

ZONING ORDINANCE AMENDMENT 2008-01

AN ORDINANCE TO AMEND THE ONEKAMA TOWNSHIP PERMANENT ZONING ORDINANCE DATED 1991, AS AMENDED, BY ADDING OR REVISING CERTAIN DEFINITIONS IN ARTICLE 5; AMENDING SECTION 1012. PRIVATE ROADS; AMENDING SECTION 1019. ACCESSORY BUILDING LOCATION; ADDING SECTION 1028. IMPERVIOUS SURFACE REGULATIONS; AMENDING ARTICLE 84 PERMITS; AMENDING ARTICLE 86 SPECIAL USE PERMITS; ADDING NEW ARTICLE 87. OPEN SPACE RESIDENTIAL (CLUSTER) DEVELOPMENTS; AND OTHER HOUSEKEEPING CHANGES; AND BY REPEALING ALL OTHER ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH:

THE TOWNSHIP OF ONEKAMA ORDAINS:

Section One. The Onekama Township Permanent Zoning Ordinance of 1991, as amended, (the "Ordinance"), is hereby amended by adding and revising certain definitions in Article 5. Definitions, as follows:

CONSERVATION EASEMENT: means that term as defined in Section 2140 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL.

LOT WIDTH: means the mean horizontal distance between the side lot lines, measured at right angles to those lines. Where side lot lines are not parallel, the lot width shall be considered as the average of the width throughout the lot between such lot lines. The minimum lot width, at any point in the lot, shall not be less than the required road frontage of the respective Land Use District.

PASSIVE RECREATION: means recreational activities that involve the use of existing natural resources and have a minimal impact. Examples include, but are not limited to picnicking, hiking, walking and jogging and other non-motorized uses

UNDEVELOPED STATE: means a natural state preserving natural resources, natural features, 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 the use of the public.

Section Two. The Ordinance is amended by adding the following subparagraph 8 to Article 10, General Conditions. Section 1019. Location of Accessory Buildings and Structures.

8. Except for waterfront properties, accessory buildings may be located in a Front Yard in the RR-1, RR-2, RR-3, and RR-4 Zoning Districts if ALL the following are met:
 - a. The property shall contain at least one acre of land;
 - b. The accessory building is located to one side of the property and not in front of the primary dwelling;
 - c. The accessory building shall not be more than half the distance between the primary dwelling and the road Right-of-Way but not less than fifty (50) feet from the road Right-of-Way.
 - d. Access to the accessory building shall be from the side or rear of the building rather than facing the road.
 - e. Side yard setbacks shall be met.

Section Three. Article 10, General Conditions. Section 1012 “Private Roads” is amended by adding the following sentence to the beginning of the existing text:

All Private Roads are subject to Article 84. Permits and shall require a Land Use Permit before any earth moving.

Section Four. Article 10. General Conditions is amended by adding Section 1028 as follows:

Section 1028 Impervious Surface Coverage:

For any parcel that is one (1) acre or less, or any parcel that is partially or wholly within five-hundred (500) feet of Portage Lake or any tributary of Portage Lake, the following standards shall apply:

- A. The impervious surfaces of the development of the property shall not cover more than 35% of the total parcel.

- B. For non-conforming “lots of record” that are less than 15,000 square feet in area, the impervious surfaces shall not exceed 35% of the total property area or the area of the building envelope, whichever is less.

- C. For the purposes of this ordinance "impervious surfaces" means surfaces that are impenetrable by water, including, but not limited to, building roofs, sidewalks, driveways, parking lots, concrete or stone patios.

Section Five. Article 84 Permits. Section 8401. is amended as follows:

Change Paragraph A. to read:

A. No land shall be occupied or used and no improvements, buildings or structures shall hereafter be erected, altered or relocated under the provisions of this section until a Land Use Permit authorizing the same shall be issued by the Zoning Administrator. Proceeding without a proper permit shall be subject to a fine in an amount established from time to time by the Onekama Township Board.

Change Paragraph F. to read:

F. A permit issued under this Section is void if the use is not commenced within one (1) year. A renewal may be granted by the Zoning Administrator after a restudy of the permit, for a fee established from time to time by the Onekama Township Board.

