

**ORDINANCE NO. 2024**

AN ORDINANCE TO AMEND CHAPTER 115, ARTICLE IV, SECTION 115-25 TO PROVIDE CRITERIA FOR DETERMINING WHETHER A PRELIMINARY CLUSTER SUBDIVISION PLAN PROVIDES FOR A TOTAL ENVIRONMENT AND DESIGN WHICH ARE SUPERIOR TO THAT WHICH WOULD BE ALLOWED UNDER THE REGULATIONS FOR THE STANDARD SUBDIVISION OPTION

WHEREAS, Sussex County Council (“Council”) has the power and jurisdiction to regulate zoning and the uses of land in those portions of Sussex County which are not included within the corporate limits of any City or Town; and

WHEREAS, Council deems it appropriate to amend the Cluster Subdivision Ordinance to provide a criteria to be used by the Commission in determining whether a preliminary cluster subdivision plan provides a total environment and design which are superior to that which would be allowed under the regulations for the standard option subdivision; and

WHEREAS, Council is of the opinion that this amendment will promote the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of the County and provide for a more orderly development of the County; and

WHEREAS, any material that is to be deleted will be enclosed in brackets [ ] and any new material to be inserted will be indicated by underlining;

NOW THEREFORE THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 115-25.F (3)(a) is hereby amended as follows:

(3) In respect to any preliminary cluster subdivision application that is submitted after the effective date of this amendment, if the applicant voluntarily elects to comply with the superior design criteria contained in this amendment, the Planning and Zoning Commission shall determine that the following requirements are met before approving any preliminary plan and such application shall be approved on an expedited review basis. The superior design criteria contained in this amendment shall not apply to applications submitted under the terms of the cluster ordinance, as it existed prior to the date of this amendment, or to any application hereafter submitted where the applicant does not voluntarily elect to comply with the requirements contained in this amendment.

(a) The cluster development sketch plan and the preliminary plan of the cluster subdivision provides for a total environment and design which are superior, and the reasonable judgment of the Planning Commission, to that which would be allowed under the regulations for the standard option [,]. For the purposes of this subsection a proposed cluster subdivision which provides for a total environment and design which are superior to that allowed under the standard option subdivision is one which, in the reasonable judgment of the Planning Commission meets all of the following criteria:

1. Homes shall be clustered on the environmentally suitable portions of the tract, specifically those portions of the tract least encumbered by sensitive environmental features, including but not limited to wetlands, mature woodlands, waterways and other water bodies. This does not inhibit the development of wooded parcels.
2. The applicant must submit a “Yield Plan” that accurately depicts the maximum number of dwelling units possible on the same tract under current applicable conventional (non-cluster) development regulations.
  - A. The Yield Plan shall be completed to scale, and accurately depicts potential lots, streets, and storm drainage facilities. However, the Yield Plan is not required to contain the same level of engineering detail required for a subdivision plan.

- B. The Yield Plan shall depict all wetlands, wooded areas, waterways and other water bodies.
  - C. The applicant shall comply with Section 115-25.A (2) or Section 115-25.B (3), as applicable. In addition, the maximum number of dwelling units allowed on a cluster development tract shall not be greater than the maximum number of dwelling units determined to be possible under the Yield Plan prepared for that same tract, plus the number of additional units allowed if the applicant prefers the required per unit fee provided for under Section 115-25.B (3) and F (3) (d) as provided for in Ordinance 1842.
    - 1. The Yield Plan shall not have any legal standing except for the purposes of determining maximum density allowed under a cluster development.
3. Required open space shall comply with the following criteria:
- A. All required open space must meet the official definition of acceptable open space contained in Section 115-4.
  - B. Required open space must be designed to be beneficial to the residents or users of the open space. It shall not be constituted of fragmented lands with little open space value. Accordingly, 30% of all required open space shall be located on one contiguous tract of land, except that such open space may be separated by water bodies and a maximum of one street.
  - C. If one of the following physical conditions exist adjacent to the proposed cluster development tract, at least 30% of all required open space must be adjacent to:
    - 1. An existing or officially planned public park, land preserved by easement, or land preserved as open space and in municipal, County, State, or Federal ownership.
    - 2. Existing wetlands, waterways, wildlife corridors, or other ecology-sensitive land.
    - 3. Existing farmland and/or woodlands.
    - 4. If more than one of these physical features exist on adjacent properties, then one of these features will be identified and utilized to satisfy this requirement.
  - D. If the open space is proposed to be dedicated to a municipality, a County, State, or Federal agency or a homeowner's association, an agreement shall be provided, in advance, stipulating that such entity agrees in advance to accept that dedication and maintain that land for public recreation or as a nature preserve.
  - E. Open space in a cluster development shall include a pedestrian trail system accessible to residents. This trail system shall connect to an adjacent trail, adjacent neighborhood, adjacent commercial area, or adjacent public open space, if any such areas exist adjacent to the proposed cluster development. Construction materials for the proposed trail shall be identified and a typical construction detail for the proposed trail shall be shown. Trail construction materials shall be pervious in nature.
4. A minimum of 25 feet permanent setback must be maintained around the outer boundaries of all wetlands, except for tidal waters, tidal tributary

streams and tidal wetlands and from the ordinary high water line of perennial non-tidal rivers and non-tidal streams as provided for in Section 115-193.B under Ordinance No. 774 where a 50 foot permanent setback is required. No buildings or paving shall be placed within these setbacks.

5. Stormwater management shall be designed to promote groundwater recharge and protect groundwater quality. Natural drainage flows shall be maintained to the greatest extent possible. Drainage from rooftops shall be directed to vegetated areas or allow green technology. Stormwater detention and retention facilities should be designed to resemble natural ponds as referenced by DNREC in the National Resource Conservation Service's (NRCS) Pond Code 378, Visual Resource Design.
6. Removal of healthy mature trees shall be limited.
7. Scenic views that can be seen from within the tract should be preserved to the greatest extent possible.
8. The applicant for a cluster development shall illustrate that the following sequence and process was followed in the site design of the cluster project:
  - A. Identify Lands that should be Preserved – First, areas worthy of preservation should be mapped, including wetlands, wooded areas, waterways, other water bodies, and natural drainage areas. Then, other features that are important should be mapped, such as tree lines, scenic views, historic buildings, and prime farmland. The areas with the fewest important natural, scenic and historic features should be considered the “Potential Development Area.”
  - B. Identified Developable Areas – Next, the most appropriate locations for development should be chosen to minimize the impact to the most important features mapped in the first step.
  - C. Locate Roads and Trails – After the developable areas are determined, a road system should be designed to serve those homes. A trail system that links homes to destinations outside of the tract should be designed.
  - D. Locate Lot Lines – The last step is to configure lot lines and make necessary adjustments to satisfy the various reviewing agencies' comments.
9. Sidewalks shall be required at least on one side of each street, subject to Planning and Zoning Commission approval.

Section 2. This ordinance shall become effective upon its adoption by a majority of the members elected to Council and shall apply to all cluster subdivision applications filed after January 1, 2009.

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2024 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 16TH DAY OF DECEMBER 2008.



ROBIN A. GRIFFITH  
CLERK OF THE COUNCIL