

CHARTER TOWNSHIP OF FENTON
Ordinance No. 637
Adopted: April 4, 2005

An ordinance to amend Article 11 of Fenton Township Zoning Ordinance No. 594 by adding Section 11.49A, to revise and expand the provisions for open space developments.

THE CHARTER TOWNSHIP OF FENTON, GENESEE COUNTY, MICHIGAN, ORDAINS:

ARTICLE I. Article 11 of Zoning Ordinance No. 594 is hereby amended to add Section 11.49A (Open Space Developments) as follows:

SECTION 11.49A Open Space Developments

Open Space Developments permitted in the AG, R-1, R-2, R-3, R-4 and PUD zoning districts shall comply with the following requirements.

- A. In order to calculate the density bonus, the applicant shall present a parallel plan which will demonstrate the maximum number of lots that could be developed on the site without clustering. In the case of a proposed PUD zoning, the minimum lot size and lot width to be used in preparing the parallel plan shall be based on the zoning district equivalent to the future land use designation of the parcel unless the parcel's current zoning district allows a higher density, in which case the parallel plan will be based on the current zoning district regulations. The parallel plan shall comply with all of the applicable zoning requirements for a non-cluster development, and shall be deemed "buildable" by the Planning Commission in reviewing the plan. The number of lots shown on the parallel plan shall be the base number of lots used to calculate density and any applicable density bonus in the open space development.

- B. The applicant shall ensure permanent protection of any dedicated open space through an irrevocable conveyance that is found acceptable to the Planning Commission, in both form and content, such as recorded deed restrictions, covenants that run perpetually with the land, or a conservation easement established per the State of Michigan Conservation and Historic Preservation Act, Public Act 197 of 1980 as amended (M.C.L. 399.251). Such conveyance shall assure that the open space will be protected from all forms of development in perpetuity, except as shown on an approved site plan, and shall not be changed to another use. Such conveyance shall provide the following:
 - 1. Indicate the proposed allowable use(s) of the perpetually preserved open

space. The Planning Commission may require the inclusion of open space restrictions that prohibit the following:

- a. Dumping or storing of any material or refuse;
 - b. Any activity that may cause the risk of soil erosion or threaten any living plant material;
 - c. Cutting or removal of live plant material except for the removal of dying or diseased vegetation;
 - d. Use of motorized off-road vehicles;
 - e. Cutting, filling or removal of vegetation from wetland areas; and/or
 - f. Use of pesticides, herbicides or fertilizers within or adjacent to wetlands.
2. Require that the perpetually preserved open space be maintained by parties who have an ownership interest in the open space;
 3. Provide standards for scheduled maintenance of the open space; and
 4. Provide for maintenance to be undertaken by the Charter Township of Fenton in the event that the perpetually preserved open space is inadequately maintained, or is determined by the Township to be a public nuisance, with the assessment of costs upon the property owners.

C. In calculating open space, the following standards will be used.

1. Any proposed open space must be a minimum of fifty (50) feet wide in order to be considered open space, unless the Planning Commission determines that it is an integral part of the total open space for the development and is physically improved in a manner that is readily identifiable as open space and distinguishable from the adjoining lots.
2. No individual areas less than one-half (1/2) acre may be counted in calculating open space.
3. Detention/retention areas shall not be counted as open space unless, in the judgment of the Planning Commission, it meets one or more of the following criteria:
 - a. The area constitutes an improved landscaping feature;
 - b. The area promotes bio retention; and/or
 - c. The area otherwise advances the purpose of the open space requirement.
4. Regulated wetlands, floodplains and submerge lands shall not be counted as open space. The location and size of wetlands shall be verified by the

Michigan Department of Environmental Quality as required in Article 8 Site Plan Review and Section 3.21 Planned Unit Development.

5. Golf courses shall not be included in the calculation of open space.
6. Rights-of-way and existing easements that make the property they cross non-buildable shall not be included in the calculation of open space.
7. The requirements listed above may be modified by the Planning Commission if the use of the open space as an amenity for the common benefit of the residents of the development or the general public is determined by the Planning Commission to warrant such consideration.

D. The proposed site plan shall provide pedestrian access to all open space areas from all residential areas, connections between the following:

1. open space areas
2. right-of-ways
3. appropriate on- and off-site uses.

Trails within the site shall be constructed of gravel, woodchip or other similar material, however the Planning Commission may require construction of paved bike paths through portions of the development or along any public right-of-way abutting the site as a requirement to qualify as open space.