Add a new Paragraph G.

G. A permit issued under this Section may be amended by presenting the proper documentation to the Zoning Administrator, together with the proper fee. The fee may vary depending on the extent and nature of the changes requested.

Re-label Paragraphs H and I to I and J respectively.

Section Six. Article 86 Section 8603 is amended as follows:

Change Subparagraph A. to read as follows:

A. No land shall be occupied or used and no improvements, buildings or structures shall hereafter be erected, altered or relocated under the provisions of this section until a Special Use Permit authorizing the same shall be issued by the Township Planning Commission following application submitted for review and approval pursuant to the requirements of this Section. Proceeding without a proper permit shall be subject to a fine in an amount established from time to time by the Onekama Township Board.

Change Subparagraph B. 1. to read as follows:

1. A Special Use Permit Application properly filled out and signed by the applicant, together with all required documentation. Five (5) copies shall be provided.

Change Subparagraph B. 4. to read as follows:

4. Provide eleven (11) copies of the Detailed Site Plan pursuant to Section 9406.

Change Subparagraph B. 5. to read as follows:

5. A project narrative that explains the proposal in detail. Also, any other information deemed necessary by the Planning Commission shall be provided by the applicant.

Section Seven. Add new Article 87. Open Space Residential (Cluster) Developments.

ARTICLE 87 - OPEN SPACE PRESERVATION RESIDENTIAL (CLUSTER) DEVELOPMENTS

8701. Statement of Intent

The purpose of this Section is to allow and encourage alternative designs for residential developments, site condominiums or subdivisions, which preserve open and natural space and protect Onekama Township's rural residential character, agricultural lands and environmentally sensitive and unique features, including the bluffs that overlook Lake Michigan. The Township specifically finds that the Lake Michigan bluff features are a unique resource deserving of special protection from erosion and de-stabilization caused by over-development and loss of scenic value as viewed from the lake and lakeshores. The standards for permitted uses in each lakefront district are designed to protect these Lake Michigan coastal features and other features along Portage Lake. Any development plan proceeding under the flexibility provided in this Article shall be designed to protect and to enhance these features to an equal or greater degree than if the development were to proceed under the standard guidelines for permitted uses in each underlying land use district.

8702 Eligibility

- A. Residential Developments utilizing Open Space Preservation (OSPRD) are allowed in all areas of the Township that are zoned for residential development, pursuant to the Michigan Zoning Enabling Act, Act 110 of 2006, provided all the following apply:
 1. The parcel to be developed contains a minimum of 20 contiguous acres.
 2. The land is zoned 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.

3. 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 means that runs with the land.
4. The development does not depend upon the extension of a public sewer or public water supply system, unless development of the land without the exercise of the Open Space Preservation option provided by this provision would also depend upon such an extension.
5. The development option provided pursuant to this section has not previously been exercised with respect to the subject property.

B. Developments utilizing OSPRD may be located in the following land use districts:

- 1) Agricultural Residential 1 (AG-1)
- 2) Agricultural Residential 2 (AG-2)
- 3) Special and Unique Residential (SUR)
- 4) Resort Residential 1 (RR-1)

8703 General Provisions

- A. Open Space Preservation Residential Developments (OSPRD) may be proposed in lieu of conventional design for Site Condominiums (Article 89), Subdivisions (Township Subdivision Ordinance) or Land Division (Township Land Division Ordinance) providing eligibility requirements are met.
- B. Only single family dwellings are allowed in OSPRD, unless the land use district allows duplexes, in which case the Planning Commission may allow them in the Development.
- C. The Planning Commission may waive or modify provisions of the Zoning Ordinance regarding minimum road frontage, minimum lot sizes and dimensions, and setbacks, **except waterfront and bluff setbacks, or as otherwise limited by the terms of this Article.** Waivers must be documented and may only be granted if it is determined by the Planning Commission that the resulting open space design will be a benefit to the integrity of the Township to help achieve the goals and objectives set forth in the Onekama Township Master Plan and Zoning Ordinance.

