

TOWN OF SCITUATE



600 Chief Justice Cushing Highway
Scituate, Massachusetts 02066
Phone: 781-545-8730
FAX: 781-545-8704

Planning Board

**Flexible Open Space Development Special Permit – 305 Country Way
Findings and Decision: APPROVED with Conditions**

Applicant: Douglas E. Sheerin
 Address: P.O. Box 67, Quincy, MA 02171
 Owner: Douglas E. Sheerin and Kristen DeGaravilla
 Address: 305 Country Way, Scituate, MA 02066
 Request: Approval of special permit for Flexible Open Space Development under Scituate Zoning Bylaw Section 550
 Location: 305 Country Way
 Zoning District: R-1, R-2 and Water Resource Protection District (small portion of the site is in the Flood Plain and Watershed Protection District)
 Public Hearings: April 25, 2013, May 23, 2013, June 27, 2013, July 25, 2013, August 8, 2013, September 26, 2013, October 10, 2013, November 14, 2013, December 5, 2013, January 9, 2014, January 30, 2014, March 13, 2014, and April 24, 2014.
 Planning Board Members hearing Application: William Limbacher, Robert Vogel, Richard Taylor and Stephen Pritchard

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TOWN CLERK

DECISION: APPROVED WITH CONDITIONS BY 4-0 VOTE

Background:

The property is an 8.56 acre wooded and grass parcel improved with a single family home and barn. It contains 4.25 acres of upland and 4.31 acres of wetland, including an intermittent stream which and is located in a well-established neighborhood of single family homes on lots generally ranging from 12,000 to 45,000 sq. ft., with some larger properties. Access is from Country Way. The property is shown on Assessor's Maps as parcels 37-8-13R (registered land) and 37-2-2 (unregistered land). It is located in the Residential R-1, Residential R-2 and Water Resource Protection Zoning Districts.

In the Flexible Open Space Development proposal that is the subject of this application, 6.51 acres (2.21 acres upland) nearest the existing wetlands would be preserved as open space, with 3 lots for single family homes created on the remaining land. The proposed road would be 260' in length with pavement of 16' wide. A drainage pipe along the west side of Lots 2 and 3 takes stormwater to an basin which would outlet outside of the 100 foot buffer zone of the wetlands to the south, avoiding flooding on adjacent property and preventing a direct discharge to wetlands.

The applicant submitted a Stormwater Report by Gregory Morse, P.E. and a list of waivers from Section 6.3 of the Subdivision Rules and Regulations with the application. This report was reviewed by the Town's consulting engineers, Chessia Consulting Services, LLC, who submitted detailed comments to the Planning Board. In response to these comments, the applicant provided a Revised Stormwater Report which, after further review by the consulting engineer, was found to address his recommendations.

A fire flow test performed by John Hoadley & sons, Inc., and witnessed by the Scituate Water Dept. showed static water pressure of 52 psi at two hydrants, residual pressure of 45 and 25 psi and flow of 840 gpm which was determined to be adequate.

The R-2 zoning district where the property is partially located requires 20,000 sq. ft. of upland lot area for each dwelling unit. Section 550 of the Zoning Bylaw, Flexible Open Space Development, allows the Planning Board to issue a special permit to approve lots which do not meet some dimensional requirements of the underlying zoning when they find the development to be superior to a conventional subdivision, based on the design standards of Section 550.5. The development must also conform to Section 550.6, Minimum Requirements. The maximum number of lots is established by the Planning Board's approval of a Conventional Density Sketch Plan which complies with the Town of Scituate Zoning Bylaw and Subdivision Rules and Regulations.

Procedural Summary:

An application for a Flexible Open Space Development Special Permit was filed with the Town Clerk on February 28, 2013. A Public Hearing on the Special Permit was duly advertised and notices sent to all abutters in accordance with MGL Chapter 40A. The Public Hearing was opened on April 25, 2013 and immediately continued to May 23, 2013 as engineering peer review was not complete. The hearing was continued to June

27, 2013, July 25, 2013, August 8, 2013, September 26, 2013, October 10, 2013, November 14, 2013, December 5, 2013, January 9, 2014, January 30, 2014, March 13, 2014 and April 24, 2014 when the hearing was closed and the Special Permit was approved with conditions. During the public hearing sessions where testimony was taken, all voting members were present except for June 27, 2013 when Richard Taylor was not present. He filed a Mullin Rule Certification with the Town Clerk for the hearing session.

