

3. See the Lot Averaging provisions of Section 309, which may make it easier for a property-owner to comply with the requirement of this Section 308.F.
4. See also provisions of Section 403 which allows "Farm-Related Businesses."

308.G. See Section 807 entitled "Driveway Completion."

308.H. Rural Character. Applicants are strongly encouraged to utilize architectural styles and materials that are consistent with Albany Township's rural and rustic character for sides of buildings that will be visible from an existing public street. For example, applicants are encouraged to use earth tone colors, roof pitches that are typical for farmhouses and rustic materials such as wood, brick and stone on at least a portion of the facade. Buildings proposed on highly visible and scenic sites (such as the tops of ridgelines) are encouraged to be placed so that the top of the roofline is below the tops of surrounding trees. Where a highly visible site is not wooded, the planting of landscaping to partially screen the building is recommended.

309. LOT AVERAGING INCENTIVE TO PRESERVE NATURAL FEATURES.

309.A. Purposes. To allow flexible development of areas with sensitive natural features in such as to a) avoid severe soil erosion and sedimentation, b) avoid severely increased stormwater flows and speeds, c) steer development to those areas that are more physically suited for it, d) avoid construction of steep roads that are difficult, time-consuming, and expensive to maintain and snow plow, e) avoid increased use of steep roads and driveways that are dangerous to drive upon in snow and ice, f) to conserve forested areas that are an important part of the ecological cycle, providing for groundwater recharge, air pollution reduction and wildlife habitats and g) reduce construction costs, h) to allow each property owner a reasonable use of their land, related directly to the natural features and location and accessibility of the land, i) to encourage the preservation of significant areas of common open space and j) provide for development that respects and protects the rural scenic character of the Township.

309.B. Applicability. This Section allows an applicant the option to reduce the minimum lot areas and minimum lot widths of certain lots if the applicant proves to the satisfaction of the Board of Supervisors that all of the requirements of this article will be complied with.

1. The term "**Lot Averaging**" shall mean a ^{subdivision or} residential development meeting the requirements of this Section 309 as a conditional use. The only dwelling units permitted within a Lot Averaging development shall be single family detached dwellings.
2. The minimum Total Area of the Tract shall be 10 acres in ^{size} common ownership in order to be eligible for approval as a Lot Averaging Development, except that such minimum shall be 6 acres in the LDR district. Such land area shall be adjacent, although portions of the tract may be separated by existing or proposed streets or creeks. A Lot Averaging Development shall only be permitted within the LDR, AG and WC districts.
 - a. Lots of less than 2 acres that were previously granted final subdivision approval as part of a residential development shall not be recombined and resubmitted under this Section.

Proposed Am. 4/1/01 see file

Proposed Amend
11/1/01 see File

b. For the purposes of this Article, the term "Total Area of the Tract" shall mean the total lot area or the total lot area of adjacent lots in common ownership, ~~but not including areas within the existing and future rights-of-way of existing streets, but including-a) the right-of-way of any new future streets proposed within the tract and b) any proposed open space.~~

c. The Total Area of the Tract shall be divided by the total proposed number of ~~dwelling~~ ^{lots} units to equal the average lot area.

d. The total lot width... e. The total lot width...

3. A Lot Averaging Development shall be designed as a unified and coordinated manner and shall follow an approved development plan. After final subdivision approval and within an approved development agreement, a developer may sell individual lots to different builders or home buyers, provided that the developer or his/her successor remains responsible for ensuring the compliance with the approved development plan. All the conditions

4. The application shall be submitted and decided upon as a conditional use, within the procedures of Article I. The application shall be reviewed by the Planning Commission and approved or disapproved by the Board of Supervisors.

a. To reduce uncertainty to an applicant, a conditional use application under this Section 309 shall only be judged based upon the specific provisions of this Ordinance. The general standards for a conditional use stated in Section 117 shall not apply.

b. Time Limit upon the Township. To reduce uncertainty to an applicant, a conditional use application under this Section 309 shall be decided upon by the Board of Supervisors within 120 days after a complete application is duly submitted, unless the applicant grants a written extension.

c. Coordination With Other Approvals. The applicant may choose either of the following options:

- 1) To have the conditional use review occur at the same time as a preliminary and/or final subdivision review;
- 2) Or, the conditional use application may be considered before a preliminary or final subdivision submittal. In such case, the conditional use application is not required to include the following types of information: detailed surveying, detailed stormwater management, engineering details, profiles and detailed proposed grading. However, the conditional use application shall include sufficient information for the Board of Supervisors to determine the feasibility of the proposed layout and to fully understand the impact on natural features.

