

CHAPTER 21

OPEN SPACE PRESERVATION PROJECTS

SECTION 21.01 PURPOSE AND APPLICABILITY. The purpose of this Section is to adopt open space preservation provisions consistent with the requirements of Section 506 of the Michigan Zoning Enabling Act which requires that zoned townships having a population of 1,800 or more and having undeveloped land zoned for residential purposes must adopt zoning regulations to permit “open space preservation” developments.

Under these regulations, a landowner has the option to retain at least 50% of the property as open space and placing dwelling lots on the remaining portion. The number of dwelling structures and lots cannot be more than the number which would be permitted on the land without the open space preservation regulations, nor may the Township require less than the number of dwelling lots which would be permitted on the land without the open space preservation regulations.

This Section shall only apply to open space preservation projects supporting single family detached residential dwellings in qualifying residential Zoning Districts and where no open space option has been previously exercised.

SECTION 21.02 QUALIFYING CONDITIONS.

- (a) The option to develop land under the provisions of this Section may be exercised only if each of the following conditions is satisfied:
 - (1) The land is located in the AG, R-1, and R-1a Zoning Districts, where as of the effective date of these provisions, if the land is not served by a public sewer system, the zoning will permit development at a density equivalent to only two or fewer single family dwelling units per gross acre; or if the land is served by a public sanitary sewer system, the zoning only permits development at a density equivalent to three or fewer single family dwelling units per gross acre.
 - (2) The open space cluster approach to development of land under this Chapter as defined by the number of dwelling units proposed, shall not depend upon the extension of a public sanitary sewer or a public water supply system to the land, unless conventional development of the land (without the exercise of the clustering option provided by this Chapter) would also depend on such extension; and
 - (3) The clustering option provided pursuant to this Chapter shall not have previously been exercised with respect to the same land.
- (b) If all of the preceding conditions are satisfied, the land may be developed, at the option of the landowner, in accordance with the provisions of this Chapter.

SECTION 21.03 PERMITTED USES. Only single family detached residential dwellings and accessory land uses thereto, as permitted in the underlying zoning district in which the land is located, shall be permitted on land developed or used pursuant to the provisions of this Chapter.

SECTION 21.04 PRELIMINARY CONFERENCE. Prior to preparing a formal application, the applicant is required to have a preliminary conference with the Township Zoning Administrator. The purpose of the conference is to discuss the proposed development and to review the procedures, standards and requirements of the Township. The applicant is encouraged to present concept plans, site data and other information that will assist in explaining the proposed development. Statements made in the conferences shall not be legally binding to the applicant or Township.

SECTION 21.05 APPLICATION AND REVIEW PROCEDURE; REVIEW BY THE PLANNING COMMISSION. Except as specifically provided in this Chapter, the application requirements and review procedures for land proposed to be developed pursuant to the provisions of this Chapter shall be those governing Site Plans, as outlined in Chapter 19, Site Plan Review except that final review and approval of a site plan for a project submitted under the provisions of this Chapter shall in all cases rest with the full Planning Commission.

- (a) Required Submittals: In addition to the site plan application materials required by Chapter 19, an application for the development of land under the provisions of this Chapter shall include the following:
- (1) **Parallel Plan.** The applicant shall prepare a Parallel Plan for the project consistent with the lot width, setback, area requirements and design criteria of the applicable zoning district of the Heath Township Zoning Ordinance in which the property is located. The Parallel Plan will be used to determine the allowable density/number of home sites for the project. The Parallel Plan may be conceptual in nature but must include at least the following information.
 - a. Date, north arrow and scale, which shall not be more than 1" = 100. The scale shall be the same as the scale utilized for the site plan illustrating the proposed open space preservation project permitted by this Section.
 - b. Location of existing and proposed streets.
 - c. Location of all lots, illustrating the lot area and width of each lot and in compliance with the minimum requirements of the applicable zoning district.
 - d. General layout of utilities necessary to serve the Parallel Plan development including but are not limited to, storm water retention or detention basins, community sewage treatment systems and community water supply facilities.
 - e. If the use of private wells, septic tanks and drain fields is proposed, the applicant shall submit evidence that the ground water supply and septic tank and drain field locations would be approved, or have been approved, by the Allegan County Health Department.