Hearing Summary:

When the public hearing was opened on April 25, 2013, a continuance was sought until May 23, 2013. On May 23, 2013, Mr. Gregory Morse of Morse Engineering Co., Inc., design engineer, was present with the applicant, Douglas E. Sheerin and his attorney Michael Hayes. Town Planner, Laura Harbottle was also present. Mr. Morse gave an overview of the development and a brief review of the waivers requested. The location of the tributary and its 150 foot buffer were reviewed. The Board and Town Planner gave some preliminary thoughts to the applicant; the most significant being that too much of the proposed Lot 3 was in the 150 foot no disturb buffer of the tributary.

Ms. Harbottle summarized the process and standards for applications for Flexible Open Space Development special permits of Scituate Zoning Bylaw Section 550, Flexible Open Space Development. She advised the Planning Board that they must determine that this type of development is superior to a conventional development.

At the June 27, 2013 public hearing, the Conventional Density Plan was discussed. Three lots were proposed. The Planning Board's consulting engineer indicated a retaining wall was located within the proposed right of way, immediately adjacent to the 150' no-disturb buffer to a tributary to the Reservoir. The Board questioned if the wall should be in the right of way and if the other wall could be built without impacting the 150 foot buffer. Sight distance on Country Way was also discussed. Lance Van Lenten, representing an abutter, said he believed areas of natural grade greater than 25% in the Water Resource Protection District would be disturbed in four locations. The Board also questioned the sight distance. The Board was concerned with the demarcation of the 150 foot buffer zone to the tributary.

At the July 25, 2013 public hearing, the applicant presented a revised plan which shifted the road 4 ½ feet minimum away from the 150' no disturb buffer zone according to the applicant's engineer. He indicated the wall could be constructed without disturbing the buffer with sheet piles driven in right at the 150' line. The new plan also increased the Lot 1 strip of land leading to the backland for better lot shapes. The Planning Board determined the wall could probably be installed without disturbance to the 150' buffer with the right construction techniques. The Water Resources Committee stated they preferred two lots over three as work was so close to the 150 foot buffer due to their concern with the fragile ecology of the tributary. After approving Findings of Fact, the Planning Board approved the Conventional Density Sketch Plan by Morse Engineering Co., Inc. dated February 19, 2013 with five revisions through July 25, 2013. There was extensive discussion among the Board and the public about the density – 2 versus 3 lots. The Board voted to allow 3 lots as they determined that 3 lots would comply with zoning requirements.

At the August 8, 2013 public hearing, the Board revisited the Conventional Density Plan in response to a letter from Mr. Krusell and Mr. Van Lenten. Ms. Harbottle outlined that the Conventional Plan sets the density for the FOSD Plan which would have smaller lots, open space and provide a public benefit. The Board reviewed items in a letter from Mr. Krusell and was able to dismiss them with the exception that a survey of the tributary should be completed. John Clarkeson, of the Water Resource Committee suggested it should be done during a storm event. The Board reaffirmed that they thought the three lot Conventional Plan meets current subdivision regulations and zoning requirements.

At the August 22, 2013 public hearing the Board focused on letters from the Water Resource Committee and Mr. Van Lenten. Both letters asked that the tributary line be established by objective professional evidence as well as the disturbance of 25% slopes. The Board agreed to obtain quotes for this work. The Board discussed the sight line on Lot 1 and determined that the applicant has control over the sight line for the posted speed of 30 mph, but not higher speeds that are travelled. The Board asked the applicant to try to obtain an easement from the neighbor for the remainder of the sight line. The Board directed that a Landscape Plan was needed during the hearing process as it could impact the 150 foot buffer area. The Board concurred the preservation of the buffer as open space in perpetuity would benefit the Town.

No evidence or testimony was taken at the September 26, 2013 public hearing.

At the October 10, 2013 public hearing, a Landscape Plan was submitted along with a revised existing conditions plan with the tributary shown. The applicant indicated that they did not feel the costs the Board obtained for hiring a professional to evaluate the tributary were reasonable. They brought in as experts Brad Holmes, a professional wetland scientist who delineated the wetlands on site; Peter Dillon, a hydrogeologist and Water Commissioner in Norwell and Steve Ivas, a wetland scientist who was previously hired by the Scituate Conservation Commission to review resource areas on the site. The Board concurred with their overall assessment that the tributary was conservatively located and the 150 foot buffer as shown now would be the correct line. Mr. Morse, the applicant's engineer, said that as a soil evaluator he was qualified to assess whether an area of the site constituted a natural slope. Mr. Dillon agreed with his assessment.

