

Introduced 07/17/2018

ORDINANCE NO. _____

AN ORDINANCE TO AMEND CHAPTER 99, ARTICLE I AND III, SECTIONS 99-5 AND 99-16 OF THE CODE OF SUSSEX COUNTY RELATING TO FORESTED AND/OR LANDSCAPED BUFFERS.

WHEREAS, it is determined that in order to best serve the health, safety and welfare of the citizens of Sussex County, it is necessary to revise the Code of Sussex County in respect to the provision of a forested buffer on lands that are to be subdivided for residential use; and

WHEREAS, it is the intention of County Council that, with the exceptions noted herein, 40-foot-wide forested and/or landscaped buffers shall now be required along every boundary of any subdivision; and

WHEREAS, such buffers will increase the separation distance between residential developments and will improve the likelihood that existing vegetation will be retained within the larger buffer area; and

WHEREAS, such buffers will maintain the rural and agricultural appearance of Sussex County; and

WHEREAS, the 40 foot buffers will benefit the health, safety and welfare of Sussex County and its residents by providing additional, contiguous open space along the perimeter of all subdivisions, thereby improving the visual landscape of the County; and

WHEREAS, such a change requires the amendment of Sections 99-5 and 99-16D of the Subdivision Code.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. Amend Sussex County Code, Chapter 99, Article I, § 99-5 “Definitions” by amending the definition of “FORESTED AND/OR LANDSCAPED BUFFER STRIP” as follows:

Section 99-5. Definitions.

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FORESTED AND/OR LANDSCAPED BUFFER STRIP – A strip of land, not less than [20] 40 feet in width, exclusive of any residential lots, stormwater management areas or facilities, open space (except that the land area within the buffer strip may be included in

the overall calculation of open space), recreational amenities, wastewater treatment and/or disposal facilities, water treatment facilities, streets, buildings or other surface improvements and located along the entire outer perimeter of any portion of a major subdivision of lands into four or more lots adjacent to land of other ownership. A landscape plan for the buffer shall be designed and certified to by a licensed landscape architect, licensed forester or forester designated by the Society of American Foresters as a “certified forester”. The landscape plan shall be reviewed and commented on by the State Forester and shall be subject to the final review and approval of the Commission. The following conditions shall apply to the forested buffer:

- A. All trees that are to be planted shall include a mix of 70% deciduous shade trees and 30% evergreen trees, a majority of which shall be suitable trees of common local species, which may include existing as well as planted trees. Every 100-foot length of buffer shall include a minimum total of [15] 25 trees *that must be staggered throughout the 40 foot width of the buffer to fill out the entire width of the buffer and create a natural appearance*; and
- B. All deciduous trees that are planted to establish the buffer plantings shall have a minimum caliper of 1.5 inches and a minimum height of 6 feet above ground when planted in order to ensure that the trees will be capable of obtaining a minimum height of 10 feet above ground within 5 years of being planted; and
- C. All evergreen trees that are planted to establish the buffer plantings shall have a minimum height of 5 feet above ground when planted in order to ensure that they are reasonably capable of attaining a minimum height of 10 feet above ground within 5 years of being planted; and
- D. *Sussex County desires the maintenance of existing vegetation whenever possible within the buffer area. In that regard, and upon a submission of an [The] existing landscape plan [may include] showing suitable existing deciduous and evergreen trees of common local species, the existing vegetation may be maintained in lieu of the planting requirements set forth in Subsection A hereof provided they will achieve the overall goal of the plan as described in Subsection E hereof and provided that said existing trees survive the site work construction activity and any changes in the water table and exposure which may result from the construction activity [occurring prior to the date the buffer plantings are required to be installed as provided in Subsection F hereof]. When existing vegetation is to be maintained, the buffer area shall be clearly designated as a non-disturbance area with all silt fencing located outside of the buffer area (i.e., between the buffer and the area of disturbance associated with development)*; and
- E. The goal of the landscape plan for the forested buffer area shall be to include trees of the type indicated herein that will be planted in a staggered natural manner, as opposed to being planted in row fashion, which will filter views from and into the subdivision in such a manner that the areas on the agricultural side

of the buffer area appear more green and less visible and the structures or uses on the subdivision side appear less obvious and less dense than if no landscaping had been required. The procedures and details for planting new trees shall be specified by the landscape architect on the plan submitted to and approved by the Commission and shall include the requirement that the buffer area shall have a final grade that contains a minimum of 4 inches of topsoil and a suitable grass mix planted as sacrificial cover between the buffer trees for soil stabilization until the newly planted trees become larger. The plan may substitute woodchips for planted grass between the buffer trees in respect to both newly planted and existing trees, as determined by the landscape architect; and

