

DELAWARE TOWNSHIP
ORDINANCE #2015-03LU

AN ORDINANCE SUPPLEMENTING AND AMENDING THE
ORDINANCE ENTITLED “THE LAND USE ORDINANCE OF
THE TOWNSHIP OF DELAWARE” BY PERMITTING
NONCONTIGUOUS CLUSTERING IN THE A-1 AND A-2
DISTRICTS. #2015-03LU

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

- To encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals, and general welfare;
- To promote 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;
- To provide sufficient space in appropriate locations for a variety of 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;
- To promote a desirable visual environment through creative development techniques and good civic design and arrangement;
- To promote the conservation of historic sites and districts, open space, energy resources and valuable natural resources in the State and to prevent urban sprawl and degradation of the environment through improper use of land;
- To enable municipalities the flexibility to offer alternatives to traditional development, through the use of equitable and effective planning tools including clustering, transferring development rights, and lot-size averaging in order to concentrate development in areas

where growth can best be accommodated and maximized while preserving agricultural lands, open space, and historic sites; and

WHEREAS, Delaware Township’s zoning ordinances permit conventional development in the A-1 and A-2 districts pursuant to the standards set forth in the Land Use Ordinance and also permit Open Lands Subdivisions pursuant to the standards set forth in Ordinance 2011-12LU; and

WHEREAS, P.L. 2013, Chapter 106 amended the Municipal Land Use Law and authorized municipalities to provide for noncontiguous clusters as a development option; and

WHEREAS, the purpose of this ordinance is to provide a noncontiguous cluster option pursuant to that law; and

WHEREAS, the noncontiguous cluster option is a tool that helps municipalities plan for livable neighborhoods and districts while preserving farmland and open space; and

WHEREAS, the noncontiguous cluster option can result in the establishment of close-knit communities and allow for the more efficient provision of infrastructure and local government services while avoiding sprawl; and

WHEREAS, this ordinance does not authorize use of the development transfer provisions set forth in the "State Transfer of Development Rights Act," P.L.2004, c.2 (C.40:55D-137 et seq.).

NOW, THEREFORE, BE IT ORDAINED by the Township Committee of the Township of Delaware, County of Hunterdon, State of New Jersey, that the Land Use Ordinance of the Township of Delaware be supplemented as follows:

SECTION 1

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

* * *

Section 3:5.2, Use Regulations

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

* * *

13. Noncontiguous Cluster Option, subject to the provisions of Section 3:17 of this Ordinance.

SECTION 2

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

* * *

Section 3:6.2, Use Regulations

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

* * *

13. Noncontiguous Cluster Option, subject to the provisions of Section 3:17 of this Ordinance.

SECTION 3

Section 3:17, Noncontiguous Cluster Option (New section)

Section 3:17.1. Definitions

For purposes of this section,

A. "Agricultural restriction" means an "agricultural deed restriction for farmland preservation purposes" as defined in section 3 of P.L.1983, c.32 (C.4:1C-13).

B. "Cluster development" means a noncontiguous cluster that is not a planned development.

C. "Development restriction" means an agricultural restriction or conservation restriction.

D. "Noncontiguous cluster" means noncontiguous areas to be developed as a single entity according to a plan containing an area, or a section or sections thereof, to be developed for residential purposes, nonresidential purposes, or a combination thereof, at a greater concentration of density or intensity of land use than authorized within the area, section, or sections, under conventional development, in exchange for the permanent preservation of another area, or a section or sections thereof, as common or public open space, or for agricultural purposes, or a combination thereof.

E. "Buildable acres" means land in the A-1 or A-2 districts, the area of which shall be determined after deductions for 1) all areas of roads and transmission rights-of-way, including the area of proposed roads within the tract but excluding easements or rights-of-way required for widening of existing roads abutting the tract boundaries; 2) all areas of existing conservation and open space easements; 3) all areas of other existing restrictive covenants and easements; and 4) resource protection areas pursuant to Article XII of this Ordinance.

