

CHIKAMING TOWNSHIP
BERRIEN COUNTY, MICHIGAN

PROPOSED ORDINANCE TO AMEND THE TOWNSHIP ZONING ORDINANCE

ARTICLE 20-A
OPEN SPACE PRESERVATION DEVELOPMENT

I. Intent

This article contains standards and procedures for review and approval of "Open Space Preservation Developments" that meet the criteria for open space preservation development design set forth in Sec. 16h.(1)(a)-(d) of the Township Zoning Act, P.A. 184 of 1943, as amended by P.A. 177 of 2001. The purpose of these standards and procedures is to:

- A. Encourage the use of Township land in accordance with its character and adaptability and the goals and objectives of the Township Master Plan;
- B. Assure the permanent protection of open space, agricultural lands, and natural resources from development pressures;
- C. Encourage development designs that preserve traditional southwest Michigan rural, countryside views along major road corridors;
- D. Provide passive recreational facilities within a reasonable distance of all residents of the Open Space Community development;
- E. Allow innovation and greater flexibility in the design of residential developments;
- F. Facilitate the construction and maintenance of streets, utilities, and public services in a more economical and efficient manner that is less damaging to the environment;
- G. Ensure compatibility of design and use between neighboring properties;
- H. Encourage a less sprawling form of development, thus preserving open space as undeveloped land;
- I. Connect open space areas on adjacent developments to create a network of green space and habitat area throughout the community, and where appropriate provide paths, trails, or greenways between these areas; and
- J. To encourage the use of this tool consistent with the purpose and intent of this Ordinance.

These regulations are intended to result in creative development in a manner that reflects the rural character of the community and protects the natural features of the surrounding area through the creation of open space areas and the clustering of development areas within a project site. This Article is not intended as a device for ignoring the Zoning Regulations of the Township, the standards set forth therein, nor the planning concepts upon which the Zoning Ordinance has been based.

These regulations are intended to result in a specific development substantially consistent with Zoning Ordinance standards, yet allow for modifications from the general standards to insure appropriate, fair, and consistent decision making.

II. Scope and Applicability

For the purposes of this Article, an “Open Space Preservation Development” is defined as a predominantly residential development in which dwelling units are placed together into one or more groupings within a defined project area without increasing the overall project density unless granted a bonus per the standards below. The dwellings are clustered together, and the development includes substantial open space that is perpetually protected from development. A minimum of fifty percent (50%) of the land area shall remain perpetually in an undeveloped state as open space on the property.

III. By Right Eligibility

Open Space Preservation Development is permitted by right in the zoning districts identified in Section VI.A below. A proposed Open Space Preservation Development shall be required to satisfy those development standards that would be applied to a conventional development in the same district, except that a parallel plan (Section V.A) shall be required in order to determine the number of lots or units permitted to be developed on the subject property. A By Right Open Space Preservation Development shall satisfy the requirements of Section 16h.(1).(a)-(d) of the Township Zoning Act, including provision of a guarantee of protection of the open space by means of a conservation easement, plat dedication, restrictive covenant, or other legal means that runs with the land. A By Right Open Space Preservation Development completed according to these provisions, however, will not be eligible for any density bonus provided in this article.

IV. Density Bonus Eligibility

To be eligible for consideration for a density bonus as an Open Space Preservation Development, the applicant must present a proposed development plan that meets each of the following:

A. *Recognizable and Substantive Benefits*

An Open Space Preservation Development shall result in recognizable and substantive benefits to the ultimate users of the project and the community, and shall result in a higher quality of development than could be achieved under conventional zoning. Such benefits can be provided through site design elements in excess of the requirements of this Ordinance, such as the following:

