

Private Ownership of Open Space.

**11.04 COMMON OPEN SPACE DEVELOPMENT OPTION**

A developer and/or land owner who seeks to meet the open space provisions through the set aside of open space under a common ownership shall address the following requirements:

- (1) All dwelling units must be situated in a cluster or clusters that occupy no more than forty (40) percent of the gross acreage. The dwellings may be located on individual subdivided lots or lease parcels, or they may be sighted together on a large lot(s) held in one ownership.
- (2) The limit of cluster shall be delineated on the PRSD plan which shall show private land ownership and common open space as described below.
- (3) There is no limit to the number of permitted dwelling units allowed in one cluster provided the number of dwellings do not exceed the total permitted on the site, as described in Section 11.03 above.
- (4) There is no limit to the size in area of a cluster provided that it not exceed the allowable maximum percentage of forty (40) percent of the total gross acreage of the lease parcel or subdivision.
- (5) The number of clusters permitted in a PRSD shall be limited as follows:

Number of dwellings permitted in the <u>development</u>	Number of clusters permitted in the <u>development</u>
1-5	1
6-10	2
11-15	3
16-20	4
21-25	5
26+	6

- (6) Clusters within the same development shall have a minimum distance of five hundred (500) feet between cluster limits. If this separation distance cannot be met, then dwelling units must be consolidated in fewer clusters.
- (7) Clusters shall incorporate existing buildings, if possible.
- (8) Ownership of Common Open Space

Any of the following methods may be used to preserve, own, and/or maintain open space: developer/owner, homeowners association, dedication in fee simple, dedication of easements, or transfer to a private conservation organization.

- A. Developer/Owner: The developer/landowner may continue to own outright the open space and draft a plan for the mutual use of this space by all property owners and, at the owners' sole discretion, by the public. Such intent and plans for ownership and maintenance shall be submitted to the County Zoning Hearing Board at the time the PRSD is submitted for approval.
- B. Homeowners Association: The open space may be held in common ownership by a homeowners' association. Such ownership shall be subject to all of the provisions for homeowners associations set forth in Article VII of the Pennsylvania Municipalities Planning Code.
- C. Fee-Simple Dedication: A municipality may, but shall not be required to, accept any portion or portions of the open space provided: (1) such land shall be freely accessible to the public; (2) there shall be no cost to the municipality involved; (3) the municipality agrees to and has access to maintain such lands; and (4) the open space shall be in an acceptable condition to the municipality at the time of transfer with regard to size, shape, location and improvement.
- D. Dedication of Easements: A municipality may accept, but shall not be required to accept, easements to any portion or portions of the open space. In such cases, the land remains in the ownership of the individual, or homeowners association while the easements are held in public ownership. The municipality may require this method where it deems this to be the most appropriate way of preserving land in open space.
- E. Transfer to a Private Conservation Organization: With permission of the County, (which shall not be unreasonably withheld) an owner may transfer either the fee simple title, with appropriate deed restrictions running in favor of the County or easements, to a private, non-profit organization, among whose purposes is to conserve open space land and/or natural resources provided that: (1) the organization is acceptable to the County and is a bona fide conservation organization with perpetual existence; (2) the conveyance contains appropriate provisions for proper reverter or retransfer in the event that the organization becomes unwilling or unable to continue carrying out its functions; and (3) a road and common open space maintenance agreement acceptable to the County is entered into by the developer and the organization

#### 11.05 PRIVATE OWNERSHIP OF OPEN SPACE

The landowner or developer shall have the option to sell and/or develop lots based on the private ownership of parcels in the PRSD provided they meet the

density requirements set forth in Section 11.03(3).

- (1) The principle of open space shall be maintained and no more than forty (40) percent of the gross acreage of an individual parcel may be developed. Plans to preserve as open space the remaining sixty (60) percent of these parcels, including agreements to be executed by the buyer or user to insure such an open space requirement, shall be submitted with the PRSD application.
- (2) To the greatest extent possible the private open space to be set aside by the developer and the individual lot owner or user shall be contiguous with the open space of adjoining tracts. Such massing of private open space may not be possible where the size and/or location of the parcel, the terrain, or other natural features make it impracticable. In such an event and provided he has tried to comply with the contiguous open space requirement, the landowner, and/or developer, shall communicate the particular circumstances and his selected alternative to the County Zoning Hearing Board.
- (3) At his option, however, the landowner and/or developer may choose to sell or develop any number, or percentage, of the permitted number of lots if he should choose, according to the cluster and open space requirements of Section 11.03. In such lots the landowner or developer must conform to all provisions of Section 11.04, Common Open Space Provisions.

