

CUMBERLAND TOWNSHIP, ADAMS COUNTY, PENNSYLVANIA

ORDINANCE NO. 2021 - 186

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF CUMBERLAND TOWNSHIP, ADAMS COUNTY PENNSYLVANIA AMENDING VARIOUS SECTIONS OF CHAPTERS 22 (SUBDIVISION AND LAND DEVELOPMENT) AND 27 (ZONING) OF THE CODE OF THE TOWNSHIP OF CUMBERLAND TO SET FORTH OPEN SPACE DESIGN STANDARDS AND REGULATIONS

WHEREAS, the Board of Supervisors of the Township of Cumberland are authorized to adopt subdivision and land development provisions encouraging and promoting flexibility, economy, and ingenuity in the layout and design of subdivisions and land developments (see 53 P.S. §10503(5)); and

WHEREAS, the Board of Supervisors of the Township of Cumberland are authorized to adopt zoning provisions for the purpose of encouraging innovation and the promotion of flexibility, economy, and ingenuity in development and for the purpose of increases in the permissible density of population or intensity of a particular use based on expressed standards or criteria set forth in the Zoning Ordinance (see 53 P.S. §10605 (3); and

WHEREAS, the Board of Supervisors of the Township of Cumberland, Adams County, Pennsylvania deems it to be in the best interest and the general welfare of the citizens and residents of the Township to amend various sections of the Subdivision and Land Development Ordinance (Chapter 22) and the Zoning Ordinance (Chapter 27) of the Township of Cumberland Code of Ordinances to set forth open space design standards and regulations.

NOW THEREFORE, BE IT ENACTED AND ORDAINED, by the Supervisors of Cumberland Township, Adams County, Pennsylvania, that the Subdivision and Land Development Ordinance (Chapter 22) and the Zoning Ordinance (Chapter 27) of the Township of Cumberland Code of Ordinances (the "Code"), are hereby amended and supplemented as follows:

SECTION 1. Chapter 22, Part 2, Section 203, §22-203 of the Code entitled "Definitions" is hereby amended by replacing the definition of "Open Space" with the following:

OPEN SPACE

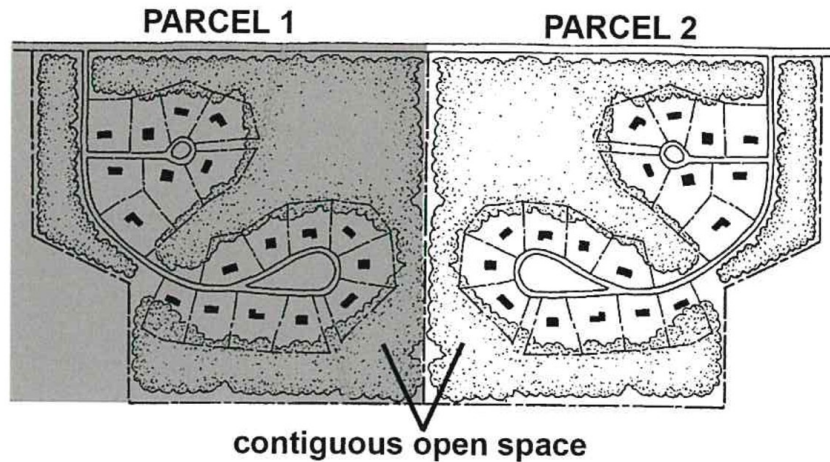
A parcel or parcels of land or an area of water or a combination of land and water within a development site, logically interrelated and interconnected, and designed and intended for the use and enjoyment of the residents of the development and/or community, not including streets, stormwater management facilities, required off-street parking areas, and required yards or set back areas. The space may be used for passive or active recreation or may be reserved for the protection and conservation of water resources, watersheds, forests, farmland, historic structures or sites, scenic areas, and natural resources. Open Space shall be substantially free of structures but may contain such improvements as are in the development plan as finally approved and as are appropriate for the active or passive

recreation of the residents served thereby. Not less than 50% of the Open Space shall include Developable Acreage.

SECTION 2. Chapter 22, Part 4 of the Code is hereby amended by adding Section §22-416 entitled “Open Space” as follows:

§22-416 Open Space.

