

CHAPTER 22
OPEN SPACE PRESERVATION PROJECTS

SECTION 22.01 PURPOSE AND APPLICABILITY. Act No. 177 of the Public Acts of Michigan of 2001 (“Act 177”) 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 dwellings on the remaining portion. The number of dwellings cannot be more and may not be required to be less than the number which would be permitted on the land without the open space preservation regulations.

The purpose of this Article is to adopt open space preservation provisions consistent with the requirements of Act 177.

Unless otherwise amended, this Chapter shall only apply to single family residential open space preservation projects in the A1, A2, R-1 and R-2 Zoning Districts.

SECTION 22.02. REVIEW PROCEDURE. An open space preservation development shall be reviewed by the Planning Commission according to the requirements and general standards for site plan review contained in Chapter XIVA of this Ordinance except as otherwise provided in this Chapter.

SECTION 22.03 ITEMS SUBMITTED FOR REVIEW.

- (a) Application. The applicant shall submit a completed application form for open space preservation project as provided by Salem Township. The application shall include a fee and may also be required to include an escrow amount to be deposited in an account created for the project for the purposes of reimbursement of review expenses to the Township.
- (b) Open Space Preservation Plan. The applicant shall submit 9 sets of the Open Space Preservation Plan which shall include information required by Section 14.03 of this Ordinance and the following information:
 - (1) The areas devoted to preserved open space.
 - (2) The site development plan shall illustrate the location of all proposed lots and proposed building envelopes and shall indicate the lot area and width of each lot, and the proposed front, side and rear yard building setbacks. The number of proposed lots on the site development plan shall not exceed the number of lots on the Existing Zoning Plan, as approved by the Planning Commission.
 - (3) The total number of acres of land that are proposed for preserved open space, the total number of acres of land that are proposed to be used for dwellings, and the percentage of each, as compared to the total site acreage.
 - (4) The site development plan shall illustrate the location and type of all proposed structures or improvements that are not dwellings.
 - (5) If the open space development will not be served by public sanitary sewer, the applicant shall submit documentation from the Allegan County Health Department

and or Michigan Department of environmental Quality (DEQ) that the soils are suitable for on site septic systems.

- (c) Related Approvals If an open space preservation development is proposed as a platted subdivision or a site condominium, the applicant must also submit all information and follow the procedures required by the Salem Township Subdivision Control Ordinance or the Salem Township Site Condominium Subdivision requirements of this Ordinance, as applicable.
- (d) Existing Zoning Plan. In addition to the information required above, the applicant must also submit a separate **Existing Zoning Plan**.
- (e) This plan is to be prepared for the purpose of demonstrating the number of dwelling units that could be developed on the land under its existing zoning if the open space preservation option provided by this Section were not exercised. The Existing Zoning Plan may be conceptual in nature but shall include at least the following information:
 - (1) Date, north arrow and scale, which shall not be more than 1" = 200 '.
 - (2) Location of streets and utility right-of-way adjacent to and within the site.
 - (3) Location of all lots, illustrating lot area and width of each lot to demonstrate compliance with the minimum requirements of the applicable zoning district.
 - (4) Location of all utilities that would be necessary to serve a development under the Existing Zoning Plan.
 - (5) If development under the Existing Zoning Plan would require the use of septic tanks and drain fields, the applicant shall submit documentation from the Allegan County Health Department that the soils on each proposed lot are suitable for on site disposal systems.
 - (6) The Existing Zoning Plan shall illustrate all un-buildable land, which shall include slopes of 20% or greater, regulated and unregulated wetlands, public utility easements, floodplains, and other similar features which limit or prevent construction of buildings or roads. No more than 50% of the area of designated wetlands, streams, flood plains, slopes in excess of 20%, existing ponds or lakes or other bodies of water may be included in calculating the number of developable lots in an existing zoning plan.

SECTION 22.04 DETERMINATION OF NUMBER OF LOTS. The Planning Commission shall determine whether the Existing Zoning Plan accurately reflects the number of lots that could be developed on the land under its existing zoning if the clustering option provided by this Section were not exercised.

The Commission shall either approve the number of lots illustrated on the Existing Zoning Plan or require the Plan to be revised to accurately reflect the number of lots that could be developed on the land under the standards required for preparing the Existing Zoning Plan in this Section.

SECTION 22.05 OPEN SPACE REQUIREMENTS

- (a) Minimum Open Space. A minimum of fifty (50%) percent of the land proposed for development under the provisions of this Section shall remain in a perpetually undeveloped state (i.e., "open space") by means of restrictions and other legal instruments that runs with the land.

