

# **Open Space Design Pennsbury Township, Chester County**

## **ARTICLE XVI Open Space Design Option [Amended 6-7-1993 ; 10-18 -1993]**

### **§§ 162-62. Purpose.**

The alternative design options established under this article have been created to support the protection of the unique and rich ecology, wildlife habitats, and natural and scenic landscapes, historical buildings and archaeology which characterize Pennsbury Township, including scenic views, historic sites and structures, water bodies, floodplains, wetlands, wet soil conditions, steep slope areas, ridge lines, rock outcroppings, wildlife habitats, unique vegetation, and woodlands of the township. The purposes of this article are:

- A. To provide an opportunity for flexibility in lot designs and dwelling types not afforded by conventional lot-by-lot development.
- B. To provide for a more varied, innovative, and efficient development pattern.
- C. To preserve unique and sensitive landscapes and site features by locating new dwelling sites in areas removed from such features.
- D. To protect scenic vistas from encroachment by development.
- E. To retain and protect open space areas, including areas noted for their value as a wildlife habitat or corridor or as site of unique vegetation.
- F. To minimize potential adverse impacts resulting from the location of new residential development adjacent to nonresidential uses.
- G. To provide a means to attain the aims and objectives of the Comprehensive Plan relative to orderly growth and the enhancement of environmental resources.
- H. To support the objectives of the Lower Brandywine Scenic River Project as prepared and published by the Environmental Management Center of the Brandywine Conservancy.
- I. To provide incentives in the form of additional dwelling units to landowners who satisfy the purposes and accomplish the open space preservation objectives of this article and to defray the additional development cost often associated with the use of the design options sought by this article.

### **§§ 162-63. General regulations.**

- A. Any tract of land which shall be the subject of an application for subdivision, land

development or both using the provisions of this article must be held in single and separate ownership by the applicant or, in the case of multiple ownership, the tract must be developed according to a single plan with responsibility for its implementation and completion vested in a common authority.

- B. Use of the design options, uses and benefits afforded to the applicant under this article shall be permitted only when approved as a conditional use according to the requirements of §§ 162-106 of this chapter and where the applicant demonstrates, to the satisfaction of the Board of Supervisors, compliance with all design standards and criteria of this article.
- C. The Scenic Landscapes Map for the Pocopson Creek and the Main Stem of the Brandywine Creek as published by the Environmental Management Center of the Brandywine Conservancy in November of 1987 for the Lower Brandywine Scenic River Project (herein the "Brandywine River Scenic Landscapes Map"), is incorporated herein by reference as a part of this chapter and shall be deemed an overlay on the applicable zoning districts. The map shall be used as described on applicable portions of this chapter or any other ordinance of the township.
- D. The Pennsbury Township Historic Site Survey as contained in the Pennsbury Township Comprehensive Plan is incorporated herein by reference as a part of this chapter. The Historic Site Survey shall be used as described in applicable, portions of this chapter or any other ordinance of the township.

**§§ 162-64. Permitted use.**

Where permitted as a conditional use, an applicant may utilize land within any R-1, R-2 or R-3 Zoning District under the open space design options set forth in this article and for development of one or more of the following residential uses:

- A. Single-family detached dwellings.
- B. Single-family attached, two-family, multifamily, and accessory residential dwellings through renovation or adaptive re-use of structures included in the Chester County Historic Sites Survey of 1982, subject to the requirements of §§ 162-70 of this article.
- C. Uses allowed for permanently protected open space, within such permanently protected open space, as set forth in §§ 162-68 of this article.

**§§ 162-65. Requirements for submission to the township.**

- A. Applicants are strongly encouraged to meet informally with representatives of the Board of Supervisors, Planning Commission and, if in existence, Open Space Task Force prior to making a conditional use application in order to discuss community open space and resource conservation objectives.

