

- B. A principal building shall not extend into the required rear yard setback for a principal building, and an accessory structure shall not extend into the required rear yard for an accessory structure, except as provided in this chapter.
- C. Every lot shall include a rear lot line and a rear yard.

YARD, SIDE or SIDE SETBACK —

- A. A yard which establishes the minimum setback for the closest portion of the subject structure, and which is measured from along the entire length of the side lot line, and which extends from the front setback line to the rear lot line.
- B. A structure shall not extend into the applicable minimum side yard setback, except as provided for in this chapter.
- C. See "corner lot" provision in § 246-65B.
- D. A triangular lot shall include one side yard. All other lots shall include at least two side yards, except for a corner lot.

ZONING MAP — The Official Zoning Map of Fairview Township, Luzerne County, Pennsylvania.⁴⁰

ZONING OFFICER — The person charged with the duty of enforcing the provisions of this chapter, and any officially designated assistant.

ZONING ORDINANCE — The Fairview Township Zoning Ordinance, as amended.

**ARTICLE III
Regulation of Districts**

§ 246-21. Designation of districts and purposes.

- A. For the purpose of this chapter, Fairview Township is hereby divided into the following zoning districts, with the following abbreviations:

CR	Conservation and Recreation District
R	Rural District
LDR	Low Density Residential District
MDR	Medium Density Residential District
MHDR	Medium High Density Residential District
NC	Neighborhood Commercial District
HC	Highway Commercial District
LI	Light Industrial District
GI	General Industrial District

⁴⁰ Editor's Note: The Official Zoning Map is on file in the Township offices.

- B. For the purposes of this chapter, the zoning districts named in Subsection A shall be of the number, size, shape and location shown on the Official Zoning Map.⁴¹
- C. Overlay districts. The Floodplain Area, as defined by Article V, shall serve as an overlay district to the applicable underlying districts.
- D. Purposes of each district. In addition to serving the overall purposes and objectives of this chapter and the Comprehensive Plan, each zoning district is intended to serve the following purposes:
- (1) CR Conservation and Recreation District: to provide for very-low-intensity development in areas with significant important natural features, such as wetlands, flood-prone lands and steeply sloped areas; to protect the water quality of creeks, lakes and groundwater and promote recharge of groundwater and surface waters; to recognize that certain of these areas do not have sufficient road access for intense development; to provide a certain amount of flexibility in lot layout so that development can be clustered on the most suitable portions of a tract of land, while still avoiding overly intense development; to provide incentives for the permanent preservation of substantial areas of land in public, semipublic or private ownership; to provide for camps, campgrounds, sportsmen's clubs and other private recreation activities. **[Amended 7-7-2008 by Ord. No. 2-2008]**
 - (2) R Rural District: to provide for development with a low average intensity in areas that include significant important natural features, such as wetlands, flood-prone lands and steeply sloped areas; to protect the water quality and habitats along creeks, and promote groundwater recharge; to recognize that certain of these areas do not have sufficient road access for intense development; to provide a certain amount of flexibility in lot layout so that development can be clustered on the most suitable portions of a tract of land, while still avoiding overly intense development; to provide incentives for the permanent preservation of substantial areas of land in public, semipublic or private ownership; to provide for camps, campgrounds, sportsmen's clubs and other private recreation activities. **[Amended 7-7-2008 by Ord. No. 2-2008]**
 - (3) LDR Low Density Residential District: to provide for low-density residential neighborhoods that are primarily composed of single-family detached dwellings; to protect these areas from incompatible uses; to preserve the attractive historic character of older areas of the Township.
 - (4) MDR Medium Density Residential District: to provide for medium-density residential neighborhoods with a mix of housing types; to protect these areas from incompatible uses; to meet requirements of state law to provide opportunities for various housing types.
 - (5) MHDR Medium High Density Residential District: to provide for medium-high-density residential neighborhoods with a mix of housing types; to protect these areas from incompatible uses; to meet requirements of state law to provide opportunities for various housing types.

41. Editor's Note: The Official Zoning Map is on file in the Township offices.

- (6) NC Neighborhood Commercial District: to promote an appropriate mix of retail, service, office, public, institutional and residential uses; to avoid heavy commercial uses that are most likely to conflict with homes; to carefully locate commercial areas and commercial driveways to minimize traffic safety and congestion problems along roads.
- (7) HC Highway Commercial District: to provide for a variety of commercial uses in areas that have better road access and are not near significant numbers of homes; to provide for a wider range of commercial uses than the NC District, including uses that are more auto-related (such as car washes and gas stations); to carefully locate commercial areas and commercial driveways to minimize traffic safety and congestion problems along roads.
- (8) LI Light Industrial District: to provide for light industrial and office development in a manner that is compatible with any nearby homes and the surrounding environment; to carefully control the types of industrial operations to avoid nuisances and environmental hazards; to encourage coordinated development, particularly in regard to traffic access; to recognize that the road system and proximity of homes in Fairview Township makes the Township unsuitable for certain types of heavy industrial uses.
- (9) GI General Industrial District: to provide for industrial and office development in a manner that is compatible with any nearby homes and the surrounding environment; to carefully control the types of industrial operations to avoid nuisances and environmental hazards; to encourage coordinated development, particularly in regard to traffic access; to meet obligations under state law to provide opportunities for a range of industrial uses; to recognize that the road system and proximity of homes in Fairview Township makes the Township unsuitable for certain types of heavy industrial uses.

