

DELAWARE TOWNSHIP  
ORDINANCE #2011-12LU

AN ORDINANCE SUPPLEMENTING AND AMENDING THE ORDINANCE ENTITLED “THE LAND USE ORDINANCE OF THE TOWNSHIP OF DELAWARE” BY PERMITTING OPEN LANDS SUBDIVISIONS IN THE A-1 AND A-2 DISTRICTS AND PROVIDING DEVELOPMENT STANDARDS THEREFOR. #2011-12LU

**WHEREAS**, the Municipal Land Use Law has among its purposes:

- providing the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions and preservation of the environment; and
- providing sufficient space in appropriate locations for a variety at agricultural, residential, recreational, commercial and industrial uses and open space, both public and private according to their respective environmental requirements in order to meet the needs of all New Jersey citizens; and
- promoting a desirable visual environment through creative development techniques and good civic design and arrangement; and

**WHEREAS**, the open lands subdivision option promotes (a) the retention of large farm tracts, (b) aggregation of smaller farm parcels into contiguous farms, (c) retention of Prime and Statewide Important Soils, (d) retention of contiguous wooded tracts and (e) flexibility, economy and environmental soundness in subdivision layout and design, including preservation of Resource Protection Areas and aquifer recharge areas.

**NOW, THEREFORE, BE IT ORDAINED** by the Township Committee of the Township of Delaware, in the County of Hunterdon, State of New Jersey, that the Land Use Ordinance of the Township of Delaware be amended as follows (additions are shown with underlining and deletions are shown with ~~strikethrough~~):

**SECTION 1.**

Section 3:5, “Regulations Applying to the A-1 Zone,” is amended as follows:

Section 3:5.1, General. ~~The purposes of the A-1 Zone are to encourage the permanent dedication of tracts of farmland for continuing agricultural use and woodland preservation; implement the land use element of the Master Plan; and bring the Township into compliance with State and County policies and the purposes of the Municipal Land Use Law.~~ Development in this zone requires residential usage averaging three (3) acre minimum lots. Continuing agricultural and woodland use of land shall be encouraged. More specifically, the intent of the A-1 Zone is:

- A. To facilitate land use patterns, densities and practices that support local, County and State efforts toward sustaining agriculture;
- B. To support the continuation of existing and future agricultural operations by limiting opportunities for non-agricultural land use conflicts and nuisance complaints;
- C. To preserve Prime Agricultural Soils and Soils of Statewide Importance which are inextricably linked to long-term agricultural productivity and whose agricultural value once lost is irretrievable;
- D. To offer diverse land use options and in so doing, support a variety of agricultural pursuits;
- E. To provide opportunities for compact development patterns that are a logical extension of existing historic hamlets or similarly configured new hamlets and that result in preservation of farmland and open space;
- F. To facilitate land use patterns and practices that avoid environmental degradation, which may in turn threaten public and/or ecosystem health;
- G. To maintain residential densities that ensure the protection of drinking water supplies and quality;
- H. To ensure adequate recharge areas for new residential lots to protect drinking water supply and quality and provide for future agricultural needs;
- I. To facilitate land use patterns, densities and practices that retain woodlands; and
- J. To implement the Land Use Plan Element of the Master Plan.

Section 3:5.2, Use Regulations

A. Permitted uses. Any of the following uses shall be permitted:

1. ~~Agriculture or horticulture or agricultural or horticultural uses are~~ is the permitted uses in the A-1 Zone, including single-family residences and accessory buildings for housing of farm labor that conform to federal and state laws and regulations and the requirements of Section 3:5.3 and 4, herein, housing for animals, and selling and storing farm products and storing farm equipment.

\* \* \*

3. Single Family Detached Dwellings within a Lot Size Averaging ~~development~~ Subdivision.

\* \* \*

11. Open Lands Subdivisions, subject to the provisions of Section 3:5.5 I of this Ordinance.

12. Municipal or State recreational or park use.

**SECTION 2.**

Section 3:5.4 is amended as follows:

Section 3:5.4, Table of Performance, Area and Dimensional Regulations for the A-1 Zone.