- B. The applicant shall prepare and submit to the township, as part of any conditional use application filed under the provisions of this article, a site analysis plan in accordance with the provisions of §§ 138-21C of Chapter 138, Subdivision and Land Development. Once submitted, a site analysis plan which satisfies the requirements of §§ 138-21C of Chapter 138, Subdivision and Land Development, need not be resubmitted with any subsequent sketch plan, preliminary plan or final plan submission.
- C. In accordance with Section 503 of the Municipalities Planning Code (53 P.S. §§ 10503), the Board of Supervisors (or the Planning Commission upon prior approval of the Board of Supervisors) may retain such consultants as necessary to review and certify the accuracy of, and to comment upon, the site analysis plan and any other plans submitted by an applicant, with the reasonable and necessary charges for that purpose to be borne by the applicant.
- D. The procedure for review and approval of a conditional use application under this article shall be as set forth in §§ 162-106 of this chapter.
- E. Upon written request from the applicant and if the Board of Supervisors and Planning Commission have previously reviewed a sketch plan and site analysis plan of the proposed development, the Board of Supervisors may elect to consider the preliminary subdivision plans simultaneously with the conditional use approval.

**§§ 162-66. Area and bulk regulations.**

- A. The following requirements and benefits shall supersede existing bulk and area regulations for the district in which a parcel of land is situated and shall apply to the subdivision, land development and use of any parcel of land in the township located in an R-1, R-2 or R-3 Zoning District, if and to the extent conditional use approval has been granted by the Board of Supervisors according to the procedures set forth in this article.
- B. For purposes of calculating the maximum permissible number of lots or dwelling units permitted on a tract of land being developed under the provisions of this article, the net tract acreage shall first be established by determining the gross area of the subject tract and subtracting from the gross area the area of the following:
  - (1) Any land within the Flood Hazard District as defined in §§ 162-58A of this chapter;
  - (2) Any land which has been established at the time of the application as public or private right-of-way, street, driveway, utility easement, parking area, storm drainage collection area or passageway, unless the use allowed by the right-of-way or easement is intended to be discontinued, abandoned and removed under the plan which is the subject of the application; and
  - (3) Any land with a slope greater than 25%.

- C. Except as provided in Subsection F below, the maximum permissible number of lots and dwelling units on any tract shall be the product obtained by multiplying the net tract acreage, established as above, by the appropriate multiplier obtained from the table below. For purposes of this article, a single dwelling unit and the lot on which it is constructed shall be calculated as one; multiple dwelling units on a single lot shall be calculated by the number of dwelling units; and each lot on which no dwelling unit is proposed shall be counted as one (except for lots which are to be devoted to permanently protected open space, which shall not be counted).
- D. Wherever the design options afforded by this article are utilized for the development of a tract of land, an area of permanently protected open space in such development shall be required having an area not less than the product of gross area within the boundaries of the subject tract multiplied by the percentage of open space expressed in the column of the table which corresponds to the multiplier used to calculate maximum permissible density. Without limitation of the foregoing, in no case shall permanently protected open space encompass less than 50% of the gross area within the boundaries of the subject tract.

TABLE OF MULTIPLIERS FOR DENSITY CALCULATION

Base Zoning District	Minimum Standard Lot	Multiplier as a Function of Permanently Protected Open Space		
		50% Open Space	65% Open Space	80% Open Space
R-1	3 acres	0.30	0.38	0.48
R-2	2 acres	0.46	0.58	0.66
R-3	1 acre	1.05	1.05	1.05

- E. Notwithstanding the foregoing or any other provision of this article to the contrary, the maximum number of lots and dwelling units calculated as provided above shall be permitted only when the application and accompanying plans satisfy all other, applicable provisions of this article; applicants are advised that it may not be possible, in all cases, to achieve the maximum while complying with open space criteria and other requirements of this article.
- F. In addition to the maximum permissible number of lots and dwelling units on any tract calculated as provided in §§ 162-66A, B, C, and D, the applicant shall be permitted, only as part of the conditional use approval for Article XVI additional dwelling units and accompanying lots through the renovation or adaptive reuse of structures contained in the

Comprehensive Plan of the township; provided that such renovation and adaptive reuse complies with the designing standards for historic resources in §§ 162-70. Except where physically unfeasible due to existing locational and/or structural attributes, all such dwelling requirements in Subsection G below.

G. The following area and bulk regulations shall apply to buildings on any tract developed pursuant to this article:

- (1) Minimum separation between buildings at any point shall not be less than 20 feet.
- (2) Minimum setback from the edge of cartway (or outside edge of curb, if applicable) of any street shall be not less than 25 feet, except as provided in §§ 162-67B(3), below.
- (3) Not more than 10% of the gross tract area shall be covered with impervious surfaces.
- (4) Maximum building height shall not exceed 35 feet provided, however, that a building height of 35 feet or less than 35 feet may, when considered in conjunction with building location, be a factor in denying conditional use approval (or a lower building height may be a condition imposed) if, in the judgment of the Supervisors, the purposes of this article pertaining to, among other things, the preservation of scenic vistas, are not satisfied by the applicant's plan.

