

120.149 “OSPD” Open Space Preservation Development District.

A. Description.

This district is designed to permit Open Space Preservation development in compliance with Section 16(h) of Act No. 177 of the Public Acts of 2001, commonly referred to as the Open Space Preservation Act. The Act requires that qualified townships provide, at the option of the landowner, for the clustering of residential units on a portion of the property provided that fifty percent (50%) or more of the land is preserved in permanent open space. Development under the Open Space Preservation option will be comprised of both a residential clustering development and an open space preservation district. These regulations are intended to facilitate design flexibility while also insuring open space preservation. Land zoned for residential development in the “A,” “R-1,” “R-2” and “R-3” zoning districts, as qualified below, may be developed under the Open Space Preservation option, subject to the conditions and restrictions set forth in this section.

B. Open Space Preservation Applicability.

A landowner may apply for an Open Space Preservation development, if all of the following criteria are met:

1. The land is zoned for residential development at a density equivalent to 2 or fewer dwelling units per acre; or, if the land is served by a public sewer system, 3 or fewer dwelling units per acre.
2. Not less than 50% of the land area will remain perpetually in an undeveloped state by means of a conservation easement, plat dedication, restrictive covenant or other legal means that runs with the land.
3. The development does not depend on the extension of a public sewer or public water supply system, unless development of the land without the exercise of the development option provided by this provision would also depend on such extension.
4. The development option provided pursuant to this section has not previously been exercised with respect to the subject property.

Nothing in this Ordinance is intended to preclude application of any and all other existing Ordinances to land developed pursuant to this section, including, but not limited to, Land Division Ordinance (Section 111) and the Site Condominium Ordinance (Section 113), and any rules relating to suitability of groundwater for on-site water supply or rules relating to suitability of soils for land not served by public sewers.

C. Special Exception.

1. Land developed under the Open Space Preservation option must receive a special exception, pursuant to Section 120.420. All requirements of Section 120.420 apply to development under the Open Space Preservation option. In addition to the special exception criteria listed in Sections 120.420 D and E, the following standards are to be considered when reviewing a request for an Open Space Preservation development:

Special Exception Use Review Criteria and Standards.

- a. Preservation of significant natural features.
- b. Protection and preservation of all floodplains, wetlands and steep slopes from clearing, grading, filling.
- c. Preservation and maintenance of existing treelines, to serve as buffers.
- d. Minimization of impacts on large woodlands (5 acres or greater), especially those containing mature trees or significant wildlife habitat.
- e. Minimization of development of open fields or pastures.
- f. Preservation of existing vistas, especially those seen from public roads.
- g. Location of development so that it is buffered from view of public roads by landscaping screens.
- h. Avoidance of siting new construction on prominent hilltops or ridges.

- i. Preservation of historic, archeological or cultural sites.
 - j. Inclusion of pedestrian system to insure safe pedestrian access within the open space preservation area, as well as between properties.
 - k. Provision of open space that is reasonably contiguous and avoids fragmentation.
 - l. Preservation of significant agricultural lands.
 - m. Compatibility of the Open Space Preservation development with the adjacent land uses.
2. Special exception approval of an open space preservation development does not confer any additional development approvals. No special exception use within the underlying zoning district shall be allowed unless such use is processed separately as a special exception use subject to review and approval.

D. Permitted Uses- Residential Development.

All permitted residential uses within the underlying zoning districts.

E. Permitted Uses - Open Space Preservation Area.

The open space portion of an Open Space preservation development is to remain in a perpetually undeveloped state. An undeveloped state has been defined as "a natural state preserving natural resources, natural features, or scenic or wooded conditions; agricultural use; open space; or a similar use or condition. Land in an undeveloped state does not include a golf course, but may include a recreational trail, picnic area; children's play area, greenway or linear park. Land in an undeveloped state may be, but is not required to be, dedicated to use of the public.

The following uses are permitted in the open space preservation area:

1. Open space preservation area may be maintained in its natural state, to preserve natural resources, natural features, scenic or wooded conditions and provide open space for the adjoining residential development.