At the November 14, 2013 public hearing, John Chessia, the Board's consulting engineer, indicated that a few more changes were necessary for the storm drainage system. The Board discussed fencing of the 150 foot buffer and improvement of the water quality in the tributary as a public benefit. The Board agreed to let the 150 foot buffer area revegetate naturally. The Board approved waivers of vertical granite curb, a hammerhead turnaround and a 16 foot wide road among others.

On December 5, 2013, no evidence or testimony was taken. John Clarkeson of the Water Resource Committee expressed this displeasure that the joint review of the tributary had not occurred.

At the January 9, 2014 hearing, the applicant indicated they were unable to obtain a sight distance easement. The Board continued the hearing so that DEP could visit the site on an appeal of the determination that the abutter filed with the Conservation Commission. The Board voted additional waivers.

On January 30, 2014, no evidence or testimony was taken as the Board was awaiting a decision by DEP on the appeal of the abutter to the tributary location.

On March 13, 2014, the Board learned that the pre-trial conference on the abutter appeal to DEP was on March 18. The Board moved ahead with Findings of Fact based on the fact that the DEP did not find anything incorrect on the plans and any approval could be subject to DEP approval. The Board reviewed conditions 1-18 of the special permit.

At the April 24, 2014 public hearing, the public hearings on the Flexible Open Space Development Special Permit and Definitive Plan were closed. The Planning Board voted to make the Findings of Fact, and to waive requirements of the Subdivision Rules and Regulations with modifications from those requested by the applicant. The Planning Board voted to grant the Flexible Open Space Special Permit for White Ash Farm based on the Findings of Fact and subject to the Conditions as discussed.

Public Input:

At the May 23, 2013 public hearing, the following public comment was received: Bruce LeClair of 289 Country Way was concerned about the septic system locations and landscape buffers. Jay Gerbis of 295 Country Way was concerned that the septic system on Lot 1 was 10 feet from her property and that site distance and traffic especially during construction will be problematic. Lisa Bertola of 52 Elm Street was concerned that the development is too dense for the site as it is located adjacent to the public water supply. Other concerns of hers were asphalt, lawns, fertilizer use and public access.

At the June 27, 2013 public hearing, additional public comment was received as follows: Lance Van Lenten and William Krusell indicated that there are areas where disturbance of slopes over 25% will occur. Mr. Van Lenten said water would be discharged to the undisturbed area which is not allowed.

At the July 25, 2013 public hearing, the following additional public comment was received: Mr. Van Lenten maintained that the tributary has not been shown accurately and a hydrogeologist may be required. He said there was no public benefit of the FOSD as the open space can't be used for development as it is in the 150 foot buffer of the tributary. He said the project would change the hydrology and 2 homes would be preferable than 3. Martha Cook of the Water Resources Committee and Ms. Bertola questioned the need for 3 lots in a fragile environment.

At the August 8, 2013 public hearing, the following public comment was received: Mr. Krusell outlined 8 points that suggested that the Board reduce the Conventional plan to 2 lots as variances were needed for alteration of slopes over 25%, a building permit was needed for a wall over 4 feet high, flow was being taken away from the tributary and the edge of the tributary was not properly delineated. Ms. Bertola asked if the Board would rescind their vote of the Conventional Plan. Mark Fenton suggested that the Board's use of the words reasonable and compliant suggests that the Board is struggling with 2 versus 3 lots and suggested that the Board go with The Water Resource Committee recommendation of 2.

At the August 22, 2013 hearing, Mr. Clarkeson and Mr. Van Lenten asked that the tributary be identified during a rain event. Mr. Clarkeson concurred that the open space in Town control was a public benefit. Mr. Van Lenten wanted the open space protected so that it is not dumped or intruded upon.

On October 13, 2013, Mr. Van Lenten questioned the accuracy of the line. Samantha Woods from NSRWA summarized the tributary issue as the site has a tributary under zoning and the wetlands on site are defined under the Conservation Commission and the site is complex as it is an altered site.

On November 14, 2013, Mr. Van Lenten said the abutter filed a determination with the Conservation Commission to resolve the wetland issue at the culvert and he said he wanted the 150 foot buffer to revegetate naturally.

At the January 9, 2014 public hearing, Mr. Van Lenten indicated the abutter appealed the determination filed with the Conservation Commission to the DEP for an actual determination of the location of the tributary through the site.