Section 3:17.2. Noncontiguous Cluster Option.

A. In addition to any other development options provide in the Land Use Ordinance, any parcel of at least 24 acres within the A-1 or A-2 districts may be developed with a noncontiguous cluster option.

B. Under the noncontiguous cluster option, a developer shall be granted increased density when that developer provides acceptable development restrictions in either the A-1 or A-2 districts.

C. “Acceptable development restrictions” shall be either conservation restrictions or agricultural restrictions, as defined and permitted herein.

D. The acceptable development restrictions may be presented to the land use board as part of the application for development or may be made a condition of preliminary approval.

E. No parcel shall be considered for an acceptable development restriction unless that parcel has been so approved by the land use board after consultation with the Open Space Advisory Committee.

F. In the A-1 district, a developer shall be permitted to construct one additional dwelling unit for every three buildable acres preserved by way of acceptable development restriction in the A-1 district, or one additional dwelling unit for every six buildable acres preserved by way of acceptable development restriction in the A-2 district.

G. In the A-2 district, a developer shall be permitted to construct one additional dwelling unit for every three buildable acres preserved by way of acceptable development restriction in the A-1 district, or one additional dwelling unit for every six buildable acres preserved by way of acceptable development restriction in the A-2 district.

H. At least one-half of the preserved land must be contained on a single lot. If not, the remaining preserved land must be a parcel that is at least ten acres in size and adjacent to a lot that that is already preserved pursuant to a conservation or agricultural restriction.

Section 3:17.3. Development Restrictions.

A. A development restriction shall provide for the permanent protection of land proposed to be preserved as public open space or common open space, or as agricultural land in accordance with the provisions set forth in this section.

B. Land identified for preservation as public open space shall be conveyed or dedicated by conservation restriction. The conservation restriction shall be as set forth in Appendix II or, in the alternative, as set forth in a conservation restriction template prepared by the Department of Environmental Protection for this purpose.

C. Land identified for preservation as agricultural land shall be conveyed or dedicated by agricultural restriction. The agricultural restriction shall be as set forth in a template prepared by the State Agriculture Development Committee, or in the alternative the agricultural restriction shall be approved by the State Agriculture Development Committee.

D. The agricultural restriction shall contain provisions:

1. to allow limited non-agricultural uses which the State Agriculture Development Committee finds compatible with agricultural use and production;

2. to allow future amendments to the area subject to the agricultural restriction in order to accommodate public improvements including but not limited to roadways, drainage facilities and other public infrastructure so long as the amendment results in only de minimis impact to the original area subject to the restriction;

3. to allow the inclusion of existing dwelling units or limited additional future housing opportunities that directly support the property's agricultural operations and are appropriate to the scale of the preserved farmland.

E. Agricultural land subject to an agricultural restriction approved by the State Agriculture Development Committee shall be provided the right to farm benefits under the "Right to Farm Act," P.L.1983, c.31 (C.4:1C-1 et al.) and other benefits that may be provided pursuant to the "Agriculture Retention and Development Act," P.L.1983, c.32 (C.4:1C-11 et seq.).

F. Any development restriction shall be recorded in the office of the county recording officer prior to the start of construction.

G. Any development restriction shall be expressly enforceable by the Township of Delaware, the State of New Jersey and, if set forth in the restriction, another public agency or non-profit conservation organization.

SECTION 4.

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

SECTION 5.

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 6.

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

ATTEST:

Judith A. Allen, RMC
Township Clerk
Date: 2/23/15
Published: 2/26/15

Roger Locandro, Mayor

PLEASE TAKE NOTICE that the Delaware Township Committee approved the above ordinance on first reading at its Regular Meeting held on February 23, 2015. It will be considered on second reading for final adoption and will have a public hearing at a Regular Meeting beginning at 7:30 p.m. on March 9, 2015 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.