

ORDINANCE NO. 2428

AN ORDINANCE TO AMEND CHAPTERS 99 AND 115 OF THE CODE OF SUSSEX COUNTY TO ALLOW APPLICANTS TO SEEK AN EXTENSION OF TIME FOR APPROVALS FOR SUBDIVISION APPLICATIONS, CONDITIONAL USE APPLICATIONS, AND RESIDENTIAL PLANNED COMMUNITY DISTRICTS UPON WRITTEN REQUEST

WHEREAS, the Sussex County Council has the power to develop, adopt, amend, and revise its Subdivision and Zoning Ordinances as it shall deem necessary in order to preserve and protect the public health, safety, morals, beauty and good appearance of Sussex County and to provide for the orderly growth thereof; and

WHEREAS, the Sussex County Council has adopted Subdivision and Zoning Ordinances and a Comprehensive Land Use Plan in order to provide for the regulation and orderly approval of residential, commercial, and industrial uses with Sussex County; and

WHEREAS, on August 9, 2011, the Sussex County Council adopted Ordinance No. 2208, which extended all subdivision, Residential Planned Community and conditional use approvals as set forth therein; and

WHEREAS, on January 15, 2013, the Sussex County Council adopted Ordinance No. 2288, which again extended all subdivision, Residential Planned Community and conditional use approvals as set forth therein; and

WHEREAS, the Sussex County Council continues to be concerned that the approvals and/or permits that have been granted by it and the County Planning and Zoning Commission may lapse due to delays prompted by circumstances outside of the applicant's or County's reasonable control; and

WHEREAS, the process of obtaining approvals and/or permits can be difficult, time consuming, and expensive for both the applicants and the County Government; and

WHEREAS, approvals and/or permits could be difficult to extend, renew, or re-obtain once lapsed or expired; and

WHEREAS, the Sussex County Council deems it appropriate to allow applicants to seek up to a six-month extension of subdivision, Residential Planned Community, and conditional uses approvals in certain circumstances as set forth below; and

WHEREAS, after consideration of the relevant factors in accordance with the procedures of this Ordinance, the Director of the Sussex County Planning and Zoning Department shall send a written recommendation to Sussex County Council regarding whether to

grant an extension to the applicant up to six months, and Sussex County Council shall then render the final decision whether to grant an extension to the applicant; and

WHEREAS, Sussex County Council therefore wishes to adopt the following County Code amendments.

NOW, THEREFORE, THE SUSSEX COUNTY COUNCIL HEREBY ORDAINS:

Section 1: The Code of Sussex County, Chapter 99, Article II, Section 99-9B is hereby amended by the addition of the underlined language as follows:

“B. Tentative approval of a subdivision plat shall be valid for 36 months. Unless a final plan, in accordance with the approved preliminary plat, including any required changes or modifications, and in accordance with all other applicable provisions, shall be filed with the Commission's staff within 36 months from the date of action of the preliminary plat, the Commission's action thereon shall be deemed canceled. An extension of this time period may be sought in accordance with § 99-40F.”

Section 2: The Code of Sussex County, Chapter 99, Article VIII, Section 99-40A is hereby amended by addition of the underlined language and deletion of the strike-through language, as follows:

“A. Unless an extension is granted in accordance with § 99-40F below, any ~~Any~~ major subdivision approval granted by the Commission subsequent to the effective date of this section shall be rendered null and void if substantial construction is not commenced thereon within five years of the date of recordation of the final plat pursuant to § 99-11.

Section 3: The Code of Sussex County, Chapter 99, Article VIII, Section 99-40 is hereby amended by the addition of the following underlined language as subsection (F):

“F. The applicant of any preliminary subdivision plat under § 99-9B, and any recorded subdivision plat valid under § 99-11 and § 99-40; any Residential Planned Community District valid under Article XVI of Chapter 115 of the Sussex County Code; or any conditional use action approved and valid pursuant to the provision of Article XVI, Article XXIV, and Article XXVIII of Chapter 115 of the Sussex County Code and relating to new residential, commercial, or industrial developments may seek up to a six-month extension of said approval pursuant to this § 99-40F.