- f. All un-buildable land, which for the purposes of this Chapter include slopes of 20% or greater, regulated and unregulated wetlands, public utility easements, 100 year floodplains, and other similar features which limit or prevent construction of buildings or roads.
- (2) **Determination of Permitted Number of Lots by the Planning Commission.** The Planning Commission shall review the Parallel Plan design to determine the number of lots that could feasibly be constructed following the parallel plan design. This number shall set the maximum density/number of home sites that will be allowable under the Open Space Preservation Project provisions of this Chapter. Taking into account the existence of floodplains, wetlands and slopes in excess of 20% and other similar features which would physically limit or prevent construction of buildings each lot shall contain a contiguous unrestricted building footprint area of at least 6,000 square feet (exclusive of all required setbacks and yards) in order for the lot to be considered and found “developable” by the Planning Commission
- (3) **Open Space Preservation Project Site Plan.** The site plan for the cluster development option permitted by this Chapter shall include the following minimum information, in addition to that required by Chapter 19 of this Ordinance as applicable to the type of development. :
- a. Date, north arrow and scale which shall not be more than 1”=100’, and, in all cases, the scale shall be the same as that utilized for the Parallel Plan.
 - b. The land area that is proposed to remain in a perpetually undeveloped state and the portions of the land that will be used to support building sites and other improvements.
 - c. The total number of acres and the percentage of each of the following as compared to the total site acreage:
 1. land proposed to remain in a perpetually undeveloped state(open space),
 2. land proposed to be used for residential lot or other building lot development,
 3. land proposed to be used for streets,
 4. land used for access easements and utility use,
 - d. The location of all proposed lots or building envelopes, the lot area and width of each lot, and the proposed front, side and rear yard building setbacks. The number of proposed dwelling lots on the site plan shall not exceed the number of lots on the Parallel plan, as approved by the Planning Commission. This number will be reduced to recognize any proposed non-dwelling structures, as described in 21.07(j).
 - e. The location and type of all proposed structures or improvements that are not dwellings.

f. The location of all septic tanks and drain fields as applicable. The applicant shall submit documentation that the proposed septic tank and drain field location for each lot has been reviewed and is acceptable to the Allegan County Health Department.

(4) **Conservation Easements and Restrictive Covenants.** A draft copy of the proposed conservation easements, plat dedications, restrictive covenants or other legal instruments that are to run with the land shall be submitted. These instruments must have the legal effect of preserving the open space required by this Chapter in an undeveloped state, in perpetuity. In addition, the proposed legal documentation shall:

- a. Indicate the proposed permitted use(s) of the undeveloped open space.
- b. Require that the open space be maintained in perpetuity in an undeveloped condition, without buildings, structures or other improvements, except such engineered drainage improvements, utility lines, riding trails, hiking trails, picnic areas, park or playground equipment, agricultural structures or similar improvements that are approved by the Planning Commission.
- c. Require that the undeveloped open space be maintained by parties who have an ownership interest in the undeveloped open space.
- d. Provide standards and limitations for maintenance of the undeveloped open space, including pruning and harvesting of dead and diseased trees and new plantings.

(5) **Compliance with Street Standards.** If the development is to be served by public streets, the design, layout and construction of the streets will meet the standards of the Alleagan County Road Commission and will be accepted by the Road Commission. If the streets are to be private, the street shall meet the Private Road standards contained in Chapter 22 unless otherwise approved by the Planning Commission.

(b) **Approvals.**

(1) Prior to project approval by the Planning Commission, all proposed legal documents shall be reviewed and approved by the township attorney who shall assure the following:

- a. That the proposed manner of holding title to the preserved open land is acceptable to the Township.
- b. That the proposed restrictions will adequately preserve the natural features and regulate the use of the open land.
- c. That the restrictions can be enforced by all property owners and by the Township.

(2) If an open space preservation project site plan and all other submittals satisfy all requirements of this section and all conditions of approval imposed by the Planning Commission pursuant to Chapter 19 of this Ordinance, the Planning Commission shall approve the proposed project. After approval under this

Chapter, each Open Space Preservation Project that is proposed as a platted subdivision or a site condominium development shall be required to subsequently undergo all plat or site condominium review procedures as applicable thereto.

SECTION 21.06 DEVELOPMENT REQUIREMENTS.

- (a) Required Open Space: At least 50%, of the land proposed for development under the provisions of this Chapter shall remain in a perpetually undeveloped state (i.e., “open space”) by means of conservation easements, plat dedication, restrictive covenants or other legal instrument that runs with the land. Such open space may be dedicated to the public, may be held in common in private ownership or may be privately held by one or more individuals. Each distinct form of open space shall be so designated on the site plan.
- (b) Areas Not Eligible: Because they are considered developed or partially developed the following areas shall not be calculated in meeting the 50% open space requirement as these;
- (1) The area within all public street rights-of-way.
 - (2) The area within all private street easements.
 - (3) Any easement for overhead utility lines, unless it is included within or is adjacent to open space.
 - (4) Unless specifically authorized under these provisions to be located in or on a defined open space area, all of the area within a platted lot, a site condominium unit, or a metes and bounds parcel that is occupied or intended to be occupied by a structure.
 - (5) Off street parking and/or loading areas.
 - (6) Stormwater detention and retention ponds.
 - (7) Golf courses.
 - (8) Community drain fields.
 - (9) 50% of the area of wetlands, creeks, streams, ponds, lakes or other bodies of water.
 - (10) 50% of the area of 100 year floodplains and slopes over 20%.
 - (11) Areas within building envelopes.
- (c) Standards for Open Space: The following standards shall apply to the open space required pursuant to this Chapter:
- (1) The open space may include a recreational trail, picnic area, children’s play area, greenway, linear park, an agricultural use or other use which, as determined by the Planning Commission, is substantially similar to these uses.
 - (2) The open space may be, but is not required to be dedicated to the use of the public.
 - (3) At least 50% of the open space shall be either dedicated to the public or held in common and be available for all residents of the development, subject to reasonable rules and regulations.