§ 246-22. Applicability of district regulations.

- A. The regulations set by this chapter shall apply uniformly to each class or kind of structure or land, except as provided for in this chapter.
- B. No structure shall hereafter be erected, used, constructed, reconstructed, structurally altered or occupied and no land shall hereafter be used, developed or occupied unless it is in conformity with the regulations herein specified for the use and district in which it is located.
- C. No yard or lot existing at the time of passage of this chapter shall be reduced in dimension or area below the minimum requirements set forth herein. Yards or lots created after the effective date of this chapter shall meet at least the minimum requirements established by this chapter.
- D. Boundary change. Any territory which may hereafter become part of the Township through annexation or a boundary adjustment shall be classified as the CR Zoning District of Fairview Township until or unless such territory is otherwise classified by the Board of Supervisors.

§ 246-23. Zoning Map.

- A. A map entitled "Fairview Township Zoning Map" accompanies this chapter and is declared a part of this chapter. The Official Zoning Map, which should bear the adoption date of this chapter and the words "Official Zoning Map," shall be retained in the Township Building.
- B. Map changes. Changes to the boundaries and districts of the Official Zoning Map shall only be made in conformity with the amendment procedures specified in the state Municipalities Planning Code.⁴² All changes should be noted by date with a brief description of the nature of the change, either on the map or within an appendix to this chapter.
- C. Replacement map. If the Official Zoning Map becomes damaged, destroyed, lost or difficult to interpret because of changes and additions, or needs to have drafting errors or omissions corrected, the Township Supervisors may, by resolution, adopt a new copy of the Official Zoning Map which shall supersede the prior Official Zoning Map. Unless the prior Official Zoning Map has been lost or has been totally destroyed, the prior map or any remaining parts shall be preserved, together with all available records pertaining to its previous adoption or amendment.

§ 246-24. District boundaries.

The following rules shall apply where uncertainty exists as to boundaries of any district as shown on the Zoning Map:

- A. District boundary lines are intended to follow or be parallel to the center line of street rights-of-way, streams and railroads, and lot lines as they existed on a recorded deed or plan of record in the County Recorder of Deeds office at the time of the adoption of this chapter, unless such district boundary lines are fixed by dimensions as shown on the Official Zoning Map.
- B. Where a district boundary is not fixed by dimensions and where it approximately follows lot lines, such boundary shall be construed to follow such lot lines unless specifically shown otherwise.
- C. The location of a district boundary on unsubdivided land or where a district boundary divides a lot shall be determined by the use of the scale appearing on the Zoning Map unless indicated otherwise by dimensions.
- D. Where a municipal boundary divides a lot, the minimum lot area shall be regulated by the municipality in which the principal use(s) are located, unless otherwise provided by applicable case law. The land area within each municipality shall be regulated by the use regulations and other applicable regulations of each municipality.

42. Editor's Note: See 53 P.S. § 10101 et seq.

§ 246-25. Setbacks across municipal boundaries.

- A. Intent. The intent of this section is to continue the objective of compatible land uses across municipal boundaries.
- B. This chapter requires additional setbacks and the provision of buffer yards when certain uses would abut an existing dwelling or a residential zoning district. These same additional setback and buffer yard provisions shall be provided by uses proposed within Fairview Township regardless of whether such abutting existing dwelling or principally residential zoning district is located in an abutting municipality and/or in Fairview Township.

§ 246-26. Allowed uses in each district.

- A. For the purposes of this section, the following abbreviations shall have the following meanings:
 - P = Permitted by right use (zoning decision by Zoning Officer)
 - SE = Special exception use (zoning decision by Zoning Hearing Board)
 - C = Conditional use (zoning decision by Board of Supervisors)
 - N = Not permitted
 - (§ 246-34) = See additional requirements in § 246-34
 - (§ 246-35) = See additional requirements in § 246-35
- B. Unless otherwise provided by state or federal law or specifically stated in this chapter (including § 246-5B), any land or structure shall only be used or occupied for a use specifically listed in this chapter as permitted in the zoning district where the land or structure is located. Such uses shall only be permitted if the use complies with all other requirements of this chapter.
 - (1) See § 246-5B, which generally provides a process for approval of a use that is not listed based upon similarity to permitted uses and other criteria. Except as provided in such § 246-5B, any other principal use that is not specifically listed as P, C or SE in the applicable district in this table is prohibited in that district.
 - (2) For temporary uses, see § 246-3.
 - (3) The following table is divided into two parts:
 - (a) Primarily residential districts.
 - (b) Primarily business districts.⁴³
- C. Permitted accessory uses in all districts. An accessory use of a dwelling is only permitted if such use is customarily incidental to the residential use and is specifically permitted by this chapter. The following are permitted by right as accessory uses to a lawful principal use in all districts, within the requirements of § 246-35 and all other

43. Editor's Note: The tables of allowed uses are included as attachments to this chapter.

requirements of this chapter. [Note: See standards for each of the following in § 246-35: Subsection D(1), (2), (4), (6), (9) and (11).]