At the March 13, 2014 public hearing, Lance Van Lenten didn't think it was a good idea for the Board to approve the project without the DEP adjudicatory hearing was complete. He indicated the Conventional Plan was not good and the Flexible Plan should not have proceeded to this point.

Findings of Fact: The following Findings of Fact based on information submitted by the applicant and testimony given during the Public Hearing were voted on March 13, 2014:

1. Douglas E. Sheerin filed an application on February 28, 2013 for a Special Permit for a Flexible Open Space Development under Scituate Zoning Bylaw Section 550 for property located at 305 Country Way shown on Town of Scituate Assessor's Maps as Map/Block/Lot 37/2/2 and 37/8/13R.
2. The property that is the subject of this application is an 8.56 acre parcel at 305 Country Way which contained a single family home which has been razed. The property is located in the Residential R-1, Residential R-2 and Water Resource Protection zoning districts. A small piece of the parcel located at the southeast corner in the wetlands is in the Floodplain and Watershed Protection District.
3. A substantial portion of the property is located within an area designated by Massachusetts Department of Environmental Protection as a Zone A, or Surface Water Supply Protection Zone for the Town Reservoir which extends two hundred feet from a tributary to a surface water supply. Massachusetts DEP identified an intermittent stream that flows across this property as a tributary to the Reservoir. Its location was established by review in the field by DEP's hydrogeologist Bruce Bouck and a survey by William J. McGovern, PLS of Morse Engineering Inc. Scituate Zoning Bylaw Section 520.5, Water Resource Protection District, Buffer Zone requires a non-disturbance buffer zone extending one hundred and fifty feet horizontally from the edge of all tributaries in the reservoir watershed.
4. The proposed stormwater management system has been reviewed by the Town's consulting engineer, John Chessia of Chessia Consulting Service, LLC whose comments indicate his concerns have been satisfactorily addressed.

5. The applicant provided a plan showing removal of trees and vegetation at the entrance to improve sight distance from the entrance towards Country Way to the south.
6. As required by Scituate Zoning Bylaw Section 550.4 D., Special Permit Approval, on July 25, 2013 the Planning Board approved a Conventional Density Sketch Plan showing three lots by a unanimous vote.
7. The following benefits are provided by the Flexible Open Space Development:
 - a. The Open Space Parcel provides permanent protection to a tributary to the Town Reservoir and associated wetlands by transferring 6.51 acres of open space including the entire buffer area to the tributary on the parcel, to Town ownership. The Open Space Parcel will be protected by signs and fencing to discourage any access.

The requirement for open space for a Flexible Open Space Development on this site is 2.56 acres, including .77 acres of upland. On this site, 6.51 acres will be permanently preserved as open space, including 2.21 acres of upland. In protecting the town's water supply, and providing additional open space beyond the requirements of the bylaw, this design provides a public benefit.

- b. A permanent easement over Lot 1 created through this development will improve sight distance for drivers on Country Way as well as for those exiting the subdivision.

Based on evidence and information provided by the applicant and reviewed by the board, the Planning Board finds that the Flexible Open Space Development is superior to a conventional subdivision, and there are specific benefits to the town consistent with those in the Purpose section.

8. Scituate Zoning Bylaw Section 550.5, Design Standards, Paragraph A requires protection of important natural and historic features of the land and minimization of the size of developed areas. A buffer to a tributary to the Town Reservoir will be permanently protected by the proposed development. The development will take place on 2.05 acres of the site. 2.21 acres of upland will be permanently preserved as open space. The plan thus meets the Design Standard of Scituate Zoning Bylaw Section 550.5 A.
9. Scituate Zoning Bylaw Section 550.5 Paragraph B requires that construction and laying out of developed areas respect the natural features of the parcel, applying six guidelines, as follows:
 - a. Guideline 1 encourages site disturbance beyond the paved area of the road to be minimized, and open space maximized. Guideline 2 recommends that open space include buffers to wetlands. These are met by the minimization of developed area and preservation of open space as indicated in Finding #6 above.
 - b. Guideline 3 recommends preservation of adjacent trees along, or open space adjacent to, existing roads. In this development, it was necessary to remove trees along the road to provide adequate sight distance, but the applicant has agreed to replace them in other locations.
 - c. Guideline 4 recommends locating water and utilities under road pavement. Where possible, water lines were located under roadways and underground utilities will be used throughout.