H. [Added 6-5-1995] Where the gross area of any tract within a R-3 district to be subdivided is less than 15 acres, the tract when permitted as a conditional use shall be eligible for development utilizing lot averaging provisions, as follows:

- (1) The maximum gross density of developments utilizing lot averaging shall not be more than allowed through the zoning district regulations.
- (2) The site shall be suitable for development in the manner proposed without hazards to persons or property, on or off the site, due to flooding, erosion, or other dangers or inconveniences. Conditions of soil, groundwater level, drainage, and topography shall be compatible with proposed design.
- (3) A site plan, including layout of streets and lots, shall accompany the application for conditional use and shall be, in the judgment of the Board of Supervisors, in compliance with the purpose of this article.
- (4) The following specific design standards shall be applicable:
  - (a) Parking. As required by §§ 162-78A of this chapter.

- (b) Access and highway frontage. As required by §§ 162-78B of this chapter.
- (c) Landscaping and screening. As required by §§ 162-78E of this chapter.
- (5) Central water and/or central sewer must be provided or utilized where available unless the Board of Supervisors determines that the cost of providing or utilizing same is prohibitive or impractical.
- (6) For development utilizing lot averaging, the minimum area and bulk regulations in the table below shall be applicable.

**Lot Averaging Area and Bulk Regulation R-3**

Lot area	20,000 sq. ft.
Lot width	100 ft.
Lot coverage	15% max.
Front yard	40 ft.
Side yards:	
Aggregate	40 ft.
Minimum	15 ft.
Rear yard <sup>1</sup>	40 ft.
Accessory structures <sup>2</sup>	10 ft.

NOTES:

<sup>1</sup>Unless the lot is a reverse frontage lot, § 162-78B(2) shall apply.

<sup>2</sup>Minimum distance from a side or rear property line.

- (7) No lot of such size as to be capable of further subdivision under the district regulations shall be included in determining the average lot area unless the possibility of such further subdivision is eliminated by a deed restriction or agreement in a form acceptable to the township and duly recorded in the Office of the Recorder of Deeds of Chester County.
- (8) All plans utilizing lot averaging provisions shall adhere to the open space resource protection standards set forth in §§ 162-67C(l) of this chapter.

**§§ 162-67. Conservation and development design standards.**

- A. Conditions. The standards set forth in this section shall be treated as conditions which must be satisfied by the applicant prior to the granting of conditional use approval under this article by the Board of Supervisors as well as standards for the subdivision, land development and subsequent use of land which is the subject of any such conditional use approval after such approval has been granted.

B. General development standards.

- (1) Except to the extent plainly in conflict with the provisions of this article, the requirements of Articles XIV and XVIII of this chapter shall apply to any development submitted for approval under this article. The interpretation and resolution of such conflicts shall be made by the Board of Supervisors, subject to appeal to the Zoning Hearing Board.
- (2) All buildings (except existing buildings proposed to be retained in the conditional use application) shall be situated so that they are set back a minimum of 75 feet from the pre-development perimeter boundary of the tract which is the subject of the Conditional use application. In the case of a tract proposed for development which is comprised of two or more parcels of land, the set back described in the preceding sentence shall be measured only from the boundary with any tract of land which is not the subject of the conditional use application.
- (3) All buildings (except existing buildings proposed to be retained in the conditional use application) shall be situated so they are set back a minimum of 75 feet from any pre existing street.

C. Open space resource protection standards.

- (1) The applicant shall demonstrate to the satisfaction of the Board of Supervisors, by the use of sound, professional land planning, landscaping, architectural, and engineering techniques and practices that the development and combination of land uses proposed in the conditional use application under this article protect against disturbance of the following open space resources (by construction of buildings or site improvements, destruction of vegetation or otherwise) to the maximum extent feasible:
  - (a) Areas designated as scenic vistas on the Brandywine River Scenic Landscape Map.
  - (b) Any views of natural or agricultural landscapes, other natural features (such as woodlands, ponds or stream valleys) or historic buildings or ruins which are visible from existing streets or the Brandywine Creek, whether or not identified on the applicant's site analysis plan. To achieve this objective the applicant should propose a design which, among other things, locates buildings entirely below the elevation of the nearest ridge line unless clearly unfeasible. Where the applicant contends that the location of dwellings entirely below ridge liens is unfeasible, approval of the proposed locations shall be contingent upon demonstration of either or a combination of the following mitigative design techniques:

[1] The submission of individual lot landscaping plans demonstrating

effective screening of views from public roads and adjacent tracts.