8704 Application and Review Procedure

Application and review of proposed OSPRD shall be as detailed in the Township Zoning Ordinance or other Township Ordinance as applicable except the following additional documentation and exhibits must be included:

A. Yield Plan.

1. A "yield plan" shall be prepared by the developer showing a feasible development under the requirements of the specific land use district in which the property is located and the requirements of any and all applicable Federal, State, and local regulations. The yield plan shall serve to determine the maximum number of single-family units that can be fit within the underlying acreage for purposes of a benchmark before applying the Open Space provisions. All lots, roads and other improvements shall be designed so that they do not adversely impact wetlands, floodplains, shoreline, steep slopes, or drainage ways, or other environmentally sensitive areas; as may also be regulated by any and all Federal, State or local agencies.
2. It must be determined by the Planning Commission that this yield plan is able to be physically constructed and meet all regulations. If there is a question regarding water supply, sewage disposal, wetlands, floodplains, shoreline, high risk erosion, critical dunes, steep slopes, road access, or any other regulation or requirement, the Planning Commission may request validation from the proper regulatory authority. If it is determined, through these responses, that the number of lots proposed is not feasible, the yield plan shall be revised and resubmitted, minus that number of lots. Detailed Engineering is not required at this stage.
3. The Planning Commission may also waive, in its sole discretion, the submission of a yield plan if it is determined that the number of lots proposed for open space development is, without question, well below what would be feasible for the site. Such waivers must be detailed in writing and recorded as part of the motion in the minutes of the Planning Commission.

B. Site Analysis Plan (Natural Features inventory)

1. A Site Analysis Plan shall be submitted, showing the following site features:
 - a) Wetlands, whether regulated or not, as determined by the Michigan Department of Environmental Quality standards
 - b) Regulated areas (critical dune, high risk erosion, floodplains, etc.)
 - c) Water areas, such as streams, lakes, and ponds.

- d) Woodlands
 - e) Specimen Trees (trees with a diameter of 24" or more 4' above grade)
 - f) Agricultural lands
 - g) Soils
 - h) Topography
 - i) Drainage patterns and County drains
 - j) Historic and cultural features
 - k) Wildlife habitat corridors
 - l) View sheds and view corridors
 - m) Existing easements of record
 - n) Existing roads, two-tracks and trails
 - o) Existing and proposed rights-of-way
 - p) Existing infrastructure
 - q) Adjacent development within three hundred (300) feet.
 - r) Other site specific information as may be deemed necessary by the Planning Commission
1. It must be determined by the Planning Commission that this Site Analysis Plan adequately delineates the above site features. If there is a question regarding the accuracy of the plan, the Planning Commission may request validation from outside consultants or agencies. If it is determined, through these responses, that the Site Analysis Plan is materially incorrect or lacking sufficient detail, the Site Analysis Plan shall be revised and resubmitted, incorporating the required elements.
 2. The combination of the site analysis elements shall be used to outline the primary and secondary conservation areas, and the buildable areas. The primary conservation areas are areas where no development is to occur. The secondary conservation areas are areas where development may occur, but special care must be taken to minimize adverse impacts.
 - a. Primary Conservation Areas: These are areas of significant natural or environmental value, including but not limited to, streambeds, springs, floodplains, wetlands, bluffs, dunes, drainage ways, or other exceptional elements.

- b. Secondary Conservation Areas: These are areas, including but not limited to, steep slopes, woodlands, specimen trees, agricultural lands, marginal wetlands, tree lines, ridge tops, soils sensitive to development, soils prone to flooding, aesthetic views, or other significant elements.

- c. Buildable Areas: Areas that are not dedicated to primary conservation areas may be treated as buildable areas. Housing sites outside of primary and secondary conservation areas should be located so as to complement the conservation areas. Housing sites located within secondary conservation areas must be located to minimize disruption and impact to the area.

C. Open Space Development Plan

- 1. A “Detailed Site Plan” (Section 94) shall be provided, indicating the proposed OSPRD including lot layout, proposed open space(s), and the proposed infrastructure layout, superimposed upon the Site Analysis Plan.

- 2. The Open Space Plan must clearly indicate the dimensions and total area of the parcel, the area dedicated to open space and the area dedicated to lots and infrastructure.

