archeological conservation;
6. Purposefully introducing or allowing the introduction of species of plants and animals recognized by the Executive Office of Energy and Environmental Affairs to pose a substantial risk of being invasive or otherwise detrimental to the native plant and animal species and plant communities on the property;
7. The use, parking or storage of motorized vehicles, including all-terrain vehicles, motorcycles, and campers, except in conformance with an authorized use of the open space or as required by the police, firefighters, or other governmental agents in carrying out their duties; and
8. Any other use or activity which would materially impair conservation interests unless necessary in an emergency for the protection of those interests.

G. Ownership of the Open Space: At the applicant's discretion the open space may be owned by:

1. A private owner for agricultural, horticultural, forestry or any other purpose not inconsistent with the conservation restriction;

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2. A non-profit organization or agency of the Commonwealth, with their consent, whose principal purpose is the conservation of open space for any of the purposes set forth herein;
3. The Town Conservation Commission; or
4. A homeowners association or a condominium owners association (HOA) as defined in herein owned jointly or in common by the owners of lots or units within the project. If option four is selected the following shall apply:
 - a. The documents organizing the HOA shall be drafted and approved by the Planning Board before final approval of the OSD development, recorded prior to the issuance of building permits, comply with all applicable provisions of state law, and pass with conveyance of the lots or units in perpetuity. Each individual deed, and the deed, trust, or articles of incorporation, shall include language designed to effect these provisions.
 - b. Membership must be mandatory for each property 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 in perpetuity 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 upon individual properties within the OSRCD.
 - e. The HOA must be able to adjust the assessment to meet changed needs.
 - f. The applicant shall make a conditional grant to the Town, binding upon the HOA, of the fee interest to 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.
 - g. 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 property owners in the HOA and the dwelling units they each own.
 - h. Town Counsel must 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.
5. Selection of ownership option one, two, or four requires:
 - a. The conveyance of a conservation restriction as outlined herein; and

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- b. The granting of an access easement over such land sufficient to ensure its perpetual maintenance as agricultural, conservation, or recreation land. Such easement shall provide that in the event the trust or other owner fails to maintain the open space in reasonable condition, the Town may, after notice to the lot owners and public hearing, enter upon such land to maintain it in order to prevent or abate a nuisance. The cost of such maintenance by the Town shall be assessed against the properties within the development and/or to the owner of the open space. Pursuant to G.L. Chapter 40 Section 58 the Town may file a lien against the lot or lots to ensure payment for such maintenance. Pursuant to G.L. Chapter 40 Section 57 the Town may also deny any application for, or revoke or suspend a building permit or any local license or permit, due to neglect or refusal by any property owner to pay any maintenance assessments levied.

H. Maintenance: The Planning Board shall require the establishment of ongoing maintenance standards as a condition of development approval to ensure that utilities are properly maintained and 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. If the Board of Selectmen finds that the maintenance provisions are being violated to the extent that the condition of the utilities or the open 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.

I. Submission Requirements: In order to enable the Planning Board to determine whether or not a proposed open space design satisfies the purposes and standards of the OSRCD section of the Zoning Bylaw an applicant must present sufficient information on the environmental and open space resources for the Board to make such a determination. The required information shall include the requirements of Section III, Submission of Plans for Approval of the Town's Rules and Regulations Governing the Subdivision of Land in Hanover, Massachusetts, as well as any calculations to determine the yield and density bonuses, if any. In the case of an Open Space Residential Cluster Design that is not a subdivision, and that is presented as a Site Plan review application, the Planning Board may require the submission of all or only part of the requirements described in the Subdivision Regulations.

[Insert Section number] Septic Requirements

J. The property shall be served by a private central sanitary sewer system, central septic system, or by individual septic systems. If, however, in the judgment of the Planning 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

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approval by the Board of Health and any other permitting authority of competent jurisdiction.

[Insert Section number] Parking Requirements

- K. The Minimum Parking Requirements defined in Table 9-1 apply to the OSRCD.
- L. Shared Driveways and Clustered Parking
 - 1. Purposes:
 - a. To provide practically adequate common vehicular access to and from a public street to lots and/or parking locations, which would otherwise be required to have their own access and frontage.
 - b. To further encourage clustering by clustering parking spaces near homes, reducing the need for driveways and impervious surfaces, while encouraging a more pedestrian-focused development.
 - 2. Parking spaces: A portion, or all of required parking may be clustered in one or more lots, provided adequate pedestrian access from said lots to associated units is constructed.
 - 3. Administration: A shared driveway may be administered as part of an HOA. Alternatively, it may be jointly owned in fee or as an easement as specified on the deeds of the owners of the properties to which it provides access. Where an HOA is not utilized as the mechanism for administration, maintenance of a shared driveway is arranged between the joint owners as specified in deeded covenants.
 - 4. The Planning Board may issue special permits allowing shared driveways and/or clustered parking. The owner(s) of all lots or dwelling units to be served by the shared driveway and/or clustered parking must be party to the application for a special permit. If serving more than two units a shared driveway will be called a “way” with a sign placed in plain view of its intersection with a way on which the public has a right of access.
 - 5. Applicants must provide:
 - a. Evidence of deeded covenants for all lots or dwelling units served by the shared driveway and/or cluster parking, which include provisions that are adequate in the opinion of the Planning Board and Town Counsel to:
 - i. Establish a maintenance association or be included as part of the HOA comprised of the owners of all lots or units served by the shared driveway and/or clustered parking;
 - ii. Ensure continued maintenance of the shared driveway and/or clustered parking surface and its drainage structures;

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- iii. Provide for the collection of dues and assessments for any necessary ongoing maintenance, repairs, and any plowing/sanding of the shared driveway and/or clustered parking; and
 - iv. Provide a compliance mechanism enforceable by the maintenance association or HOA in the event of non-payment of dues or assessments by a member.
 - v. Guarantees including but not limited to financial security that the shared driveway and/or clustered parking will be constructed if the permit is issued;
 - vi. A plan signed by a registered professional engineer for the shared driveway and/or clustered parking showing alignments, grades, subsurface preparation, drainage facilities, and surface materials.
6. The Town may not be compelled to provide construction, reconstruction, maintenance, snow plowing, school bus pick-up, police patrols, or other services along a shared driveway.
 7. Shared driveways need not become public ways.
 8. A shared driveway and/or clustered parking shall not exempt an applicant from meeting applicable parking requirements for individual dwelling units.

--Definitions to add to bylaw Definitions Section --

“Homeowners Association” shall mean the corporation, trust, or association owned by the unit owners within an Open Space Residential Cluster Design and used by them to manage and regulate their affairs, including any commonly owned land or facilities.