

ARTICLE 21

OPEN SPACE

21.1 Purpose.

The open space standards contained herein are established to provide for the reservation of various forms of open spaces, including parks and greenways in all forms of developments located in the Town of Spencer territorial jurisdiction. Preservation of open space in developing areas serves a variety of purposes, including meeting the recreational needs of residents, improving the aesthetic character of the community, reducing stormwater runoff, improving stormwater runoff water quality, and enhancing air quality. The standards set forth below establish regulations for open space.

21.2 Open Space.

Although open space can be agricultural or natural in character, sub-urban open space is typically planned and developed as part of a development. The following standards are hereby established for open space, with the exception of the Main Street (MS) District which shall be exempt from the requirements of this section.

21.2-1 Open space land area requirements. Open space shall be provided in accordance with the following table 21.1 for:

- (A.) new residential development containing eight or more units,
- (B.) redevelopment or additional development that adds eight or more residential units,
- (C.) initial non-residential or mixed-use development greater than 0.6 acres, and
- (D.) re-development or additional development that adds 25 percent more non-residential or mixed-use floor area on a site that exceeds 0.6 acres within any 36-consecutive month period.

TABLE 21.1

ZONING DISTRICT	REQUIRED OPEN SPACE
Residential Uses/Districts.	<u>Single-family/and/or duplex subdivisions:</u> 5.0% of total subdivision project site area. <u>Other residential:</u> the greatest of 500 square feet of open space per dwelling unit or 9% of total project site area.
All other districts, <i>excluding "MS" which is exempt from these requirements</i>	7.5% of total project site area

21.2-2 Land designated as future open space. Regardless of the requirements and exemptions of this subsection, any portion of the site of the proposed development that is designated as future open space or greenway in the Plan referenced in Section 1.5 of this Ordinance, adopted by the Town of Spencer, as amended from time to time, shall be reserved for open space. This area may be counted toward the total amount of open space required for the development.

If the total amount of land designated as future open space or greenway is less than the total amount of open space required for the development by Table 21.1, then the developer shall provide additional open space to meet the requirement of Table 21.1. If the amount of land designated as future open space or greenway exceeds the total amount of open space required by Table 21.1, then the developer must provide the open space designated in the official adopted plan.

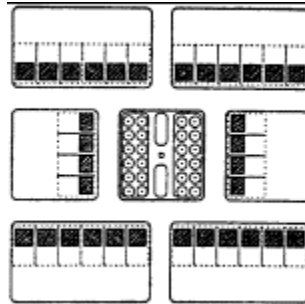
As compensation for any open space dedication associated with implementing any official adopted plan above that requirement listed in Table 21.1, the developer is eligible for a density bonus of one dwelling unit per each 4,356 square feet of land area in excess of that required in Table 21.1 or 500 square feet of non-residential gross floor area per each 2,178 square feet of land area in excess of that required in Table 21.1, up to a maximum of a fifteen (15%) percent increase above the maximum density or intensity allowed in the applicable zoning district. The density bonus in the proposed development is limited to additional yield that can be configured with less than a ten (10%) percent reduction in(s) in lot area and/or setback dimensions specified in Article 8.

21.2-3 Minimum open space area. Individual areas designated as open space areas shall not contain less than 500 square feet, although smaller areas may be approved by the *Planning, Zoning & Subdivision Administrator* if the intent of this Ordinance is determined to be met through the provision of bus/transit stops and/or mail kiosk.

21.2-4 Improvement of open space. With the exception of Natural and Agricultural Open Space, open space shall be planned and improved, accessible and usable by persons living nearby. Improved shall mean cleared of underbrush and debris and shall contain four or more of the following improvements: landscaping, walls/fences, walks, statues, fountains, demarked ball fields, and/or playground equipment. Walls and fences shall be made of brick, stone, wrought iron, decorative aluminum or wood and shall not exceed 3.5 ft. in height with the following exceptions: fences used in conjunction with ball fields, tennis courts, swimming pools, and/or playgrounds.