Permitted Use	Minimum Size of Tract (Acres)	Open Space Ratio <sup>(1)</sup>	Minimum Lot			Minimum Yard Setbacks (Feet)				
			Area	Width <sup>(2)</sup> (Feet)	Depth (Feet)	Principal Building			Accessory Building <sup>(8)</sup>	
						Front	Side	Rear	Farm	Other
Single Family Detached	3.0		3.0 Acres	250	400	50	50	100		10/50
Single Family Detached w/ Lot Averaging	12.0		1.5 Acres <sup>(3)</sup>	150	200	50	40	50		10/50
Single Family Detached Cluster	12.0	.70	30,000 SF <sup>(4)</sup>	115	250	25 <sup>(5)</sup>	15	40		10/50
<u>Open Lands Subdivision</u>	<u>24.0</u>	<u>.50</u>	<u>1.5 Acres</u> <sup>(9)</sup>	<u>115</u>	<u>400</u>	<u>25</u>	<u>15</u>	<u>40</u>		<u>10/50</u>
Village Cluster (6)	100	.82								
Flag Lot	4.0 <sup>(7)</sup>		4.0 Acres <sup>(7)</sup>	Flagpole Width: 50 feet	400	75	75	75		10/50
Lot on a Private Access Way	6.0		3.0 Acres	150	400	25	25	75		10/50
Agriculture and Other Uses	3.0		3.0 Acres						75	

\* \* \*

(8) Setbacks are determined by the size of the accessory building; less than or equal to 500

square feet is a ten foot setback, greater than 500 up to 900 square feet requires 50 foot setback. See section 3:5.5D(3) and section 3:5.5D(4).

(9) Each lot shall be one and one half acres; no development shall be permitted in deed restricted open space.

Additional Requirements:

1. Maximum gross density for all uses in the A-1 Zone shall be one dwelling unit for each three (3) acres except for Open Lands Subdivision.

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### **SECTION 3.**

Section 3:5.5, “Other Requirements for A-1 Zones,” is amended by adding new Subsection I, as follows:

#### I. Open Lands Subdivision in the A-1 Zone.

a. Minimum tract size. Open Lands Subdivisions are permitted on tracts of 24 or more acres in the A-1 Zone.

b. Intent. The primary intent of this option is to promote the retention of large farm tracts, promote aggregation of smaller farm parcels into contiguous farms, and promote retention of Prime and Statewide Important Soils. In addition, this option is intended to promote retention of contiguous wooded tracts and encourage and promote flexibility, economy and environmental soundness in subdivision layout and design, including preservation of Resource Protection Areas and aquifer recharge areas.

c. Standards. The following standards shall apply to Open Lands Subdivisions:

1. The open lands subdivision plan may result in a greater dwelling unit yield than if the property in question were developed as a conventional subdivision. In order to determine the maximum number of lots for a open lands subdivision, a Lot Yield and Buildable Tract Area Calculation shall be provided to the Municipal Agency (See Section 12:1.3). The number of lots in this calculation shall be the maximum number of lots permitted under an open lands subdivision.
2. For purposes of calculating lot yield, the maximum dwelling unit density applied to the net buildable tract area shall be ~~0.250~~ .75 dwelling units per acre. Minimum lot size will be 1.5 acres.
3. At least 50 percent of the net buildable area of the tract shall be designated as “Open Lands” and shall, as a condition of approval of the development, be deed restricted for agriculture and, where applicable, for conservation use.
4. For tracts of 75 acres or less, the open lands shall be contained in one single deed-restricted contiguous parcel; for tracts greater than 75 acres, the open lands

may be composed of two or more noncontiguous parcels, provided that the open land area shall contain at least 30 contiguous acres.

5. The Open Space Performance Standards found in Section 11:12 shall apply to a permitted open lands subdivision.
6. All lots created under this subdivision option shall be deed restricted against further subdivision for the purpose of creating an additional lot or lots.
7. To the maximum extent possible, the design of the development shall maintain a buffer along existing roadways to preserve existing woodlands that maintain the scenic forested or hedgerow roadside views and character of the Township. The dimension of the buffer and its treatment with landscaping and/or fencing shall be subject to review and approval by the Municipal Agency.
8. The proposed development shall comply with the bulk and dimensional standards contained in Section 3:6.4.
9. Hilltops and views, natural terrain, natural drainage and ridge lines shall be preserved wherever possible in designing any development containing such features. As part of the subdivision or site plan review process, development shall be designed to preserve scenic vistas and views of cultural/historic landmarks and of unique geologic and topographic features. On hillsides, development shall be sited below the ridgeline and the height and location of development shall protect unobstructed views of the ridges from existing roadways.
10. The Municipal Agency may permit the establishment of an exception area, not to exceed two (2) acres, to be identified on the open lands lot, upon which shall be located an existing or proposed dwelling unit, the septic disposal field, and any other buildings or structures not used for agricultural purposes. The exception area and access driveway, which shall be located in a manner consistent with best agricultural practices and reflecting on-site environmental and topographic conditions, shall not be included as "open lands" in calculating the portion of the tract required as open lands. The residence may only be allowed if the total permitted density is not exceeded.