- d. Guideline 5 indicates use of Low Impact Development (LID) drainage techniques wherever feasible. These techniques were not widely used on this site.
 - e. Guideline 6 states curb cuts should be minimized and conflicts with existing traffic should be avoided. One existing curb cut will be used for the development.
10. Scituate Zoning Bylaw Section 550.C requires provision satisfactory to the Planning Board for protection and maintenance of common land and common facilities. The open space in this development will be owned by the Town. A Homeowners' Association will own and maintain the drainage basin and roadway.
 11. Scituate Zoning Bylaw Section 550.6, Minimum Requirements, states that the maximum number of lots in a Flexible Open Space Development special permit must not exceed the number which could be created through conventional development of the site. A Conventional Density Sketch Plan dated February 19, 2013 with revisions through July 25, 2013 showed the parcel could be subdivided into three lots in a manner which complies with the Zoning Bylaw and the standards of the Subdivision Rules and Regulations. This plan was approved by the Planning Board on July 25, 2013.
 12. Scituate Zoning Bylaw Sections 550.6 A., Lot Area and B., Frontage requires lot area and frontage for each lot in a Flexible Open Space Development to be sufficient to support the dwelling, its accessory structures, septic system and access. Based on information provided by the applicant's engineer, each lot is of sufficient size to support construction of a single family home and an individual septic system, and frontage appears adequate to provide access to each lot.
 13. Scituate Zoning Bylaw Section 550.6 C. requires 15' front, side and rear setbacks in a Flexible Open Space Development, with setbacks from the perimeter of the development equal to those of the underlying zoning. Building envelopes shown on Sheet 3 show setbacks for Lots 1 – 3 which meet the requirements of 550.6 C.
 14. Scituate Zoning Bylaw Section 550.6 D requires no more than one single- or two-family dwelling and accessory structures on each lot. No more homes can be built on any lot because Scituate Zoning Bylaw prohibits construction of more than one single- or two-family home on a residential lot (see Section 430.1.)
 15. Scituate Zoning Bylaw Section 550.6 E requires open space to be conveyed to the Town, a conservation trust, or protected through a deed restriction accepted by the Massachusetts Office of Energy and Environmental Affairs. The open space shown on the plan will be conveyed to the Town.
 16. Scituate Zoning Bylaw Section 550.6 F requires restriction of further subdivision of the lots shown on the plan with a note so stating added to the plan. The special permit will include a condition that prior to the start of construction, a deed restriction shall be recorded stating that no lot in the Flexible Open Space Development may be further divided or subdivided into additional building lots, and a note shall be added to the plan to reference this condition.
 17. Scituate Zoning Bylaw Section 550.6 G permits the Planning Board to specify roadway, drainage and utility design requirements deemed necessary to ensure adequate access, lessen congestion, provide proper drainage, protect public safety or provide for water, sewage, utilities or other municipal services. The plans have been reviewed by the Traffic Rules and Regulations Committee, the DPW and the Town's consulting engineer. Completion of items they recommended shall be included in the conditions of approval.

18. Based on these findings and information submitted by the applicant and reviewed by the Board, this development meets the requirements for a Flexible Open Space Development, Section 550 of the Zoning Bylaw.

Decision: Based on the Findings of Fact noted above, the Planning Board approved the Flexible Open Space Development Special Permit for 305 Country Way with the following conditions:

GENERAL

1. All construction shall be according to a plan by Morse Engineering Co., Inc. titled White Ash Farm, A Definitive Flexible Open Space Development Plan, dated February 19, 2013, revised through December 4, 2013, stamped by William McGovern PLS on December 23, 2013, and with any additional revisions as needed to conform to these conditions.
2. Construction shall meet all requirements of the Fire Department, the Building Department, the Board of Health, the Conservation Commission, Massachusetts DEP, the State Building Code, and all applicable federal, state and local laws and regulations.
3. Installation of all water mains and appurtenances shall be performed according to the specifications of the Scituate DPW.
4. The total number of residential dwelling units on the site shall not exceed three (3.) There shall be no further division or subdivision of any lot shown on the plan for the purpose of construction of an additional dwelling.
5. Access to all lots shall be over the proposed subdivision road. There shall be no further extensions of the road or attachments of any other roads or Common Driveways to the proposed subdivision road.
6. The drainage system shall be maintained according to the Long Term Operation & Maintenance Plan, Best Management Practices by Morse Engineering Co., Inc. dated February 19, 2013 with revisions through July 11, 2013 and as revised to incorporate comments by the Town's consulting engineer John Chessia, PE of Chessia Consulting Services LLC with any additional revisions as needed to conform to these conditions.
7. Prior to installation of an entrance sign, a sketch showing dimensions, location, materials and color shall be approved by the Town Planner.