[2] The submission of individual building design plans with sufficient detail to demonstrate, in terms of how such buildings may be viewed from public roads or adjacent tracts, replication of proportional relationships of form and massing evident in existing historic resources, including ratios of height to width, length of individual facade segment, roof pitch, relative size and placement of windows, doors, and other facade details. The distance from any point of public view that may be considered as a mitigating factor in review of plans for buildings within such view.

- (c) Historic resources. Historic resources shall be preserved through incorporation into permanently protected open space to the extent feasible or by preservation and adaptive reuse according to the standards set forth in §§ 162-70. For purposes of this section, historic resources shall include: historic structures, ruins or sites of former historic structures; historic roads or other transport traces, paths and trails; known areas of rich archaeological deposits; and any other historic landscape features; and shall further include, without limitation, and building or other structure included on the National Register of Historic Places, in the Historic Sites Survey of Chester County or in the Pennsbury Township Inventory of Historic Sites contained in the Comprehensive Plan of the township. Features not so listed which have an age, wholly or in part, of 150 years shall be presumed to be historic resources unless demonstrated otherwise by the applicant.
- (d) Lands within the Flood Hazard District as defined in §§ 162-58A or lands affected by the Natural Resources Protection Standards found in §§ 162-53 of this chapter. In addition, the restrictions against use of lands as set forth in §§§§ 162-59 and 162-55C of this chapter shall be applied.
- (e) Wildlife habitats, particularly where species or habitat types included in the Pennsylvania Natural Diversity Inventory are found, and with a particular emphasis on the location of permanently protected open space so as to preserve corridors necessary for wildlife habitat which happen to cross property boundaries. Where feasible, multiple habitat area on a single tract shall be preserved, particularly where differing habitat types have been inventoried, in order to promote maintenance of habitat diversity.
- (f) Streams (both perennial and intermittent) and wetlands falling under the jurisdiction of the U.S. Army Corps of Engineers or the Pennsylvania Department of Environmental Protection shall not be disturbed except for permitted crossings to provide necessary pedestrian, equestrian, or



vehicular access.

- (g) Mature trees and woodlands, including any existing trees greater than eight inches dbh, hedge rows, fence lines, rock outcroppings and other noted landscape features. Woodland removal shall not exceed 40% of total woodland area on any tract.
  - (2) The location and layout of permanently restricted open space shall be configured so as to promote adherence to resource protection standards in this subsection.
  - (3) The permanently protected open space shall include an area, comprising not less than 10% of the gross tract area, which constitutes neither Flood Hazard District, nor wetlands (as defined by the U.S. Army Corps of Engineers or the Pennsylvania Department of Environmental Protection) nor slopes in excess of 25%.
  - (4) Without limitation of any other requirements of this article or the definition of permanently protected open space under §§ 162-5 of this chapter, permanently protected open space in any plan and application submitted for conditional use approval under this article shall be dedicated to the township or restricted from further development or construction beyond that which is approved as part of the conditional use application and decision of the Supervisors by deed restriction, conservation easement or other agreement running in favor of the township, a qualified conservation organization or both (as the Supervisors elect) in a form acceptable to the Supervisors (in consultation with the Township Solicitor) and which must be duly recorded in the office of the Recorder of Deeds of Chester County. The requirements of this Subsection C(4) shall be satisfied if, in the alternative, the permanently protected open space is dedicated to and accepted by the township, if offered by the applicant and accepted by the township, if offered by the applicant and accepted by the Supervisors in their discretion.
- D. Calculation of open space for purposes of determining the multiplier in §§ 162-66. Not all land which meets the definition of permanently protected open space under this chapter shall necessarily qualify as open space for the purpose of determining the multiplier under §§ 162-67. Portions of land which are occupied by any of the following features shall be excluded from open space for purposes of determining the multiplier in the Table of Multipliers in §§ 162-66:
- (1) Any area not satisfying the definition of permanently protected open space under this chapter.
  - (2) Any area occupied by any impervious surface (including buildings, other structures, parking areas, tennis courts, swimming pools and the like) unless proposed in the conditional use application and approved by the Board of Supervisors to be retained for a permitted use in permanently protected open

space under this article, and sewage treatment facility (other than subsurface sewage disposal areas and land application disposal areas which may be included in the open space calculation) or any stormwater management structure or facility.

