

ARTICLE 12. OPEN SPACE COMMUNITY

Section 12.01 Intent

The intent of the Open Space Community Overlay District is to permit residential development that results in an enhanced living environment through the preservation of open space. The provisions set forth in this Article offer an alternative to traditional subdivision and encourage innovative and livable housing environments through both permanent dedication of open space and a planned reduction of individual lot area requirements. The Open Space Community district is established as an overlay district applicable to the AR Agricultural Residential and R Residential Districts and is approved through the special use permit process (Article 13) and site plan approval process (Article 14). The overall density remains the same as would be found in a traditional development in the underlying zone unless certain benefits to the Township are provided in which case the development would qualify for heightened clustering and density bonus allowances. The Open Space Community Overlay District is enabled by planned unit development (PUD) legislation, as authorized by MZEA, MCL 125.3101 et seq.

Section 12.02 Scope

For purposes of this Article, an Open Space Community is defined as a predominately single family residential development in which dwelling units are placed together in one or more clusters within a defined project area. The dwelling units are separated from adjacent properties or other groupings of dwellings by substantial open space that is permanently protected from development.

Section 12.03 Objectives

The following objectives shall be considered in the review of any application for an Open Space Community:

- A.** To provide a more environmentally sensitive residential environment by preserving the natural character of open fields, stands of trees, ponds, streams, hills and similar natural features.
- B.** To preserve a traditional rural character to the land use pattern in the Township and protect environmentally sensitive lands from the disruptive effects of traditional subdivision developments.
- C.** To provide a more efficient and aesthetic use of open space by allowing developers to reduce lot sizes, while maintaining the residential density required in the underlying zoning district.

- D. To allow a more flexible and economical residential layout, street and utility design.
- E. To assure the permanent preservation of open space, agricultural land, rural lands and natural resources.

Section 12.04 Eligibility Criteria

To be eligible for Open Space Community consideration, the applicant must present a proposal for residential development that meets each of the following:

- A. **Recognizable Benefits.** An Open Space Community shall result in a recognizable and substantial benefit, both to the resident of the community and to the overall quality of life in the Township.
- B. **Minimum Project Size.** The minimum size of an Open Space Community shall be ten (10) acres of contiguous land.
- C. **Open Space.** The proposed development shall contain a minimum fifty percent (50%) of the gross area of the site as dedicated open space held in common ownership, with evidence of a plan for perpetually preserving the open space. Documents shall be presented that bind all successors and future owners in fee title to open space commitments made as a part of the proposal.
- D. **Road Access.** Ingress and egress to the proposed development must meet Livingston County Road Commission Standards.
- E. **Unified Control.** The proposed development shall be under single ownership or control, such that there is a single person or entity having proprietary responsibility for the full completion of the project. The applicant shall provide sufficient documentation of ownership or control in the form of agreements, contracts, covenants, or deed restrictions that indicate that the development will be completed in its entirety as proposed. This provision shall not prohibit a transfer of ownership or control, provided notice of such transfer is provided to the Township and the land uses continue as approved in the Open Space Community plan.
- F. **Master Plan.** The proposed development shall be consistent with and further the implementation of the Township's master or comprehensive plan.

Section 12.05 Principal Permitted Uses

- A. Detached single family residential units and two family residential dwelling units. Two family residential dwelling units shall number no more than twenty five (25) percent of the total number of dwelling units.
- B. In developments of twenty-five (25) acres or more, up to fifty (50) percent of the dwelling units may be attached, single family residential dwelling units or multiple family residential dwelling units. Attached single family residential dwelling units and multiple family residential dwelling units shall not exceed four (4) dwelling units in one (1) building.
- C. Agriculture, horticulture or floriculture excluding farm based agribusiness and intensive livestock raising operations, stables or veterinary hospital or clinics.
- D. Accessory uses and buildings incidental to the principal permitted uses including recreational activities which occur on common open space lands only

Section 12.06 Design Standards

A proposed Open Space Community shall comply with the following project design standards:

- A. **Location of Development.** An Open Space Community may be approved upon any Township land that is zoned AR Agricultural Residential or R Residential.
- B. **Base Zoning Regulations.** Unless specifically waived or modified by the Planning Commission, all Zoning Ordinance requirements for the underlying zoning district, except for minimum lot area, and other Township regulations shall remain in full force.
- C. **Open Space Requirements.**
 - 1. An Open Space Community shall maintain a minimum of fifty percent (50%) of the gross area of the site as dedicated open space held in common ownership.
 - 2. The dedicated open space in a proposed community shall not include any land area that is devoted to a residential unit, minimum lot size, an accessory use, vehicle access, vehicle parking, a roadway, an approved land improvement or any land that has been or is to be conveyed to a public agency.

