

Topic:	Open Space Preservation; Zoning; Development Standards
Resource Type:	Regulations
State:	New York
Jurisdiction Type:	Municipal
Municipality:	Town of Gardiner
Year (adopted, written, etc.):	Unknown
Community Type - applicable to:	Suburban; Rural
Title:	Town of Gardiner Open Space Development Ordinance
Document Last Updated in Database:	May 5, 2017

Abstract

The Open Space Development ordinance implements procedures to allow for development of protected and preserved land, while preserving the natural attributes of the land. Conservation analysis shall take place to plan open space developments. Applicants must prepare inventory maps, surveys, topography maps, and descriptions of the land. Planning Board will make final determinations on the value of the lands preserved.

Resource

Town of Gardiner NY Open Space Development
Code of the Town of Gardiner NY
Chapter 220: Zoning

§ 220-12. Open space development.

Open space development allows design flexibility while preserving important natural attributes of the land. The purpose of open space development is to ensure that environmental resources are protected as much as possible and that development occurs on the land that is best suited for development. This technique is especially important in the SP District in order to protect the unique visual and ecological characteristics of the Shawangunk escarpment and ridge.

A. Conservation analysis.

(1) As part of any sketch plan submission for an open space development, an applicant shall prepare a conservation analysis, consisting of inventory maps, survey and topographic maps, a description of the land, and an analysis of the conservation value of various site features.

(2) The conservation analysis shall be prepared by a qualified land planning professional and shall be reviewed on behalf of the Planning Board by a qualified land planning professional as provided in Subsection J below. The qualifications of the land planning professional shall be commensurate with the scale and impact of the proposed development and the characteristics of the site.

(3) Minor subdivisions (as defined in the Land Subdivision Regulations) shall not require a conservation analysis, except within the SP-2 and SP-3 Subdistricts of the SP District.

(4) The conservation analysis shall identify lands with conservation value on the parcel and within 100 feet of the boundaries of the parcel, including but not limited to the following:

(a) "Constrained land" as defined in Subsection B(1)(a) below.

(b) Farmland.

(c) Existing or proposed trail corridors.

(d) Scenic viewsheds.

(e) Unique geological features.

(f) Public water supply wellheads.

(g) Documented aquifers and aquifer recharge areas.

(h) Sites identified as historic on any federal, state, or local register of historic places.

(i) Public parks and publicly accessible recreation lands.

(j) Unfragmented forest land, as shown in a forest inventory prepared by a qualified forestry or ecology professional, including the Green Assets Program, which is referenced in the Town of Gardiner Comprehensive Plan.

(k) Land identified as having scenic, historic, or archaeological significance in the Town's Comprehensive Plan.

(l) Buffer areas necessary for screening new development from adjoining parcels and from other publicly accessible areas, including roads, parkland, and nature preserves.

(m) Stone walls.

(n) Trees 15 inches dbh or larger, except where such trees are part of a larger stand of trees, in which case the entire stand may be identified as a unit.

(o) All land which requires protection under the provisions of the Shawangunk Ridge Protection District.

(p) If requested by the Planning Board after the initial submission of the conservation analysis, other land exhibiting present or potential future recreational, historic, ecological, agricultural, water resource, scenic or other natural resource value.

(5) The conservation analysis shall also identify areas that are potentially suitable for development, especially those that have been previously disturbed (e.g., by mining, prior development, or clear-cutting) and their present condition. Such locations, depending on their condition and location, might be preferred locations for development or they may be more appropriate for environmental restoration as part of a mitigation plan.

(6) For areas that are proposed to be preserved as permanent open space (and land on adjacent parcels abutting such open space land) pursuant to § 220-12.1, the conservation analysis may consist of a general description of the land in sufficient detail to make the required conservation findings, but need not provide the level of detail required in Subsection A(4) above.

(7) The conservation analysis shall describe the importance and the current and potential conservation value of all land on the site identified in Subsection A(4) and (5) above.

(8) The Planning Board shall make a final determination as to which land has the most conservation value and should be protected from development by conservation easement. This determination shall be based upon an analysis that weighs the relative importance of the environmental resources on the site and shall be expressed in a written report supporting its decision (the "conservation findings"). The Planning Board may incorporate information provided by its own research, as a result of site visits, or provided by its own consultants, the Environmental Conservation Commission, or other qualified experts or agencies. The Planning Board shall deny tentative approval to an application that does not include a complete conservation analysis sufficient for the Board to make its conservation findings.

