

ORDINANCE NO. 2656

“AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY, CHAPTER 62, ARTICLE III, SECTION 62-7, CHAPTER 72, ARTICLE I, SECTIONS 72-4 AND 72-5, CHAPTER 115, ARTICLES IV, XXV AND TABLE 1 BY AMENDING SECTIONS 115-22, 115-25, 115-182, 115-183 AND 115-194.3 TO REPLACE ALL REFERENCES TO THE “ENVIRONMENTALLY SENSITIVE DEVELOPMENT DISTRICT”, “ENVIRONMENTALLY SENSITIVE DEVELOPMENT DISTRICT OVERLAY ZONE”, “ESDDOZ” AND “ENVIRONMENTALLY SENSITIVE DEVELOPING AREA” WITH “COASTAL AREA”

WHEREAS, Sussex County Council has adopted the **2018** Comprehensive Plan (the “Plan”); and

WHEREAS, The Future Land Use Element of the Plan creates a new “Coastal Area” and eliminates the Environmentally Sensitive Developing Area as a land use area on the Future Land Use Map contained in the Plan; and

WHEREAS, the Zoning Code must be updated to eliminate all references to the Environmentally Sensitive Developing Area since that Area no longer exists in the Plan; and

WHEREAS, the Zoning Code must be amended to insert “Coastal Area” where the “Environmentally Sensitive Developing Area” was previously referenced.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDNAINS:

Section 1. The Code of Sussex County, Chapter 62, Article III, §62-7 “Building Fees” is hereby amended by deleting the language in brackets and inserting the italicized and underlined language:

§62-7. Building Fees.

The schedule of fees for permits and applications for buildings and the like shall be as hereinafter indicated:

...

I. Cluster fee [as required by § 115-25B(3) and F(3)]. The Council will review the fees for a density bonus under the terms of this act on an annual basis and revise such fees as it deems necessary.

- (1) For the town centers and developing areas around Greenwood, Bridgeville, Seaford, Blades, Laurel, and Delmar, \$15,000 per unit in excess of two dwelling units per acre.
- (2) For the town centers and developing areas around Milford, Milton, Ellendale, Georgetown, Millsboro, Dagsboro, Frankford and Selbyville, \$15,000 per unit in excess of two dwelling units per acre.
- (3) For the [environmentally sensitive developing area] Coastal Area, \$20,000 per unit in excess of two dwelling units per acre.

...

Section 2. The Code of Sussex County, Chapter 72, Article I, §72-4 “Declaration of Public Policy” is hereby amended by deleting the language in brackets and inserting the italicized and underlined language:

§72-4. Declaration of Public Policy.

The Sussex County Council hereby declares it to be the public policy of the County to:

...

E. Encourage developments in town centers, developing areas and [environmentally sensitive developing areas] coastal areas with 35 or more total dwelling units to include a minimum number of moderately priced units of varying sizes on public water and sewer systems.

...

Section 3. The Code of Sussex County, Chapter 72, Article I, §72-5 “Definitions” is hereby amended by deleting the language in brackets and inserting the italicized and underlined language in the definition of “Qualifying Land”:

§72-5 Definitions

The following words and phrases have the following meanings:

...

QUALIFYING LAND

All land:

...

B. In a Town Center, Developing Area or [Environmentally Sensitive Developing Area] Coastal Area and zoned for any type of residential development to which a density provision applies or land that is designated on town’s comprehensive plan as lying within the town’s growth and future annexation area; and that . . .

...

Section 4. The Code of Sussex County, Chapter 115, Article IV, §115-22 “Conditional Uses” is hereby amended by deleting the language in brackets and inserting the italicized and underlined language:

§115-22. Conditional Uses.

The Following uses may be permitted as conditional uses when approved in accordance with the provisions of Article XXIV of this Chapter:

...

Multifamily dwelling structures and/or town homes, subject to the provisions of this chapter, when:

A. Said multifamily dwelling structures and/or town homes, 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] Coastal 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

...

Section 5. The Code of Sussex County, Chapter 115, Article IV, §115-25 “Height, Area and Bulk Requirements”, Note “” under subsection B. thereof, is hereby amended by deleting the language in brackets and inserting the italicized and underlined language:**

§115-25. Height, Area and Bulk Requirements.

