

ARTICLE 9  
OPEN SPACE STANDARDS

Section 1. Purpose

The purposes of this Article are, within rural areas of Kennebunk, to maintain the rural, natural, and scenic qualities of the Town; and, within developing areas, to provide for flexibility in the design of housing developments to allow for the creation of open space, recreational space, efficient use of the land, and opportunities for affordable housing.

Section 2. Applicability

(1) Rural Conservation District, Rural Residential District

The provisions of this Article shall be mandatory for residential subdivisions in the Rural Conservation District and the Rural Residential District.

(2) Other Districts

In the Coastal Residential, Suburban Residential, Village Residential (VR), and West Kennebunk Village Residential (WKVR), York Street Mixed Residential and Commercial Use, West Kennebunk Village Mixed Use (WKV) and Lower Village Business districts, the provisions of this Article shall be optional. In such districts, notwithstanding other provisions of this Ordinance, the Planning Board in reviewing and approving proposed residential subdivisions may modify provisions relating to space and bulk to permit innovative approaches to housing and environmental design in accordance with the standards of this Article. Such modifications of space and bulk provisions shall not be construed as granting variances to relieve hardship.

Section 3. General Standards

(1) Approval Criteria and Procedure

Developments proposed under the terms of this Article shall meet all the requirements of this Article, as well as the criteria for approval contained in the Town of Kennebunk's Subdivision Regulations. In its review and approval of a subdivision designed under this Article, the Planning Board shall follow the procedure for approval set forth for residential subdivisions.

(2) Permitted Uses

(a) Developments proposed under the terms of this Article shall meet all requirements of this Article, unless otherwise noted.

(b) The uses of the land shall not differ from the uses permitted in the district in which the development is located.

1 (3) Dimensional Standards

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3 (a) Within the Rural Conservation District:

- 4  
5 1. The total number of dwelling units in the subdivision shall not exceed one unit per  
6 10 acres, gross, nor more than one unit per 5 acres of net development area, as  
7 defined in this Ordinance.  
8  
9 2. Each lot within the subdivision shall contain a minimum of 20,000 square feet.  
10  
11 3. Lots shall be laid out so that, on average, they encompass no more than 2 acres  
12 per lot, and so that at least 50% of the net development area remains as open  
13 space outside of the lots and roadways.  
14  
15 4. Minimum road frontage of each lot shall be 25 feet. However, no individual lot or  
16 dwelling unit shall have its required frontage on a public road existing at the time  
17 of adoption of this amendment (November 2, 1993).  
18  
19 5. The subdivider for each lot shall establish and show on the subdivision plat a  
20 building window, the bounds of which shall be at least 75 feet from the right-of-  
21 way of any road existing prior to the adoption of this amendment (November 2,  
22 1993), at least 20 feet from the right-of-way of the road serving the subdivision,  
23 and at least 50 feet from any building window on an adjacent lot.  
24  
25 6. Neither shore frontage nor setbacks from the normal high water marks of water  
26 bodies shall be reduced below the minimum otherwise required in the district.  
27

28 (b) Within the Rural Residential District:

- 29  
30 1. The total number of dwelling units in the subdivision shall not exceed one unit per  
31 5 acres of net development area, as defined in this Ordinance.  
32  
33 2. Each lot within the subdivision shall contain a minimum of 20,000 square feet of  
34 land.  
35  
36 3. Lots shall be laid out so that, on average, they encompass no more than 2 acres  
37 per lot, and so that at least 50% of the net development area remains as open  
38 space outside of the lots and roadways.  
39  
40 4. Minimum road frontage shall be 25 feet. However, no individual lot or dwelling  
41 unit shall have its required frontage on a public road existing at the time of  
42 application for development or gain its access from such a road.  
43  
44 5. The subdivider for each lot shall establish and show on the subdivision plat a  
45 building window, the bounds of which shall be at least 75 feet from the right-of-  
46 way of any road existing prior to the adoption of this Ordinance (November 2,  
47 1993), at least 20 feet from the right-of-way of the road serving the subdivision,  
48 and at least 50 feet from any building window on an adjacent lot.  
49  
50 6. Neither shore frontage nor setbacks from the normal high water marks of water  
bodies shall be reduced below the minimum otherwise required in the district.