2. Natural or landscaped buffers.
3. Forests, wildlife reservations and conservation areas.
4. Passive or active recreation areas and facilities, excluding golf courses or commercial recreational facilities. Appropriate recreational facilities include recreational trails, picnic areas, children's play areas, greenways or linear parks.
 - a. Open space preservation area may be restricted to private use by residential development landowners only.
 - b. Open space area may be dedicated to a public agency for their use, as long as it is maintained as open space in perpetuity.
 - c. Structures for recreational facilities shall not be located closer than 100 feet from any abutting property line and shall be appropriately screened with landscaping and/or fencing.
5. Annual crop farming.
6. A golf course is a prohibited use for the open space preservation portion of a development. Likewise, any proposed use that increases the intensity of development on the proposed open space preservation portion of the development is prohibited.
7. Community drainfield site.

F. Open Space Preservation Area Standards.

When designing a development under the open space preservation provision, the following requirements must be met:

1. Required Open Space Preservation Area. No less than 50% of total land area, excluding unbuildable areas, shall be placed in open space preservation.
 - a. Phasing of Open Space Preservation Area. If a landowner proposes phasing of Open Space Preservation development, the landowner has the option of either:

- (1) Providing all required open space preservation area for the total development in Phase 1, or
 - (2) Providing 50% of each phase be dedicated to open space preservation area.
 - b. No portion of lots, parcels or building sites provided in the residential cluster portion of an Open Space Preservation development shall be counted towards required open space preservation area.
2. Location of Open Space Preservation Area. Open space preservation areas shall be contiguous and connected. Open Space preservation areas should exclude any unbuildable areas (i.e., floodplains, wetlands, slopes over 25%). Open Space Preservation areas should be designed to preserve and protect the following types of natural features:
- a. Streams, valleys and wetlands complexes, natural drainage swales and 100-year floodplains.
 - b. Aquifer recharge areas.
 - c. "Prime" and "of statewide importance" soils.
 - d. Moderate slopes (15%- 25%) and steep slopes (over 25%).
 - e. Healthy woodlands, groups of trees, large individual trees (15" in caliper and greater).
 - f. Significant natural areas of species listed as endangered, threatened or of special concern.
 - g. Historic structures, features and sites.
 - h. Visually prominent topographic features, such as knolls or hilltops, as well as scenic viewsheds as seen from public roads.

3. Character of Open Space Preservation Area.

- a. The open space preservation area shall generally not include parcels smaller than three acres. The open space preservation area shall generally not have a length-to-width ratio greater than 4:1, and shall not be less than 75 feet in width, except for such lands specifically designed as neighborhood greens, trail links, pedestrian paths, linear parkways, buffer areas or unless they contain an isolated natural feature.
- b. The open space preservation area shall be contiguous and accessible to the largest practicable number of lots, parcels or building sites. Non adjoining lots, parcels or building sites shall be provided with safe and convenient pedestrian access.
- c. The open space preservation areas shall be interconnected to provide a continuous network of conservation areas within and adjoining the development.
- d. The open space preservation areas shall provide buffers to adjoining property, if feasible.
- e. The open space preservation area shall be undivided by public or private roads, except where necessary for proper traffic circulation.
- f. The open space preservation area shall retain existing natural cover and wooded areas to the maximum extent practicable, to protect natural resources. In those areas where retention is impractical, they shall be landscaped and landscaping plans shall be submitted with the site plan/subdivision plat. The use of native species shall predominate on the landscaping plans.
- g. The open space conservation area shall be consistent with the Township's Comprehensive Plan and its Recreation component.

G. Layout/Design of Open Space Preservation Development.

The site design for an Open Space Preservation Development shall incorporate both the required open space preservation and the clustered residential units. The design shall be as compatible as possible with adjoining land uses, while still meeting the requirements of both the underlying zoning districts and the special exception provisions.

1. Maximum density calculation. The density of each site is to be governed by the density of the underlying residential zoning district as contained in the Zoning Ordinance, as well as the density requirements of the Land Division Ordinance (Sec 111) and the Site Condominium Ordinance (Sec 113), as applicable. No additional density will be achieved by developing under the Open Space Preservation Ordinance.
2. Lot area requirements.
 - a. Land not served by public sewer system.

If land is not served by public sewers, and is zoned for residential development of 2 dwelling units per acre or less, the minimum area for each residential lot, parcel or building site to be located on the residential cluster portion of an open space preservation development shall be 11,000 square feet per dwelling unit, or larger, as required to meet regulations for on-site water supply and on-site sewage disposal.

- (1) Written verification from the County Health Department, approving both a primary and secondary drainfield for each lot, parcel or building site must be provided, prior to Special Exception approval. The lot, parcel or building site must be of sufficient size to support required primary and secondary drainfield locations.

b. Land served by community drainfields.