- F. The forested and/or landscape buffer shall be installed within 18 months from the date site work is authorized to commence, as documented by a notice to proceed letter from the Commission. For subdivisions that are approved to be constructed in phases, the buffer for each phase must be completed before County approvals or permits will be granted to construct the next phase; and
- G. The land developer shall be held responsible for the health and survival of the trees, including regular necessary watering for a minimum of 2 years or until such later date as the maintenance responsibilities are transferred to a homeowner's association, provided however that the developer shall replace any trees that die during the minimum 2-year developer maintenance prior to transferring maintenance responsibilities to a homeowner's association; and
- H. The perpetual maintenance of the buffer plantings by a homeowner's association shall be assured through the restrictive covenants and/or homeowners association documents. The perpetual maintenance plan shall include the requirement that any trees that die must be replanted with trees of the same type and species and in accordance with the original landscape plan approved by the County. The perpetual maintenance plan shall also include a requirement that the forested buffer area be planted and maintained according to best management practices in the forestry industry. The responsibility for the perpetual maintenance of the buffer strip and its plantings shall be assured through restrictive covenants which are obligatory upon the purchasers through assessments by the homeowner's association. The applicant and/or land developer must provide the Commission with satisfactory proof that the covenants include a perpetual maintenance plan which shall be binding upon the applicant and/or developer during the minimum 2-year period described in subsection G above and thereafter by the homeowner's association. The Commission and its attorney shall review and approve the perpetual maintenance plan prior to the restrictive covenants being recorded and prior to granting final site plan approval.
- I. The [20] 40-foot forested and/or landscape buffer strip is not required to be installed in those portions of the subdivision perimeter which (1) represent the width of a right-of-way connector road or street that DelDOT or the Commission

required the applicant to install pursuant to § 99-17.D and the width of a stormwater outfall shown on the final site plan to drain surface or stormwater outside the perimeter of the subdivision.

- J. The landscape plan shall avoid placing planted trees or allowing existing trees to remain in the areas adjacent to entrances into and exits from the development in such a manner as to restrict the view of motorists in such a manner as to create a potential safety hazard.
- K. Notwithstanding any other provisions of this ordinance, the Planning and Zoning Commission shall be authorized, as part of the site plan review process, to grant final approval of a plan for the roadway frontage of a major subdivision which may include landscape and design features such as fences, walls, berms, landscape plantings of shrubs, ornamental grasses and/or trees, multi-modal paths required by DelDOT, open areas, or a combination of such features which is designed and certified to by a licensed landscape architect, licensed forester or forester designated by the Society of American Foresters as a Certified Forester and reviewed and commented upon by the State Forester, for the purpose of making the subdivision more attractive, more in keeping with the surrounding area and less visible from the roadway, provided said plan will not cause the landscape features contained in the plan to be placed in an area adjacent to the entrance in such a manner as to restrict the view of motorists entering or exiting from the subdivision or restrict the sight lines of motorists in such a manner as to create a potential safety or traffic hazard.

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Section 2. Amend Sussex County Code, Article III, § 99-16 “Suitability of Land; Preservation of Natural Features” is hereby amended as follows:

Section 99-16. Suitability of land; preservation of natural features.

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D. It is the intent of the county to stress the preservation of all agricultural lands which are feasible and worthwhile of such preservation in order to conserve such natural amenities. Where residential subdivisions are established adjacent to lands used for agricultural purposes, the subdivider shall ensure that there shall be no negative effect on the agricultural uses. The [20] 40-foot wide forested and/or landscaped buffer strip required by Section 99-5 shall be provided along the outer perimeter of any boundary of a residential major subdivision or development of 4 or more lots that is adjacent to agricultural farmland. “Agricultural purposes: shall be as defined as those uses identified in Chapter 115, Zoning, Article IV, § 115-20, subsection B(1), (2), (3), (4) and (5).

Section 3. Effective Date.

This Ordinance shall apply to subdivision applications filed in the Office of Planning and Zoning after the date this Ordinance is adopted.