1 (c) Within Other Districts  
2

3 Within other districts where Open Space Subdivisions (or open space residential  
4 development) is allowed, dwelling units may be clustered on individual lots, provided:

- 5  
6 1. At least 25% of the gross land area shall be permanently dedicated as open space;  
7  
8 2. Net residential density shall not exceed the density that would be permitted if the  
9 development conformed to the conventional zoning district requirements;  
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11 3. Lot size may be reduced by up to 60% of that required by the district's regulations,  
12 provided that any lot not served by a public sewer or State approved engineered  
13 system shall contain at least 20,000 square feet;  
14  
15 4. Each lot shall have street frontage (lot width) equal to at least 25% of that  
16 required by the regulations of the district in which the project is located;  
17  
18 5. Front, side, and rear setbacks may be reduced by up to 50%;
6. The perimeter of the property shall be maintained as a buffer at least 50 feet in width, except along an existing street, where the buffer strip shall be at least 75 feet wide. The buffer shall include within it a combination of landscaping, natural vegetation, fencing, and grading to minimize the impact on abutting owners. No lots, parking, roads or service facilities, with the exception of access roads as approved by the Planning Board, shall be located in this buffer strip;
7. Neither shore frontage nor setbacks from the normal high water marks of water bodies shall be reduced below the minimum otherwise required in the district.

**Section 4. Density Bonus Provision**

Notwithstanding the density requirements noted above in Sections 3.(3)(a), (b) & (c), the following density bonuses are permitted when the Planning Board finds that the applicable bonus criteria have been met; ; however, in no case shall the total density bonus (as calculated from the base allowed density) exceed 60%:

- 10% bonus for 500' visual corridor preservation and/or historic resource protection areas and further identified as Town Character Priority Areas per Chapter VI of Kennebunk Open Space Plan.
- 15% bonus for implementing some recommendations identified in Environmental and/or Recreation Priority Areas per Chapter VI of the Kennebunk Open Space Plan.
- 25% bonus for projects located within the Town's existing Growth Areas as noted in Kennebunk Comprehensive Plan Figure 4.1 as amended.
- 20% bonus if all the housing units are affordable as defined in this ordinance, and 10% bonus if at least 10% of housing units are affordable as defined in this ordinance
- 20% bonus for Energy Efficient Design (All homes to be certified under one of the following third-party verification programs: the National Green Building Standard (ICC700-2008) or the USGBC LEED for Homes (LEED H). In both cases, the homes must be certified at the Silver level or better (as defined by points earned for criteria met).

10% bonus for interconnectivity of streets both within site and to abutting streets and adjacent development

## Section 5. Design Standards

In addition to other standards of this zoning ordinance and of the Town's subdivision ordinance, the following design standards shall apply to developments under this Article.

### (1) Priorities for Location of Lots and Open Space

The Planning Board shall find that individual building lots are laid out and open space preserved to achieve the following objectives, as applicable. Where the Planning Board finds that objectives conflict, the objectives shall be achieved in the order listed:

#### (a) Within the Rural Conservation District and the Rural Residential District:

1. Where on-site wastewater disposal is to be used, on suitable soils for subsurface wastewater disposal;
2. In a manner that preserves as part of the required open space environmentally sensitive areas, such as wetlands, steep slopes, floodplains, wildlife habitat rated by the Maine Department of Inland Fisheries and Wildlife as high value, and unique natural features;
3. In a manner that maximizes as part of the required open space the amount of contiguous, usable area for agriculture or woodlot production;
4. In a manner that preserves cultural features of the rural landscape, such as stone walls, treed wind breaks, and important or unique structures;
5. In a manner that maximizes as part of the required open space the amount of undisturbed, contiguous wildlife habitat (including habitat that may not be rated as "high" by the Maine Department of Inland Fisheries and Wildlife);
6. Where the development abuts a body of water, in a manner that includes as part of the required open space a minimum of 25% of the shoreline;
7. In a manner that encourages buildings to be located within woodlands or along the edges of open fields adjacent to woodlands;
8. In locations least likely to block or interrupt scenic vistas, as seen from the public roadway;
9. In a manner that maximizes open space that is usable for outdoor recreation;
10. In a manner that each house lot has direct access to the open space ("direct access" means that the owner of one house lot does not have to cross another's house lot to reach the open space);
11. In a manner that minimizes the length of roadways, public utility lines, and other

infrastructure within the proposed development;

12. To provide planting, landscaping, fencing, and screening to buffer the development from, and integrate it with, the character of any surrounding development;
13. In locations where buildings will not interfere with the solar access of other properties.