- **Extensive Traditional Landscaping.** Maintaining existing landscaping on site to the extent feasible, particularly along primary roads and in common areas as well as enhancing existing landscaping with species native to Berrien County beyond the requirements of the Zoning Ordinance, resulting in quality development satisfying the intent of this Ordinance.
- **Transition Areas from Residential Development.** Providing buffers – distance and landscaping – between areas of potentially incompatible uses, whether located within a proposed development or between a proposed development and an adjacent property.
- **Unique Site Design Features.** Creating a development plan or site layout that exhibits creativity, demonstrates a conscious effort to protect significant natural features and other unique elements on the site (including historic or unique structures, view sheds, or community facilities), or provides other unanticipated and distinctive features in keeping with the tradition and character of Chikaming Township and are of high quality and value to the community.
- **Unified Access.** Limiting access from individual parcels and lots within the development to internal roads only; following other adopted access management standards; and providing for a continuous circulation system both within the development and with adjacent properties where development has occurred or is possible in the future (either through stub roads or through easements).
- **Preservation of Significant Natural Areas.** Strategic location of development areas within the project site to protect significant natural areas (identified in Section B.1 below).
- **Buffering of Development from Lakes, Rivers, Streams, Wetlands, and Major Thoroughfares.** Providing areas of existing natural space to buffer proposed development from natural features as well as major thoroughfares (I-94).

B. Open Space

The proposed development shall be designed to maintain and/or enhance open space areas within the project site. These areas may include the following:

1. The site plan shall preserve significant natural assets in the required open space area, to the extent required. Removal or destruction of such assets for development shall be minimized. Significant natural assets include the following:
 - Woodlands – trees and other plants in a densely wooded area
 - Landmark trees – individual trees over 12 inch diameter measured at chest height (four feet above the ground)
 - Steep slopes – topography exceeding 15% slope
 - Rural view sheds
 - Natural drainage ways or County drains
 - Surface water – lakes, ponds, rivers, and streams
 - Flood plains
 - Regulated and non-regulated wetlands
 - Natural wildlife habitat corridors (If animal or plant habitats of significant value exist on the site, the Planning Commission, as a condition of approval, may require that the Open Space Preservation Development Plan preserve these areas in a natural state and adequately protect them as nature preserves or limited access areas.)
2. Recreation Facilities. Additional enhancements in the open space areas may be provided to encourage use of and connection to the natural areas. Such facilities are subject to the standards provided for in this Ordinance and include primarily passive recreational uses. These include trails, picnic areas, children's play areas, and greenways. This does not include a golf course.

C. Impact of Density

The proposed type and density of use shall not result in an unreasonable increase in the need for or impact to public services, facilities, roads, and utilities in relation to the use or uses otherwise permitted by this Ordinance, and shall not place an unreasonable impact to the subject, surrounding land, property owners and occupants, and/or the natural environment. The Planning Commission may require that the applicant

prepare an impact statement documenting the significance of any environmental, traffic, or socio-economic impact resulting from the proposed Open Space Preservation Development Plan. An unreasonable impact shall be considered an unacceptable significant adverse effect on the quality of the surrounding community and the natural environment in comparison to the impacts associated with conventional development.

The Planning Commission may require that the applicant prepare a Comparative Impact Assessment, a quantitative comparison of the impacts of conventional development and the open space community plan to assist in making this determination. (This may include an overlay of conceptual development plans, on a natural features map, illustrating other site development options to demonstrate the impacts have been minimized to the extent practical). If the cumulative impact creates or contributes to a significant problem relative to infrastructure demand or environmental degradation, mitigation shall be provided to alleviate the impacts associated with the open space community.

D. Compliance with Township Master Plan

The proposed development shall be consistent with and further the implementation of the Township Master Plan.

V. Project Density

A. Parallel Plan

The permitted density in the Open Space Development shall be based on the net buildable area of the site, as defined in Article II of the Township Zoning Ordinance.