1. The purpose of this section is to set forth requirements for the design of Common Open Space areas associated with development activities that include Common Open Space.
2. Development Limitation. Common Open Space shall be restricted from further subdivision or land development by deed restriction, conservation easement, or other agreement or form acceptable to the Township, noted on the subdivision plan of record and duly recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania. This shall not prevent the submission of a land development plan for the construction of a structure which is consistent with the use of Open Space as set forth herein. This shall not require the Open Space to be open to the general public.
3. Composition of Open Space.
 - a. Primary natural resources (floodplains, water bodies/watercourses, areas of very steep slope, and wetlands) shall to the greatest extent possible be included in the designated Open Space, however, no more than fifty (50) percent of the minimum required Open Space shall consist of primary natural resources.
 - b. The portion of Open Space not comprised of primary natural resources shall be designed to include the most prime agricultural soils within the proposed development.
 - c. Open Space areas within a development shall be designed to be not less than one acre in size and shall be not less than 150' wide by 150' deep except in the case of a trail corridor or other linkage between two (2) larger, noncontiguous, Open Space areas. Any such trail corridor or linkage shall be a minimum of fifteen (15) feet in width. Such trail corridor or linkage shall not count towards the Open Space requirement if it is located within a required setback. Such trail corridor or linkage shall be improved with a pedestrian trail.
 - d. Linkage of Open Space. Where adjacent parcels contain existing or proposed Open Space areas, either publicly owned or otherwise designated as Permanent Open Space, Common Open Space shall be located contiguously to this adjacent Open Space whenever possible to create larger Open Space networks. The burden shall be on the applicant to either locate the Common Open Space contiguous to this adjacent Open Space or to demonstrate, to the Township's satisfaction, that there is no feasible way to so locate said Common Open Space or that doing so would create an undue hardship.



- e. Historic Resources. Historic Resources shall be preserved, to the greatest degree feasible, through incorporation into the Common Open Space. Historic Dwellings preserved and incorporated into the Common Open Space (for example, to serve as an Open Space maintenance office, community activity location, or office location for a non-profit that advances an Open Space purpose) shall not be included in the total dwelling calculation for the development.
 - f. The Developer shall, at the time of submission of the preliminary plan, provide a written narrative outlining:
 - i. The Open Space benefits of each Open Space area proposed; and
 - ii. The proposed use of each Open Space area; and
 - iii. The scope of improvements (paths, playgrounds, sports facilities, and other amenities) to be included in the Open Space; and
 - iv. An explanation regarding how all proposed Open Space areas are interrelated to each other as well as serve the inhabitants of the development.
4. Use of Open Space. The proposed use of Open Space should accommodate the projected inhabitants of the development. The following are permitted uses of Common Open Space:
- a. Conservation of open land in its natural state (i.e., woodland, fallow field, or managed meadow).
 - b. Agricultural and horticultural uses, including raising crops or livestock, associated buildings, excluding residences, that are specifically needed to support an active, viable agricultural or horticultural operation. Specifically excluded are CAO or CAFO operations. To encourage the retention of agricultural lands, the Township or homeowner's association, as the case may be, may permit all or portions of the Open Space lands to be leased to a farmer. Approval of the agricultural lease option

shall be conditioned on appropriate agreements between the titleholder and the farmer, concerning permitted agricultural practices.

- c. Pastureland or areas for horses.
- d. Forestry.
- e. Public or not-for-profit private recreation specifically excluding wheeled vehicle activities (other than wheelchairs), shooting ranges, driving ranges, and golf courses. This does not preclude a non-commercial putting green.
- f. Easements for drainage, sewer, or water lines, or other subsurface public utilities, provided such areas do not occupy greater than ten (10) percent of the Common Open Space.
- g. Easements for stormwater management, only insofar as a meadow may be utilized as a best management practice and provided that such areas do not occupy greater than twenty (20) percent of the Common Open Space.
- h. Aboveground utility and street rights-of-way may traverse Common Open Space areas but shall not count toward the minimum required Common Open Space.
- i. Historic resources as identified and approved in accordance with the Township's ordinances.

In no event shall less than twenty-five (25) percent of the Common Open Space be available for and accessible for passive or active recreation use. Not less than five (5) percent of the Common Open Space (excluding trail corridor or linkage) shall be graded to serve as flexible recreation space with grades that do not exceed 8% slope in any direction.

The owner of the Common Open Space shall not be precluded from modifying the permitted Open Space use from its initial use to another use, provided that such use meets the requirements of this Section, as amended from time to time. In the event that the owner of the Common Open Space desires to modify the use of the Open Space, the owner shall notify the Township in writing of the desire to modify the use of the Common Open Space. The written notification shall include a proposed modified maintenance plan as required by this Section.

