

**PROPOSED NEW ZONING BYLAWS – REVISED 9/19/24**  
**§255-95 Common Drive and §255-96 Common Open Space**

**§ 255-95 Common Drive. PROPOSED**

A. All dwelling units in multifamily developments and developments with more than one building for dwelling purposes on a single parcel of land shall be served by a Common Drive designed and constructed in accordance with Rules and Regulations adopted by the Planning Board.

B. The Planning Board shall adopt Rules and Regulations governing the design, construction, and maintenance of a Common Drive.

C. Plans for Common Drives shall be submitted to and approved by the Planning Board in accordance with Rules and Regulations adopted by the Planning Board.

D. A Common Drive shall not be considered to be:

- (1) A public way or a way which the Clerk of the Town of South Hadley certifies is maintained and used as a public way;
- (2) A way shown on a plan previously approved and endorsed in accordance with the Subdivision Control Law; or,
- (3) A way in existence when the Subdivision Control Law became effective in the Town of South Hadley having, in the opinion of the Planning Board, sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon or served thereby, and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon.

E. Land fronting or abutting a Common Drive shall not be eligible for division except in accordance with a Definitive Plan prepared and approved in accordance with the South Hadley Subdivision Regulations.

F. A plan for a Common Drive shall not be approved unless the applicant has submitted a written statement guaranteeing that adequate ways furnishing access to all buildings will be provided and maintained in accordance with the Planning Board's adopted Rules and Regulations adopted by the Planning Board.

G. The Planning Board shall require applicants to provide a maintenance plan for the Common Drive which will be an obligation upon the owner(s) of the dwellings on the subject property, and which shall be recorded at the Hampshire County Registry of Deeds.

H. The Planning Board may require applicants to post financial Performance Guarantees, either in a bond, tripartite agreement of savings account, or cash, to ensure that the Common Drive and all other details associated with the Common Drive are constructed in accordance with the plans approved by the Planning Board.

I. The Planning Board may require applicants to post financial Performance Guarantees, either in a bond, tripartite agreement of savings account, or cash, to ensure that the Common Drive and all other details associated with the Common Drive are maintained in accordance with the approved maintenance plan for a period of 24 months following the Planning Board's vote determining that the Common Drive has been constructed in accordance with the plans approved by the Planning Board.

**§ 255-96 Required Common Open Space. PROPOSED REVISED 9/19/24**

Wherever Common Open Space is required as a component of a residential development, the required Common Open Space shall be provided and maintained in accordance with the provisions herein, except as specifically stated otherwise within the Zoning Bylaw or the Massachusetts General Laws.

- A. Common Open Space. The required Common Open Space must conform to the characteristics and dimensions specified below. Common Open Space is defined as areas suitable for use as facilities and sites for play, tot lots, gardens, hiking/jogging trails or similar facilities, as well as land for conservation purposes.
- (1) Minimum required. Unless specified otherwise in an applicable section of the Zoning Bylaw, a minimum of 30% of the parcel shown on the development plan shall be in Common Open Space.
  - (2) Contiguity of Open Space. Preserved Common Open Space shall be contiguous to the greatest extent practicable. Where noncontiguous pockets of open space are preferable, applicants shall attempt to connect these resource areas to the greatest extent practicable through the use of trails and/or vegetated corridors.
  - (3) Multiple parcels. The required Common Open Space may be in multiple parcels, provided that no individual parcel shall be less than 25% of the required Common Open Space and all of the parcels are connected via walkways, pathways, roadways, or other means of access. The portion of the connecting accessway located outside of the limits of roadway or roadway right-of-way may be included in the calculation of the area of the Common Open Space.
  - (4) Uses of Common Open Space. The required Common Open Space shall be used for agriculture, nature education, recreation, conservation, historic preservation, park purposes, or a combination of such uses. Public easement purposes may also be permitted to traverse portions of the Common Open Space. Only structures commonly associated with and incidental to the permitted uses shall be permitted in the Common Open Space areas.
  - (5) Composition of Common Open Space.
    - (a) While the Planning Board will make the final determination of the composition of the Common Open Space, it may include wetlands, floodplains, and steep slopes. However, the required open space shall not be comprised exclusively of lands with such constraints. The applicant has the burden of demonstrating that the composition of the proposed open space and its location and access further the purposes of the Zoning Bylaw provisions in which it is required and are appropriate for the proposed development.
    - (b) The percentage of the Common Open Space that is wetlands shall not normally exceed the percentage of the tract that is wetlands; provided, however, that the Planning Board may allow the applicant to include a greater percentage of wetlands in such open space upon a demonstration that such inclusion promotes the purposes of this bylaw.
    - (c) The Planning Board may deny use of any surface drainage systems (such as retention and detention ponds, swales, etc.) as qualifying for the required Common Open Space.
  - (6) Access from dwelling units.
    - (a) A maximum number of the subject development's dwelling units compatible with good design shall abut the Common Open Space. All dwelling units shall have ready access to the Common Open Space either physically or through internal pedestrian paths or sidewalks.