To assist the Planning Commission in determining the net buildable area, the applicant shall submit a parallel plan for the development that is consistent with the requirements for a site plan in Chapter 21. The parallel plan should show how the site could be developed under conventional zoning, land division, subdivision, and/or site condominium regulations. The parallel plan should be drawn to contain the maximum number of lots allowable per these standards in the underlying zoning district without any bonuses or provisions of the Open Space Preservation Development Plan.

The Planning Commission shall review the parallel plan and determine the number of lots that could be feasibly constructed (based on site conditions, engineering, cost, and similar factors) following the design. This number, as determined by the Planning Commission, shall be the base number of dwelling units allowable for the Open Space Preservation Development project. Density bonuses may be applied to this base value by the Planning Commission per the standards of Section V, B and C below, if the development is eligible.

B. *Density Bonus*

The Planning Commission may grant a density bonus to Open Space Preservation Developments that satisfy the eligibility requirements of Section IV above. In these cases, the base number of lots in an Open Space Preservation Development may be increased by the following percentages, resulting in the following overall densities for the entire project site:

Zoning District	Percent Density Bonus	Permitted Density Under Conventional Zoning	Permitted Density With Open Space Bonus
AG	25%	1:10 Acres	1:8 Acres
R-1	15%	1:20,000 Square Feet	1:17,391 Square feet
R-2	20%	1:1.5 Acres	1:1.25 Acres
R-3	15%	1:20,000 Square Feet	1:17,391 Square Feet

C. *Bonus for Exemplary Project*

The Planning Commission may allow an additional density bonus for exemplary Open Space Preservation Developments that include one or more of the following optional provisions. In order to qualify for an optional provision, the applicant must demonstrate, to the satisfaction of the Planning Commission, that the proposed project exceeds the minimum standards for Open Space Preservation Development eligibility under Section III.

An additional variable density bonus may be allowed at the discretion of the Planning Commission, based upon a demonstration by the applicant of design excellence in the open space community. Projects qualifying for an additional density bonus shall include at least one of the elements identified below. Each element is worth an additional percentage density bonus as indicated for each district below. However, the maximum additional density bonus for an exemplary project shall be fifteen percent (15%) in the R-1 and R-3 districts and twenty-five percent (25%) in the AG and R-2 districts.

1. A high level of clustered development where a minimum of sixty percent (60%) of the gross land area of the Open Space Preservation Development is protected open space. (Density bonus: 3% in R-1 and R-3; 5% in AG and R-2)
2. Inclusion of an integrated mixture of housing types and sizes, including units with a livable floor area of 1,500 square feet or less. (Density bonus: 3% in R-1 and R-3; 5% in AG and R-2)
3. Providing frontage transition areas along all public roads that are at least one hundred fifty (150) feet in depth with suitable landscaping. (Density bonus: 3% in R-1 and R-3; 5% in AG and R-2)

4. Providing public amenities such as trails for non-motorized use, children's playgrounds, picnic facilities, or community centers (not included in open space area). (Density bonus: 3% in R-1 and R-3; 5% in AG and R-2)
5. Providing paths, trails, greenways, or other connectors between adjacent open space areas, accessible to the public, and connected to or creating a network of trails throughout the community. (Density bonus: 3% in R-1 and R-3; 5% in AG and R-2)
6. Cleanup of site contamination. (Density bonus: 3% in R-1 and R-3; 5% in AG and R-2)
7. Storm water management on site that relies upon natural systems to the greatest extent possible and preserves the quality and integrity of such systems. (Density bonus: 3% in R-1 and R-3; 5% in AG and R-2)
8. Use of porous paving materials to reduce impervious surfaces. (Density bonus: 3% in R-1 and R-3; 5% in AG and R-2)
9. Other similar elements as determined by the Planning Commission. (Density bonus: 3% in R-1 and R-3; 5% in AG and R-2)

VI. Development Standards for Open Space Preservation Developments

A. *Zoning Districts*

An Open Space Preservation Development may be located in the Ag - Agricultural or R-2 - Residential Rural Estate Districts. If the property has access to public sewer, a proposed development may also be located in the R-1 - Single Family Residential District and the R-3 - Two-Family and Multiple-Family Residential District.