- (4) If the land contains a lake, stream or other body of water, the Planning Commission may require that a portion of the open space abut the body of water.
 - (5) A portion of the open space shall be located along the public street abutting the land. The depth of this area shall be at least 50 feet, not including public right-of-way, and this area shall be left in its natural condition or be landscaped to help reduce the view of houses on the land from the adjacent roadway and to preserve the rural view.
 - (6) A portion of the open space held in common shall be reasonably useable by the residents of the land for passive recreational uses such as hiking or picnicking.
 - (7) Open space dedicated to the public or held in common shall be reasonably accessible by safe, convenient and appropriately located pedestrian access points.
 - (8) Open space shall be located so as to preserve significant natural resources, natural features, scenic or wooded conditions, bodies of water, wetlands or agricultural land. If these types of land features are not present on the land, then the open space shall be located along the road frontage as indicated in paragraph (5) or as buffer between other adjacent land uses.
 - (9) Where feasible, open space shall be linked with adjacent open spaces, public parks, bicycle paths or pedestrian paths.
- (d) Use of Open Space: All dwelling units and other structures and improvements shall be located outside that portion of the land designated as open space. However, the Planning Commission, at its discretion, may permit minor structures or improvements to be located in the open space if the structures and/or improvements would be consistent with the designated purpose of the open space. By way of example, park or playground equipment could be permitted on open space designated for recreational use and small semi-permanent agricultural storage structures or animal shelters could be permitted on open space designated for agricultural use.

SECTION 21.07 GENERAL PROJECT DESIGN STANDARDS.

- (a) Water and Sanitary Sewer: Open Space Preservation projects shall be served by a public water supply and a public sanitary sewer system or a private community water supply or private sanitary sewer system as determined appropriate by the Township for the specific development OR by private wells and septic systems subject to the approval of the Allegan County Health Department.
- (b) Minimum Lot Sizes and Setbacks: In order to accommodate both the required open space and the number of lots permitted according to the "Parallel Plan" the Planning Commission shall allow a reduction in the minimum lot size and building setback requirements of the zoning district in which the Open Space Preservation project is located. The minimum lot sizes contained in Table 21-1 shall be required unless it is demonstrated that a waiver is required.
- (c) Compliance with Zoning District: The development of land under this Chapter shall comply with all requirements of this Ordinance applicable to the zoning district in which the land is located, except for the lot size and lot width requirements. The minimum front, side and rear yard setback standards are outlined in Table 21-2.

**Table 21-1
Minimum Lot Size and Lot Width**

<u>Zoning District</u>	<u>Minimum Lot Size</u>	<u>Minimum Lot Width</u> ¹
AG Agricultural District	80,000 square feet ^{2,3}	200 ft.
R-1 Rural Estate District	40,000 square feet ^{1,2,3}	125 feet
R-1a Rural Residential District	20,000 square feet ^{1,2,3}	100 feet

¹ If necessary the Planning Commission may further adjust the minimum lot size and/or lot width requirements to achieve the required 50% open space allotment and the maximum number of lots allowed as demonstrated on an approved parallel plan.

² Subject to individual septic system and domestic well approval of the Allegan County Health Department.

³ Subject to a Heath Township determination of sanitary sewer availability and utility improvement standards for platted and site condominium subdivisions.

**Table 21-2
Required Principal Building Setbacks**

Yard	AG District	R-1 Districts	R-1A District
Front Yard	40 feet	40 feet	40 feet
Side Yard	20 feet min. 50 feet total for both sides	20 feet min. 50 feet total for both sides	15 feet
Rear Yard:	50 feet	40	25 feet
<u>Accessory Buildings:</u> The setback and lot coverage requirements for residential accessory buildings shall be the same as the requirements established for the underlying District.			