- 21.2-5 Design and location. In major subdivisions and multi-building developments in all zoning districts, except Agricultural, open space shall be integrated into the design of the site. In subdivisions where 50% or more of the lots are less than 0.75 acre in size, open space shall be located within ¼ mile of at least 90% of the building lots, as measured along the rights-of-way of streets providing access between the two. In subdivisions where 50% or more of the lots are 0.75 acre or more in size, open space shall be located within ½ mile of at least 90% of the building lots, as measured along the rights-of-way of streets providing access between the two.
- 21.2-6 Focal point. Open space features shall provide focal points for the neighborhood. A central square or green, for example, may comprise a majority of the open space. There shall be a variety of features provided in accessible open space within new neighborhoods so that open space serves the needs of multiple age groups.
- 21.2-7 Types of open space. Open space types include Squares, Parks, Forecourts, Plazas, Greenways, and Natural and Agricultural. Standards for these open space types are set forth below:

(A.) Squares



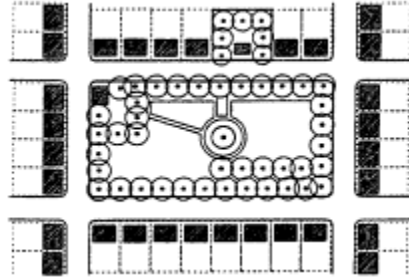
Squares are areas for passive recreational use. Squares shall be bounded by streets on either a minimum of three sides or 56% of their perimeter.

Squares shall be used in high-density environments where residents have little yard space. Squares are used to bring a natural landscape into a high-density environment. As such, not more than 25% of a square should be impervious surface coverage. Hardscaping shall be of an enhanced decorative finish to improve aesthetic impact for persons viewing and/or visiting the Square (example brick pavers or decorative concrete edges instead of solid asphalt ribbon or broom finished concrete for walkways).

Min size: 500 sq. feet, unless approved per Section 21.2-3 of this Ordinance.

Max Size: 4 acres

(B.) Parks



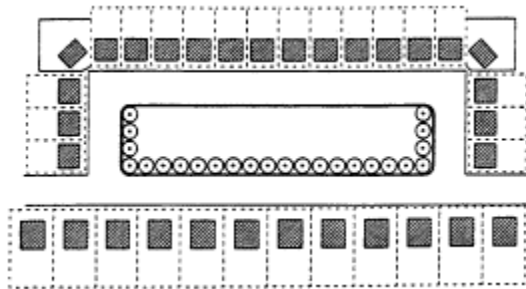
Parks are areas for passive or active recreational use. Parks shall be bounded by streets on either a minimum of two sides or 32% of their perimeter.

Minimum Size: 6,500 square feet

Maximum Size: 8 Acres. Maximum size may exceed eight acres if the park serves multiple neighborhoods or preserves environmental features.

Parks shall be areas where both passive and active recreation may occur simultaneously (example: park benches for elderly and a tot-lot for young children), encouraging intergenerational interactions among park users.

(C.) Forecourt

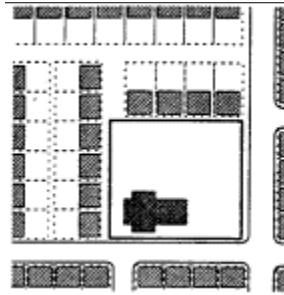


Forecourts are open spaces that act as buffers between residential buildings and streets or non-residential buildings. Forecourts are entirely bounded by buildings or streets. Forecourts shall be planted parallel to all primary street rights-of-way as shown in the illustration above.

Minimum Size: 500 sq feet, unless approved per Section 21.2-3 of this Ordinance.

Maximum Size: 1.5 acre

(D.) Plaza



A plaza is an open area adjacent to a civic or commercial building. Plazas shall be planted with deciduous trees to provide shade in the summer. Plazas function as gathering places and may incorporate a variety of non-permanent activities such as outdoor farmers markets or craft fairs. Temporary over-flow parking is permissible on plazas in accordance with Section 12.9 of this Ordinance. Plazas shall match the architectural style of the buildings that they are adjacent to regarding materials and design. Plazas shall be level or gently sloping.

Minimum Size: 500 sq. feet, unless approved per Section 21.2-3 of this Ordinance.