B. *Permitted Uses*

1. An Open Space Preservation Development is generally restricted to single family detached or single family attached residential dwellings consistent with the underlying zoning district.
2. Multiple Family Component. In an Open Space Preservation Development in the R-1 or R-3 districts, multiple-family residential uses may be permitted consistent with the standards for a multiple-family residential structure in the R-3 district unless otherwise modified through the Open Space Preservation Development process by the Planning Commission, considering the following minimum standards.

- a. The Planning Commission may modify these standards based upon a determination that off-street parking will be adequate and that the modification will preserve natural features. Building setback requirements along the perimeter of the development shall not be reduced below the ordinance standard.
- b. Where the rear of a building abuts the side or rear of another residential structure, the minimum spacing between the structures shall be the combined total of the two setback requirements.
- c. Where two buildings are located side-by-side, a thirty five (35) foot spacing shall be maintained between apartment buildings.
- d. Off-street parking lots serving three (3) or more dwelling units shall provide a ten (10) foot wide open green space area around the perimeter of the parking lot.

C. Minimum Standards

1. 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.
2. Minimum setback standards may be modified if necessary based on reduced lot sizes and sound planning and design principals, taking into account the degree of compatibility between adjoining uses, sensitivity to characteristics of the site, the needs for free access for emergency vehicles, the need for adequate amounts of light and air between building, and the need for proper amounts of open space for the use of residents on the site.
3. Building and parking lot setback standards along the public road frontage of Open Space Preservation Developments shall be 50 feet.

D. Roads and Driveways

To the extent practicable, the arrangement of lots, access roads, and designated open space within an Open Space Preservation Development shall achieve the following objectives:

1. All lots shall be accessed through an interior network of public or private streets. Unless specifically waived by the Township and the Berrien County Road Commission, individual lots shall not be accessed directly from the pre-existing public road adjacent to the property.
2. Streets systems and lot layout should be designed so that their curvature or alignment produces unimpeded views of prominent open space elements. This

may commonly occur at the terminus of street intersections or through use of a street alignment directly abutting open space.

3. The amount of site disruption caused by road and driveway construction and associated grading required for construction shall be minimized in Open Space Preservation Developments.
4. Roads shall follow existing contours to minimize the amount of cut and fill.
5. Where sites include linear features, such as tree lines and stone rows, roads shall follow these features to minimize the visual impact of the roads.
6. Both sides of all internal roads shall be landscaped with street trees. For road frontages of individual lots or condominium sites, a minimum of two (2) canopy trees shall be provided per dwelling. For sections of road that do not abut lots or condominium sites, one canopy tree shall be provided on each side for every fifty (50) feet of road. Existing trees to be preserved within five (5) feet of the road right-of-way or easement may be credited towards meeting this requirement.

E. Utilities

1. All utility distribution lines and service lines to individual dwelling units, including telephone, electric and cable television lines, shall be placed underground.
2. If there is public water or sewer service available to the site on which an open space community development is proposed, the Planning Commission shall require connection into the system.

F. Lighting

Street lighting shall be permitted only if authorized in the Open Space Preservation Development Plan approved by the Township. The design and style of any street lighting shall be subject to the approval of the Township. Cut-off fixtures with little to no glare that do not brighten the night sky shall be selected if street lights are used in the development.

G. Stormwater Management

Existing natural drainage shall be maintained to the maximum extent feasible. Retention and detention basins, where proposed or required, shall resemble natural ponds with gradual slopes and shall be landscaped with plant material native to Berrien County that enhances the wildlife habitat.