If a landowner chooses to use a community drainfield, and the land is zoned for residential development of 2 dwelling units per acre, or less, the minimum area for each residential lot, building site or parcel shall be 11,000 square feet per dwelling unit. The community drainfield system may be provided on the open space preservation portion of the development. The community drainfield system must be accessed by dedicated easements and must be maintained in perpetuity for the use of the development.

- (1) Written approval from the Kalamazoo County Health & Community Services Department for the community drainfield system is required, prior to Special Exception approval. The community drainfield system must be adequate to support the total number of permitted lots, building sites or parcels.

c. Land served by public sewer.

If land is served by a public sewer system and has a density of 3 dwelling units per acre or less, under the Zoning Ordinance, Land Division Ordinance or Site Condominium Ordinance, the Open Space Preservation development option will apply. In such an instance, residential developments developed under either the Land Division Ordinance or the Site Condominium Ordinance, where the land is served by public sewer, may calculate the density of their development pursuant to the standards contained in those Ordinances, as appropriate. If a proposed site condominium, land division or platted subdivision is served by public sewer, the minimum lot or building site size shall be 7,500 square feet per dwelling unit.

3. Yard requirements.

- a. For building sites, lots or parcels created under the Zoning Ordinance, Land Division Ordinance or the Site Condominium Ordinance that do not have public sewer and have a density of 2 dwelling units per acre or less, the following modification to the yard requirements in section 120.600 may apply:

- (1) Front yard setback may be reduced up to 30%, but in no event less than 35 feet.
 - (2) Side yard setbacks may be reduced up to 30%, but in no event less than 10 feet.
 - (3) Rear yard setbacks must be maintained at 15 feet.
 - b. For building sites, lots or parcels created under the Zoning Ordinance, Land Division Ordinance or the Site Condominium Ordinance that have public sewer, the following modification to the yard requirements in section 120.600 may apply:
 - (1) Front yard setback may be reduced up to 30%, but in no event less than 35 feet.
 - (2) Side yard setbacks may be reduced up to 30%, but in no event less than 8 feet.
 - (3) Rear yard setbacks must be maintained at 15 feet.
 - c. In no event shall any residential cluster unit be closer than 50 feet to an abutting property line or 100 feet to a public right of way.
 - d. In no event shall any structure on the open space preservation area be closer than 100 feet to any abutting property line.
 - e. All other structures shall meet the requirements specified in the underlying zoning district. Accessory structures are governed by Section 120.600.
4. Maximum Building Height. Building height shall be determined by underlying zoning district, in accordance with Section 120.600.

5. Minimum Lot Width.

- a. For building sites, lots or parcels created under the Zoning Ordinance, Land Division Ordinance or the Site Condominium Ordinance that do not have public sewer and have a density of 2 dwelling units per acre or less, the minimum lot width may be reduced up to 25%, but in no event less than 100 feet.
- b. For building sites, lots or parcels created under the Zoning Ordinance, Land Division Ordinance or the Site Condominium Ordinance that have public sewer and a density of 3 dwelling units per acre or less, the minimum lot width may be reduced up to 25%, but in no event less than 80 feet.

6. Maximum Lot Coverage.

- a. For building sites, lots or parcels created under the Zoning Ordinance, Land Division Ordinance or the Site Condominium Ordinance that do not have public sewer and have a density of 2 dwelling units per acre or less, maximum lot coverage may be increased up to 25%, including all structures.
- b. For building sites, lots or parcels created under the Zoning Ordinance Land Division Ordinance or the Site Condominium Ordinance that have public sewer and a density of 3 dwelling units per acre or less, the maximum lot coverage may be increased up to 30%, including all structures.

7. Minimum Floor Area.

The minimum floor area for the dwelling units shall meet requirements of underlying zoning district, as per Section 120.600.

8. Public/Private Road Access.

All residential cluster units must have access to either a public or private road. Private roads must meet all standards of the Kalamazoo County Road Commission.

