

**ORDINANCE NO. 2618**

**AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY, CHAPTER 115 (“ZONING”), ARTICLE III (“PROVISIONS APPLICABLE TO ALL DISTRICTS”), ARTICLE IV (“AR-1 AND AR-2 AGRICULTURAL RESIDENTIAL DISTRICTS”) AND ARTICLE XXV (“SUPPLEMENTARY REGULATIONS”) WITH RESPECT TO THE CALCULATION OF PERMITTED DENSITY**

WHEREAS, pursuant to the provisions of Title 9, Chapter 69 of the Delaware Code, Sussex County has been granted the power and authority to regulate zoning; and

WHEREAS, Sussex County currently permits wetlands to be included in the gross area for the purposes of calculating permitted density; and

WHEREAS, Sussex County Code also emphasizes the avoidance of wetlands areas, including provisions of Section 99-9C (requiring the minimal use of wetlands), Section 115-25E(6) (prohibiting wetlands within lots in cluster subdivisions) and Section 115-25F (regarding the exclusion of wetlands from lots and requiring a 25 foot buffer in certain cluster subdivisions);

WHEREAS, Sussex County wishes to amend the Code to clarify the calculation of density and to exclude streams, rivers and wetland areas from the density calculation; and

WHEREAS, Sussex County Council believes that this legislation will promote the health, safety, morale, convenience, order, prosperity and/or welfare of its citizens.

**NOW THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:**

**Section 1. Sussex County Code, Chapter 115, Article III, Section 115-15.1 (“Definitions and word usage”) shall be amended by the addition of the underlined language and deletion of the language in brackets, as follows:**

**§ 115-15.1 [(Reserved)] Calculation of permitted density in all districts.**

For purposes of calculating the permitted density or allowable density in all districts, the gross area, as defined herein, shall be divided by the applicable lot area stated in each district, unless otherwise specifically set forth therein. “Gross area” shall include the lot areas and the area of land set aside for common open space or recreational use but shall exclude any area designated as a tidal tributary stream or tidal wetlands by §115-193.

**Section 2. Sussex County Code, Chapter 115, Article IV, Section 115-25 (“Height, area and bulk requirements”) shall be amended by the addition of the underlined language and deletion of the language in brackets, as follows:**

**§115-25. Height, area and bulk requirements.**

A. Minimum lot sizes for lots using a wastewater disposal system located entirely on that lot and generally defined as an on-site septic system.

...

(2) Cluster development option. The minimum lot size may be reduced to one-half acre (21,780 square feet) where soil conditions are suitable as approved by DNREC. The total number of lots allowed shall not exceed the number of lots that would be permitted under the standard lot option. The number of dwelling units permitted shall be determined by dividing the gross area by 32,670 square feet. “Gross area” shall include the lot area and the area of land set aside for common open space or recreational use but shall exclude any area designated as a tidal tributary stream or tidal wetlands by §115-193. [The area of land set aside for common open space or recreational use shall be included in determining the number of dwelling units permitted.] However, if the proposed cluster development lies within a Low-Density Area as described within the Land Use Element and as shown on the Future Land Use Plan of the adopted Sussex County Comprehensive Plan, the total number of lots permitted shall be determined by first reducing the gross area by 25%.

B. Minimum lot sizes, dimensions and open space for lots using a central sewer system as defined by § 115-194A:

...

(3) The number of dwelling units permitted shall be determined by dividing the gross area by 21,780 square feet. [The area of land set aside for common open space or recreational use shall be included in determining the number of dwelling units permitted.] When a cluster development lies 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 the developer has proffered to Sussex County for the purpose of creating open space preservation/active and passive recreation areas a development fee per unit for every unit in excess of two units per acre, then the maximum number of dwelling units that may be permitted by the Planning and Zoning Commission shall be determined by dividing the gross area by 10,890 square feet. The development fee shall not be less than the minimum established by the Sussex County Council and shall be paid prior to recording any lot based upon the fee in effect at the time the application was filed. “Gross area” shall include the lot area and the area of land set aside for common open space or recreational use but shall exclude any area designated as a tidal tributary stream or tidal wetlands by §115-193.

...

F. Review procedures for cluster development.

...

(3) [In respect to any preliminary cluster subdivision application that is submitted after the effective date of this amendment,] I[i]f the applicant voluntarily elects to comply with the superior design criteria contained in this Paragraph F.(3) [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 Paragraph F.(3) [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.

...

[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 (noncluster) development regulations.

[a] The yield plan shall be completed to scale, and accurately depict potential lots, streets and storm drainage facilities. The potential lots shall exclude any area designated as a tidal tributary stream or tidal wetlands by §115-193. 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 §115-25A(2) or §115-25B(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 proffers the required per unit fee provided under §115-25B(3) and F(3)(d) [as provided for in Ordinance 1842].

[i] The yield plan shall not have any legal standing except for the purposes of determining maximum density allowed under a cluster development.

...

**Section 3. Sussex County Code, Chapter 115, Article XXV, Section 115-194.3 (“ES-1 Environmentally Sensitive Development District Overlay Zone (ESDDOZ)”) shall be amended by the addition of the underlined language and deletion of the language in brackets, as follows:**

**§115-194.3 (“ES-1 Environmentally Sensitive Development District Overlay Zone (ESDDOZ).**

...

C. Permitted uses and densities.

(1) Uses permitted in the Environmentally Sensitive Development District Overlay Zone will be those uses permitted in the underlying zoning category as established by the Sussex County Zoning Ordinance.

(2) Uses prohibited in the underlying zone are also prohibited in the overlay zone.

(3) The maximum density shall be the allowable density of the underlying zoning district for developments using a central water and wastewater collection and treatment system. "Central sewer system" means centralized treatment and disposal facilities as defined in §115-194A. Within this Overlay District, clustering of single-family detached lots to a minimum lot size of 7,500 square feet is permitted in all residential zoning districts using a central water and sewer system. For dwelling units using on-site individual wastewater disposal systems, the allowable density shall be based upon a minimum lot size of  $\frac{3}{4}$  of an acre. The applicant has the option of clustering the lots to a minimum lot size of  $\frac{1}{2}$  of an acre where soil conditions are suitable as determined by DNREC, provided, however, that the number of lots or dwelling units permitted shall not exceed the number permitted in the underlying district. For purposes of this paragraph, the "allowable density" shall be determined by calculating the lot area and the area of land set aside for common open space or recreational use but shall exclude any area designated as a tidal tributary stream or tidal wetlands by §115-193.

(4) For areas within the Conservation Zone, as currently defined in the Sussex County Zoning Ordinance, the minimum lot size and dimension requirements in the Conservation Zone shall apply.

...

**Section 4. This Ordinance shall become effective upon its adoption by a majority of the elected members of Sussex County Council.**

**I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2618 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 4TH DAY OF DECEMBER 2018.**

---

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