- (d) Maximum Number of Lots. The Open Space Preservation project shall contain no more than the maximum number of lots as determined from the Parallel plan approved by the Planning Commission under this Section.
- (e) Perimeter Lots. Notwithstanding any other provision of this Chapter, the Planning Commission may require that the Open Space Preservation project be designed and constructed with lot sizes and setbacks or open space buffers on the perimeter that will create transitional net densities reasonably consistent with the lot sizes and setbacks of adjacent uses (planned or existing).
- (f) Sidewalks. The Planning Commission may in its discretion require sidewalks.
- (g) Grading. Grading shall comply with the following requirements:
 - (1) All graded areas, cuts and fills shall be kept to a minimum. Specific requirements may be placed on the area of land to be graded or to be used for building, and on the size, height, and angles of cut-and-fill slopes and the shape thereof.

- (2) All areas indicated as open space on the approved development plan shall be undisturbed by grading or excavating, except as specifically approved by the Planning Commission.
- (h) Uniform Lot Size. Lots for dwellings in the clustered portion of the development shall be as uniform in area as is reasonably practicable, unless otherwise approved by the Planning Commission.
- (i) Building Footprints/Building Envelopes. The location and area of buildings as proposed by the applicant shall be subject to the review and approval of the Planning Commission. Building envelopes shall not be located on steep slopes, or in positions that will negatively impact wetlands or other environmentally sensitive areas.
- (j) Non-Dwelling Unit Structures. Lots containing non-dwelling structures as permanent principal buildings, such as a clubhouse and its related amenities shall be subject to all requirements of this Chapter applicable to lots containing dwellings and shall further be subject to all other requirements of this Ordinance and other Township ordinances applicable to the type of structure proposed. If principal structures other than dwellings, such as a clubhouse, horse stable or community pool, are constructed on a lot in the clustered portion of the land, the number of dwelling lots permitted in the clustered portion of the land shall be reduced as follows:
- (1) The area occupied by the principal non-dwelling structure(s), shall be calculated and then divided by the minimum required lot area for dwellings. If the number derived is a fraction, it shall be rounded up to the nearest whole number.
 - (2) The number calculated is then subtracted from the lot yield number of dwelling lots permitted (as determined by the approved parallel plan) in the open space preservation project in the absence of the non-dwelling structures to determine the maximum number of dwelling lots permitted along with the non-dwelling structures included.
- (k) Private Streets/Driveways.
- (1) All streets within an open space preservation project shall be located away from areas of steep slopes.
 - (2) Private streets within a clustered development shall conform to the private street requirements of this Ordinance. The Planning Commission may, however, following consultation with the Township Fire Chief and other public safety officials as appropriate, allow a reduction in the minimum right-of-way and roadbed width requirements for all or a portion of the street to minimize the removal of vegetation or alteration of natural slopes. The Planning Commission may require that portions of private streets with reduced widths be designated as one-way only.
 - (3) Provisions for shared driveways by individual units shall be made where appropriate to minimize removal of vegetation or alteration of existing slopes.
- (l) Other Laws. The development of land under this Chapter is subject to all other applicable Township ordinances, state and federal laws, rules and regulations, including, but not

limited to, rules relating to suitability of groundwater for on-site water supply for land not served by a public water system, and rules relating to the suitability of soils for on-site sewage disposal for land not served by public sanitary sewers.

SECTION 21.08 AMENDMENTS TO AN APPROVED SITE PLAN.

- (a) An approved open space preservation project site plan and any conditions imposed upon its approval shall not be changed except upon the mutual consent of the Planning Commission and the applicant, except as otherwise stated below with respect to a minor change.
- (b) A minor change may be approved by the Zoning Administrator who shall notify the Planning Commission of the minor change and that such change does not substantially alter the basic design or conditions required for the plan by the Commission.

The following items shall be considered minor changes:

- (1) Reduction of the size of any building, building envelope or sign.
 - (2) Movement of buildings or signs by no more than ten feet.
 - (3) Plantings approved in the landscaping plan may be replaced by similar types of plantings.
 - (4) Changes requested by the Township for safety reasons.
 - (5) Changes which will preserve natural features of the land without changing the basic site layout.
 - (6) Other similar changes of a minor nature proposed to be made to the configuration, design, layout or topography of the site development plan which are deemed by the Zoning Administrator to be not material or significant in relation to the entire site and which the Zoning Administrator determines would not have any significant adverse effect on the development or on adjacent or nearby lands or the public health, safety and welfare.
- (c) The Zoning Administrator may refer any decision regarding any proposed change in an approved site plan to the Planning Commission for review and approval (regardless of whether the change may qualify as a minor change). In making a determination whether a change is a minor change, or whether to refer a change to the Planning Commission for approval, the Zoning Administrator may consult with the chairperson of the Planning Commission.
 - (d) Should the Zoning Administrator determine that a requested change in the approved site plan is not minor, re-submission to the Planning Commission for an amendment shall be required and the consideration thereof shall take place in the same manner as for an original application.