309.C. Reduction of Lot Width, Lot Area and Setback. If approved as a Lot Averaging Development, then the minimum lot area, minimum lot width and setbacks specified for Lot Averaging in Section 307.B. of this Ordinance shall apply, unless a more restrictive requirement is established by another applicable section of this Ordinance.

309.D. Other Requirements. Only requirements that are specifically stated in this Section as being adjusted shall differ from what would otherwise apply to a conventional ~~non-cluster~~ ^{non-lot averaged} development. All other requirements of this Ordinance and the Township Subdivision and Land Development Ordinance shall still apply to a Lot Averaging Development.

309.E. Conditions for Approval. In addition to the specific requirements of this Section, a Lot Averaging Development shall only be approved as a conditional use if the applicant proves to the satisfaction of the Board of Supervisors, based upon review by the Planning Commission, that the following conditions will be met:

1. The applicant shall prove that the Lot Averaging would clearly serve a valid public purpose that would result in a development that would be superior to what would result if the land would be development as a conventional development of 5 acre minimum lots. Such valid public purposes include, but are not limited to, one or more of the following:
 - a. The permanent preservation through conservation easements of dense forests, steep slopes over 25%, wetlands, creek valleys, highly scenic areas or other sensitive natural features.
 - b. The permanent preservation of a substantial area of land in agricultural uses, in a tract of sufficient size and configuration that allows for efficient long-term agricultural use.
 - 1) These agricultural uses include but are not limited to: a) a plant nursery without on-site retail sales of plants not grown on the premises or b) a Christmas Tree Farm.
 - 2) If the lot averaging is intended to preserve farmland, then the farmstead should be placed on the largest lot possible.
 - c. The dedication of public parkland at a site acceptable to the Board of Supervisors and that involves land that is clearly physically suitable and physically accessible for public recreation. See methods of ownership below.
2. Natural Features. The applicant shall prove that the Lot Averaging Development has been designed in full consideration of important natural features, including mature woodlands, creek valleys, steep slopes over 25 percent and wetlands. Areas along creeks shall be preserved in their natural state, except for landscaping, erosion control improvements and needed utility, street and driveway crossings.
3. Scenic Character. The applicant shall prove that proposed lots and building locations will be laid out to minimize disruption of Albany Township's scenic character, especially considering views from existing public streets and from major scenic overlooks. Buildings shall not be located in areas that are highly visible, such as on top of major highly visible ridgelines. Buildings shall not be sprawled fronting onto existing public streets.
 - a. The applicant shall provide cross-sections of views from major vantage points along existing public streets.
 - b. The site plan should attempt to place some or all of the houses within woods or behind hedgerows or within dips in topography to minimize their visual impact. Major scenic vistas should remain open.
 - c. See Section 309.M., which encourages deed restrictions to preserve scenic character.
4. The site plan shall be prepared to minimize impacts on and conflicts with any tracts of cropland or livestock operations of more than 30 acres on abutting lots.
5. If the intent of the plan is to preserve a significant tract of farmland, then houses should be placed on soils that are less productive as farmland.

6. The subdivision plan submitted...
7. The subdivision plan shall...

Proposed Amend
1/1/01 see file

309.F. Average Density and Open Space.

1. The applicant shall prove to the satisfaction of the Board of Supervisors that land will be permanently preserved as public, semi-public or private open space to ensure that the minimum average lot area specified in Section 307 is complied with.

a. The following are examples of the ways this Section 309 may be used in the AG district, provided that a minimum average lot area of 5 acres per dwelling unit is maintained instead of an absolute minimum lot area of 5 acres per lot, provided all other requirements of this Ordinance are met:

- 1) A 10 acre tract may be subdivided into a 2 acre and a 8 acre lot, instead of requiring 5 acre minimum lots. In such case, a conservation easement, enforceable by the Board of Supervisors, shall be required on the 8 acre lot to ensure that the lot is not further subdivided and to protect any portions of such lot that have important natural features, such as portions along a creek.
- 2) A 10 acre tract may be subdivided into two 2 acre lots, if 6 acres are dedicated to the State Game Commission, to a homeowner association or to another approved entity to serve as common open space.
- 3) A 20 acre tract may be subdivided into four 3 acre lots, if 8 acres are dedicated to the State Game Commission, to a homeowner association or to another approved entity to serve as common open space.
- 4) A 100 acre tract may be subdivided into 20 2 acre lots, if all remaining land (such as 55 acres after constructing streets) is suitable for and preserved through a conservation easement as usable contiguous farmland or a plant nursery. In such case, the farmland may be sold and resold or leased for its agricultural value.
- 5) **A 100 acre tract may be subdivided into two 2 acre lots and a 96 acre tract. A conservation easement would be needed to protect at least 11 acres of the 96 acre lot. That easement would make sure that the 5 acre minimum average lot size is maintained. The conservation easement would still allow additional subdivisions of the unprotected portions (85 acres) of the 96 acre lot. Under this example, all of the 100 acres would still be privately owned, would not be open to the public, and could be resold or leased.**

b. A 100 ACRE FARM...

b. See Section 307.B. which permits the minimum lot width to be averaged among the lots in the tract.