- (1) Standard antennas, including antennas used by contractors to communicate with their own vehicles.
 - (2) Fence or wall.
 - (3) Garage, household.
 - (4) Garage sale.
 - (5) Maintenance facilities for a homeowners' association.
 - (6) Pets, keeping of.
 - (7) Parking or loading, off-street, only to serve a use that is permitted in that district.
 - (8) Recreational facilities, limited to use by residents of a development or students at a primary or secondary school or center for the care and treatment of youth, and their occasional invited guests.
 - (9) Residential accessory structure (see definition in Article II).
 - (10) Signs, as permitted by Article VII.
 - (11) Swimming pool, household.
 - (12) Such other accessory use or structure that the applicant proves to the satisfaction of the Zoning Officer is clearly customary and incidental to a permitted by right, special exception or conditional principal use.
- D. Permitted accessory uses to business and institutional uses. The following are permitted by right accessory uses only to a permitted by right, special exception or conditional commercial, industrial or institutional use, provided that all requirements of this chapter are met:
- (1) Storage of fuels for on-site use or to fuel company vehicles.
 - (2) The following accessory uses, provided that the use is clearly limited to employees, patients, residents and families of employees of the use and their occasional invited guests:
 - (a) Internal cafeteria without drive-through service;
 - (b) Day-care center; or
 - (c) Recreational facilities.
 - (3) Bus shelters meeting § 246-35.
 - (4) Automatic transaction machine.
 - (5) Storage sheds meeting the requirements of § 246-27A.

§ 246-27. Dimensional requirements in each district. [Amended 7-7-2008 by Ord. No. 2-2008; 2-2-2016 by Ord. No. 1-2016]

- A. Attached accessory structures. An accessory structure attached to a principal structure shall be considered part of the principal structure and shall comply with the dimensional requirements, including setbacks, lot coverage, and height, as applicable to the principal structures for the zoning district in which it is to be located.
- B. Unattached accessory structures.
- (1) Nonresidential. An unattached accessory nonresidential structure shall only be erected in a side or rear yard and shall comply with the side yard setback requirements for the principal structure for the zoning district in which it is located and shall not be less than 10 feet from a rear yard lot line.
 - (2) Residential. An unattached accessory residential structure shall only be erected or located in a side or rear yard subject to the following:
 - (a) The minimum sides and rear yard setbacks shall be six feet.
 - (b) The maximum number of accessory buildings per lot shall be two.
 - (c) The maximum total floor area of all accessory buildings shall be 500 square feet.
 - (d) The maximum height of an accessory building shall be 15 feet.

§ 246-28. Wetlands and lakes.

- A. Lot area. Wetlands (as officially defined under federal and/or state regulations), ponds and lakes shall not be counted toward the minimum lot area of any lot or tract of land. This Subsection A shall only apply to a lot within a subdivision or land development submitted for approval after the adoption of this chapter.
- B. Wetland studies. It shall be the responsibility of each applicant to determine whether land areas proposed for alteration meet the federal or state definition of a wetland prior to submittal of development plans to the Township. If the Zoning Officer has reason to believe that wetlands may be present on a site proposed for development or subdivision, the Zoning Officer may require that the applicant provide a suitable wetland delineation study prepared by a qualified professional.
- C. Wetland setbacks. A minimum setback of 20 feet shall be required between any new principal building for which a building permit is issued after the effective date of this chapter and any wetland.

§ 246-29. Sewage and water services.

- A. Central water service. A use shall not be considered to be served by Township-approved central water service unless:
- (1) All applicable requirements of state regulations and Chapter 225, Subdivision and Land Development, are met;

- (2) The applicant proves to the satisfaction of the Township that there will be an appropriate system in place to guarantee and properly fund the long-term operation and maintenance of the system by a qualified professional operator; and
 - (3) The applicant proves to the satisfaction of the Township, based upon review of the Township Engineer, that the system will include adequate supply, transmission capacity and pressure to serve the development.
- B. Central sewage service. A use shall not be considered to be served by Township-approved central sewage service unless:
- (1) All applicable requirements of state regulations and Chapter 225, Subdivision and Land Development, are met;
 - (2) The applicant proves to the satisfaction of the Township that there will be an appropriate system in place to guarantee and properly fund the long-term operation and maintenance of the system by a qualified professional operator; and
 - (3) The applicant proves to the satisfaction of the Township, based upon review of the Township Engineer, that the system will include adequate treatment capacity and conveyance capacity to serve the development.
- C. Connection to a larger system. Any nonpublic central water or central sewage system developed after the adoption of this chapter shall be engineered and constructed in such a manner as to allow its efficient interconnection in the future into a larger regional system.
- (1) Such a system shall include appropriate utility easements and/or rights-of-way within property controlled by the developer extending to the borders of the development to allow future interconnections at logical points.
 - (2) At the time of subdivision or land development approval, the Board of Supervisors may request that agreements be established so that a central water or sewage system is dedicated to a Township authority after completion of the development, or at such other time as is mutually agreed upon. A developer who dedicates a central water or sewage system to a Township authority shall retain the right to use or sell the capacity of the system that was funded by the developer. The Township may require a developer to post a bond to guarantee proper operation of a system for at least two years after dedication.
- D. On-lot septic systems.
- (1) Purpose. The purpose of this subsection is to ensure that a suitable location is available for a new septic system if the original septic system should malfunction.
 - (2) This Subsection D shall only apply to a lot that is officially submitted for subdivision or land development approval after the adoption of this chapter.
 - (3) Each lot shall include both a primary and a reserve septic system location. Both locations shall be determined by the Township Sewage Enforcement Officer to meet Pennsylvania Department of Environmental Protection regulations for a septic system location prior to approval of the final subdivision or land development plan.