H. *Regulatory Flexibility*

1. Upon showing that an alternative standard will result in a higher quality development or increased protection of open space / natural resources the Planning Commission may grant specific modifications from the requirements in the Zoning Ordinance as a part of the approved process for a particular development.
2. 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 Zoning Board of Appeals.
3. An appeal of an Open Space Preservation Development Plan decision shall not be heard by the Zoning Board of Appeals. Such an appeal shall be to the Circuit Court of Berrien County.
4. This provision shall not preclude an individual lot owner from seeking a variance following final approval of the Open Space Preservation Development, provided such a variance does not involve alterations to open space areas as shown on the approved Open Space Preservation Development site plan.
5. A table shall be provided on the site plan which specifically details all deviations from the established zoning area, height and setback regulations, off-street parking regulations, general provisions, or subdivision regulations which would otherwise be applicable to the uses and development proposed in the absence of this Open Space Preservation Development article. This specification should include Ordinance provisions, from which deviation is sought, and the reasons and mechanisms to be utilized for the protection of the public health, safety, and welfare in lieu of the regulations from which deviations are sought. Only those deviations consistent with the intent of this Ordinance shall be considered.

VII. Open Space Amount/Requirements

Open Space Preservation Developments shall provide and maintain open space in an Undeveloped State as defined in Article 2 of the Zoning Ordinance. The Planning Commission may determine that a public park or a public facility is appropriate and should be located in the open space areas of Open Space Preservation Developments. Open space provided in Open Space Preservation Developments shall comply with the following standards:

- A. A minimum of fifty percent (50%) of the gross land area of an Open Space Preservation Development shall be designated as open space.
- B. Open space shall be located on the parcel to meet the following objectives:
 - 1. To protect and preserve distinct natural features, scenic or wooded conditions, and rural characteristics.
 - 2. To allow for the continued use of agricultural lands within a residential environment in compliance with GAAMP Standards.
 - 3. To protect viewsheds and provide visual and spatial separation between the developed property and adjoined property.
 - 4. To provide Open Space along public road corridors.
 - 5. To provide common recreational area for use by the residents of the development or the public.
- C. The open space shall be strategically located on a lot adjacent to open space areas on contiguous developments or potential open space areas on undeveloped properties in order to establish continuous networks of important environmental resource systems including, but not limited to, wetlands, woodlands, stream and river corridors, and wildlife corridors and habitats.
- D. In addition, no more than 40% of the required open space may be developed with children's play facilities, picnic facilities, and/or public parks, to satisfy the needs of future residents of the development, provided that all such facilities shall be compatible in design with other open space requirements and objectives and shall satisfy the definition standards for open space.
- E. At least 25% of the open space must be in usable, upland areas.
- F. To the extent possible, dedicated open space areas shall be continuous throughout the Open Space Preservation Development. Open space areas shall be large enough and of proper dimensions so as to contribute significantly to the purpose and objectives of the development.
- G. Land with any of the following characteristics shall not be included in the calculation of the area of designated open space.
 - 1. Land subject to public or private street easements or right-of-way.
 - 2. Land used for any above ground portion of a private community on-site wastewater disposal system.

3. Land that is included within the boundaries of a lot in a subdivision plat, within the boundaries of a condominium unit, or within the boundary of a parcel intended to be a building site.
 4. Land designated for parking of vehicles.
- H. Unpaved trails and passive recreation space shall be permitted in open space areas.
- I. The required open space shall be perpetually preserved in an undeveloped state and protected against uses or activities inconsistent with the intent of this article through use of a conservation easement held by the Township or a qualified land trust, a plat dedication, restrictive covenant, or other instrument of record that runs with the land. Such conveyance shall:
1. Be subject to approval of the Township Attorney.
 2. Indicate the proposed use(s) of the required open space.
 3. Provide for the privately owned open space to be maintained by the property owners' association or other association of private property owners having a shared ownership interest in the open space.
 4. The applicant(s) for the proposed development shall provide the Township with a recordable maintenance or restrictive covenant agreement between the owner(s) of the open space, or other documentation satisfactory to the Township, which shall provide for and assure that the open space shall be preserved in perpetuity and maintained as needed.
 5. Provide notice of possible assessment to the private property owners by the Township for the maintenance of the open space in the event that it is inadequately maintained and becomes a public nuisance.
 6. Except for on existing active farms, the maintenance requirements of dedicated open space are not necessarily intended to include regular clearing and mowing or other active maintenance. For the purposes of this subsection, maintenance is intended to include such items as removal of any accumulation of trash or waste material within the dedicated open space area, clean up of storm or other Act of God damage, or removal of diseased plant materials.
 7. After approval from the Township, the developer shall record the final document with the Berrien County Register of Deeds to provide notice of the restrictions to all persons having or seeking an interest in the property contained in the Open Space Preservation Development. A copy of the recorded document shall be provided to the Township.