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

...

**For lots located in the [Environmentally Sensitive Development District] Coastal Area, the Development Districts or the Town Center Districts, the overlay ordinance for that district shall determine the minimum lot size.

Section 6. The Code of Sussex County, Chapter 115, Article XXV, §115-182 “Front Yards” is hereby amended by deleting the language in brackets and inserting the italicized and underlined language:

§ 115-182. Front yards.

- A. On through lots, the required front yard shall be provided on each street.
- B. There shall be a front yard of at least 15 feet on the side street of a corner lot in any district.
- C. On a street or road with existing buildings having a front yard setback that is less than that required in the district, any building may have a front yard setback that is equal to the average setback of those existing buildings located on the same side of the street or road and being with 300 feet of the building. Any vacant lot shall be calculated as having the required setback for the district. No front yard setback reduced pursuant to this subsection shall be reduced to less than five feet. The provision of this subsection shall not apply to any lot in a cluster subdivision, [ESDDOZ] Coastal Area cluster subdivision or residential planned community.
- D. Open unenclosed decks, porches, platforms or steps not covered by a roof or canopy and which do not extend above the level of the first floor of the building may extend or project into the front yard not more than five feet. This provision does not apply to manufactured home parks or campgrounds.

Section 7. The Code of Sussex County, Chapter 115, Article XXV, §115-183 “Side and Rear Yards” is hereby amended by deleting the language in brackets and inserting the italicized and underlined language:

§ 115-183. Side and rear yards.

A. Where a building in a commercial district is subject to the height, area and bulk requirements applicable to residential development under § 115-178 of this article, the side yard requirements for residential development shall be applied only to the lowest floor (and all floors above it) which contains more than 25% of its area used for dwelling. All floors shall be subject to side yards required by these regulations for commercial buildings adjacent to residential districts.

B. For the purpose of the side yard regulations, a group of business or industrial buildings separated by common or party walls shall be considered as one building occupying one lot.

C. Open unenclosed decks, porches, platforms or steps not covered by a roof or canopy and which do not extend above the first floor of the building may be constructed in a side or rear yard no closer than five feet from a side lot line and five feet from a rear lot line. This provision does not apply to manufactured home parks or campgrounds.

D. For any existing approved lot that is less than 10,000 square feet in size, the side yard setbacks shall be reduced to five feet and the rear yard setback shall be reduced by five feet. For any lot with side or rear setbacks reduced by operation of this § 115-183D, no structures shall extend or project closer than five feet from the lot line. The provision of this subsection shall not apply to any lot in a cluster subdivision, [ESDDOZ] Coastal Area cluster subdivision or residential planned community.

Section 8. The Code of Sussex County, Chapter 115, Article XXV, §115-194.3 “Environmentally Sensitive Development District Overlay Zone (ESDDOZ)” is hereby amended by deleting the language in brackets and inserting the italicized and underlined language:

§ 115-194.3. ES-1 [Environmentally Sensitive Development District Overlay Zone (ESDDOZ)] Coastal Area.

A. Delineation of the zoning district.

- (1) The [Environmentally Sensitive Development District] Coastal Area shall include all lands designated as the "[Environmentally Sensitive Developing] Coastal Area" in the adopted Sussex County Comprehensive Plan dated [January 1, 2003] March 19, 2019, or as subsequently amended.
- (2) Where the boundary of the [ESDDOZ] Coastal Area is formed by a roadway, the overlay zone shall be deemed to include the contiguous property on the far side of the roadway, provided that depth of the [ESDDOZ] Coastal Area on contiguous property shall not exceed six hundred feet.

B. Application process.

- (1) All rezoning, subdivision, business and industrial site plans and conditional use applications involving one or a combination of the following shall be subject to the process and performance requirements as described hereinafter:
 - (a) Any residential planned community application.
 - (b) Any development containing 50 or more dwelling units.
 - (c) Any development containing 75,000 square feet or more of floor area used for commercial or industrial uses.
 - (d) Any use or activity that requires a permit in the Coastal Zone.
- (2) The applicant shall submit an environmental assessment and public facility evaluation report and sketch plan (report) to the Director of Planning and Zoning, a copy of which will be forwarded to the Office of State Planning Coordination and members of the Technical Advisory Committee for review and comment. The sketch plan shall address the following issues for the property to be developed and, where appropriate to the context, for the contiguous property. Information submitted by the applicant shall at a minimum contain the following:
 - (a) Proposed drainage design and the effect on stormwater quality and quantity leaving the site, including methods for reducing the amount of phosphorous and nitrogen in the stormwater

runoff and the control of any other pollutants such as petroleum hydrocarbons or metals.

