

ARTICLE XIII - Open Space

§ 152-196. Purpose.

The Board of Commissioners finds that when land is developed for residential purposes, the public health, safety, and welfare are best served when substantial portions of the tracts so developed remain as usable open space. The preservation of usable open space serves the following important objectives to the benefit of the residents of such developments as well as the general public: the preservation of open vistas; pedestrian connections to community facilities; providing relief from urban and suburban landscapes; the preservation of environmentally sensitive lands; the preservation of habitat for wildlife; the preservation of historically or archaeologically significant areas; and the provision of areas for passive recreation, such as walking or jogging.

§ 152-197. General Requirements.

Except as provided in this article, all residential development shall be required to provide usable open space. For the purposes of this article, "subdivision" shall refer to the entire project developed on a single tract or contiguous multiple tracts under common ownership or control, regardless of whether the subdivision is constructed in phases or stages.

§ 152-198. Usable Open Space.

(A) Usable Open Space Required. Except as otherwise exempted by this section, all residential developments shall be developed so that, at a minimum, the following amounts of the development remain permanently as usable open space:

| Type of Development | Minimum Open Space Required |
|----------------------------|------------------------------------|
| Single-Family Residential | 20% |
| Manufactured Home Parks | 20% |

(B) Exemptions.

(1) Existing lots developed for single family purposes shall be exempt from the requirements of this section. This exemption is intended to apply to infill development only and shall not exempt entire subdivisions, or any portion thereof, or any other development which otherwise would have to comply with the requirements of this section.

(2) The following subdivisions shall be exempt from the requirements of this section:

- (a) Any subdivision that does not qualify as a "subdivision," as defined in section 152-15; and
- (b) Any subdivision that qualifies as a gift lot pursuant to section 152-78, "Exempt Subdivisions."

(3) The open space requirement for multi-family developments (which includes the multi-family portions of developments that have both single-family and multi-family dwelling units), residential planned unit developments, and business and industrial planned unit developments are set forth in subsections 152-163.14(G), 152-163.15(D), 152-163.16(C), respectively. Notwithstanding the foregoing sentence, the definition of “usable open space” set forth in subsections 152-198(C) and (D) shall apply to multi-family developments and all planned unit developments.

(C) For purposes of this section, “usable open space” refers to an area that:

- (1) Is not encumbered with any substantial structure;
- (2) Is not devoted to use as a roadway, parking area, or sidewalk;
- (3) Is not part of a roadway median;
- (4) Is not part of any privately owned lot that is used or intended for use for residential purposes;
- (5) Is legally and practicably accessible to the general public or to the residents of the development where the open space is located; and
- (6) Does not consist of multiple small, noncontiguous pieces of land which are, as a practical matter, inaccessible to all or most of the residents of development.

(D) Narrow strips of common area that separate lots within a development from each other, from streets, or from adjoining tracts shall generally not be regarded as open space within the meaning of this section unless such areas:

- (1) Are at least fifty (50) feet in width and function or will function as a substantial visual buffer; or
- (2) Are configured or improved (e.g. through the installation of trails) in such a way as to be conducive to actual use for pedestrian connections to community facilities and for recreational purposes (i.e. walking or jogging) by the residents of the development where the land is located.

(3) The following areas shall be regarded as usable open space if such areas satisfy at least the criteria set forth in subsections (C)(1), (2), (3) and (4) of this section:

- (a) Utility easements located outside of street rights-of-way;
- (b) Cemeteries located on a tract prior to its development; and
- (c) Areas used for the growing of crops, such as hay, corn, or vegetables, if and to the extent that such uses occur within an area that is subject to the

control of a homeowners association or similar organization and such uses are approved by that association or organization.

(4) Except as required by this subsection, the choice as to the areas to be set aside as usable open space shall remain with the developer.

(E) Water bodies, such as ponds or lakes, and wetland areas associated with recreational trail systems may also be counted toward open space requirements, provided that such areas satisfy at least the criteria set forth in subsection (C)(1), (2), (3) and (4) of this section.

(F) No more than thirty (30) percent of usable open space may be devoted to active recreational uses (for example soccer fields and swimming pools) without approval of the permit-issuing authority.

§ 152-199. Reserved

§ 152-200. Payment-In-Lieu Fees.

(A) When the permit-issuing authority determines (upon the recommendation of the town Parks and Recreation Director) that the open space and recreational needs of a development required by this section to set aside open space could also be adequately met by public open space and/or facilities constructed on town property that is located close enough to such development to reasonably serve its residents, the town may authorize the developer to pay a fee to the town's open space fund in lieu of providing some or all of the required open space. For purposes of this subsection, "town property" means property that is owned by the town or that the town has made plans to acquire within a reasonable time.

(B) The minimum amount of the fee paid under this section shall be determined by multiplying the acreage of open space that would otherwise be required of the development by the dollar value per acre established in the town's miscellaneous fees and charges schedule. However, nothing herein shall prevent a developer from paying a fee that exceeds the minimum fee established pursuant to this section, and the town's willingness to allow a payment of fees in lieu of the on-site provision of open space may depend upon the developer's agreement to pay fees in excess of the minimum.

(C) With respect to any development that is authorized by this section to pay a fee in lieu of providing some or all of the required open space, no use may be commenced, lot sold, or building occupied unless the fee has been paid. If a development is intended to be sold or occupied on a phase-by-phase basis, payment of the fee relating to each phase must first be made.

§ 152-201. Flexibility in Administration Authorized.

(A) The requirements set forth in this article concerning the amount, size, location and nature of usable open space to be provided in connection with residential developments are established by the Board of Commissioners as standards that presumptively will result in the provision of that amount of usable open space that the Board has determined to be

reasonable and necessary for these developments. The Board recognizes, however, that due to the particular nature of a tract of land or other factors, the underlying objectives of this section may be achieved even though the standards are not adhered to with mathematical precision. Therefore, the permit-issuing body is authorized to permit minor deviations from these standards whenever it determines that:

(1) The objectives underlying these standards can be met without strict adherence to them, and

(2) Because of peculiarities in the developer's tract of land, it would be unreasonable to require strict adherence to these standards.

(B) Whenever the permit-issuing authority authorizes some deviation from the standards set forth in this article pursuant to subsection (A), above, the official record of action taken on the development application shall contain a statement of the reasons for allowing the deviation.

§ 152-202 through § 152-209. Reserved.