(9) The outcome of the conservation analysis and the Planning Board's conservation findings shall be incorporated into the Planning Board's tentative approval of the sketch plan, pursuant to § 188-12A of the Town Code.

(10) The sketch plan, as tentatively approved, shall show the following:

(a) Preferred locations for intensive development as well as acceptable locations for less dense development.

(b) Land to be permanently preserved by a conservation easement, as well as recommended conservation uses, ownership, and management guidelines for such land.

(c) Land suitable for stormwater management facilities, which may be located within the preserved land area.

(11) At least 50% of the total acreage shall be preserved by conservation easement and shown as such on the sketch plan, based upon the conservation findings. In the SP District, at least 80% of the land shall be preserved by conservation easement. The preserved land shall meet the requirements of § 220-12.1, and shall generally form unfragmented contiguous blocks of land.

B. Calculation of permitted number of dwelling units. The maximum number of dwelling units in an open space development is based upon either a "yield plan" or a density formula that subtracts constrained land from the parcel's acreage and divides the "net acreage" by the minimum lot size in the district. This density formula method is intended to simulate, in a more efficient manner, the lot count that would result from preparing a conventional subdivision yield plan for the same property. An applicant may elect either to prepare a yield plan pursuant to Subsection B(2) or to use the density formula pursuant to Subsection B(1). The calculation of the number of permitted dwelling units may be done at either the sketch plan or preliminary plat stage of the application, at the applicant's election.

(1) To calculate the permitted number of dwelling units using the density formula method:

(a) Determine the unconstrained acreage by subtracting from the total (gross) acreage of the proposed development parcel the acreage of constrained land. Constrained land consists of wetlands as defined in § 220-77, one-hundred-foot buffers to such wetlands, federal wetlands regulated by the U.S. Army Corps of Engineers, watercourses, stream corridors extending 50 feet from the banks of any perennial stream or lake, one-hundred-year floodplains, cemeteries, and slopes over 20% (2,000 square feet or more of contiguous sloped area at least 10 feet in width). Slope determinations shall be based upon ten-foot contour intervals, unless an applicant elects to submit slope information with smaller contour intervals or another section of the Zoning Law or Subdivision Law requires the use of smaller contour intervals.

(b) Multiply the unconstrained acreage by a development loss factor of 0.85 (to account for roads and lot shape irregularities).

(c) Divide the resultant area by the minimum lot size for a conventional subdivision in the district. Fractional units of 0.5 or less shall be rounded down and fractional units greater than 0.5 shall be rounded up.

(d) The result of this calculation, as reviewed and approved by the Planning Board, establishes the maximum number of units permitted in the open space development using the density formula method.

(e) For lots in more than one district (or subdistrict in the SP District), the permitted number of dwelling units for land in each district shall be computed separately, but the units may be located in the manner that best fits the character of the land.

(2) To calculate permitted number of dwelling units using the yield plan method:

(a) The applicant shall prepare and submit an application that satisfies all of the requirements for a preliminary plat in the Subdivision Regulations, **Editor's Note: See Ch. 188, Subdivision of Land.** complying with all applicable bulk requirements and other requirements of this Zoning Law (including all of the standards in § 220-13.1 for land located in the SP District), as well as with all standards and requirements of the Subdivision Regulations and all applicable requirements of the Ulster County Health Department, New York State Department of Environmental Conservation, United States Army Corps of Engineers, and any other agency with jurisdiction over the project as shown on the yield plan.

(b) The applicant shall be required to show compliance with the requirements listed in Subsection B(2)(a) by submitting road profiles, soil and percolation test results, well test results, and any other information the Planning Board deems necessary to conduct an adequate review of an application as if it were being proposed for approval as a conventional subdivision.

(c) Based upon its review and analysis of this information, which shall be conducted at the applicant's expense, the Planning Board shall make a determination as to how many lots it could approve as buildable lots if such application were submitted for approval as a conventional subdivision. That number of lots shall be the maximum number of units permitted in the open space development using the yield plan method.

(3) An applicant may increase the permitted number of dwelling units (using either method) by increasing the percentage of open space preserved by conservation easement beyond 50%. For every 10% of additional open space protected above the minimum required for the entire parcel, the applicant may be given, at the discretion of the Planning Board, an increase in the permitted number of dwelling units of up to 10%. This density bonus shall not be available within the SP District.