2. Method of Preserving Open Space.

a. The applicant shall prove prior to conditional use approval that the proposed method of ownership and preservation of required open spaces will ensure adequate preservation and maintenance of the land.

b. Unless the applicant proposes to have the open space owned by an acceptable homeowner association, the Township shall be given right of first refusal at the time of the conditional use review to accept proposed open space as public open space.

c. In each of the following cases, an appropriate conservation easment shall be established as described in Section 309.L., with such easement being enforceable by the Board of Supervisors. Required open space shall be permanently preserved by one of the following methods *selected by the board of supervisors*:

*Proposed Amend
11/1/01 See file*

Proposed Amend
4/1/01 see file

- 1) Dedication to **Albany Township** as public open space, if the Board of Supervisors agree in writing to such dedication and agree to maintain such land for public open space. a) Conveyance to Albany Twp. . .
- 2) Dedication to the **County of Berks or the PA. State Game Commission or the PA. Fish and Boat Commission** as public recreation land, if the County Commissioners or such agency agrees in writing to accept such dedication and agrees to maintain such land as public recreation land.
- 3) Dedication to the Kutztown Area **School District** if the School District agrees in writing to accept such dedication and to use and maintain the land for a public school building and/or public open space.
- 4) Dedication to a **homeowner association** as common open space that is not publicly-owned, with the homeowners legally bound to ensure the maintenance and preservation of such land.
 - a) Such homeowners association being incorporated with covenants and by-laws providing for the filing of assessments and/or municipal liens for the non-payment of maintenance costs for such common open space. Such responsibilities shall be specified as part of each deed prior to sale of each lot or dwelling unit.
 - b) The Board of Supervisors may require a developer to continue to be responsible for all maintenance and oversight of approved open space until the developer proves that a proposed homeowners association is incorporated and fully able to maintain such land.
 - c) Areas required to be preserved shall be preserved by an appropriate method (such as a homeowner association agreement) in a legal form acceptable to the Board of Supervisors, based upon review by the Township Solicitor. The Board of Supervisors may require reasonable adjustments to such agreement based upon such review.
 - d) The provisions of Sections 705.(f) parts (1) and (2) of the PA. Municipalities Planning Code, as amended, or such successor sections, shall serve as a general guide for any homeowner association agreement.
- 5) Dedication of the land itself to a well-established and incorporated **nature conservation organization** acceptable to the Board of Supervisors. For example, the Board of Supervisors may find that the Berks County Conservancy would be an appropriate owner.
- 6) Dedication of a 99 year minimum conservation easement to the Board of Supervisors and also to a well-established and incorporated **nature conservation organization** acceptable to the Board of Supervisors. In such case, the open space may remain privately owned within certain lots that are larger than would otherwise be required.
 - a) **A conservation easement may be limited to those portions of the lot(s) that would need to be protected to ensure compliance with the minimum average lot area and width requirements.** Portions to be protected by the conservation easement shall be contiguous, be generally rectangular in shape and have a minimum width of 200 feet, unless the applicant proves to the satisfaction of the Board of Supervisors that an alternative configuration would be appropriate and reasonable.
- 7) By including notes on the Subdivision Plan. . .

309.G. Open Space Standards. Open spaces needed to meet the lot averaging requirements shall meet all of the following requirements:

1. Such open space shall be protected by an appropriate conservation easement (which may include an agricultural preservation easement), as specified in subsection "L." below, including restrictions to prevent further subdivision that would violate the average lot area requirement for the tract. Where public or homeowner association open spaces are required, such land shall only be used for non-commercial recreation and for the preservation of natural features.
2. If open space is intended to be open to the public, it shall have pedestrian access a minimum of 20 feet width to a public street or a private street to which the public is permanently granted access or abut an existing open space that is open to the public that has such access. The Board of Supervisors may also require appropriate street access for maintenance vehicles.
3. All proposed open spaces shall be cleared of construction debris, materials from illegal dumping and any rocks that were not naturally on the land, unless those rocks are incorporated into landscaping.