#### **SECTION 4.**

Section 3:6, "Regulations Applying to the A-2 Zone," is amended as follows:

Section 3:6.1, General. ~~The soils in this zone are underlain by the Lockatong Argillite formation, Diabase and Basalt areas. Recognizing the limited suitability of these soils for intensive development and the continued interest in large residential lots in the Township, these areas of less productive farmland can accommodate low density housing. Development in this zone requires residential usage averaging six (6) acre minimum lots. Continuing agricultural and woodland use of land shall be encouraged.~~ Development in this zone requires residential usage averaging six (6) acre minimum lots. Continuing agricultural and woodland use of land shall be encouraged. More specifically, the intent of the A-2 Zone is:

- A. To facilitate land use patterns, densities and practices that support local, County and State efforts toward sustaining agriculture;
- B. To support the continuation of existing and future agricultural operations by limiting opportunities for non-agricultural land use conflicts and nuisance complaints;
- C. To preserve Prime Agricultural Soils and Soils of Statewide Importance which are inextricably linked to long-term agricultural productivity and whose agricultural value once lost is irretrievable;
- D. To offer diverse land use options and in so doing, support a variety of agricultural pursuits;
- E. To provide opportunities for compact development patterns that are a logical extension of existing historic hamlets or similarly configured new hamlets and that result in preservation of farmland and open space;
- F. To facilitate land use patterns and practices that avoid environmental degradation, which may in turn threaten public and/or ecosystem health;
- G. To maintain residential densities that ensure the protection of drinking water supplies and quality;
- H. To ensure adequate recharge areas for new residential lots to protect drinking water supply and quality and provide for future agricultural needs;
- I. To facilitate land use patterns, densities and practices that retain woodlands; and
- J. To implement the Land Use Plan Element of the Master Plan.

Section 3:6.2, Use Regulations

A. Permitted uses. Any of the following uses shall be permitted:

1. ~~Agriculture or horticulture or agricultural or horticultural uses are is the~~ permitted uses in the A-2 Zone, including single-family residences and accessory buildings for housing of farm labor that conform to federal and state laws and regulations and the requirements of Section 3:6.3 and 4, of this ordinance, housing for animals, and selling and storing farm products and storing farm equipment.

\* \* \*

3. Single Family Detached Dwellings within a Lot Size Averaging ~~development~~ Subdivision.

\* \* \*

11. Open Lands Subdivisions, subject to the provisions of Section 3:6.5 H of this Ordinance.

12. Municipal or State recreational or park use.

**SECTION 5**

Section 3:6.4 is amended as follows:

Section 3:6.4, Table of Performance, Area and Dimensional Regulations for the A-2 Zone.

Permitted Use	Minimum Size of Tract (Acres)	Open Space Ratio <sup>(1)</sup>	Minimum Lot			Minimum Yard Setbacks (Feet)				
			Area	Width <sup>(2)</sup> (Feet)	Depth (Feet)	Principal Building			Accessory Building <sup>(8)</sup>	
						Front	Side	Rear	Farm	Other
Single Family Detached	6.0		6.0 Acres	250	400	50	50	100		10/50
Single Family Detached w/ Lot Averaging	24.0		3.0 Acres <sup>(3)</sup>	250	400	50	50	100		10/50
Single Family Detached Cluster	24.0	.70	1.5 Acres <sup>(4)</sup>	115	400	25 <sup>(5)</sup>	15	40		10/50
<u>Open Lands Subdivision</u>	<u>24.0</u>	<u>.50</u>	<u>1.5 Acres <sup>(9)</sup></u>	<u>115</u>	<u>400</u>	<u>25</u>	<u>15</u>	<u>40</u>		<u>10/50</u>
Village Cluster (6)	100	.82								
Flag Lot	7.0 <sup>(6)</sup>		7.0 Acres <sup>(6)</sup>	Flagpole Width: 50 feet	400	75	75	75		10/50
Lot on a Private Access Way	12.0		6.0 Acres	150	400	25	25	75		10/50
Agriculture and Other Uses	6.0		6.0 Acres						75	

\* \* \*

(8) Setbacks are determined by the size of the accessory building; less than or equal to 500 square feet is a ten foot setback, greater than 500 up to 900 square feet requires 50 foot setback. See section 3:6.5C(3) and section 3:6.5C(4)

(9) Each lot shall be one and one half acres, no development shall be permitted in deed restricted open space.