- (4) The requirement for a reserve septic system location shall not apply to the following:
 - (a) A lot of over 10 acres;
 - (b) The simple merger of two or more existing lots, or an adjustment to lot lines of an existing lot;
 - (c) A vacant lot that includes a permanent deed restriction or conservation easement prohibiting any construction of buildings on the lot; or
 - (d) Lots within a subdivision or land development that will abut a complete capped sewage system constructed by the developer, the design of which has been approved by the Township.
 - (5) The reserve septic system location shall be kept clear of buildings and parking and shall be shown on any subsequent applications for new or expanded buildings or parking. The Township may require that the location be recorded on the deed.
- E. Well and septic system locations. Every plan for a subdivision or land development and every application for a building permit for a new principal building that will be served by a well and/or septic system shall designate the proposed well and primary and alternate septic system locations.
- (1) Such plan shall show that the proposed locations will meet the minimum isolation distances established by Pennsylvania DEP regulations between a well and septic systems on the subject lot and all adjacent lots.
 - (2) A plan may show the outer extent of potential well locations, instead of one exact location, provided all of the potential area would still meet the isolation distance.
 - (3) If the well or septic system location is proposed to be changed from the location shown on the submitted plan, then a site plan showing the revised location shall be submitted for approval by the Zoning Officer and Sewage Enforcement Officer prior to issuance of the building permit.
 - (4) It is requested that well sites be placed in the front yard, thereby allowing septic systems to be placed in the rear yard. The intent is to minimize the visibility of any septic mound systems. In addition, if wells are located in consistent locations within a subdivision, it will make it easier for adjacent property owners to meet minimum separation distances between septic systems and wells.
- F. Expansion of septic use. If the Zoning Officer has reason to believe that a proposed increase in the number of dwelling units or expansion or change of a nonresidential use would result in increased flow to a septic system, then the application shall be referred to the Sewage Enforcement Officer. The Sewage Enforcement Officer shall require modification, expansion or replacement of the septic system if necessary to handle the proposed flow.
- G. Water studies.
- (1) Purposes. The purposes of this subsection are:

- (a) To provide the Township with information to properly evaluate the impact a proposed development will have upon groundwater resources.
 - (b) To make sure that adequate water supplies will be available to service a proposed development without negatively impacting adjacent uses dependent upon the same water source.
- (2) A hydrogeologic study shall be required to be submitted by the applicant whenever a proposed use, subdivision or land development will involve total average water usage of groundwater or spring water after build-out exceeding 10,000 gallons per day.
 - (3) See also the provisions of §§ 246-26 and 246-34 concerning withdrawals of spring water and groundwater for off-site use.
 - (4) Credentials. The study shall be prepared by a professional geologist or professional engineer with substantial experience in preparing similar studies. Before any person or entity is engaged to prepare the study, the applicant shall submit written credentials of the individual who will direct the study. The Board of Supervisors shall then have a maximum of 45 days from the date of receipt to the Township to determine whether the individual's credentials are acceptable. The governing body may also preapprove a written list of individuals who are known to be qualified to complete these types of studies.
 - (5) The hydrogeologic study, at a minimum, shall include the following:
 - (a) A location map for the proposed development showing proximity to waterways, lakes and major roads.
 - (b) A proposed thirty-day average rate and maximum daily rate of groundwater or spring water withdrawal from each water source.
 - (c) A map showing water withdrawal points.
 - (d) An analysis of the impacts of the water withdrawal upon the groundwater supply and upon uses and creek levels within a one-half-mile radius of the project, including agricultural activities.
 - (e) The analysis shall consider impacts during both normal conditions and drought conditions. Drought conditions shall be documented.

§ 246-30. Steep slopes.

- A. Purposes. The following provisions are primarily intended to avoid erosion, sedimentation, stormwater management and winter driving hazards, particularly considering the Township's climate, in addition to serving the overall purposes of this chapter.
- B. Regrading. Non-man-made slopes of over 15% shall not be regraded after the adoption of this chapter in such a manner that circumvents the requirements of this chapter. This section shall not regulate slopes that were clearly man-made prior to the adoption of this chapter.

