

ORDINANCE NO. 1984

AN ORDINANCE TO AMEND CHAPTER 99, ARTICLES I, III, IV AND VI OF THE CODE OF SUSSEX COUNTY RELATING TO FORESTED AND/OR LANDSCAPED BUFFERS, SITE PLANS AND BONDING REQUIREMENTS AND TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY, ARTICLE III TO ADD A PROVISION ALLOWING COUNCIL TO REQUIRE A FORESTED AND/OR LANDSCAPED BUFFER FOR CONDITIONAL USES AND RESIDENTIAL PLANNED COMMUNITIES OF SINGLE-FAMILY OR MULTI-FAMILY DWELLINGS

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 to clarify that, with the exceptions noted herein, forested and/or landscaped buffers shall now be required along every boundary of any subdivision; and

WHEREAS, this Ordinance shall clarify that a forested and/or landscaped buffer shall be required not only between the boundary with lands of other ownership, but also between such boundaries and stormwater management areas, open spaces, wastewater treatment and/or disposal facilities, water treatment facilities, recreational amenities, buildings, streets or other surface improvements; and

WHEREAS, such clarification requires the amendment of Sections 99-5, 99-6 and 99-16D of the Subdivision Code; and

WHEREAS, Sussex County also desires to amend Section 99-26 to require Final Site Plans to confirm the location of all stormwater management areas; and

WHEREAS, the County also desires to amend Section 99-23 to allow the requirement for forested and/or landscaped buffers to be added to the improvements for which a performance bond is required; and

WHEREAS, Council also desires to amend Section 115-218 of the Zoning Ordinance to allow Council to apply the requirements for landscaped and/or forested buffers to be applied as conditions applicable to a conditional use or a change of zone for a residential planned community for attached or a detached single-family or multi-family dwellings.

NOW, THEREFORE THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 99-5. Definitions.

FORESTED AND/OR LANDSCAPED BUFFER STRIP - A strip of land, not less than 20 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 (4) or more lots adjacent to [agricultural farmland,] land [as referenced defined in Chapter 115, Zoning, Article IV, Section 115-20, Subsection B(1).] of other ownership. [upon which certain planting shall be recommended by the State Forester, through the Technical Advisory Committee, and shall be subject to review and approval of the Commission. The “buffer strip” shall remain free of any buildings or streets.] 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 trees.
- 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 insure that the trees will be capable of obtaining a minimum height of 10 feet above ground within 5 years of being planted.
- 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 insure that they are reasonably capable of attaining a minimum height of 10 feet above ground within 5 years of being planted.
- D. The landscape plan may include suitable existing deciduous and evergreen trees of common local species 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.
- 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.
- 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.
- G. The land developer shall be held responsible for the health and survival of the trees including regular necessary watering for a minimum of two years or until such later date as the maintenance responsibilities are transferred to a homeowners association, provided however that the developer shall replace any trees that die during the minimum two year developer maintenance prior to transferring maintenance responsibilities to a homeowners association.
- H. The perpetual maintenance of the buffer plantings by a homeowners 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 homeowners 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 two year period described in subsection G above and thereafter by the homeowners 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 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 DeIDOT 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 entering or exiting from the development or restricting site lines for 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 DeIDOT, 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 restricting the sight lines of motorists in such a manner as to create a potential safety or traffic hazard.

Section 99-6. General requirements and restrictions.

J. A forested and/or landscape buffer, as defined in § 99-5 A-J, must be depicted on the preliminary and final plot plans for each major subdivision of lands into four (4) or more lots and must be established in accordance with all the requirements of § 99-5 A-J.

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

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 [operations] purposes, the subdivider shall ensure that there shall be no negative effect on the agricultural [operations] uses. [A] The twenty (20) foot wide forested and/or landscaped buffer strip required by Section 99-5 shall be provided along the outer perimeter of any [portion] boundary of a residential major subdivision or development of four (4) or more lots that is adjacent to agricultural farmland [of other ownership]. “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 99-26. Information to be shown.

A. The Final Plat shall be legibly and accurately drawn and shall show the following information:

(18) A space for the signature of an authorized representative of the Sussex Conservation District approving the location and design of all stormwater management areas and erosion and sediment control facilities which shall be shown on the final site plan.

Section 99-32. Bonds and guaranties.

A. As a condition of approval of improvement plans, the County Council shall require the subdivider to post a performance bond or other guaranty for any improvements required by the application of this chapter in an amount sufficient to construct the improvements and in a form acceptable to the County Attorney. The amount of such bond shall be no less than 125% of the cost of improvements. Bonding and guaranties may be required for street and road improvements, surface drainage facilities, erosion and sedimentation control facilities, water supply facilities, sanitary sewer facilities, forested and/or landscaped buffer strips or other improvements deemed necessary by the Commission or required by the subdivision ordinance.

Section 115-218. Forested and/or landscaped buffer requirements.

E. When approving a conditional use for attached or detached single-family or multi-family dwellings or a change of zone for a Residential Planned Community of attached or detached single-family or multi-family dwellings, in any zoning district in which they are permitted with Council approval, Council shall have the right to impose a condition requiring the applicant to install a forested and/or landscaped buffer as defined in Section 99-5 and 99-6.D. of the subdivision ordinance.

This Ordinance shall apply to subdivision applications filed after the date this Ordinance is adopted.

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 1984 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 29TH DAY OF JULY 2008.



ROBIN A. GRIFFITH
CLERK OF THE COUNCIL