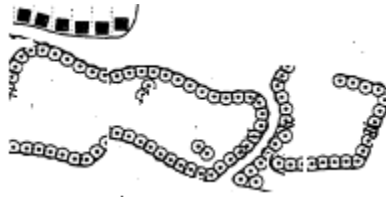
Maximum Size: unlimited

(E.) Greenways



Greenways are spaces designed to incorporate natural settings such as creeks and significant stands of trees within a neighborhood. Greenways shall have streets or pedestrian ROWs parallel to or integrated into at least 70% of their length. Greenways are used for walking, jogging, biking, and they are used as wildlife corridors. Greenways may have infrequent small-scale active recreational facilities such as playgrounds, although the majority of greenways shall be for passive, pedestrian and/or bicycle recreation.

(F.) Natural and Agricultural Open Space



Natural and Agricultural Open Space preserves agricultural lands, environmentally sensitive areas such as stream buffers and floodplains, scenic views, cultural features, and rural character that would likely be lost through conventional development approaches. To accomplish this goal, the Town of Spencer encourages creativity and allows for greater flexibility in the design of developments through use of the Mini-Farm and Traditional Neighborhood Development Overlay Districts in Article 8 of this Ordinance. Natural and Agricultural Open Space shall be placed in preserves, which adjoin housing areas.

- 21.2-8 Open Space Ownership and Conservation Easement. Open space may be owned or administered by one or a combination of the following methods: fee simple ownership by a unit of government or private non-profit land conservancy; owned by a property association; or by individual private ownership such as a farmer, developer or other private entity that perpetually maintains the *Common Open Space*.

All lands within areas required to be maintained as open space shall be protected by a permanent conservation easement, prohibiting further development beyond improvements approved for the land, and setting other standards safeguarding the site's special resources from negative changes.

Public use of the open space may be limited to residents of the development, except for land used for public sidewalks and multi-use trails, provided that such open space is held in private or property association ownership.

- 21.2-9 Maintenance. The owner or lessee of the property designated as the open space shall be responsible for the maintenance of the open space area. Landscaped areas shall be maintained in good condition and the entire area shall be kept clear of debris. Failure to maintain the area shall constitute a violation of this or other applicable ordinances. Alternatively, if acceptable to the Town Board of Aldermen, as applicable, the land may be dedicated to the Town for public use and thereafter maintained by the Town.

- 21.2-10 Land Acceptable for Open Space Designation. The classes of land enumerated below may be utilized to meet the requirements of this section.

(A.) Open water, wetlands, utility easements, and undisturbed floodplains shall be designated Open Space and may account for up to 80 percent of the area requirement

in subsection 21.2-1 of this Article.

- (B.) Land used for landscape buffers (Type A, B and C only), public sidewalks in excess of standard sidewalk requirements, streetscape and hardscape areas accessible to the public including sidewalk cafe areas, areas containing public art, and similar high density area open space amenities.
- (C.) Land on which locally or nationally designated historic structures are located and determined to be contributing to the designation.
- (D.) Land which exceeds a eighteen (18%) percent slope may be used to provide up to 70 percent of the required open space if existing slopes and vegetation so designated remain undisturbed.
- (E.) Land used for stormwater retention, provided such land is natural in appearance and is not separately fenced, may be used for up to thirty-two (32%) percent of the required open space; green roofs are eligible to be counted as open space under this provision on a 2:1 ratio (two square feet of green roof = one square foot of conventional open space). Additionally, land used for stormwater retention, provided such land is natural in appearance and is not separately fenced, that is developed using best management practices (e.g., constructed wetlands, rain gardens, green roofs or similar features), and either exceeds the required amount of retention or treats off-site stormwater may be used for up to eighty (80%) percent of the required open space at the discretion of the *Planning, Zoning & Subdivision Administrator* after consultation with the Public Works Engineer.
- (F.) Land available to residents or tenants for active or passive recreation, including parks, walking trails not used to meet sidewalk requirements, playgrounds, benches, picnic tables, and similar land uses or facilities. Playgrounds and athletic fields installed shall be counted at a 2:1 ratio (two acres of unimproved land = one-acre playground and/or athletic field) for calculation compliance provided all improvements are installed.
- (G.) Land that is suitable for agriculture, land that has environmentally sensitive areas (ex. mature trees), or land that has cultural significance (ex. important view such as a rural entrance into Town).