- C. Slopes over 25%. Any area with a slope over 25% shall not be counted toward the minimum lot area of a lot, for the purposes of determining compliance with any minimum lot area or any tract area requirements of this chapter. See also § 246-28 which requires deletion of lakes, ponds and wetlands from minimum lot area.
- D. Single-family dwellings and steep slopes. The following provisions shall only apply to any lot that is submitted for preliminary subdivision approval after the effective date of this section, or which is submitted for final subdivision approval if a preliminary plan submittal was not required:
- (1) Any lot proposed to be used for a single-family detached dwelling shall include a proposed building area with a minimum of 4,000 square feet of land area. Such building area shall not include land within the minimum yard areas. Such building area shall contain the proposed location of the dwelling. The dwelling shall be built within the proposed building area shown on the plan, except as may be approved under Subsection F.
 - (a) If such building area for each lot includes an average slope of greater than 15% but not greater than 20%, then the minimum lot area shall be five acres in the CR District and two acres in any other district, unless a larger lot area is required by another section of this chapter.
 - (b) If such building area for each lot includes an average slope of greater than 20% but not greater than 25%, then the minimum lot area shall be eight acres in the CR District and three acres in any other district, unless a larger lot area is required by another section of this chapter.
 - (c) A new lot shall not be created that has a proposed building area that includes an average slope of greater than 25%.
 - (d) Through designations on the Township-approved site plan, an applicant may limit the area upon which new principal buildings are permitted. By committing to not place a principal building on slopes over 15%, the applicant can avoid the larger lot size requirement of this subsection.
 - (2) Access. Each lot shall be accessible from an existing or proposed street by means of a driveway with a maximum grade of 15%.
- E. Steep slopes and other uses. A lot shall only be used for buildings for principal uses other than single-family detached dwellings if the proposed building area includes an average slope of less than 15%.
- (1) For such uses, the building area shall include locations of all proposed buildings and parking areas and outdoor storage areas and an area 20 feet around buildings, parking and storage areas. Such building area shall also contain the proposed locations of any primary and alternate on-lot septic systems.
 - (2) Access. Each principal building and each parking area shall have vehicle access from an existing or proposed street by means of a driveway with a maximum grade of 10%.
- F. Changes to building area. The building area may show the outer extent of areas being considered for a proposed building, without showing an exact location, provided all of

those potential areas still meet the requirements of this section. An applicant may change the proposed building area after subdivision approval is granted, provided that the applicant proves that the new building area will still comply with this section. However, the building area shall not be so large as to attempt to circumvent the average slope provisions of this section that apply to a building site.

- G. Site plan and tree protection. If an applicant proposes to alter or build upon slopes of 15% or greater, then a site plan shall be submitted to the Zoning Officer. A separate site plan is not required if the same information was included in an approved subdivision or land development plan.

(1) Site plan. The site plan shall show:

- (a) The proposed lot lines;
- (b) The existing and proposed contours; and
- (c) Existing and proposed building locations, and the outer perimeter of the proposed building area as described above.

(2) Mature trees. Where building or alteration is proposed on slopes of over 15%, the applicant shall prove to the satisfaction of the Zoning Officer that the removal of healthy trees with a trunk width of over eight inches (measured at a height 3.5 feet above the ground level) and other attractive natural vegetation will be minimized. The Zoning Officer may ask for reviews by the Township Engineer or Planning Commission. The site plan shall show wooded areas to be removed or preserved, and methods to be used to make sure trees are protected by temporary fences or other measures during the construction process.

§ 246-31. Open space development.

- A. Purposes. The purpose of this section is to allow flexible development of areas with sensitive natural features in such a way as to avoid severe soil erosion and sedimentation; avoid severely increased stormwater flows and speeds; steer development to those areas that are more physically suited for it; avoid construction of steep roads that are difficult, time-consuming and expensive to maintain and snow plow; avoid increased use of steep roads and driveways that are dangerous to drive upon in snow and ice; conserve forested areas that are an important part of the ecological cycle, providing for groundwater recharge, air pollution reduction and wildlife habitats; and reduce construction costs, while allowing each property owner a reasonable use of their land, related directly to the natural features and location and accessibility of the land. In most cases, this option will encourage the preservation of significant areas of preserved open space. These provisions also recognize the groundwater supplies and the ability of the ground to treat sewage wastes are limited, and may become overtaxed if the entire Township is developed in one-acre-minimum lots from end to end.
- B. Applicability. This article allows an applicant the option to reduce the minimum lot areas on tracts of land if the applicant proves to the satisfaction of the Township that all of the requirements of this section will be complied with.

- (1) The term "open space development" shall mean a residential development meeting the requirements of this section and which is approved as provided in § 246-26.
 - (a) Uses. An open space development shall only include single-family detached dwellings, nature preserves, Township-owned recreation, a golf course and their customary permitted accessory uses. A mobile/manufactured home park shall not qualify as an open space development.
 - (2) A tract may be eligible for approval for an open space development if it includes a minimum of four acres of land area in common ownership, except that a minimum of six acres shall be required in the CR District. Such land area shall be contiguous, except that portions of the tract may be separated only by existing or proposed streets or creeks.
 - (a) These provisions are intended to allow flexibility in the placement of individual dwelling units, in order to locate homes away from important natural areas and other community assets.
 - (b) The amount of common open space shall be based upon the total lot area of all lots within the development, prior to subdivision, and prior to deletion of rights-of-way of future streets and before deleting the area of any environmental features. Areas that were preserved by a conservation or agricultural preservation easement prior to the submittal of the subdivision shall not be counted toward the area of the tract in calculating common open space or allowed density.
 - (c) Areas used for a principal nonresidential use (other than uses approved by the Township to be part of the preserved open space, such as a barn) shall not be included within the land area used to calculate residential density.
 - (d) Conservation easements shall be established on lots as necessary to make sure that the maximum density requirement is met over time. Such conservation easements shall prevent the resubdivision of lots in a manner that would violate this section.
 - (3) An open space development shall be designed as a unified, coordinated residential development, and shall be approved within a development plan controlled by a single development entity. After final subdivision approval and within an approved development agreement(s), a developer may sell individual lots to different builders or home buyers, provided that the developer or his/her successor remains responsible for ensuring the compliance with the approved development plan.
- C. Density, open space and lot standards.
- (1) A yield plan shall be presented by the applicant. The yield plan shall accurately show the maximum number of dwelling units that would be possible under current Township ordinances if the open space development provisions would not be used. This yield plan shall be completed to an accurate scale, including accurately showing tract boundaries, steep slopes, 100-year floodplains and wetlands. The yield plan shall show potential lots and streets. However, the yield