3. Dedicated open space may include any land area that is devoted to recreation, conservation, agricultural uses, secondary emergency vehicle access or that is preserved in an undeveloped state. Dedicated open space should consist of the land area on the parcel that contains the most significant natural features. Significant wildlife habitats, sensitive environmental lands and scenic vistas are to be protected through dedicated open space. Determination of open space significance is based upon a combination of factors including soil type, topography, existing vegetation and habitat historic use of the land, size of parcel, use of land for agricultural purposes and character of the surrounding area. If open space areas of significance are determined by the Planning Commission, a condition of approval may require that the open space community plan preserve these areas in a natural state and adequately protect them as nature preserves or limited access areas.
4. Any structure or building accessory to a recreation, conservation or an approved agricultural use may be erected within the dedicated open space. These accessory structure or building shall not exceed, in the aggregate, one percent (1%) of the required open space area.
5. Open space intended for recreation or use by the residents shall be easily accessible to pedestrians. Accessibility shall meet the needs of the handicapped and older citizens.
6. The dedicated open space shall be set aside by the developer through an irrevocable conveyance that is found acceptable to the Planning Commission, such as:
 - a. Recorded deed restrictions;
 - b. Covenants that run perpetually with the land; or
 - c. A conservation easement established per NREPA, 1994 PA 451 (Part 21, subpart 11), MCL 324.101 et seq.

Such conveyance shall assure that the open space will be protected from all forms of development, except as shown on an approved site plan, and shall never be changed to another use. Such conveyance shall:

- a. Indicate the proposed allowable use(s) of the dedicated open space.

- b. Require that the dedicated open space be maintained by parties who have an ownership interest in the open space.
- c. Provide standards for scheduled maintenance of the open space.
- d. Provide for maintenance to be undertaken by the Township of Conway in the event that the dedicated open space is inadequately maintained or is determined by the Township to be a public nuisance, with the assessment of cost upon the property owners.

D. Dwelling Density.

- 1. The total number of dwelling units permitted in an Open Space Community shall be determined by submittal of a conventional subdivision plan that identifies buildable land areas and residential lots that are based on the minimum lot sizes of the underlying zoning designation. Planning Commission review of the conventional subdivision plan will determine the maximum number of residential lots for the Open Space Community. Unless otherwise permitted by this section, the maximum residential density specified for the underlying zoning district shall not be increased.
- 2. Lots not served by a public or common sanitary sewer shall be at least 21,780 square feet in area (one-half acre). Lots served by public or common sanitary sewers shall have a minimum lot area of 10,890 square feet (one-quarter acre).
- 3. Lots may vary in size shall not consume, on average, more than two (2) acres per dwelling including roads. The front, rear and side yard setbacks of a lot may be staggered to provide for maximum variety in the size of such yards.
- 4. Dwelling units shall be grouped so that open space within a development is at least fifty percent (50%) of the gross area of the site. Whenever possible, dwelling units should contain rear yards that are contiguous to the open space.
- 5. No more than ten (10) dwelling units per cluster shall be permitted within a development in order to maintain rural character.
- 6. Open spaces between clusters, including those spaces used as recreation areas, shall be at least one hundred (100) feet wide and shall be protected with an irrevocable conveyance that is found acceptable to the Planning Commission.

7. Notwithstanding the above, if the community is constructed with a deceleration lane on the public highway, hard surface roads with curbs and gutters, sidewalks and/or open space between the public highway and the community of three hundred (300) or more feet, the community may have more than ten (10) dwelling units per cluster and a bonus density up to twenty-five (25) percent. Permitted clustering and appropriate density bonuses shall be determined by the Planning Commission based on the number, extent, and quality of additional benefits provided under this subsection.

E. Location of Lots.

1. Residential lots shall be laid out to the greatest extent feasible to achieve the following objectives:
 - a. On the most suitable soils for subsurface septic disposal.
 - b. Within the edge of woodland contained on the parcel or along the far edge of open fields adjacent to any woodland.
 - c. In locations least likely to block or interrupt scenic vistas, as seen from public roadways(s).

F. Regulatory Flexibility. To encourage flexibility and creativity consistent with the Open Space Community concept, the Planning Commission may grant specific departures from the requirements of the Ordinance for yard, lot and bulk standards as a part of the approval process. These departures from the requirements shall not increase the number of dwelling units per cluster unless otherwise permitted by this section. Any regulatory modification shall be approved through a finding by the Planning Commission that the deviation shall result in a higher quality of development than would be possible using conventional zoning standards. Regulatory modifications are not subject to variance approval of the ZBA. No part of the Open Space Community plan may be appealed to the ZBA.

G. Roadway.

1. The nearest edge of any entrance or exit drive shall be located no closer than two hundred (200) feet from any existing street or road intersection (as measured from the nearest intersection right-of-way line).

2. Construction of private roads or private access drives as a means of providing internal road access and circulation is encouraged. Private roadways within an Open Space Community shall meet the design requirements of Article 16, Access Management and Private Road Standards.