- (b) Proposed method of providing potable and, where appropriate, irrigation water and the effect on public or private water systems and groundwater, including an estimate of average and peak demands.
 - (c) Proposed means of wastewater treatment and disposal with an analysis of the effect on the quality of groundwater and surface waters, including alternative locations for on-site septic systems.
 - (d) Analysis of the increase in traffic and the effect on the surrounding roadway system.
 - (e) The presence of any endangered or threatened species listed on federal or state registers and proposed habitat protection areas.
 - (f) The preservation and protection from loss of any tidal or nontidal wetlands on the site.
 - (g) Provisions for open space as defined in § 115-4.
 - (h) A description of provisions for public and private infrastructure.
 - (i) Economic, recreational or other benefits.
 - (j) The presence of any historic or cultural resources that are listed on the National Register of Historic Places.
 - (k) An affirmation that the proposed application and proposed mitigation measures are in conformance with the current Sussex County Comprehensive Plan.
 - (l) Actions to be taken by the applicant to mitigate the detrimental impacts identified relevant to Subsection B(2)(a) through (k) above and the manner by which they are consistent with the Comprehensive Plan.
- (3) The Director of Planning and Zoning shall prepare (with input from the County Administrator) guidelines describing the application process and the form and content of information to be submitted by the applicant and shall review all applications, plans, assessments and other information submitted and prepare a written report summarizing his findings and the comments of

state agencies and other County offices. The Planning and Zoning Commission shall make a determination as to whether adequate information has been presented for the project to proceed. A completed report shall be required prior to any preliminary plan approval for a development subject to this section. Approval of the report does not constitute final approval of the commenting agencies.

c. Permitted uses and densities.

- (1) Uses permitted in the [Environmentally Sensitive Development District Overlay Zone] Coastal Area 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 on a minimum lot size of 3/4 of an acre. The applicant has the option of clustering the lots to a minimum lot size of 1/2 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.
- (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.

d. Exemptions from the [Environmentally Sensitive Development District] Coastal Area. The following are exempted from the requirement of this section:

- (1) Single-family residential lots of record as of the date of this section.

(2) Existing developments and developments which have filed for approval as of the date of this section.

E. Design consideration should be given by the applicant toward the establishment of a greenways system which utilizes schools, parks, wildlife habitat areas, river and stream corridors, wetlands, floodplains, historic sites, business parks, urban sidewalks, abandoned rail lines, roads, beach areas and vacant land. Greenways should provide benefits like safe pedestrian, bicycling and equestrian routes for recreationists and commuters; and natural wildlife corridors and biological reserves.

Section 9. The Code of Sussex County, Chapter 115, Table 1 “General Table of Height, Area and Bulk Requirements”, Note 16 thereof, is hereby amended by deleting the language in brackets and inserting the italicized and underlined language:

(16) For any existing approved lot which is not located in a cluster subdivision, [ESDDOZ] Coastal Area or residential planned community, and consists of less than 10,000 square feet, the following setbacks shall apply: the side yard setback shall be reduced to five feet and the rear yard setback shall be reduced by five feet. For any lot with side or rear yard setbacks reduced by operation of §115-183D, no structures shall extend or project closer than five feet from the lot line. The front yard setback may be reduced to the average front yard setback of the existing buildings located on the same side of the street or road and being within 300 feet of the structure; provided, however, the front yard setback is not less than five feet. Any vacant lot within 300 feet of the structure shall be calculated as having the required setback for the district.

Section 10. Effective Date.

This ordinance shall take effect upon adoption by Sussex County Council. Any pending land use applications submitted prior to the date of adoption of this Ordinance shall be reviewed as though all references to the ESDDOZ, Environmentally Sensitive Developing District Overlay Zone, or Environmentally Sensitive Developing Area are to the “Coastal Area” as set forth in this Ordinance.

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2656 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 21ST DAY OF MAY 2019.

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