8705 Development Options

- A. Under the Open Space Residential Developments provision, the final density shall be no greater than that normally permitted within that land use district, unless specifically authorized in this Section. The maximum "density" shall be the maximum number of single-family lots, parcels or site condominium units (“SF Units”) permitted by the approved Yield Plan. Density does not guarantee any specific number of SF Units from any individual parcel or group of parcels. Rather, density refers to the number of SF Units, which can be placed on the subject parcel.

8706 Open Space Criteria

- A. Open Space are all areas within the development not individually owned nor part of a limited common area, which are designed and intended to preserve desirable environmental features of the property for the common use of the residents of the entire development (or for the general public if desired by the developer), subject to limitations in this section.

- B. Open Space shall specifically exclude the following: road and utility right of ways, easements of record, noncontiguous land less than an acre between a road and a property boundary.

- C. Open Space shall consist only of the primary and secondary conservation areas, unless it is used for Recreational Open Space, in which case it can be sited in buildable areas, as outlined in the Site Analysis plan.
- D. Open Space shall be classified as one of the following:
1. Natural Open Space: This is Open Space that is intended to be left in its natural state as a nature preserve and/or for passive recreation (trails, walking and similar). It may be up to 100% of all the Open Space in the development. Natural Open Space shall be subject to a management plan as outlined in 8707(C)(1).
 2. Agricultural Open Space: This is Open Space set aside for current or future agricultural uses. It may be up to 100% of all the Open Space in the development. Access to Agricultural Open Space may be limited. It shall be subject to the provisions outlined in 8707(C)(2).
 3. Recreational Open Space: This is Open Space set aside for active recreation, such as sports fields (i.e., football, soccer, baseball), playgrounds and similar facilities. It may be up to 20% of all the Open Space in the development. It shall be subject to the provisions outlined in 8707(C)(3).
- E. Open Space shall not be met by land uses such as golf courses or other exclusionary commercial recreational uses, lot area within setbacks for each specific lot, or land area dedicated as limited commons.
- F. A minimum of 50% of the total Open Space shall be contiguous.
- G. The maximum amount of unbuildable land that can be classified as Open Space is fifty (50%) percent of the total Open Space.. Unbuildable land is considered to be submerged land or wetlands, or land that is regulated by Michigan Department of Environmental Quality, Environmental Protection Agency, Army Corps of Engineers, or any other regulatory body which has jurisdiction over land and which cannot be used for the construction of housing.

8707 Dedication of Open Space

- A. The dedicated open space shall be set aside in an irrevocable conveyance that is acceptable to Planning Commission and Township Attorney, approved by the Township Board, and duly recorded; in order of preference:
 - 1. Conservation Easement
 - 2. Master Deed or Plat dedication
 - 3. Restrictive Covenant
 - 4. Other Conveyance, as deemed acceptable to the Township.

- B. The conveyance shall indicate all proposed uses of the dedicated Open Space, which shall also be shown on the approved Open Space Plan. The Township Attorney shall review the conveyance and assure the Township in a written opinion that such lands shall remain as open space for perpetuity..

- C. The conveyance shall detail the following:
 - 1. For Natural Open Space, a management plan that ensures the long-term health of the natural ecosystem, including sustainable forestry principles, and has a mechanism for being periodically reviewed and updated.
 - 2. For Agricultural Open Space, a statement that the agricultural land shall be managed in accordance with Generally Accepted Agricultural Management Practices, including sustainable forestry..
 - 3. For Recreational Open Space, a plan that specifies a maintenance schedule and provides funding for operation, maintenance and insurance for these areas in the Open Space Community. The plan shall include method(s) of assessment, payment and collection.

8708 Design Requirements & Criteria

- A. Unless otherwise provided for in this Ordinance, all other applicable Township Ordinances and Zoning Ordinance provisions shall apply.

- B. Minimum Lot Size: Minimum lot sizes shall be determined by the State and/or County Health Departments' regulations or standards and the Planning Commission.

- C. Minimum Yard Setbacks: As outlined in respective land use district, unless waived or modified by the Planning Commission. Waterfront and bluff setbacks may not be waived.

- D. Minimum Road Frontage: As outlined in respective land use district, unless waived or modified by the Planning Commission.