- (1) Common Ownership of Preserved Areas. Any land intended to be used as common area by home owners shall be set aside for their exclusive use. All such lands shall be designated on the site plan and shall be protected by restrictions running with the land. The restrictions shall be reviewed and approved as to wording by the Township Attorney to assure the following:
 - (a) That title to the open space would be held in common by the owners of all dwelling units in the cluster development.
 - (b) That a permanent organization for maintenance and management of such area would be assured by legal documents prior to the issuance of any building permits or the sale of any property.
 - (c) That the restrictions would be sufficient to assure the permanent preservation of the open space.
 - (d) That the restrictions could be enforced by all property owners and by the Township.
- (2) Preserved Areas Not Owned in Common. Land areas which are to be preserved but not held in common ownership shall be designated on the site plan and shall be protected by restrictions running with the land. The restrictions shall be reviewed and approved as to wording by the Township Attorney to 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 would adequately preserve the natural features and regulate the use of the open land.
 - (c) That the restrictions could be enforced by all property owners and by the Township.

(a) Areas Not Counted as Open Space.

- (1) The area within all public or private road rights-of-way.
- (2) Golf course.
- (3) Any easement for overhead utility lines.
- (4) The area within a platted lot, site condominium unit or metes and bounds parcel occupied or to be occupied by a building or structure not permitted to be located in open space.
- (5) Off street parking areas.
- (6) Detention and retention ponds created to serve the project.
- (7) Proposed community drain fields.
- (8) Subject to Planning Commission approval, lakes and ponds created as part of the project may be included in final open space calculations. Existing lakes and ponds shall be excluded from meeting the minimum of fifty (50%) open space requirement unless such lakes or ponds lie entirely within a single development site or lot.

(a) Standards for Open Space. The following standards shall apply to the preserved open space required by this Section:

- (1) Features To Be Preserved. In order to approve a cluster housing proposal, the Planning Commission must determine that the parcel of land contains natural features which would be preserved through the use of cluster development. Such features must include at least one of the following:

- (a) Natural stands of large trees.
 - (b) Natural habitat for wildlife within the developed portion of the property.
 - (c) Unusual topographic features.
 - (d) Productive farmland.
 - (e) Water or wetland areas.
- (2) The open space may include a recreational trail, picnic area, children’s play area, community building or other use which, as determined by the Planning Commission, is substantially similar to these uses.
 - (3) Not less than 50% of the minimum required open space shall be held in common.
 - (4) The open space held in common shall be available for all residents of the development, subject to reasonable rules and regulations.
 - (5) 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.
 - (6) A portion of the open space shall be reasonably useable by the residents of the land for passive recreational uses such as hiking or picnicking.
 - (7) Open space held in common shall be located so as to be reasonably accessible to the residents of the open space development. Safe and convenient pedestrian access points to the open space from the interior of the open space shall be provided.
 - (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.
 - (9) Open space areas held in common shall take into account adjacent public and private open space areas and where possible shall be located and established to provide or facilitate the creation of continuous pathways, open space areas and corridors.

SECTION 22.06 DEVELOPMENT REQUIREMENTS

- (a) Water and Sanitary Sewer. Open Space Preservation projects shall be served by either public or community water and sanitary sewer 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 Existing Zoning 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.
 - (1) The minimum lot sizes shall not be less than the following:

	<u>Target*</u>	<u>Minimum Lot Width*</u>
	<u>Minimum Lot Size</u>	
A1, A2 and R-1 Zones	18,000 square feet	90 feet
R-2 District	12,000 square feet	80 feet

* Conventional lot size requirements are reduced by more than 50% in order to allow the developer to achieve the same number of lots as allowed under the existing zoning and still set aside 50% of the parcel as open space. Where it is shown by soil borings that the allowed number of lots could meet Health Department approval but the above target minimums cannot be achieved on each lot, the Planning Commission may waive the minimum lot size or lot width requirement on a lot by lot basis.

- (2) The minimum front, side and rear yard setback standards as applied to single family homes in the R-2 Low Density Residential District shall apply (Ref. Sec. 7.04).
- (c) Compliance with Zoning District. The development of land under this Section 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 setback requirements.
- (d) (d). Maximum Number of Lots. The Open Space Preservation project shall contain no more than the maximum number of lots as determined from the **Existing Zoning Plan** approved by the Planning Commission under Section 22.04.
- (e) Perimeter Lots. Notwithstanding any other provision of this Section, the Planning Commission may require that the Open Space Preservation development 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 require sidewalks in accordance with the Township's Site Condominium Ordinance and Subdivision Control Ordinance.
- (g) Grading. Grading shall comply with the following requirements:
- (1) To preserve the natural appearance of the land 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 permitted by the Planning Commission.