H. Development Standards and Procedures: The following requirements shall apply for Open Space Preservation Developments:

1. Submittal of plans for review. When applicant submits for special exception review under the Open Space Preservation option, applicant shall submit 2 sets of site plans, land division plans and/or subdivision plans. The requirements listed below are in addition to the development plan requirements contained in Section 120.420 (Special Exception), Section 120.430 (Site Plan Review) as well as in the Land Division Ordinance (Sec 111) and the Site Condominium Ordinance (Section 113).
 - a. The applicant shall submit two sets of plans. The first plan, the Base Plan, shall depict development permitted per the underlying zoning district. The Base Plan can be in the form of a proposed plat creating lots, a land division plan creating parcels or a site plan creating building sites. This Base Plan shall provide the number of dwelling units permitted per underlying zoning district standards.
 - b. The Open Space Preservation Plan shall depict the proposed open space preservation development, showing the clustering of all building sites, lots or parcels on 50% or less of the parcel. Computations shall be provided detailing total site area, net site area (exclusive of nonbuildable areas), percentage of site in open space preservation and percentage of site in residential cluster.
 - c. The number of units depicted on the Open Space Preservation Plan shall be the same as the number of units on the Base Plan, unless the lots, parcels or building sites utilizing individual on-site sewage systems necessitate larger areas to meet requirements. In such a case, the difference between the Base Plan and the Open Space Preservation Plan shall be explained. In no case will the number of building sites, lots or parcels for an Open Space Preservation development exceed the number of buildings sites, lots or parcels that are permitted under the underlying zoning district.

- d. Any proposed phasing of an Open Space Preservation development must be identified on the Open Space Preservation Plan. A project time line must accompany the Open Space Preservation Plan.
 - e. All proposed structures for both the residential cluster and the open space preservation portions of the site shall be depicted on the Open Space Preservation Plan.
 - f. Any improvements proposed for the open space preservation portion of the development (i.e., walking trails, children's playground, linear parks) must be depicted on the Open Space Preservation Plan.
 - g. Justification shall be provided for the location and design of the open space preservation area.
 - h. Both the Base Plan and the Open Space Preservation plan shall include locations of common wells or common sewage disposal facilities, if applicable.
 - i. Both the Base Plan and the Open Space Preservation Plan shall be submitted with the Special Exception Application.
2. Site Analysis/Natural Features Inventory. Along with the Base Plan and Open Space Plans, as detailed in Sections F and G, a natural features/site analysis plan is required. This plan shall include all structures, natural features and areas within 100 feet of the boundary of the site. The plan shall also include the following information:
- a. Topography at not less than 4 foot intervals, with slopes between 15% and 25% delineated, as well as slopes over 25% delineated.
 - b. Steam valleys and wetlands.
 - c. Woodlands over ½ acre in area.
 - d. Ridge lines.
 - e. Land protected under conservation easements.

- f. Location of ponds, streams and natural drainage swales, and 100-year floodplains.
- g. Soil types and vegetative cover conditions.
- h. Trees in excess of 15 inches outside of designated woodlands, including actual canopy of existing trees and woodlands. Vegetation should be described by type, relative age and condition.
- i. Locations of all historic structures and features.
- j. Areas in agricultural production or planned for agricultural production.

I. Ownership and Maintenance of Open Space Preservation Area:

1. The applicant shall provide to the Township, prior to Special Exception approval, documentation in the form of a conservation easement, deed restriction or similar document, that specifies the method for maintaining the open space preservation area in perpetuity. The documentation shall include the establishment of homeowner's association, or shall define what entity shall be responsible for maintenance of the open space preservation area. The documentation shall also convey easements to the open space preservation area to all lot, parcel or condominium owners in the development. These documents must be submitted to the Township for their review and approval, prior to special exception approval.
2. The Township Board of Supervisors may approve conveyance of the open space preservation area to a qualifying nonprofit or governmental entity other than the homeowner's association, condominium association or the Township, upon a finding that such a conveyance will achieve purposes of open space consistent with this Ordinance, that the conveyance will be beneficial to future owners and the public and that the purposes and resources of the entity and the proposed conveyance are consistent with perpetual preservation of the open space and significant features.

- a. A letter from the nonprofit or governmental entity must be provided, indicating acceptance of the open space preservation area, as well an agreement to maintain the open space preservation area in perpetuity.
- b. The documentation shall be adequate to provide proper notice to purchasers and the public of the area included in the open space preservation, the means that it will be maintained and any permitted uses on the open space preservation area.
- c. The documentation shall be sufficient to demonstrate that the open space preservation area will be maintained in a manner consistent with the purpose and intent of Act No. 177 of the Public Acts of 2001 and that the nonprofit entity has sufficient legal and financial resources to permanently preserve the open space preservation area in an undeveloped state.