(4) The maximum number of units, whether derived from the density formula or a yield plan, shall not be considered an entitlement. The applicant must also demonstrate compliance with all applicable criteria and standards of the Zoning Law, Subdivision Regulations, and other applicable laws and regulations. These requirements may result in an actual approvable unit count that is less than the maximum allowed by Subsection B(1), (2), or (3) above.

C. Road and lot configuration and frontage.

(1) Roads shall be designed based upon the conservation analysis to maximize preservation of important natural features on the property, including but not limited to

watercourses, wetlands, steep slopes, large trees, scenic views, agricultural fields, unfragmented forest land, and stone walls.

(2) Roads shall follow the contour of the land insofar as practical and minimize cutting and filling.

(3) Road access to lots shall be from interior roads rather than existing public roads to the extent practical.

(4) There shall be no minimum road frontage requirement for lots fronting on newly constructed interior roads, provided that the Fire Commissioners determine that adequate access will be provided to the building site on the lot. To the extent that this subsection may be inconsistent with Town Law § 280-a, the Town Board hereby declares its intention to supersede § 280-a pursuant to § 10 of the Municipal Home Rule Law.

(5) The minimum road frontage for lots fronting on existing roads shall be 300 feet, unless the Planning Board determines after review of the conservation analysis, and based upon the conservation findings, that a lesser road frontage would be consistent with the purpose of open space development as stated in § 220-12. In no case shall the minimum road frontage be less than 150 feet. Minimum road frontage requirements shall apply only to lots obtaining access from their frontage on an existing road.

(6) Lots shall be arranged in a manner that protects land of conservation value, as determined by the conservation findings, and that facilitates pedestrian and bicycle circulation both internally and through interconnections with adjoining land. The lot layout shall generally follow applicable portions of the Rural Design Guidelines and Hamlet Design Guidelines published by the New York Planning Federation in 1994, adapted as necessary to conform to the requirements of this chapter. Requirements of the Subdivision Regulations concerning the shape or geometry of lots may be waived by the Planning Board as necessary to comply with this subsection.

(7) To the extent practical, roads shall be laid out in manner that facilitates interconnection with adjoining parcels, consistent with the policies in the Town of Gardiner's Comprehensive Plan.

D. Types of residential development.

(1) The allowable residential units may be developed as single-family or two-family dwellings.

(2) Multifamily dwellings shall be permitted if allowed in the zoning district in which the land is located, provided that applicable special permit requirements are satisfied. Multifamily dwellings shall comply with the Building Form Guidelines published by the New York Planning Federation in 1994, adapted as necessary to conform to the requirements of this chapter.

(3) If multifamily dwellings are not permitted in the zoning district, such dwellings may be allowed by special permit granted by the Town Board, provided that they are designed in the form of traditional rural clustered farmsteads, composed of extended farmhouses, barns or barn-like structures, garage apartments, and accessory structures that are designed using traditional architectural forms historically found in Gardiner before 1900.

(4) The subdivision and special permit/site plan reviews shall occur concurrently in one proceeding to the extent practical.

E. Dimensional regulations.

(1) Minimum lot area: The minimum lot area shall be one acre for lots with individual wells and septic systems, if approved by the Ulster County Health Department. A lot with all or a portion of its septic system or well located within a preserved open space area shall not be considered a lot with an individual well or septic system for purposes of this subsection.

(2) Constrained land may be included in individual lots and counted toward lot area, provided that it is protected from development.

(3) Lots that are connected to central sewage and central water systems shall have no minimum lot size requirement. For lots that have either central water systems or central sewer systems (but not both), or that have their septic system and/or well located within a preserved open space area, the minimum lot size shall be established by the Planning Board based upon site-specific soil and hydrological conditions and the approval of the Ulster County Board of Health.

(4) Setbacks. Appropriate minimum setbacks in an open space development depend upon the lot sizes, the type of road frontage (state, county, Town, or private) and the character of the subdivision (hamlet, suburban, or rural). Accordingly, the applicant shall propose, and the Planning Board shall approve, setback (or build-to line) requirements at the time of plat approval. These setback requirements shall be shown in a chart on the plat. New structures in an open space development shall be set back a minimum of 300 feet from existing dwellings on lots that are not part of the open space development, unless the Planning Board finds that site conditions, lot configurations, or the conservation analysis make this requirement infeasible or inconsistent with the purposes of open space development.