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11/1/01
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309.H. Uses. A Lot Averaging Development may only include single family detached dwellings, nature preserves, crop farming, plant nurseries, Christmas Tree farms, Township-owned recreation and their customary permitted accessory uses. *by right OR By conditional use*

309.I. Steep Slopes. A lot required to have a larger minimum lot area under Section 505 because of steep slopes shall not be permitted to be reduced in lot area below the requirements of that Section 505. (However, through the use of the smaller minimum lot areas in this Article, the lot layout may be able to be revised to move proposed building sites away from steeply sloped portions of a tract so that the requirements of Section 505 no longer apply.)

309.J. Access. A Lot Averaging Development involving 4 or more dwelling units shall only be permitted if all lots in the Development will have vehicle access from the perimeter of the Development using ^{PAVED} streets of less than 12 percent slope and 16 feet minimum width to reach a collector or arterial street. Such standard shall be an absolute minimum, and shall not limit or reduce other Township requirements. *The Twp may require.*

309.K. Phasing. If the development involves 4 or more dwelling units, it shall include a phasing system that shall be approved by the Board of Supervisors. Such phases shall ensure that the requirements of this Article would be met after the completion of any one phase, and that the development could properly function without the construction of additional phases.

309.L. Conservation Easements. Where a Conservation Easement is required by this Article, the following shall apply:

1. Definition of a Conservation Easement. A legal agreement granted by a property owner that strictly limits the types and amounts of development that may take place on a lot or on specific portions of a lot. Such easement shall restrict the original and all subsequent property-owners, leasees and all other users of the land. To meet a requirement of a Township ordinance, such easement shall run for a minimum period of 99 years. Such easement may serve as an agricultural easement, to ensure the preservation of specified portions of the tract in permitted agricultural uses.
2. Standards. Where a Conservation Easement is required by this Article, such easement shall meet the following minimum requirements:
 - a. Such easement shall be recorded in the Recorder of Deeds Office in Berks County.

Proposed Amend
11/9/01 see File

- b. The vast majority of the land shall be preserved in a near-natural or landscaped state or for agricultural uses.
- c. No new ~~principal~~ buildings may be constructed on the lot, ~~other than for non-commercial recreation or as necessary to support on-site agricultural activities.~~ *unless such development.*
- d. The land shall not be used for any mineral extraction, commercial or industrial activities, other than agriculture or the growing of trees and plants for re-planting or for Christmas Tree sales.
- e. The land protected by the Conservation Easement shall not be further subdivided.
- f. Currently forested areas shall be maintained as forests, with only carefully selective cutting of trees in such a way as to preserve the character of such lands as forested lands, without any clearcutting of trees.
- g. A conservation easement that is intended to preserve agriculture should be based upon a typical agricultural preservation easement used by the County Agricultural Preservation Board.

309.M. Deed Restrictions. The applicant shall provide a written description of the substance of types of any deed restrictions that the applicant proposes to establish on individual lots. The applicant is strongly encouraged to establish architectural standards to ensure that the proposed homes visible from a pre-existing public street are compatible with the Township's rural and rustic character. *ANY ADDITIONAL CONDITIONS...*

- 1. Such standards should encourage or require the use of the following on the facades of homes: the use of earth tone colors, roof pitches that are typical for farmhouses in the Township and rustic materials such as wood, brick and stone on at least a portion of the facade.
- 2. Such deed restrictions should also require future residents to plant a certain number of trees unless the home sites are already wooded.
- 3. Applicants are encouraged to establish lower height limits on certain sites to minimize visibility from scenic areas along pre-existing public streets.

309.N. Site Design. The proposed ~~site layout and any landscaping~~ *lot averaging* plan shall be ~~sealed by a Registered Landscape Architect.~~ *formalized...*

309.O. See Section 308.F. entitled "Lots With a Barn," which may require a larger minimum lot area.

309.P. Historic Preservation. The development shall be designed to avoid demolition of and to encourage rehabilitation of attractive historic barns and other significant historic buildings.

309.Q. Detention Basins. Stormwater detention or retention basins in visible locations shall be designed to resemble farm ponds or natural ponds to the maximum extent practical. If fencing to be provided around a basin visible from an existing public street, such fencing shall have the appearance of split rail wood, with wire mesh securely attached on the inside of the fence. Any wood used for such fencing shall be pressure-treated or otherwise treated to be weather-resistant.

310. FRONT YARD REQUIREMENTS FOR ACCESSORY STRUCTURES