plan is not required to meet the detailed engineering requirements of a preliminary subdivision plan. The Board of Supervisors or its designee shall require sufficient septic probes to prove that on-lot septic systems would be possible in marginal areas. If the probes are not intended to be used for actual construction of septic systems, such probes may be conducted by any state-certified sewage enforcement officer.

- (2) Such yield plan shall be reviewed by the Zoning Officer, with advice by the Township Engineer, to determine whether each represents a reasonably accurate estimate of the number of dwelling units possible on each site, both physically and legally. If such estimates are determined to not be accurate, the applicant shall be required by the Zoning Officer to revise such yield plan.
- (3) The maximum number of dwelling units allowed on the tract through open space development shall be 25% greater than the number of dwelling units that is determined by the Township to be possible under the approved yield plan.
- (4) Within an open space development, the only allowed dwelling units shall be single-family detached dwellings. The following minimum lot areas shall apply, provided that the total maximum density for the tract is not exceeded:
 - (a) CR District. The minimum lot area shall be reduced to one acre and the minimum lot width shall be reduced to 150 feet. A minimum of 65% of the total lot area of the tract (prior to subdivision) shall be preserved as common open space. The majority of the required common open space shall be in one contiguous tract, except that it may be separated by one street. The only allowed dwellings shall be single-family detached dwellings.
 - (b) R District. The minimum lot area shall be reduced to one acre and the minimum lot width shall be reduced to 150 feet. A minimum of 50% of the total lot area of the tract (prior to subdivision) shall be preserved as common open space. The majority of the required common open space shall be in one contiguous tract, except that it may be separated by one street. The only allowed dwellings shall be single-family detached dwellings.
 - (c) LDR District. The dwellings shall need both Township-approved central water and central sewage services. The minimum lot area may be reduced to 10,000 square feet and the minimum lot width to 80 feet. A minimum of 35% of the total lot area of the tract (prior to subdivision) shall be preserved as common open space. The majority of the required common open space shall be in one contiguous tract, except that it may be separated by one street. The only allowed dwellings shall be single-family detached dwellings.
 - (d) MDR District. The dwellings shall need both Township-approved central water and central sewage services. The minimum lot area may be reduced to 8,000 square feet and the minimum lot width to 60 feet for a single-family detached dwelling. For other housing types, the minimum average lot area per dwelling unit shall be reduced to 8,000 square feet. A minimum

of 30% of the total lot area of the tract (prior to subdivision) shall be preserved as common open space, except that such minimum common open space shall be increased to 40% if 1% to 25% of the dwelling units are not single-family detached dwellings and shall be increased to 50% if over 25% of the dwelling units are not single-family detached dwellings. The majority of the required common open space shall be in one contiguous tract, except that it may be separated by one street.

- (5) Utilities. Any lot of less than one acre shall be served by Township-approved central sanitary sewerage service and central water service.
 - (6) Subdivision of part of a tract. This Subsection C(6) addresses a situation in which only part of a lot is proposed to be subdivided, and the applicant at the present time does not intend to subdivide for the maximum number of dwellings allowed by this section. In such case, the applicant shall establish a permanent conservation easement covering common open space to comply with this section. Because only part of the tract is being subdivided, it may not be necessary to meet the common open space requirement based upon the area of the entire tract.
 - (a) The land under the conservation easement shall be a regular rectangle in shape and shall be located in such a manner as to allow it to adjoin land that could be added under a conservation easement in the future.
 - (b) The following hypothetical example assumes a lot includes 50 acres, and the yield plan determines that the applicant for a conservation development is allowed a total of 30 new dwellings. In this example, the applicant only wishes to subdivide lots for 10 new dwellings at the present time, which is 1/3 of the total number of allowed dwellings. If the entire lot would be subdivided to the maximum allowed, a conservation easement would need to be placed on 30% of 50 acres, or 15 acres. Because only 1/3 of the allowed dwelling units are being subdivided, then the conservation easement at this time would only need to apply to five acres. The five acres under the conservation easement would need to be placed on the tract at a location where it could be joined by the remaining 10 acres of land under a conservation easement if the applicant in the future decided to subdivide lots for the remaining 20 dwelling units that are allowed.
- D. Conditions for approval. In addition to the specific requirements of this section, an open space development shall only be approved if the applicant proves to the satisfaction of the Board of Supervisors, based upon review by the Planning Commission, that the following conditions will be met:
- (1) That the open space development would clearly serve a valid public purpose that would result in a development that would be superior to what would result if the land would be developed as a conventional development. Such valid public purposes include, but are not limited to, the following:
 - (a) The permanent preservation of dense forests, steep slopes, wetlands, creek valleys, highly scenic areas or other sensitive natural features.
 - (b) The permanent preservation of a substantial area of land in agricultural uses, in a tract of proper size and configuration that allows for efficient

agricultural use and that properly considers the issue of compatibility between the agricultural uses and homes.