- (b) Exception. The Planning Board may grant an exception to the access requirement upon a recommendation from the Conservation Commission that the resource area is vulnerable to trampling or other disturbance and physical access should not be provided.
- (7) Accessory structures or buildings. Structures or buildings accessory to recreation, conservation, or agriculture use may be erected but shall not exceed 5% of the area protected as Common Open Space. Accordingly, the applicant may make provision for erection of such structures or buildings by subsequent owners of the residences; however, the aggregate size of all such structures shall not exceed the 5% standard. Further, the applicant shall make provisions for maintenance of any accessory structures or buildings (such provisions may include assignment of responsibility to a homeowners' association). All maintenance provisions shall be recorded at the Hampshire County Registry of Deeds as part of an Operation and Maintenance Plan.
- (8) Impervious coverage. The maximum amount of impervious coverage within Common Open Space shall not exceed 10%, inclusive of accessory structures.
- (9) Landscaping. For designated Common Open Spaces associated with recreational activities, native species shall be used for landscaping to support local biodiversity and the establishment and regeneration of native plant communities. The use of turf in and around these Common Open Spaces is to be minimized.

B. Ownership of Common Open Space.

- (1) Conveyance. The required Common Open Space shall, at the Planning Board's election, be conveyed to one of the following:
  - (a) The Town or its Conservation Commission and be accepted for park or open space use.
  - (b) A nonprofit organization, the principal purpose of which is the conservation of open space.
  - (c) A corporation or trust owned or to be owned by the owners of the lots or residential units within the development. If such a corporation or trust is utilized, as indicated herein, ownership thereof shall pass with conveyance of the lots or residential units.
  - (d) A private entity under a Conservation Restriction approved by the Commonwealth of Massachusetts.
- (2) Restriction. Regardless of the ownership of the open space, any conveyance shall be subject to the conditions of the Planning Board approval of the development and subject to a recorded restriction enforceable by the Town, provided that such land shall be:
  - (a) Perpetually kept in an open state unless the Planning Board has approved an alternative condition for the Common Open Space; and,
  - (b) Preserved for exclusively agricultural, horticultural, educational, conservation, or recreational purposes, except for those lands expressly approved by the Planning Board to also be used for a common septic disposal system; and,
  - (c) Maintained in a manner which will ensure its suitability for its intended purposes; and,
  - (d) Prohibited from being further subdivided or otherwise developed or altered without prior approval by the Planning Board in the same manner as approval was granted for the original development.
  - (e) All restrictions must conform to the requirements of G.L. c. 184 section 30-33 and be perpetual. In the event of a Restriction which is not approved by the Commonwealth, the Grantor must grant to the Town a springing right to file an extension of the Restriction without further authorization of the Grantor.