- (3) Any area located within 25 feet of any building or other structure (existing or proposed) except structures accessory to permitted uses of the permanently protected open space (such as agricultural or community recreation buildings or other structures).
- (4) Any area with a width of less than 75 feet measured perpendicular from any point on the boundary of the open space sought to be included in the determination.
- (5) Any parcel of permanently protected open space having an area less than 1.0 acre (measured by its boundaries with land not qualifying as permanently protected open space).

**§§ 162-68. Use of permanently protected open space.**

- A. Areas designated as permanently protected open space may, upon approval as a conditional use under this article, be used for any of the following:
  - (1) Crop or pasture land.
  - (2) Cultivation of nursery stock or orchard trees.
  - (3) Woodland, meadow, wetland, wildlife habitat, game preserve, or similar conservation-oriented area.
  - (4) Public, common or private park or outdoor recreation area.
  - (5) Land application of treated waste water in accordance with the Municipal Sewage Facilities Plan Act 537 Plan) of the township.
- B. Further subdivision of permanently protected open space may be permitted by approval of the Board of Supervisors in accordance with all applicable provisions of this chapter and Chapter 138, Subdivision and Land Development, and where continued compliance after the proposed subdivision with the requirements of the conditional use approval, testimony given in support thereof and the standards for conditional use set forth in this article can be and is demonstrated by the applicant.

**§§ 162-69. Management of permanently protected open space.**

- A. Any application for conditional use approval under this article shall contain a conceptual plan for the long term management of the permanently protected open space which is to be created as part of the development. Such a plan shall include a discussion of the

manner in which the permanently protected open space will be owned and by whom it will be managed and maintained; the conservation, land management and agricultural techniques and practices which will be used to conserve and perpetually protect the permanently protected open space; the professional and personnel resources that will be necessary in order to maintain and manage the property; the nature of public or private access that is planned for the permanently protected open space; and the source of money that will be available for such management, preservation and maintenance on a perpetual basis. The adequacy and feasibility of this conceptual management plan as well as its compatibility with the open space preservation objectives of §§ 162-67C shall be a factor in the approval or denial of the conditional use application by the Board of Supervisors.

- B. The conceptual management plan shall be transformed into a more detailed open space management plan and presented to the township for review and approval with the final subdivision and land development plan. The Board of Supervisors may require that the management plan be recorded, with the final subdivision and land development plans, in the Office of the Recorder of Deeds of Chester County. In order to allow for the changing needs inherent in the perpetual management of land, the management plan shall contain a provision to the effect that it may be changed by written application to the Board of Supervisors, so long as the proposed change is feasible and consistent with the purposes of preservation of open space set forth in this article and so long as the plan for such change avoids a likelihood of the obligation for management and maintenance of the land falling upon the township without the consent of the Board of Supervisors, and the approval of the Board of Supervisors in that regard shall not be unreasonably withheld or delayed.
- C. The permanently protected open space in any land development or Subdivision utilizing the design options of this article shall, subject to the approval of the Supervisors, be owned and maintained by one or a combination of the following: condominium association, homeowners association, the township, the County of Chester, the Commonwealth of Pennsylvania, a qualified conservation organization, or a private landowner.
- D. The township may, but shall not be required to, accept dedication of all or any portion of the permanently protected open space, if offered by the applicant or any subsequent owner thereof and only if accepted by the township on such terms and conditions as the Board of Supervisors may deem appropriate.
- E. The township may, but shall not be required to, accept easements for public use of any portion or portions of the permanently protected open space, title to which is to remain in ownership by another person or entity otherwise permitted under the preceding subsections to owe permanently protected open space, if offered by the applicant or any subsequent owner thereof and only if accepted by the township on such terms and conditions as the Board of Supervisors may deem appropriate.
- F. All or portions of the permanently protected open space may, if approved by the Board of

Supervisors, in the case of applications involving the creation of fewer than 30 dwelling units, be divided among one or more of the lots proposed for the development. Where deemed appropriate, the Board of Supervisors may require that responsibility for maintenance of restricted open space be conferred upon and divided among the owners of one or more individual lots.