- (c) The dedication of public parkland at a site deemed appropriate by the Board of Supervisors and that involves land that is clearly suitable for active and/or passive recreation.
 - (d) The open space of homes in a location that will be substantially buffered from highly noxious, nuisance-generating uses, such as an expressway or major arterial street.
- (2) The applicant shall prove that the proposed open space development has been designed in full consideration of important natural features, including mature woodlands, creek valleys, steep slopes and wetlands.
- (a) At a minimum, the applicant shall prove that areas along perennial creeks shall be preserved in their natural state, except for landscaping, erosion control improvements, public recreation improvements and needed utility, street and driveway crossings.
 - (b) The natural features of the site shall be a major factor in determining the siting of dwelling units.

E. Open space.

- (1) Open space. Land within an open space development may be permanently preserved as public, semipublic or private common open space. See the definition in § 246-20 of "open space, common or preserved." The common open space requirements of this section shall be in place of the common open space land or fee requirements of Chapter 225, Subdivision and Land Development.
- (2) Open space standards. Any preserved open spaces shall meet all of the following requirements:
 - (a) Such open space shall be permanently deed-restricted or protected by an appropriate conservation easement to prevent the construction of buildings or the use for any nonagricultural commercial purposes or the use of the land for clear-cut forestry. Land approved as required open space shall only be used for noncommercial active or passive recreation, a Christmas tree farm, a golf course, a nature preserve, a wholesale plant nursery and/or Township-approved agricultural uses.
 - (b) An open space development shall still meet any recreation land dedication or recreation fee requirements that may apply under Chapter 225, Subdivision and Land Development.
 - (c) The Township may require the use of conservation easements within an open space development to limit the disturbance of natural slopes over 15%, wetlands, mature forests, creek valleys and other important natural features.
 - (d) Improvements to open spaces. Where open space is proposed to be used for recreation and/or dedicated to the Township, the application shall include a

detailed and legally binding (if approved) description of what improvements the applicant will make to any land intended to be publicly dedicated open space to make it suitable for its intended purpose.

- [1] Examples of such improvements for areas intended for passive recreation include preservation and planting of trees, development of nature, bicycle or jogging trails, the stabilization of creek banks and the removal of undesirable vegetation.
 - [2] Examples of such improvements for areas intended for active recreation include rough grading of land to create land suitable for free-play fields for youth.
 - [3] Type of maintenance. Where the open space would not be dedicated to a government entity, the subdivision plan shall state the intended type of maintenance of the open space. The following classes of use and maintenance may be used, or other classes that are clearly described within and approved as part of the plan submittal:
 - [a] Lawn. A grass area with or without trees which may be used by the residents for a variety of purposes and which is intended to be mowed regularly.
 - [b] Natural area. An area of attractive desirable natural vegetation that is primarily intended for passive recreation, with minimal maintenance. Noxious and poisonous weeds should be controlled. Additional trees, as appropriate, and wildflowers are recommended to be planted.
 - [c] Recreation area. An area designated for a specific recreation use, including, but not limited to, tennis, swimming, shuffleboard, playfields and/or children's play equipment. Such areas shall be maintained so as to be safe and appropriate for the intended use.
- (e) All proposed preserved open space shall be cleared of construction debris, materials from illegal dumping and any rocks that were not naturally on the land, unless those rocks are incorporated into landscaping improvements.
 - (f) The applicant shall prove that all required open space would be suitable for its intended and Township-approved purposes. The Township may require the provision of a trail easement and/or the construction of a trail through common open space. If a developer is required to install a trail, it shall be completed prior to the final sale of any adjacent residential lots.
 - (g) Lots and open spaces shall be located to promote pedestrian and visual access to preserved open spaces whenever possible. A nonmotorized recreation trail shall be shown on the plans through common open space and shall be built by the developer prior to the sale or construction of any adjacent homes, unless the Board of Supervisors determine that a trail is not appropriate in the particular situation.