#### **11.06 LOCATION, DESIGN AND LAYOUT OF COMMON OPEN SPACE**

- (1) The open space shall be maintained permanently in a natural vegetative state, except for: forestry uses; firewood cutting; limited view openings; construction of necessary access roads; utility corridors; and improvement of wildlife habitat.
- (2) No buildings are permitted in the common open space.
- (3) Location of common open space shall incorporate as much as possible water resources or other unique features.

#### **11.07 DEED RESTRICTIONS AND COVENANTS**

Deed restrictions, in the form of covenants running with the property, shall be recorded with the Clinton County Recorder of Deeds. All deeds shall refer to the covenants. Proof of such recorded restrictions shall be submitted to the County prior to issuance of any permits. Such restrictive covenants shall address the following issues:

- (1) Building shells shall be completed within one (1) year of commencement of construction during which period temporary living arrangements are permitted. Following the one (1) year period, the County may grant up to two (2) six-month extensions. A Zoning Permit must be secured and conspicuously posted at the site during this period.

- (2) Soil disturbance shall be prohibited within two hundred (200) feet of watercourses, wetlands or lakes.
- (3) Total site disturbance shall be limited to one (1) acre in addition to the building square footage area, and access areas.
- (4) Common open space lands shall remain free of buildings and the natural environment of the open space shall be preserved.
- (5) The cost and responsibility of maintaining common open space shall be borne by the property owner or designated organization. If the open space is not properly maintained, the County may assume responsibility and maintenance in accordance with Article VII of the Pennsylvania Municipalities Planning Code.
- (6) Provisions for establishing private rights-of-way for the use of:
  - A. Lot owners, their guests, heirs and assigns;
  - B. Emergency response;
  - C. Inspection of premises by County Zoning Officer and Municipal Sewage Enforcement Officer.
- (7) The location and extent of utility installation shall be the sole responsibility of the applicable utility and property owner.
- (8) Each property owner shall keep his lot free of trash and junk and shall maintain structures in a good state of repair.
- (9) Temporary living arrangements including recreational vehicles as defined in Article III of this Ordinance are allowed for a maximum of one hundred twenty (120) days per year.

**ARTICLE XII**

**SPECIAL EXCEPTIONS**

**12.00 SPECIAL EXCEPTIONS**

For any use permitted by special exception, a special exception must be obtained from the County Zoning Hearing Board. Unless otherwise specified or specifically extended by the County Zoning Hearing Board, a special exception authorized by the Board expires if the applicant fails to obtain, where required to do so, a zoning permit within six (6) months of the date of the authorization of the special exception.

**12.01 REFERRAL TO PLANNING COMMISSION**

Where the County Zoning Ordinance has stated special exceptions to be granted or denied by the County Zoning Hearing Board pursuant to the express standards and criteria, the County Zoning Hearing Board shall hear and decide request from such special exceptions in accordance with such standards and criteria. All applications for a special exception shall be referred to the County Planning Commission who shall make a study thereof and recommendation thereon to the Board within thirty (30) days from the date of the receipt of said application by the County Planning Commission.

**12.02 REFERRAL TO COUNTY ZONING HEARING BOARD**

The County Zoning Hearing Board may grant a special exception if the use meets all standards and criteria in this Ordinance and the following general provisions:

- (1) Purpose - The purpose of the proposed use must be consistent with the County's community development objectives.
- (2) Compatibility - The proposed use shall be in the best interest of properties in the general area.
- (3) Suitability - The proposed use shall be suitable for the population served, frequency of use, adequacy of space and traffic generation.
- (4) Serviceability - Assurance shall be made as to the adequacy and availability of utility services such as sanitary and storm sewers, water, trash and garbage collection and disposal.
- (5) Accessibility - The proposed use shall provide adequate ingress and egress, interior circulation of both pedestrian and vehicles.
- (6) Water Supply - The applicant must establish that there is an adequate water supply in accordance with Section 5.10 of the Clinton County Subdivision and Land Development Ordinance.