- J. Any structure(s) or building(s) accessory to an approved open space use and owned and maintained by the same property owner' association as the open space area may be erected within the dedicated open space. These accessory structure(s) or building(s) shall not exceed, in the aggregate, a maximum gross floor area of 100 square feet per dwelling unit within the entire development, up to a maximum of 2,500 square feet. The size, location, design, appearance, and use of any accessory structure or building located within designated open space areas shall be compatible with the character, natural features, and intended use of the open space area. Accessory structures installed after approval of the development shall be considered a major change subject to the provisions of Section VII.C below. Barns used as an accessory to active agricultural operations shall be an exception to this requirement.
- K. Designated open space areas not intended to be used for active agricultural uses should be accessible by pedestrians and non-motorized vehicles from all dwelling units in an Open Space Preservation Development by means of public or private streets, or by pedestrian access ways in easements that have a minimum width of twenty (20) feet and an improved surface meeting specifications as approved by the Planning Commission or Township Board. To the extent possible, natural features shall be preserved within easement areas.

VIII. Procedures and Approval

- A. Review and Approval Process. Proposals for Open Space Preservation Development shall be reviewed following the same procedures required for conventional subdivisions, condominium proposals, land divisions, planned unit developments, or other conventional developments, except that the applicant shall submit a site features inventory prior to development. This inventory shall consist of maps and written analysis which shall identify, describe, and quantify the following features, at a minimum: active agriculture areas, existing vegetation, topography at two (2) foot contour intervals, water courses, drainage patterns, wildlife habitats, roads and road rights-of-way, easements, soils (based on U.S. Soil Conservation Survey or soil borings) MDEQ-regulated wetlands, floodplains, woodlands and tree lines, rare and endangered habitats, and any additional features uniquely affecting the site. The information required may be modified by the Zoning Administrator based on the characteristics of the site or the scope of the development.
- B. Approval of an Open Space Preservation Development 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 final approved plan or application and comply fully with any conditions.
- C. Satisfactory evidence that deed restrictions, easements, and measures used to designate and protect the open space have been duly filed with the Register of Deeds of the County and copies of recorded documents presented to the Township promptly following approval of an Open Space Development Plan and prior to issuance of any

building permits for construction within the development. The Township Clerk shall establish a file and maintain all records of open space, etc.

IX. Revising Approved Plans

A. Minor changes to an approved Open Space Preservation Development Plan may be permitted by the Planning Commission following normal site plan review procedures outlined in Article 21 for the following:

1. Reduction in density;
2. Changing non-single family dwelling units to single family dwelling units;
3. Realignment of roads;
4. Modifications to setbacks;
5. Increasing the amount of open space;
6. Changes to landscaping, provided the number of plantings is not decreased;
7. Change in the size of detention ponds by no more than 10%;
8. Other minor changes similar to the above, as determined by the Planning Commission.

B. Minor changes shall be 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 Preservation Development 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.

C. Revisions to an Open Space Preservation Development that do not qualify as minor under Section A above may be revised by resubmitting the final plan and repeating the process required for approval of the original Open Space Preservation Development Plan.