- (3) Open space ownership. The method(s) to be used to own, preserve and maintain any preserved open space shall be acceptable to the Township. The Township shall only approve an open space development if the applicant proves there will be an acceptable method to ensure permanent ownership, preservation and maintenance of land that will not be included in individual home lots.
- (a) The method of ownership and use of any required preserved open space shall be determined prior to preliminary subdivision or land development approval. The Township should be given right of first refusal at the time of such review to accept proposed open space as public open space. Required open space shall be permanently preserved by one or a combination of the following methods:
- [1] Dedication to the Township as public open space, if the Board of Supervisors agrees, in writing, to such dedication.
 - [2] Dedication to the county as public open space, if the County Commissioners agree, in writing, to such dedication.
 - [3] Dedication to the school district, if such Board of Education agrees, in writing, to accept such dedication and to use and maintain the land for public school buildings and/or related open space.
 - [4] Dedication to a homeowners' association as preserved open space, with the homeowners legally bound to pay fees for the maintenance and other expenses of owning such land, and with such homeowners' association being incorporated with covenants and bylaws providing for the filing of assessments and/or municipal liens for the nonpayment of maintenance costs for preserved open space that is not publicly owned. Such responsibilities shall be specified as part of each deed prior to sale of each lot or dwelling unit. The Township may delay a dedication of maintenance responsibilities by a developer to a homeowners' association until such association is incorporated and able to maintain such land.
 - [5] Dedication of the land to an established nature conservation organization acceptable to the Board of Supervisors.
 - [6] Dedication of a permanent agricultural preservation easement to the County Agricultural Land Preservation Board, with the land utilized for allowed agricultural uses.
 - [7] Dedication to the State Game Commission, State Fish and Boat Commission or similar public agency, if such agency agrees, in writing in advance, to accept the dedication and to maintain the land for public recreation.
 - [8] Operation as a bona fide golf course, with a minimum lot area of 50 acres. Areas including buildings or vehicle parking shall not count toward the minimum average lot area.

- [9] Retention as part of one or more private lots, with an appropriate Township-approved conservation easement. This option shall only be available in locations where the applicant proves to the Board of Supervisors that none of the above options are feasible or appropriate. This option is primarily intended for situations where less than two acres of common open space would result (which may include a situation where only part of a tract is being subdivided).
- (b) Legal documents providing for ownership and/or maintenance of required preserved open space shall be reviewed by the Township Solicitor and be subject to approval by the Board of Supervisors prior to recording of the final plan.
- (c) A legally binding system shall be established to oversee and maintain land that will not be publicly owned. Any homeowners' association should generally follow the provisions of Section 705(f), parts (1) and (2), of the Pennsylvania Municipalities Planning Code, as amended.⁴⁴ Proper notations shall be required on the recorded plan. For example, if the preserved open space is intended to be owned by a homeowners' association as recreation land, a statement should be included that the designated open space "shall not be further subdivided and shall not be used for the construction of any nonrecreation buildings."
- F. Steep slopes. Within an open space development, no principal building shall be placed on slopes of over 25%.
- G. Access. An open space development shall have an interior street system that minimizes or avoids the need for individual driveways entering directly onto arterial or major collector streets.
- H. Phasing. The development shall include a phasing system that shall be approved by the Board of Supervisors. Such phases shall ensure that the requirements of this article would be met after the completion of any one phase, and that the development could properly function without the construction of additional phases.
- I. Landscaping plan. An application for an open space development involving over 30 acres shall include a landscape planting and preservation plan prepared by a registered landscape architect.
- (1) Such plan shall show the locations, general species and initial sizes of landscaping to be planted within the preserved open space and throughout the tract.
- (2) Such plan shall also show that existing substantial healthy trees will be preserved to the maximum extent reasonable. The methods to ensure preservation during construction shall be described.
- (3) Landscaping shall also be used as appropriate to filter views of denser housing from any adjacent housing that is less dense.

44. Editor's Note: See 53 P.S. § 10705.

§ 246-32. Setback from creeks.

- A. No new or expanded building and no new or expanded off-street parking area or commercial or industrial storage area shall be located within: **[Amended 2-2-2016 by Ord. No. 1-2016]**
- (1) One hundred feet measured horizontally from the top of the defined bank of the Big Wapwallopen and Wapwallopen creeks; and
 - (2) Fifty feet measured horizontally from the top of the defined bank of the Bow Creek.
- B. Any street or driveway crossing of a perennial natural watercourse shall be approximately perpendicular to the watercourse, to the maximum extent feasible.
- C. Exception. This section shall not prohibit the construction of a single-family detached dwelling on an existing lawful lot of record if the applicant proves to the Zoning Officer that it is infeasible to comply with the setbacks of this section. In such case, the applicant shall prove to the Zoning Officer that the dwelling will be at the greatest distance from the creek or river that is feasible.

ARTICLE IV

Additional Requirements for Specific Uses**§ 246-33. Applicability.**

- A. This article establishes additional specific requirements for certain specific uses, in addition to the sign, parking, environmental and other general requirements of this chapter and the requirements of each district. Wherever two requirements conflict, the stricter requirement shall apply.
- B. For uses allowed within a specific zoning district as special exception uses, see also the procedures and standards in § 246-16.

§ 246-34. Additional requirements for specific principal uses.

- A. Each of the following uses shall meet all of the following requirements for that use:
- (1) Adult use. (This is limited to the following: adult bookstore, adult movie theater, massage parlor or adult live entertainment facility.)
 - (a) Purposes. The regulations on adult uses are intended to serve the following purposes, in addition to the overall objectives of this chapter:
 - [1] To recognize the adverse secondary impacts of adult uses that affect health, safety and general welfare concerns of the municipality. These secondary impacts have been documented in research conducted across the nation. These secondary impacts typically include, but are not limited to, increases in criminal activity; increases in activities that increase the risk of transmission of sexually transmitted diseases; increases in activities that increase the risk of transmission of other