21.2-11 Land not Acceptable for Open Space Designation: The classes of land enumerated below shall not be utilized to meet the requirements of this section:

- (A.) Land that is contaminated with hazardous or toxic waste or materials as defined by state or Federal regulations, except for land covered by an approved mitigation plan and deemed acceptable by the Town Board of Aldermen or land that is designated in an officially adopted Open Space, Park or Greenway master plan.

- (B.) Land occupied by streets, drives, parking areas, or structures other than recreational structures.
- (C.) Land with a minimum width less than twenty (20) feet. Mixed use developments in the TND district are exempt from the minimum width requirement.
- (D.) Playgrounds and athletic fields that have not been maintained to adequate standards for safe and sanitary use.

21.3 Fee-in-Lieu.

For open space and/or park requirements of 500 square feet or less in area and not involving property designated as a greenway on any official plan adopted by the Town of Spencer, a property owner may elect to pay a fee-in-lieu of open space instead of providing the open space provided that the *Planning, Zoning & Subdivision Administrator* deems that there is reasonable existing or future open space proximate to the subject parcel. For other required open space areas, a property owner may pay a fee-in-lieu of open space designation for all or a portion of the open space requirement if such fee-in-lieu is acceptable to the Town Board of Aldermen. For developments and subdivisions containing more than 30 residential units, the fee-in-lieu option may only be used for up to 50 percent of the open space requirements in order to ensure that these larger projects provide on-site open space for their residents.

This fee shall be calculated by using the pro rata value of the designated property relative to the value of the entire site to be developed using current property tax appraisal data; for properties covered by agricultural or other exemptions, the Town may utilize a separate appraisal method in its sole discretion. Funds collected in this manner shall be maintained in a separate fund and shall be used to purchase or to enhance recreational use of property provided such features are reasonably proximate to the site(s) from which the funds are collected. Where practical, the collected fees for each project shall be designated for specific parks and recreation acquisitions and/or enhancements by the Town.

21.4 Guarantee in lieu of construction of improvements.

In lieu of completion of construction of the required improvements prior to final occupancy approval, the property owner may provide a performance guarantee in accordance with G.S. 160D-702(a) and G.S.160D-804(g). The performance guarantee shall be in an amount equal to 125% of the estimated cost of the installation of the required improvements, as determined by the Town. The performance guarantee shall secure the completion of construction of the improvements shown on the approved site development plan and as detailed within the approved construction plans. The performance guarantee shall remain in full force and effect until such time as the

construction of improvements are completed and either approved or accepted by the Town of Spencer. Failure to maintain the required performance guarantee shall result in the revocation of the approval of any permits issued as a result of the site development plan and/or permit approval. The performance guarantee shall be automatically renewed unless all parties agree not to renew it at least sixty (60) days prior to its scheduled expiration date. A temporary construction easement permitting the Town of Spencer or its designee(s) to access the property for the purpose of constructing/installing the guaranteed improvements is required to be provided with the performance guarantee. The temporary construction easement shall be valid until all guaranteed improvements have been constructed/installed and approved or accepted by the Town. The temporary construction easement shall bind to all successive owners until the guaranteed improvements have been constructed/installed and approved or accepted by the Town. Said temporary construction easement shall be recorded at the office of the Rowan County Register of Deeds, with recording fees to be paid by the applicant/landowner.

21.5 Failure to perform.

Failure to initiate construction of the improvements within one year of the date the performance guarantee was accepted by the Town of Spencer shall result in the Town, at its sole discretion, constructing the improvements, with the cost to be paid from the performance guarantee. The guarantor institution shall, if requested by the Town, pay all or any portion of the funds to the Town up to the amount needed to complete the improvements based on an estimate by the Town. The Town may spend such portion of said funds necessary to complete all or any portion of the required improvements. The Town shall return to the developer any funds not spent in completing the improvements. Default on a project does not release the developer from responsibility for the completion of the improvements. In the event that the amount of performance guarantee on hand is insufficient to pay for the completion of the improvements, the property owner shall pay to the Town of Spencer the total amount of the insufficiency. If the Town is not paid, the amount of the insufficiency shall constitute a lien on the property in favor of the Town.