Additional Requirements:

1. Maximum gross density for all uses in the A-2 Zone shall be one dwelling unit for each six (6) acres except for Open Lands Subdivision.

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**SECTION 6.**

Section 3:6.5, “Other Requirements for A-2 Zones,” is amended to add a new Subsection H, as follows:

H. Open Lands Subdivision in the A-2 Zone.

a. Minimum tract size. Open Lands Subdivisions are permitted on tracts of 24 or more acres in the A-2 Zone.

b. Intent. The primary intent of this option is to promote the retention of large farm tracts, promote aggregation of smaller farm parcels into contiguous farms, and promote retention of Prime and Statewide Important Soils. In addition, this option is intended to promote retention of contiguous wooded tracts and encourage and promote flexibility, economy and environmental soundness in subdivision layout and design, including preservation of Resource Protection Areas and aquifer recharge areas.

c. Standards. The following standards shall apply to Open Lands Subdivisions:

1. The open lands subdivision plan may result in a greater dwelling unit yield than if the property in question were developed as a conventional subdivision. In order to determine the maximum number of lots for a open lands subdivision, a Lot Yield and Buildable Tract Area Calculation shall be provided to the Municipal Agency (See Section 12:1.3). The number of lots in this calculation shall be the maximum number of lots permitted under an open lands subdivision.

2. For purposes of calculating lot yield, the maximum dwelling unit density applied to the net buildable tract area shall be 0.50 dwelling units per acre. Minimum lot size will be 3.0 acres.

3. At least 50 percent of the tract shall be designated as “Open Lands” and shall, as a condition of approval of the development, be deed restricted for agriculture and, where applicable, for conservation use.

4. For tracts of 75 acres or less, the open lands shall be contained in one single deed-restricted contiguous parcel; for tracts greater than 75 acres, the open lands may be composed of two or more noncontiguous parcels, provided that the open land area shall contain at least 30 contiguous acres.

5. The Open Space Performance Standards found in Section 11:12 shall apply to a permitted open lands subdivision.

6. All lots created under this subdivision option shall be deed restricted against

further subdivision for the purpose of creating an additional lot or lots.

7. To the maximum extent possible, the design of the development shall maintain a buffer along existing roadways to preserve existing woodlands that maintain the scenic forested or hedgerow roadside views and character of the Township. The dimension of the buffer and its treatment with landscaping and/or fencing shall be subject to review and approval by the Municipal Agency.

8. The proposed development shall comply with the bulk and dimensional standards contained in Section 3:6.4.

9. Hilltops and views, natural terrain, natural drainage and ridge lines shall be preserved wherever possible in designing any development containing such features. As part of the subdivision or site plan review process, development shall be designed to preserve scenic vistas and views of cultural/historic landmarks and of unique geologic and topographic features. On hillsides, development shall be sited below the ridgeline and the height and location of development shall protect unobstructed views of the ridges from existing roadways.

10. The Municipal Agency may permit the establishment of an exception area, not to exceed four (4) acres, to be identified on the open lands lot, upon which shall be located an existing or proposed dwelling unit, the septic disposal field, and any other buildings or structures not used for agricultural purposes. The exception area and access driveway, which shall be located in a manner consistent with best agricultural practices and reflecting on-site environmental and topographic conditions, shall not be included as "open lands" in calculating the portion of the tract required as open lands. The residence may only be allowed if the total permitted density is not exceeded.

## **SECTION 7.**

Repealer. All ordinances and resolutions, or parts thereof, inconsistent with this Ordinance, are hereby repealed.

## **SECTION 8.**

Severability. If any section, paragraph, subsection, clause or provision of this Ordinance shall be adjudged to be invalid, such adjudication shall apply only to the section, paragraph, subsection, clause or provision so adjudged and the remainder of this Ordinance shall be deemed valid and effective.

## **SECTION 9.**

Codification. This ordinance may be renumbered for codification purposes.

**SECTION 10.**

Effective Date. This Ordinance shall take effect immediately upon its passage and publication, as required by law.

ATTEST:

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Judith A. Allen, RMC  
Township Clerk  
September 12, 2011  
Published 9/15/11

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Kenneth J. Novak, Mayor

PLEASE TAKE NOTICE that the Delaware Township Committee approved the above ordinance on first reading at its Regular Meeting held on September 12, 2011. It will be considered on second reading for final adoption and will have a public hearing at a Regular Meeting beginning at 8:00 p.m. on September 26, 2011 at the Delaware Township Municipal Bldg., 570 Rosemont Ringoes Rd. (County Rt. 604), Sergeantsville, NJ. At that time an opportunity will be given for all interested citizens to be heard.