(1) Prior to the expiration of its current approval, any applicant holding a currently valid approval as set forth in this § 99-40F may request an extension up to six months for the validity of said approval. The six-month period shall commence upon the date of expiration of the current approval. Such a request must be in writing and delivered to

the Director on or before the expiration date of its current approval. At a minimum, the written request must include the following information:

- (a) A schedule or plan for the project describing the steps that have been completed through the date of the extension request and describing the remaining steps to be completed. For any steps that remain outstanding, the applicant is to provide the anticipated time frame for completing those remaining steps.
 - (b) A detailed explanation of the reasons in support of the applicant's request for the time extension. Applicant is to include an explanation of whether such reasons were within the applicant's reasonable control. Examples of reasons beyond the applicant's reasonable control, include but are not limited to, undue delays in receiving regulatory approvals, litigation affecting the progression of the project, third party economic restrictions of an extraordinary or unreasonable nature, or delays caused by significant medical or health issues impacting applicant's key stakeholders.
 - (c) For subdivisions with recorded final plats that are valid in accordance with § 99-11 and § 99-40, a specific schedule and plan demonstrating that the improvements on the subdivision plat will be "substantially constructed" within six months of the expiration of the current approval.
 - (d) For conditional uses, a specific schedule and plan demonstrating that the construction or use will be "substantially underway" within six months of the expiration of the current approval.
- (2) The Director, after consultation with and input from other County departments or public agencies as the Director sees fit, shall consider any written request and the accompanying documentation submitted pursuant to this § 99-40F. Time extensions shall be recommended to Sussex County Council by the Director only upon a finding that all of the following criteria have been met: (i) that the approval constitutes one of the approvals defined in the first paragraph of this § 99-40F; (ii) that the request for said extension was timely filed; (iii) that all of the information required herein has been supplied; (iv) that there is good cause for the granting of the requested extension; (v) that necessity for the extension is due primarily to reasons beyond the reasonable control of the applicant, such as undue delays in receiving regulatory approvals, litigation affecting the progression of the project, third party economic restrictions of an extraordinary or unreasonable nature, or delays caused by significant medical or health issues impacting applicant's key stakeholders; (vi) with respect to subdivisions with

recorded final plats that are valid in accordance with § 99-11 and § 99-40, that there is a reasonable plan and schedule demonstrating that the improvements set forth on the subdivision plat in conformance with Chapter 99, Article VI of the Sussex County Code will reach “substantial construction” within six months; and (vi) with respect to a conditional use under Chapter 115, Article XXIV of the Sussex County Code, that there is a reasonable plan and schedule demonstrating that the construction or use shall be “substantially underway” within six months.

- (3) After consideration of the relevant factors in accordance with this § 99-40F, the Director shall make a written recommendation whether to grant an extension to the applicant. This recommendation will be provided to Sussex County Council, who shall render the final decision whether to grant an extension to the applicant for up to six months from the expiration date of the current approval.”

Section 4: The Code of Sussex County, Chapter 115, Article XXIV, Section 115-174 shall be amended by the addition of the following underlined language:

“Approval of a conditional use under this article shall be valid for a period of three years after the date of approval and thereafter shall become null and void unless construction or use is substantially underway during said three-year period. Any conditional use shall expire upon abandonment or expiration of the use. Construction shall be deemed to be "substantially underway" if the right-of-way has been cleared, the roadways, internal streets and/or parking areas have been rough-graded, the drainage system and/or stormwater management facilities have been rough-graded and erosion and sediment control measures are in place and being actively maintained. In a case where no new construction is required to implement the approved use, the use shall be deemed "substantially underway" if the activity permitted by the approved conditional use is actively underway. “Abandonment” shall mean that the subject parcel remains idle or unused, or that no construction activity is actively underway, for a continuous period of two years, whether or not equipment or fixtures are removed. An extension of this time period may be sought in accordance with § 99-40F.”

Section 5: The Code of Sussex County, Chapter 115, Article XXVIII, Section 115-218F shall be amended by the addition of the following underlined language:

“F. A preliminary site plan for an RPC shall be valid for the period of time set forth in § 99-9B of Chapter 99, Subdivision of Land. A final site plan for an RPC shall be valid for the period of time set forth in § 99-40A of Chapter 99, Subdivision of Land. An extension of these time periods may be sought in accordance with § 99-40F.”

Section 6: This Ordinance shall become effective upon its adoption by a majority of all members elected to the County Council of Sussex County.

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2428 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 15TH DAY OF DECEMBER 2015.

ROBIN A. GRIFFITH
CLERK OF THE COUNCIL