- E. Septic Areas: Primary or secondary or common septic areas may be located on Open Space if it is deemed by the Planning Commission to be beneficial to the Open Space Community and the Township, and is acceptable to the State and/or County Health Department. The septic area cannot be greater than 10% of the Open Space.

- F. Agricultural Buffer: For developments that are adjacent to agricultural lands, particularly those that are being actively farmed, there must be maintained and/or created a highly vegetated buffer at least fifty (50) feet wide to minimize interactions between residential and agricultural uses.

- G. Lake Michigan Access: If a development offers access to Lake Michigan, then the development must provide one and only one common access point, including an access structure constructed in accordance with applicable standards. In land use district SUR, the minimum lot width/road frontage along the bluff may be reduced to not less than 200 feet if a minimum 50 foot wide corridor is provided for access to Lake Michigan.

- H. Development Layout: The developer should site roads and lots where the least disruption to natural grade and vegetation occurs and in a manner that minimizes the length of road necessary to service the development.

- I. Minimum Exterior Road Buffer: The developer shall preserve a minimum of a 20 foot, highly vegetated buffer from the proposed right-of-way along any County Road, Private Road or State Highway adjacent to the open space development.

- J. Other requirements as the Planning Commission may deem appropriate to carry out the intent of this Ordinance.

- A. The Planning Commission shall review the application for a proposed Open Space Preservation Residential Development in accordance with all applicable State or Local laws, regulations and Ordinances.
- B. The Application Fee shall be as established from time-to-time by the Township Board.
- C. Except as to the costs covered by the Application Fee, all of the reasonable, necessary and actual costs incurred by the Township in the processing and review of an application, and all actual costs incurred by the Township in conducting necessary studies or inspections pertaining to the application shall be charged to the party requesting the approval of the Township. If deemed necessary, an escrow deposit will be required in accordance with Township regulations.

8710 Completion of Public Improvements

Completion Required: Alternate Performance Guarantee Agreement. The construction of all public improvements shall be completed by the applicant and approved by the Township Board prior to final approval. In the alternative, certain Site Plan improvements may be completed, subsequent to the issuance of a Land Use Permit for the project, at the Township Board's discretion, provided the applicant guarantees completion of such required improvements as provided in this Section. In such instances the Township and the applicant shall enter into a written agreement specifying in detail the nature of the required improvements, the time in which these improvements are to be completed, provisions for verifying and inspecting the construction of such improvements to determine their conformity to the approved plans and specifications, and the nature of the financial guarantee of performance which is to be provided for each improvement.

Acceptable Types of Performance Guarantees. Where the Township Board agrees to accept performance guarantees for the completion of public improvements subsequent to final plat approval, the Township Board may require one or more of the following types of guarantees:

1. Performance or surety bond
2. Cash deposit, certified check, negotiable bond, or irrevocable bank letter of credit.

Remuneration from Performance Guarantee Instrument. The performance guarantee agreement may provide for progressive remuneration from the applicable financial instruments upon certification by the Township Engineer that the specific required public improvement has been satisfactorily completed/installed.

Penalty for Failure to Complete Improvements. If the applicant fails to complete a required public improvement within a period of time specified in the performance guarantee agreement the Township Board may, at its option, proceed to have the public improvement completed. In such event the Township shall be reimbursed for all costs associated with the completion of the improvement from the performance guarantee instrument provided for that improvement. The applicant shall be liable to the Township for any amount of such costs exceeding the funds available from the pertinent instrument.

Section Eight.

All Ordinances or parts of Ordinances in conflict herewith are hereby repealed to the extent of the conflict. This Ordinance shall become effective eight (8) days after publication.

THOSE VOTING IN FAVOR:

THOSE VOTING OPPOSED:

THOSE ABSENT OR ABSTAINING:

ORDINANCE DECLARED PASSED AND APPROVED

Helen Mathieu, Township Clerk

CERTIFICATION

I, Helen Mathieu, Clerk of the Township of Onekama, do hereby certify that the above is a true and correct copy of the amendment to the Onekama Township Permanent Zoning Ordinance as adopted by the Township of Onekama Board at a meeting held on the 1st day of July, 2008.

Helen Mathieu, Township Clerk