REQUIRED PRIOR TO ENDORSEMENT OF THE DEFINITIVE PLAN

8. All remaining comments by the consulting engineer shall be addressed prior to endorsement of the Definitive Plan, including revisions to the Long Term Operation & Maintenance Plan, Best Management Practices by Morse Engineering Co., Inc. dated February 19, 2013 with revisions through July 11, 2013.
9. To reflect the waiver granted by the Planning Board, prior to endorsement of the Definitive Plan, curbing details shall be modified to show bituminous berm and detail for granite where it is still required. Bituminous concrete berm must reflect loam and seed to the top of the back of the berm. Vertical granite curb detail must be added to plans. 4' transition curb adjacent to the curb inlet must be labelled as granite. Vertical granite curb shall be set and held in place with a 6" depth lift of 4,000 PSI concrete with ¾"

aggregate on both sides and the bottom of the curb. Limits of vertical granite curb shall be shown on the plans.

10. To reflect the road width and other items which do not meet the standard of the Subdivision Rules and Regulations, a note shall be added to the Lot Layout Plan stating "The subdivision road does not meet the standards of the Subdivision Rules and Regulations and shall remain private in perpetuity."
11. The applicant shall provide an Easement Plan as an additional plan sheet. This shall be provided to the Planning Board a minimum of three weeks prior to endorsement of the Definitive Plan. The purpose and dimensions of all easements, as described below, shall be clearly shown on the Easement Plan, which shall include the following easements:
 - a. An easement to allow a Homeowner's Association and/or its designee access to maintain, inspect and repair the stormwater management system, sight distance easement, fencing, signs and common area plantings, and to allow the Town access to the detention basin in case of an emergency. This shall include an easement for access to the detention basin of a minimum width of 20' which shall allow vehicle access from the end of the subdivision road across Lot 3.
 - b. An easement to allow the Town of Scituate the right to repair, replace, operate, use and maintain all streets, water mains, and all surface and subsurface stormwater drains in, through and under the streets and easement, allowing the town access in case of an emergency, and allowing the DPW to test water quality if this is deemed in the public interest.
 - c. An easement over Lot 1 in the area shown on the plan, to provide a safe sight triangle which shall be kept clear of obstructions as shown on the plan including vegetation in order to maintain adequate sight distance along Country Way to the south.
12. Prior to endorsement of the Definitive Plan, a note shall be added to the Erosion & Sedimentation Plan stating that construction shall proceed in two phases, the first including clearing for the road, detention basin, staging areas and temporary sediment basin; the second, for homes as they are built. This will help prevent sediment affecting the water quality of the tributary to the reservoir and protect other wetlands resources.
13. The boundary of the 150' buffer to the Tributary to the Reservoir shall be protected by installation of staked siltsock, the stakes flagged with bright surveyor's tape. This buffer protection shall be maintained until all work is complete.
14. The Landscape Plan shall be revised to include the following and shall be provided to the Planning Board a minimum of two weeks prior to endorsement of the Definitive Plan:
 - a. All easements described in Condition 11 above with their purpose, boundaries, dimensions and improvements.
 - b. 3' high PVC split rail fence from the location near the entrance to the subdivision shown on the Landscape Plan to the back property line of Lot 3 at the limit of clearing, with shrubs as identified on the plan, located on the open space side with minor gaps, but fairly continuously behind the fence. The plan

and detail shall show the fence located 5' off the subdivision road. A note shall be added to the plan stating that the Town Planner shall approve the number, type and locations of shrubs prior to planting in the field.