H. Landscaping and Buffering.

1. Buffer zones at least one hundred (100) feet in width shall be required between residential and agricultural areas and shall be planted with fast growing native shrubs and trees to create an effective barrier separating yards from fields and pastures.
2. All dwellings, accessory structures and roadways shall be no less than one hundred (100) feet from lakes, ponds, streams and wetlands. The one hundred (100) foot area shall be part of the dedicated open space and shall not be in private ownership.
3. Existing county roadway frontage shall be preserved by a one hundred (100) foot buffer of native plants and trees located between the roadway and any dwellings and accessory structures in the development.
4. Landscaped or natural vegetative cover shall provide a screened buffer between Open Space Community dwellings and neighboring properties.

Section 12.07 Project Standards for Approval

In considering any application for approval of an Open Space Community site plan, the Planning Commission shall make their determinations on the basis of the standards for special uses set forth in Article 13 and site plan approval set forth in Article 14, as well as the following standards and requirements:

- A. The overall design and land uses proposed in connection with an Open Space Community shall be consistent with the intent of the Open Space Community concept, as well as with specific design standards set forth in this Article.
- B. The proposed Open Space Community plan shall set forth in detail, all specifications with respect to height, setbacks, density, parking, circulation, landscaping, views, and other design features that illustrate the relationship of the proposed development to surrounding properties, the character of the site, and the land uses. In determining whether this requirement has been met, consideration shall be given to:

1. The bulk and placement of proposed structures.
 2. Vehicular and pedestrian circulation.
 3. The location and screening of proposed dwelling units from neighboring property.
 4. The provision of landscaping and other site amenities.
- C. The usefulness of open space intended for recreation, conservation or agricultural purposes shall be determined by the size, shape, topographic and location requirements of the particular purpose for the open space.
- D. Open space shall include irreplaceable natural features located on the parcel, such as, but not limited, to stream beds, wetlands, significant stands of trees and individual trees of significant size. The protection of these natural features shall comply with all applicable environmental protection laws and regulations.
- E. The suitability of open space intended for scenic value purposes shall be determined by its visibility from a significant number of units or buildings.
- F. Diversity and originality in lot layout and individual building design shall be encouraged to achieve the best possible relationship between the development and the land.
- G. The Open Space Community shall be designed to minimize the impact of traffic generated by the proposed development on surrounding uses.
- H. The proposed Open Space Community shall comply with all applicable federal, state and local regulations.

Section 12.08 General Requirements

- A. An Open Space Community shall require the submission of a conventional subdivision concept plan (a conceptual drawing, not a full site plan) that identifies buildable land area and residential lots that are based on the minimum lot sizes of the underlying zoning designation. Planning Commission review of the conventional subdivision concept plan will determine the maximum number of residential lots for the Open Space Community.
- B. Final approval of an Open Space Community proposal shall not require, nor shall it be construed as an amendment to the Zoning Ordinance. All improvements and uses of the site shall be in

conformity with the approved Open Space Community site plan and comply fully with any conditions.

- C. The applicant shall record an affidavit with the Livingston County Register of Deeds containing the full legal description of the project site, specifying the date of final Township approval and declaring that all improvements will be carried out in accordance with the approved Open Space Community plan unless an amendment is adopted by the Township. In addition, all deed restrictions and easements shall be duly filed with the county register of deeds and copies of recorded documents presented to the Township.
- D. In addition to final approval of the Open Space Community site plan in accordance with Article 14, a special land use permit shall be obtained in the accordance with Article 13. When reviewing an application for special use permit for an Open Space Community, the Planning Commission shall hold the public hearing. It shall be the responsibility of the applicant to obtain all other applicable township, county, state or federal permits.
- E. If construction has not commenced within twelve (12) months of final approval, all Township approvals become null and void. The applicant may apply in writing to the Planning Commission for an extension, not to exceed twelve (12) months. A maximum of two (2) extensions may be allowed.
- F. Any property owner who fails to maintain an approved site design shall be deemed in violation of the use provisions of this Ordinance and shall be subject to the penalties for same.
- G. The Planning Commission may require that a performance guarantee, in accordance with Section 3.06, be deposited with the Township to insure completion of improvements.

Section 12.09 Scheduled Phasing

- A. When proposed construction is to be phased, the project shall be designed in a manner that allows each phase to fully function on its own regarding services, utilities, circulation, facilities and open space. Each phase shall contain the necessary components to insure protection of natural resources and the health, safety and welfare of the users of the Open Space Community and the residents.
- B. Each phase of the project shall be commenced within twelve (12) months of the schedule set forth on the approved site plan. If construction of any phase is not commenced within the approved time period, approval of the plan shall become null and void, subject to the requirements of Article 14, Site Plan Review.

Section 12.10 Revision of Approved Plans

- A. Approved plans for an Open Space Community may be revised in accordance with the procedures set forth in Article 14, Site Plan Review.
- B. Notwithstanding subsection (A), minor changes to an approved Open Space Community plan may be permitted by the Planning Commission following normal site plan review procedures outlined in Article 14, Site Plan Review, subject to the finding of all of the following:
 - 1. Such changes will not adversely affect the initial basis for granting approval;
 - 2. Such minor changes will not adversely affect the overall Open Space Community in light of the intent and purpose of such development as set forth in this Article; and
 - 3. Such changes shall not result in the reduction of open space area as required herein.