F. Impervious surface coverage. The amount of pavement and building coverage is a major factor in determining the impact of a development. Therefore, limiting impervious surface coverage, as defined in § 220-77, is critical in maintaining environmental integrity.

(1) The maximum impervious surface coverage in an open space development shall be 10%, except in the SP District, where it shall be 6%. This applies to the entire area to be developed, including open space areas.

(2) Individual lots may have higher impervious surface coverage, as long as the total impervious surface coverage for the development is within the limits prescribed in Subsection F(1) above.

(3) Open space subdivision plats shall show the impervious surface coverage limit for each building lot on a table in order to establish compliance with this Subsection F. Such plats may limit impervious surfaces, other than driveways, to specified building envelopes shown on the plat.

G. Minimum preserved open space. One of the major purposes of an open space development is to preserve open space. To achieve this purpose, the following minimum requirements apply:

(1) All open space development shall preserve at least 50% of the land, based upon the conservation findings, unless a density bonus has been granted as provided in Subsection B(3) above, in which case additional open space shall be preserved as required to achieve the density bonus.

(2) In the SP District, at least 80% of the land shall be preserved as open space.

(3) All open space shall be preserved following the requirements described in § 220-12.1 below.

(4) Preserved open space may include constrained land. It may be contained in a separate open space lot or be included as a portion of one or more lots, provided that its ownership is not fragmented in a manner that compromises its conservation value.

(5) The required open space land to be preserved may not include private yards within 50 feet of a principal structure.

(6) Preserved open space land may be owned by any one of the following, as long as it is protected from development by a conservation easement:

(a) Homeowners' association.

(b) Private landowner(s).

(c) Nonprofit organization.

(d) Town of Gardiner or another governmental entity, as provided in § 220-12.1.

H. Partial open space development. In order to encourage small subdivisions to follow open space development principles, there is no minimum tract size or number of lots required for an open space development. A two-lot subdivision can be an open space development if the application complies with limitations on the permitted number of dwelling units and preservation requirements in Subsections A and G. In the

case of a subdivision of a portion of a larger parcel, the Planning Board may require an applicant to show a sketch of an ultimate plan of subdivision of the property unless the applicant agrees to restrict the remainder of the property as permanent open space.

I. Accessory uses. In order to encourage co-housing, senior citizen communities, and other innovative forms of residential development, residential and nonresidential accessory uses may be combined in an open space development, provided that the applicant complies with limitations on the number of permitted dwelling units, and all maximum impervious surface and minimum open space requirements. Permitted nonresidential uses that may be included in an open space development include:

(1) Common buildings for dining, recreation, and for entertaining and lodging guests of the residents.

(2) Child-care facilities for residents of the development as well as those outside the development.

(3) Office space for use by administrators of the development as well as for use by residents of the development in the conduct of their own businesses, provided that such offices do not occupy more than 10% of the total floor area of the development.

(4) Storage facilities, which may be used for the needs of the development and the personal needs of its residents.

(5) Recreational facilities for use by residents and their guests.

J. Qualified experts. The Planning Board may retain the services of qualified experts, including but not limited to landscape architects, ecologists, DEC-certified professional foresters, arborists, hydrologists, engineers, architects, as well as the Town of Gardiner Environmental Conservation Commission (ECC) as necessary to adequately review a conservation analysis and proposed open space development plan, and may charge the applicant for the reasonable costs of review by such experts. The level of required professional qualification of the experts shall be determined by the Planning Board and shall be commensurate with the scale and impact of the proposed development and the characteristics and environmental sensitivity of the site.

K. Recreation land or fee. In applying the provisions of § 188-22A of the Town Code pertaining to parks and open space, the Planning Board shall apply the standards in § 277(4) of the Town Law to determine whether or not the preserved open space land in an open space development qualifies as the parkland required under § 277(4) for playgrounds or other recreational purposes within the Town. In the event that the Planning Board finds that the proposed development will generate demand for playgrounds or other recreational facilities which will not be satisfied by the preserved open space in the proposed development plan, the Planning Board shall require the payment of money in lieu of land pursuant to § 188-22A(3) of the Town Code.