- c. Two freestanding signs, one on the north side of the subdivision road at the end of the stone wall and the second at the beginning of the cul-de-sac describing the purpose of the tributary buffer, limitations on public access and the reasons for same. The sign shall be white with dark green lettering, constructed of a durable, weatherproof material, a minimum of 1 sq. ft. in area and 4' in height. Wording shall be approved by the Town Planner. 5" X 5" square signs shall be affixed to the PVC fence at intervals not to exceed 60 feet stating "Conservation Area / No Disturb Zone."
- d. A planting plan fully specifying seed mixes and species of shrubs and trees.
- e. Concrete bounds on or about 50' apart shall be installed at the beginning and end points along the property line between Lot 3 and the Drainage Parcel. The bounds shall extend 4" above grade.
- f. Notes shall be added to the plan stating:
 - i. The developer agrees to provide the owners of Lots 37-2-1, 43-1-15A and 43-1-14A and 43-1-14B up to six arborvitae to each of the owners for screening along the boundary of the development. If requested by the owner, alternative shrubs such as rhododendron, laurel, holly, forsythia, inkberry or similar shrubs shall be provided. Shrubs shall be provided prior to the approval of As-Built plans by the Planning Board.
 - ii. Prior to the start of construction, the applicant or contractor shall identify healthy trees shown on the Landscape Plan between the boundary of the abutting lots to the southeast and the limit of work shown on the Landscape Plan. These trees shall be preserved unless determined to be diseased or dangerous by a certified arborist after field verification.
 - iii. Light fixtures, if any, shall preferably be of an "antique" style, with the fixture shielded, and not to exceed 14' in height.

15. A deed restriction establishing the Sight Distance Easement on Lot 1, and prohibiting any structure, installation or activity which would interfere with visibility between 2 ½ and 6' above ground, shall be drafted and a copy provided to the Planning Board with a check sufficient to cover review by Town Counsel. This shall be recorded with the subdivision covenants and plans.

16. The Homeowners Association Declaration of Trust shall be amended to include the following items, and shall be provided to the Planning Board no less than ten business days prior to endorsement of the Definitive Plan:

- a. A statement that homeowners are encouraged to use organic pesticides, herbicides and fertilizers. These may be found through the Northeast Organic Farming Association (NOFA) list of certified landscape professionals, available on the website <http://nofa.organiclandcare.net/aolcp-search> or similar.

Pesticides and herbicides shall be used sparingly and as directed. If professional application is used, pesticides shall be applied by a professional applicator licensed under the Massachusetts Department of Agriculture. Fertilizers, herbicides, pesticides and hazardous materials should be stored inside, on an impervious surface, in quantities no greater than necessary for household use. Where outside storage is necessary, covered containers must be used.

- b. A requirement that the Homeowners' Association maintain the Sight Distance Easement on Lot 1 by checking the condition each summer and removing all vegetation between 2 ½ and 6' in height with proof of maintenance provided to the Planning Board each year by October 1.
 - c. A requirement that the Homeowners' Association permanently maintain the fence on the north side of the subdivision road, entrance landscaping, bounds shown on the Definitive Plan and the signs described in Condition 14 c above.
 - d. The Homeowners Association Declaration of Trust shall establish an area for snow storage, not in the no disturb area, which shall not impact the stormwater management system, the Open Space Parcel, or interfere with sightlines for vehicles exiting driveways or the subdivision with the location approved by the Town Planner, and shall require that this be used for this purpose.
17. This approval is subject to the applicant consulting with the Board of Selectmen regarding their desire to accept the permanently protected open space shown on the plan in the care and custody of the Conservation Commission for protection of the Zone A to a Tributary to the Town Reservoir. This consultation shall occur prior to the endorsement of the Definitive Plan.
18. A copy of the revised Definitive Flexible Open Space Development Plan shall be provided to the Planning Board a minimum of ten business days before expected endorsement of the Definitive Plan.
19. Prior to the start of construction, the applicant shall provide the Planning Board a check for \$10,000 towards the sizing, purchase and installation of a Stormceptor to be installed by the Town south of the existing catchbasins between 310 and 318 Country Way, and at 320 Country Way in order to treat the stormwater. If the unit is not installed within five years of the date of endorsement of the Definitive Plan, these funds shall be returned to the applicant.

REQUIRED PRIOR TO SCHEDULING THE PRE-CONSTRUCTION CONFERENCE

20. Following endorsement, the applicant shall, within six (6) months of such approval, file such plan with the Plymouth County Registry of Deeds, and shall transmit prints of the endorsed plan to the appropriate Town Boards and Commissions. The applicant will not file such plan, however, until they have provided the Town one (1) mylar reproducible and ten (10) prints of each sheet thereof, of such plan after filing with the Registry of Deeds. All plans in the Definitive Drawing set must be recorded at the Registry of Deeds.
21. Prior to scheduling the pre-construction conference, the following must be provided to the Planning Board:
- a. Copies of the NPDES Permit and Stormwater Pollution Prevention Plan.
 - b. A check to cover the cost of inspections and review of Interim and Final As-Built Plans by the Town's consulting engineer.