E. Any area to be used as open space must be a contiguous to the property receiving the density bonus.

F. All proposed lots must comply with the minimum lot size requirements of this Ordinance, which shall not include regulated wetlands, floodplains and submerged lands.

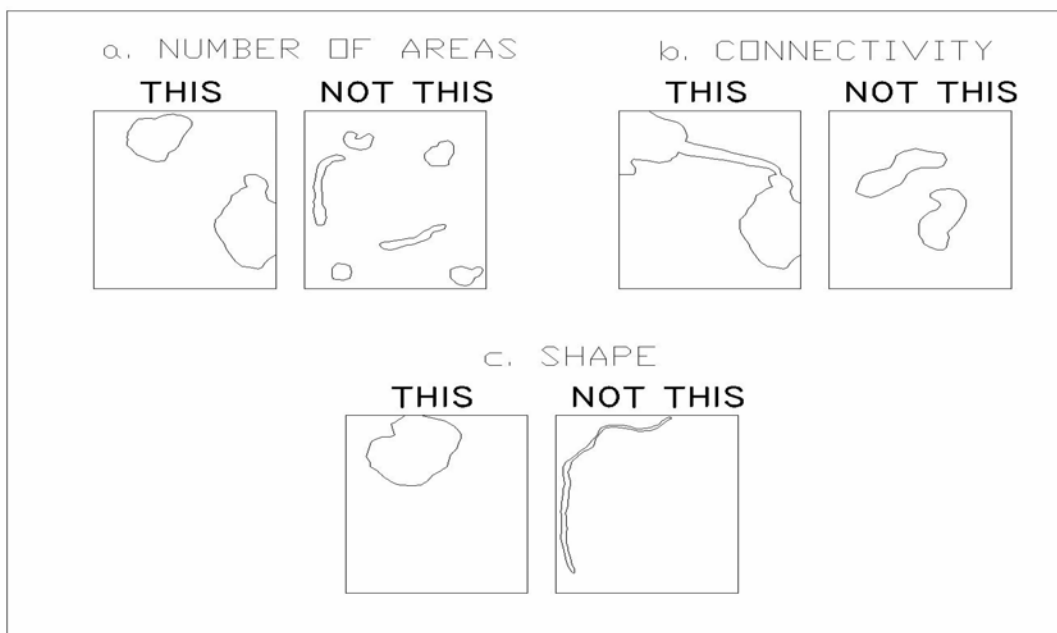
G. Concept plans and site plans submitted for consideration as part of a proposed open space development must include an itemized table showing the following:

1. Each of the proposed open spaces, including their location, size and use.
2. The total amount of all open space stated in acres.
3. The total amount of all open space stated as a percentage of net area.
4. The calculation of the net area of the site.

H. In reviewing proposed open space plans, the Planning Commission will consider:

1. Compliance with the general standards for site plan approval found in Section 8.06 of this ordinance.
2. In considering the appropriate portions of a proposed site to be preserved as open space, the Planning Commission will give priority to land with one or more of these characteristics:

- a. Serves as a wetland buffer area.
 - b. Protects a floodplain.
 - c. Preserves a woodlot.
 - d. Protects an area of steep slopes/high erosion potential.
 - e. Preserves a historic structure or site.
 - f. Preserves a scenic vista.
 - g. Preserves the rural character of the community along roadways.
 - h. The requirements listed above may be modified by the Planning Commission if the use of the open space as an amenity for the common benefit of the residents of the development or the general public is determined by the Planning Commission to warrant such consideration.
3. In considering the size and shape of proposed open space, the Planning Commission will consider open space areas with the following characteristics:
- a. The open space is divided into the minimum number of sites feasible
 - b. The open space connects to existing designated open space areas or potential open space areas on adjacent parcels
 - c. The open space, where possible, is relatively equal in width and depth, rather than long and narrow.



ARTICLE II. This ordinance and its various articles, paragraphs and clauses thereof are hereby declared to be severable. If any article, paragraph or clause is adjudged unconstitutional or invalid, the remainder of this amendatory ordinance shall not be affected thereby.

ARTICLE III. All ordinances and provisions of ordinances of the Charter Township of Fenton in conflict herewith are hereby repealed.

ARTICLE IV. This amendatory ordinance shall be published as required by law and shall take effect 7 days after adoption and publication.

Enacted at a regular meeting of the Fenton Township Board held on the 4th day of April 2005.

Bonnie Mathis, Supervisor

Robert Krug, Clerk