5. Ownership of Common Open Space.

- a. Development with Single Owner. For a development held in single fee simple ownership (for example, a development which includes dwelling units offered for lease by a single property owner) ownership may be retained by the developers and its successors or assigns, subject to the restrictive covenants set forth above.
- b. Developments with more than one Owner. For a development with more than one fee simple owner, all Common Open Space within the development shall be held by a single homeowner's association. In addition to all applicable statutes and regulations for homeowner's association ownership, the following shall apply:
 - i. The association shall be responsible for maintenance of Common Open Space and maintaining a policy of appropriate liability insurance in connection therewith;

- ii. The by-laws shall confer legal authority on the association to place a lien on the real property of any member who falls delinquent in his dues and/or assessments. Such dues and/or assessments shall be paid with all accrued interest before the lien may be lifted;
 - iii. The association shall ensure that Common Open Space is maintained in accordance with all applicable Township ordinances as well as the provisions of the approved land development plan and associated documents.
 - c. Dedication of Open Space Property Interest.
 - i. The owner of Common Open Space may transfer fee simple interest or a conservation easement or preservation easement to a “holder” as defined in the Conservation and Preservation Easements Act, 32 P.S. § 5051 et. seq., as amended.
 - ii. The conveyance shall be subject to the restrictions set forth in this Section, as amended from time to time.
 - iii. The restrictive covenants set forth in the conveyance documents shall be in a form acceptable to the Township.
 - iv. The conveyance shall retain a mandatory reversionary interest by the conveying owner in the event that the receiving entity ceases to exist or is no longer able to maintain the Common Open Space as required by the Section and all applicable land development plan documents.
- 6. Maintenance.
 - a. Maintenance Plan. The Developer shall, at the time of preliminary plan submission, provide a plan for the perpetual maintenance of Common Open Space and any facilities or amenities associated therewith. The plan shall:
 - i. Describe the manner in which the restricted Open Space will be utilized, managed, and maintained;
 - ii. Set forth all maintenance responsibilities for the uses of the Open Space (for example, if the Open Space includes walking trails or playing fields, how and when will they be maintained and when will such facilities need to be upgraded, repaired, or replaced).
 - iii. Delineate the estimated required funding needed to maintain the Common Open Space and the means of funding said maintenance on an on-going basis. This shall include the means of funding long-term capital improvements as well as regularly reoccurring operating and maintenance costs.
 - iv. The maintenance plan shall not be modified without written approval of the Board of Supervisors.
- 7. Access to Common Open Space. Common Open Space shall be designed in such a way to provide convenient access for the inhabitants of the development via adjoining street frontage, sidewalks, walking trails, or other access improvements. Where Common Open Space includes playgrounds or sports facilities such as courts or fields,

pavilions, or community gathering spaces the Open Space design shall include not less than one bicycle rack at each facility. If the development does not include shared community parking areas, a parking area shall be provided at the perimeter of playgrounds or sports facilities of sufficient size to provide not less than one parking space per every four (4) persons who may utilize the facility at any one time.

SECTION 3. Chapter 27, Part 2, Section 201, §27-201 of the Code entitled “Definitions” is hereby amended by replacing the definition of “Open Space” with the following:

OPEN SPACE

A parcel or parcels of land or an area of water or a combination of land and water within a development site, logically interrelated and interconnected, and designed and intended for the use and enjoyment of the residents of the development and/or community, not including streets, stormwater management facilities, required off-street parking areas, and required yards or set back areas. The space may be used for passive or active recreation, or may be reserved for the protection and conservation of water resources, watersheds, forests, farmland, historic structures or sites, scenic areas, and natural resources. Open Space shall be substantially free of structures but may contain such improvements as are in the development plan as finally approved and as are appropriate for the active or passive recreation of the residents served thereby. Not less than 50% of the Open Space shall include Developable Acreage.

SECTION 4. Chapter 27, Part 2, Section 201, §27-201 of the Code entitled “Definitions” is hereby amended by adding the term “Development Unit” in alphabetically order along with the following definition:

DEVELOPMENT UNIT

A portion of a lot, tract, or parcel consisting of 50 acres. In the event the lot, tract, or parcel is less than 50 acres it shall be considered one development unit. In the event that a lot, tract, or parcel consists of more than one development unit, but the acreage results in less than a whole unit, the number of Development Units shall be rounded up to the nearest whole number.