- (7) Drainage - The applicant must establish compliance with drainage requirements of Section 5.12 and Section 5.13 in the Clinton County Subdivision and Land Development Ordinance.
- (8) Sewage - The applicant must establish that adequate provisions will be made to dispose of the sewerage consistent with the Pennsylvania Department of Environmental Resources.
- (9) In granting a special exception, the Zoning Hearing Board may attach other reasonable conditions and safeguards it deems necessary to meet the purposes of this Ordinance.

The applicant shall have the duty of presenting evidence supporting the required findings. The burden of persuasion shall be upon the applicant as to the requirements herein.

The County Zoning Hearing Board has the right to perform or have performed by a professional consultant relevant investigations or studies to assure the public safety, health and welfare and require the costs to be borne by the applicant.

Parties before the County Zoning Hearing Board who object to the special exception application shall have the duty of presenting evidence on the general effect of a proposed special exception if the objecting parties desire the County Zoning Hearing Board to consider the following issues:

- (1) That the grant of the special exception shall not materially increase traffic congestion in the roads and highways, nor cause nor encourage commercial or industrial traffic to use residential streets, so as to pose a substantial threat to the health and safety of the community;
- (2) That adequate water, sewage, storm drainage, fire and police protection and other public requirements can not be provided for the use;
- (3) That overcrowding of land or undue congestion of population will result thereby;
- (4) That the use of adjacent land and buildings will be discouraged and the value of the adjacent land and buildings will be impaired by the location, nature and height of buildings, walls and fences.
- (5) That the proposed use will adversely affect the health, safety or welfare of the general public.

Parties before the County Zoning Hearing Board who object to the special exception application shall have the duty of presenting evidence on the general policy concerns arising from the proposed special exception if the objecting parties desire the Zoning Hearing Board to consider the following issues:

- (1) That the location of the use, including location with respect to the existing or future streets giving access to it, is not in harmony with

the orderly and appropriate development of the zoning district in which the use is to be located;

- (2) That the nature and intensity of the operations involved are not in harmony with the orderly and appropriate development of the zone in which the use is to be located;
- (3) That the overall effect thereof shall not be in harmony with the County Comprehensive Plan.

Mere allegations by objecting parties of an adverse impact on general policy concerns shall not be considered evidence. Objecting parties desiring findings to be made on any of the matters set forth in this subsection must present into evidence facts which support a finding of an adverse impact on general policy concerns. Upon presentation of such evidence by objecting parties, the applicant shall have the opportunity to present rebutting evidence on these issues. In the event that the objecting parties have properly raised any issue under this subsection, the burden of persuasion shall be upon the objecting party.

The County Zoning Hearing Board shall make findings in writing within the time period allowed under the applicable provisions of the Pennsylvania Municipalities Planning Code and this Ordinance.

#### **12.03 CONDITIONS FOR GRANTING A SPECIAL EXCEPTION**

In granting a special exception, the County Zoning Hearing Board may attach such reasonable conditions and safeguards in addition to those expressed in this Ordinance, considered necessary to implement the purposes of this Ordinance, including conditions which are more restrictive than those established for other uses in the same district and may require among others and where appropriate the following:

- (1) Interior drives and an automobile parking arrangement that prevents blockage of vehicles entering or leaving the site and minimal conflicts between pedestrian/ vehicular and vehicular/vehicular points of intersection or contact and/or landscape barriers.
- (2) Areas for loading and unloading delivery trucks and other vehicles and for the servicing of shops by refuse collection, fuel and other service vehicles and shall be so arranged that they may be used without blockage or interference with the use of accessway of automobile parking facilities.
- (3) Screened storage of any proposed outside materials and screened separation between mix use in conformance with this Ordinance.
- (4) Landscaping of any part or portion of the site which is not used for building, other structures, loading or parking spaces and aisles, sidewalks and designated storage areas to:
  - A. Restrict blowing trash;

- B. Retain and absorb surface water runoff;
- C. Deter improper and unsafe access to the site by the public.

- (5) Any proposed display of signs which does not constitute a hazard to public safety by reason of location, content, coloring, or manner of illumination or by any other display method so as to obstruct or detract vision at drive or free ingress and egress from a site, window, fire escape or door.
- (6) Adequate easements or rights-of-way for drainage and utilities.
- (7) Positive drainage away from the buildings and proper surface water drainage so as to prevent ponding or the erosion and flooding of abutting properties and street.
- (8) Appropriate stormwater and soil erosion and sedimentation measures must be taken.
- (9) Protection and mitigation measures to assure the integrity of individual or public water systems.

