

**ORDINANCE NO. 1920**

**AN ORDINANCE TO AMEND CHAPTER 115 SECTION 22 OF THE CODE OF SUSSEX COUNTY ALLOWING FOR AN INCREASE OF DENSITY FOR MULTIFAMILY DWELLING STRUCTURES AND/OR TOWNHOUSES AND/OR TOWNHOMES IN AR-1 DISTRICTS WITHIN COMPREHENSIVE PLAN GROWTH AREAS, PROVIDING FOR SPECIFIC CIRCUMSTANCES, FEES AND/OR CONDITIONS FOR OBTAINING SUCH AN INCREASE IN DENSITY AND PROVIDING AN INCENTIVE FOR THE ACQUISITION AND PRESERVATION OF OPEN SPACE AND/OR ACTIVE AND/OR PASSIVE RECREATION AREAS.**

**WHEREAS, pursuant to the provisions of Title 9, Chapter 68 and 69, Delaware Code, the Sussex County government has the power and the authority to regulate the use of land and to adopt a Comprehensive Plan; and**

**WHEREAS, pursuant to Chapter 115 of the Code of Sussex County, as amended, the Sussex County government has undertaken to regulate the use of land; and**

**WHEREAS, Sussex County has an adopted Comprehensive Plan (“Plan”), that identifies specific development districts within defined Growth Areas; and**

**WHEREAS, the intent of the Plan is to “encourage higher residential densities in Town Centers and Developing Areas, with densities reducing as development moves further away from Town Centers”; and**

**WHEREAS, the Plan also allows the approval of higher residential densities within those areas designated as Environmentally Sensitive Developing Areas; and**

**WHEREAS, the Plan provides that Town Centers, Developing Areas and Environmentally Sensitive Developing Areas are considered to be Growth Areas; and**

**WHEREAS, Sussex County has, in general, planned to expand sewer services capable of supporting four dwelling units per acre within the defined Growth Areas; and**

**WHEREAS, a further goal of the Plan is to encourage the preservation of open space and/or active and/or passive recreation areas within Sussex County; and**

**WHEREAS, it is the intent of the Sussex County Council, through the adoption of this ordinance, to balance the need to protect land equity with the need to provide additional housing and to create a means by which Council will be compensated for any additional density that is allowed above 2 units per acre and will use those funds to acquire open space for preservation and/or active and/or passive recreation areas; and**

**WHEREAS, it has been determined in order to further promote and protect the health, safety, convenience, orderly growth and welfare of the inhabitants of Sussex County, and to assist in the proper development of land;**

**THE COUNTY OF SUSSEX HEREBY ORDAINS:**

**Section 1. The Code of Sussex County, Chapter 115, Article IV, Section 115-22, is hereby amended as follows, by adding the following as a possible Conditional Use:**

*Multifamily dwelling structures and/or town houses and/or townhomes, subject to the provisions of this Chapter when:*

- 1) Said multifamily dwelling structures and/or townhouses and/or townhomes, the owners of which would share and own in common the surrounding grounds (which may also be referred to herein collectively as “units”), lie within a TOWN CENTER, a DEVELOPING AREA, or an ENVIRONMENTALLY SENSITIVE DEVELOPING AREA as described within the Land Use Element and as shown on the Future Land Use Plan of the adopted Sussex County Comprehensive Plan; and*
- 2) The developer has proffered to Sussex County for the purpose of creating open space for preservation and/or active and/or passive recreation areas a development fee per unit, as described in Chapter 62, Section 62-7, for every unit in excess of 2 units per gross acre that is included in the application; and*
- 3) The Sussex County Council prior to the signing of a contract to purchase or lease open space for preservation and/or active and/or passive recreation areas shall approve all such land or conservation easement purchases which utilize monies paid to the County under the terms of this amendment. All such approvals by the Council shall be by a four-fifths majority vote and shall include a determination that the land and/or conservation easement to be acquired is located in the same watershed area as the land where the bonus density will be located; and*
- 4) It is understood that Sussex County shall control all monies paid to it under this amendment and that the Sussex County Land Trust may act as a recommending body and/or partner at the discretion of the Sussex County Council; and*
- 5) The maximum number of multifamily dwelling structures and/or town houses and/or townhomes, as defined in Subsection (1) above, included in the application, shall not exceed four dwelling units per gross acre, including land set aside for common open space and/or recreational uses; and*
- 6) The minimum percentage of the total site which shall be set aside as common open space shall be 40% of the total land area included in the application; and*
- 7) There shall be a vegetated buffer of not less than 75 feet, subject to the following conditions:*
  - (a) the vegetated buffer shall be located adjacent to a numbered road shown on the General Highway Map for Sussex County and may include the required setback area from the road and shall be kept free of vehicle parking areas, buildings and structures; and*
  - (b) the vegetated buffer shall include a mix of deciduous shade trees and evergreen trees, a majority of which shall be of common local species; and*
  - (c) the deciduous shade trees shall include trees reasonably capable of attaining a minimum trunk diameter of 2 inches measured 3.5 feet above the ground within 5 years of being planted; and*
  - (d) the evergreen trees shall include trees reasonably capable of attaining a minimum height of 10 feet above the ground within 5 years of being planted; and*
  - (e) the goal of the landscape plan for the buffer area shall be include*

*trees of the type indicated herein that will be planted in a natural manner, as they might appear in nature, as opposed to being planted in row fashion which will filter views from the road in such a manner that the dwelling units appear more green and less dense than if no landscaping had been required; and*

*(f) a further goal of the landscape plan would be to avoid placing plantings in an area adjacent to the entrance to the development in such a manner as to restrict the view of motorists entering or exiting from the development or restricting sight lines for motorists in such a manner as to create a potential safety hazard; and*

*(g) the landscape plan for the buffer area shall be designed and signed by a Delaware licensed landscape architect and approved by the Planning and Zoning Commission and County Council; and*

*8) Council and/or the County Administrator may consider and authorize an expedited review of a Conditional Use Application filed under this Section; and*

*9) Multifamily dwelling structures and/or town houses and/or townhomes shall not be considered as a Conditional Use under any other provision of this Section which existed prior to the date of this amendment; and*

**Section 2. The Code of Sussex County, Chapter 115, Article IV, Section 115-22, is hereby amended by adding the following:**

*I. The Density Bonus Fee for each multifamily and/or town house and/or townhome dwelling unit in excess of two units per gross acre shall be determined by reference to and the use and application of the per unit density bonus fees adopted as part of Ordinance 1842 and applicable to cluster developments and appearing in Chapter 62, Article III, Section 62-7, as the same may hereafter be modified by Council, from time to time. Council will review the fees for a density bonus under the terms of this amendment on an annual basis and revise such fees as it deems necessary by an appropriate amendment..*

**I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 1920 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 31ST DAY OF JULY 2007.**



**ROBIN A. GRIFFITH  
CLERK OF THE COUNCIL**