SECTION 5. Chapter 27, Part 5, Section 506, §27-506.6 of the Code is hereby amended by replacing Subsection 6, with the following:

6. Historic Resources. In a development undertaken under the provisions for cluster development, the maximum permitted tract density may be increased above the respective district maximum density per developable acre for cluster development, as outlined in § 27-503, Subsection 2, in accordance with the following:
 - A. Tract density may be increased by 10% above the respective district maximum density per developable acre in §27-503 where the development of the tract includes the preservation of a building or site on the Historic Resource List (a “Preserved

Resource”). The maximum increase in tract density is 10%. The ratio at which the increase in tract density shall be applied is subject to the following:

Tract Size	Development Unit (50 Acres)	Preserved Building/Site	Increase in Density* (per Development Unit)
10-50 acres	1	1	10%
51- 100 acres	2	1	10% on 1 unit or 5% on 2 units
101-150 acres	3	1	10% on 1 unit or 5% on 2 units or 3.33% on 3 units
151-200 acres	4	1	10% on 1 unit or 5% on 2 units or 3.33% on 3 units or 2.5% on 4 units
200-250 acres¹	5	1	10% on 1 unit or 5% on 2 units or 3.33% on 3 units or 2.5% on 4 units or 2% on 5 units

* The increase in density is not required to be on the development unit that includes the Preserved Resource.

If a historic site also includes a structure, credit will not be doubled.

- i. The preservation of a building shall be carried out in accordance with the Secretary of the Interior’s Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings.
- ii. The preservation of a historic site shall be carried out in such a manner as to result in the least amount of disturbance necessary to the site. The site shall be returned, as closely as possible, to its period appropriate complexion in accordance with the Secretary of the Interior’s Guidelines for the Treatment of Historic Landscapes.

B. Tract density may be increased by 2% above the respective district maximum density per developable acre in §27-503 where the development of the tract includes the preservation of a historic fence or wall (a “Preserved Structure”). The maximum

¹ Tract Size in excess of 250 acres shall be subject to the proration formula set forth above applicable to the Tract Size.

increase in tract density for all preservation activities shall not exceed 10%. The ratio at which the increase in tract density shall be applied is subject to the following:

Tract Size	Development Unit (50 Acres)	Preserved Fence/Wall	Increase in Density* (per Development Unit)
10-50 acres	1	1	2%
51-100 acres	2	1	2% on 1 unit or 1% on 2 units
101-150 acres	3	1	2% on 1 unit or 1% on 2 units or 0.6% on 3 units
151-200 acres	4	1	2% on 1 unit or 1% on 2 units or 0.6% on 3 units or 0.5% on 4 units
200-250 acres²	5	1	2% on 1 unit or 1% on 2 units or 0.6% on 3 units or 0.5% on 4 units or 0.4% on 5 units

*The increase in density is not required to be on the unit that includes the Preserved Structure.

- C. This increase in tract density cannot be stacked with the increase in tract density for a Preserved Resource. The increase is conditioned upon the following:
- The preservation activities may include the preservation of an existing wall or fence, the restoration of an existing wall or fence, or the installation of a fence that may have been present at the development tract based on historical data for the period appropriate to the site.
 - The preservation, restoration, or construction of fences or walls shall be carried out in accordance with the Secretary of the Interior Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings and the Secretary of the Interior's Guidelines for the Treatment of Historic Landscapes.
- D. If tract density is increased in accordance with this Section, the Developer shall provide a completion guarantee for such Preserved Resource or Preserved Structure activity, which shall be considered an "improvement", in accordance with the financial security provisions of the Subdivision and Land Development Ordinance.

² Tract Size in excess of 250 acres shall be subject to the proration formula set forth above applicable to the Tract Size.

SECTION 6. Repealer. All provisions of previous Ordinances of the Township of Cumberland which are contrary to this Ordinance are expressly repealed.

SECTION 7. Savings Clause. In all other respects, the Code of the Township of Cumberland shall remain as previously enacted and ordained.

SECTION 8. Severability. The provisions of this Ordinance are declared to be severable, and if any section, subsection, sentence, clause or part thereof is, for any reason, held to be invalid to unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of any remaining sections, subsections, sentences, clauses or part of this ordinance.

SECTION 9. Effective Date. This Ordinance shall take effect in accordance with law.

ENACTED AND ORDAINED on this 27th day of July, 2021.

ATTEST:

CUMBERLAND TOWNSHIP BOARD OF SUPERVISORS
CUMBERLAND TOWNSHIP, ADAMS COUNTY,
PENNSYLVANIA

Carol Merryman
Carol Merryman,
Township Secretary

By: David P. Waybright
David Waybright, Chairperson