- c. A copy of a recorded deed restriction stating that no lot in the Flexible Open Space Development may be further divided or subdivided into additional building lots.
- d. Construction schedule including approximate dates for items in Subdivision Rules and Regulations 9.1.3.

REQUIRED PRIOR TO THE START OF CONSTRUCTION

- 22. A pre-construction conference shall be held with the applicants, their representatives, their engineer, the site contractor(s), the Town Planner, the Planning Board's consulting engineer, Conservation Agent and other representatives of the Town as the Board feels are necessary. A preconstruction conference will not be scheduled until all items required under Condition 21 have been submitted. A list of all contractor contacts, including names and telephone numbers, shall be provided to the Planning Board and DPW. At least one contractor shall be available 24 hours per day in the event of an emergency.
- 23. Prior to the start of construction, the limit of clearing and the boundary of the 150' tributary buffer shall be staked in the field under direction of a surveyor. A silt fence with silt sock, NOT straw wattle, shall be used to delineate the entire length of the buffer during construction. The fence shall include 5' posts every ten to fifteen feet with bright construction tape strung between them through the length of the barrier. The location and method of staking shall be reviewed by the Town's consulting engineer prior to the start of construction.
- 24. Prior to the start of construction, the applicant or contractor shall identify healthy trees shown on the Landscape Plan between the boundary of the abutting lots to the southeast and the limit of work shown on the Landscape Plan. These trees shall be preserved unless determined to be diseased or dangerous by the Town Planner after field verification.

REQUIRED DURING CONSTRUCTION

- 25. Construction work shall not begin prior to 7 AM weekdays and 8 AM on Saturday and shall cease no later than 7 PM or sunset whichever is earlier. No construction shall take place on Sundays or legal holidays.
- 26. All earth moving operations shall only occur while erosion and sedimentation control measures approved by the Town Planner after consultation with the Conservation Agent, are in place. Such control measures shall remain in place until the Board's consulting engineer determines, after consultation with the Town Planner, that the danger of erosion or sedimentation no longer exists.
- 27. Interim As-Built Plans shall be prepared for all drainage or detention basins, rain gardens and infiltration structures and the roadway system, and provided to the Planning Board for review and approval before any building permits for new structures or buildings are issued.

Interim As-Built Plans shall confirm that the roadway and drainage basins are properly constructed, located in the approved location and properly sized, so that the required storage capacity is available and no upland necessary for adjacent lots has been used. The location of the drainage basin and all drainage easements shall be confirmed by setting a minimum of two bounds and shall be tied to at least two bounds of the subdivision way and to the Mass. State Plane coordinate system. As-Built Plans shall be signed and

stamped by a Registered Professional Engineer and Professional Land Surveyor.

REQUIRED PRIOR TO APPLICATION FOR THE FIRST BUILDING PERMIT

28. The signs described in Condition 14c above shall be installed prior to application for the first building permit.
29. A copy of a deed conveying the property identified on the Lot Layout Plan as Open Space to the Town of Scituate in the care and custody of the Conservation Commission shall be provided to the Planning Board prior to application for the first building permit.
30. Prior to application for building permits, septic system grading will be reviewed with the Board of Health, to assure septic systems will not interfere with drainage either within the development or onto abutting properties.

REQUIRED PRIOR TO APPLICATION FOR THE FIRST OCCUPANCY PERMIT

31. The developer shall notify contractors, builders and real estate agents that membership in a Homeowners' Association is required to be disclosed to all prospective buyers, and shall make copies of the Homeowner's Association Declaration of Trust available to be provided to all prospective purchasers of lots in the development.
32. The developer shall provide one hour of instruction by a professional engineer to each of the first purchasers of new homes in the development about their responsibilities for maintaining the stormwater management system under the Homeowners Association Declaration of Trust.

ADMINISTRATION

33. All time periods referenced in this document for completion of conditions shall be tolled in case any appeals are taken.
34. This Special Permit shall be void if it is not recorded at the Registry of Deeds within 45 days of expiration of the appeal period following approval of this Special Permit. The Applicant shall provide proof that the Special Permit was recorded to the Planning Board.
35. Within three months of the date of recording, copies of the approved Definitive Flexible Open Space Development Plan, the special permit, the Homeowners Association Declaration of Trust shall be provided to the Planning Board.
36. This Special Permit shall lapse within two years from the date of its issuance unless substantial use or construction has commenced prior to that time in accordance with MGL Chapter 40A, Section 9.
37. All plan sheets of the Flexible Open Space Development Definitive Plan shall be recorded at the Registry of Deeds.

