

## ORDINANCE NO. 1829

AN ORDINANCE TO AMEND CHAPTER 99 OF THE CODE OF SUSSEX COUNTY BY AMENDING ARTICLE VIII RELATING TO APPEALS.

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 appeals filed under the Subdivision Ordinance;

NOW, THEREFORE THE COUNTY OF SUSSEX HEREBY ORDAINS:

### § 99-39 Appeals.

- [A. Any applicant aggrieved by a finding, decision or recommendation of the Commission and/or its staff may request and shall receive opportunity to appear before the Commission to present additional relevant information and request reconsideration of the original finding, decision or recommendation, or said applicant may appeal said finding, decision or recommendation to the County Council within 60 days.]
- A. No preliminary plat shall be acted upon by the Commission without affording a hearing thereon as outlined in Title 9, § 6812 of the Delaware Code and after notice of the time and place of the hearing shall be sent by registered mail to the applicant not less than 5 days before the date fixed for the hearing. Following said hearing any approval or disapproval of the preliminary plat by the Commission may be appealed to County Council within 30 days of the official action of the Commission approving or disapproving the preliminary plat.
- B. As provided in 9 Delaware Code, §6811, an appeal may be filed by a party aggrieved by either the approval or the disapproval of a preliminary plat.
- [B. If, after requesting the Commission to reconsider the denial of any preliminary or final plat, the applicant still feels that such action is unreasonable and causes him unjustifiable hardship, he may appear before the County Council to request a reconsideration of the denial of said plat.]
- B. If the appellant is aggrieved by the decision of the Commission, he may appeal that decision to the County Council within 30 days of the official action of the Commission. In such event, the appeal shall be an appeal on the record of the hearing before the Commission and the notice of appeal shall be on a form provided by the Office of Planning and Zoning and shall specify the grounds therefor and the appellant shall pay the appeal fee hereafter provided. In respect to an appeal to Council from a decision of the Commission the following procedures shall apply:
  - 1. Within 30 days following the filing of the appeal to Council, it shall be the responsibility of the appellant to pay the costs to have a certified court reporter prepare a verbatim transcript of the hearing record before the Commission at the appellant's expense and to file said transcript with the Clerk of County Council. If the transcript is not filed within said 30 day period, the appeal shall be dismissed and the appellant shall be notified of the dismissal by letter from the Clerk.
  - 2. Council shall review the record of the hearing before the Commission and shall make a determination as to whether the Commission's decision was the result of an orderly and logical review of the evidence and involved the proper interpretation and application of the Ordinance. If Council finds that the Commission misapplied or misinterpreted the applicable sections of this Chapter or that its

findings were not the result or an orderly and logical review of the evidence and the applicable provisions of this Chapter:

- (a) Council may send the matter back to the Commission for further review and consideration and, if Council considers it necessary, it may direct that the Commission hold a new hearing, specify the time period within such hearing shall be held and direct the Commission to issue a written decision containing findings and conclusions following the rehearing.
  - (b) Council may reverse a decision only upon a finding that the Commission made an error in its interpretation of the applicable sections of this Chapter; or the Commission's findings and conclusions were not the result of an orderly and logical review of the evidence and the applicable provisions of this Chapter.
  - (c) Within 60 days from the receipt of the transcript, Council shall act on the record of the hearing before the Commission and Council shall not hold an additional public hearing.
- [C. Further appeals shall be to the Superior Court in the same manner as appeals from decisions of the Board of Adjustment in 9 Del. C., § 6918.]
- C. Any party aggrieved by the decision of Council may appeal to the appropriate Court, but only after all remedies made available under this chapter have been exhausted. Such appeals shall be to the Superior Court in the same manner as appeals from decisions of the Board of Adjustment as specified in 9 Del. C. § 6918.
- D. The standard of review to be applied by Council is that a decision approving or disapproving a plat shall be upheld unless the appellant can demonstrate that the Commission made an error in its interpretation of the applicable sections of the subdivision ordinance and/or that the Commission's findings and conclusions were not the result of an orderly and logical review of the evidence and the applicable provisions of the subdivision ordinance.
- E. Appeals to the Council shall not be based on new or revised subdivision plans that were not presented to the Commission prior to the plat being approved or denied or to appeal a condition imposed by the Commission.
- F. The fee for filing an appeal to Council shall be \$500.00 and shall be payable to the Clerk of Council on the date of filing the notice of appeal.
- G. This amended appeal procedure shall apply to any Preliminary Plat applied for after the date of adoption of this Amendment.
- H. An applicant may request in writing that the Commission reconsider a condition imposed by the Commission but there shall be no appeal from the decision of the Commission on such request.

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 1829 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 28TH DAY OF FEBRUARY 2006.



ROBIN A. GRIFFITH  
CLERK OF THE COUNCIL