

**ARTICLE XIII - Open Space**  
*(Amended 12/10/2018)*

**§ 152-196. Purpose.**

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 open space. The preservation of 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. *(12/10/2018)*

**§ 152-197. General Requirements.**

Except as provided in this article, all residential development shall be required to provide 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. Open Space.**

(A) 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 open space:

<b>Type of Development</b>	<b>Minimum Open Space Required</b>
Single-Family Residential	15%
Manufactured Home Parks	20%
Multi-Family Residential	435 sf/unit
Nonresidential development	10% of gross floor
Planned Unit Development - Residential	15%
Planned Unit Development – Business & Industrial	5%

*(12/10/2018)*

(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:

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- (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."
  - (c) Any multifamily developments with four (4) or fewer dwelling units (including the multi-family portions of developments with both single-family and multi-family dwelling units. *(12/10/2018)*)
- (C) Features counted as open space: *(12/10/2018)*
- (1) Environmentally-sensitive lands including water features (drainageways, lakes, streams, etc.), wetlands, floodplains, and protected stream buffers, provided no more than 25 percent of a development's total open space may be located in environmentally-sensitive lands;
  - (2) Stormwater management lands, including retention and detention ponds, and bio-retention devices that are designed and improved with pedestrian amenities;
  - (3) Farm and forestry lands within the boundary of the development;
  - (4) Pedestrian and, or bicycle amenities, trails, and greenways, in common area of the development;
  - (5) Active Recreation Areas;
  - (6) Passive Recreation Areas; and
  - (7) Narrow strips of common area that separate lots within a development from each other, from streets, or from adjoining tracts shall not be regarded as open space within the meaning of this section unless such areas:
    - (a) Are at least forty (40) feet in width at the street right-of-way, consisting of at least one thousand (1,000) square feet of contiguous area; and
    - (b) 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.
- (D) Features not counted as open space: *(12/10/2018)*
- (1) Private yards;
  - (2) Street right-of-way, private street common area, or vehicle median;

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- (3) Vehicular use areas, including parking spaces, drive aisles, and private drives;
- (4) Privately owned lot that is used or intended for use for residential purposes;
- (5) Easements not within the common area of the development;
- (6) Noncontiguous pieces of land which are, as a practical matter, inaccessible to all or most of the residents of development; and
- (7) Land covered by buildings not designated for active recreational use.

(E) A minimum of fifty percent (50%) of the required open space, shall be developed as Active Recreation Area. *(12/10/2018)*

**§ 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 Technical Review Committee is authorized to permit minor deviations from these standards whenever it determines that: *(12/10/2018)*

- (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.**