(2) Vehicular Access, Street Layout and Construction

- (a) All vehicular access to buildings and lots shall be from a street within the development and not from an existing public road, except as approved by Planning Board as part of an overall site design which includes interconnection of streets.
- (b) All streets, roads, access drives, and parking areas shall be designed to harmonize with the topographic and natural features of the site. The road network shall provide for vehicular and pedestrian safety, all-season emergency access, snow storage, delivery and collection services, and potential connections to abutting land.
- (c) Streets shall be designed and constructed in conformance with the Town of Kennebunk Street Design and Construction Standards Ordinance.

(3) Water Supply

All dwelling units in the development shall be connected to a common water supply and distribution system, either public or private, unless the developer clearly demonstrates to the Planning Board that:

- (a) Adequate ground water is available at all locations proposed for individual water systems; and
- (b) The ground water source(s) proposed for individual water systems is safe from both on-site and off-site contamination.

(4) Sewage Disposal

All structures within the development which are equipped with plumbing shall be connected to a public sanitary sewer system, if available, unless the developer clearly demonstrates that:

- (a) Adequate soils and land area are available at all locations proposed for individual septic systems;
- (b) The proposed individual septic systems shall in no way endanger ground water supplies which are currently being utilized as a water source for any existing development and/or public water supply;
- (c) The proposed individual septic system shall in no way endanger ground water supplies which will be used by any proposed common or individual water system in the development; and

- (d) Connection to a private central collection and treatment system will be allowed only when connection to a public sanitary sewer system is not feasible, and when the design for such a common system:
1. Meets the minimum standards of the Maine Subsurface Wastewater Disposal Rules, and
  2. Has a backup site available, which also meets the standards of the Maine Subsurface Wastewater Disposal Rules, for use in the event of the failure of the system, and
  3. Has a maintenance plan accompanying it which shall be made part of the homeowners' association's responsibilities.
- (5) Common Open Spaces and Facilities
- (a) The common open space created by the development shall be shown on the subdivision plan with the following notation on the face of the plan: "Common open space shall not be further divided or used for future building lots."
- (b) The common open space shall be used only for agriculture, woodlands, and preserving the natural and cultural features of the site and/or outdoor recreation. Such uses shall not include street rights-of-way, driveways, or parking areas; storage sheds or above ground utility structures; or similar manmade structures. Buildings related to allowed activities may be located in the common open space, provided that the footprints of such buildings shall not count toward the percentage of open space required by this Article.
- (c) The common open space shall be controlled by one or more of the following methods:
1. Common ownership by the owners of units within the project;
  2. Common ownership by the owners of the units within the project with a conservation easement granted to the Town or recognized conservation organization;
  3. Dedication to the Town as public open space; and/or
  4. Transfer, with permanent restrictions, to a land trust or other recognized conservation organization.
- (d) Any subdivision designed under this Article shall specify the ownership, use, management, and person responsible for maintenance of all common areas and facilities. The Planning Board shall approve the arrangements for the ownership, control, and maintenance of the common open space as part of the approval of a final subdivision plan. No changes in the use or management of the common open space shall be made without Planning Board approval.
- (e) Any common open space or facility shall be maintained by a homeowners' association unless and until it is transferred in its entirety to the Town or a recognized conservation

organization, and until the transfer actually is completed. The formation and incorporation by the developer of a homeowner's association shall be accomplished prior to final subdivision approval. Covenants for mandatory membership in the association shall be approved by the Planning Board and included in the deed for each lot or unit. The association's documents shall specify that:

1. The association shall have the responsibility of maintaining the common open space and other private facilities dedicated to the use in common by the development's residents.
2. The association shall levy annual charges against all property owners to defray the expenses, if any, connected with maintenance of the common open spaces and facilities.
3. The developer shall maintain control of common open spaces and facilities and be responsible for their maintenance until at least 51% of the development's lots or units have been completed and sold, with evidence of such completion and sales submitted to and approved by the Planning Board.

(6) Other Design Elements

The subdivider shall address the following issues in their plans prepared under the terms of this Article:

- (a) The screening and buffering of above ground utility structures, such as transformer boxes, meters, and pumping stations;
- (b) The location of private outdoor space for each dwelling unit;
- (c) Private storage space for each dwelling unit, if needed, in order to store such items as lawnmowers, recreational vehicles, lawn furniture, and the like;
- (d) Owner and visitor parking;
- (e) A landscape plan which preserves the natural landscape and which adds new landscape materials where needed to buffer, or mitigate, the impacts of new development; and
- (f) Pedestrian circulation within the development and, as appropriate, to abutting developments and pedestrian systems.