#### **12.04 REQUIREMENTS FOR SUBDIVISION AND LAND DEVELOPMENT APPROVAL**

Within six (6) months of receiving special exception approval from the Clinton County Zoning Hearing Board, the landowner, where required to do so, shall apply for land development plan approval as stipulated in the Clinton County Subdivision and Land Development Ordinance.

## **ARTICLE XIII**

### **NONCONFORMING USES**

#### **13.00 NONCONFORMING STRUCTURES**

Any nonconforming use or structure legally existing at the time of the adoption of this Ordinance or which is created whenever a District is changed by amendment hereafter, may be continued, altered, reconstructed, changed, sold, or maintained even though it does not conform to the regulations of the District in which it is located, except as provided below. It is the intent of this Ordinance to permit these nonconformities to continue until they are abandoned. The Zoning Officer may identify and register the nonconforming uses and structures existing as of the effective date of this Ordinance, to provide written assurance of the right to continue the use.

#### **13.01 NONCONFORMING STRUCTURE ALTERATIONS**

Repairs and structural alterations may be made to a nonconforming building or a building occupied by a nonconforming use. If the building is damaged by fire, flood, or other natural causes, it may be reconstructed, restored, or used as before provided that:

- (1) Work shall commence within one (1) year of the damage.
- (2) Reconstruction shall not exceed the size, bulk, and area that existed prior to the damage, unless approved by the Zoning Hearing Board.
- (3) If the nonconformity is located within the 100 year floodplain, new construction shall comply with all of the requirements contained in the applicable municipal floodplain ordinance.

#### **13.02 ABANDONMENT**

If any nonconforming use or structure is abandoned for a period of one (1) year, the future use of such building or land shall be in conformity with the District regulations. A nonconforming use shall be judged as abandoned when there occurs a cessation of any such use or activity by an apparent act or failure to act on the part of the tenant or owner to reinstate such use within a period of one (1) year from the date of cessation or discontinuance.

#### **13.03 EXTENSION, ALTERATIONS, ADDITIONS**

Extension, alterations, and additions may be made to nonconforming structures or uses provided that they do not extend the use or structure by more than fifty (50) percent of the area occupied by such use at the effective date of this Ordinance; that such non-conforming use or structure is not located in the Nature Conservation (NC) District; the Zoning Hearing Board approves such proposed extension or expansion; and provided further that any extensions or enlargements

shall conform to the yard and height regulations of the District in which it is situated and, in the case of a nonconforming use, be immediately adjacent to the existing non-conforming use.

#### **13.04 RESTORATION**

A nonconforming structure which has been damaged or destroyed by fire or other causes to an extent of not more than seventy-five (75) percent of its market value or a nonconforming structure which has been legally condemned may be reconstructed provided that:

- (1) The reconstructed structure shall not exceed in height, area, and volume the structure destroyed or condemned.
- (2) The reconstruction shall be commenced within one (1) year from the date the structure was destroyed or condemned and shall be carried on without interruption.

#### **13.05 OTHER NONCONFORMING USES**

A nonconforming use of a building or land may be changed to a nonconforming use of the same or a more restricted classification. Whenever a nonconforming use of a building or land has been changed to use of a more restricted classification or to a conforming use, such use shall not thereafter be changed to a use of a less restricted classification.

#### **13.06 EXPANSION OF NONCONFORMING USES**

A nonconforming use may be extended, provided expansion is part of normal operations and provided that:

- (1) Any extension shall take place only on the lot or contiguous lots held in the same ownership as that existing at the time the use became nonconforming.
- (2) No nonconforming use shall be extended to displace a conforming use.
- (3) Any extension shall conform with the regulations of the District in which it is located.
- (4) For nonconforming uses whose normal operations involve natural expansion (quarries, landfills, cemeteries, etc.), expansion of area shall be permitted by right up to fifty (50) percent of the volume or area of the non-conformity; for expansion beyond fifty (50) percent, a special exception shall be required.

#### **13.07 NONCONFORMING LOTS**

Any nonconforming lot legally existing at the time of the adoption of this Ordinance or which is created whenever a District is changed by amendment