

ORDINANCE NO. 2737

AN ORDINANCE TO AMEND CHAPTER 52 OF THE CODE OF SUSSEX COUNTY GRANTING THE BOARD OF ADJUSTMENTS AND APPEAL AUTHORITY TO HEAR APPEALS OF VIOLATIONS UNDER CHAPTER 80 (“PROPERTY MAINTENANCE CODE”) AND CHAPTER 115 (“ZONING”), ARTICLE XXV (“SUPPLEMENTARY REGULATIONS”), §115-191 AND ITS SUBSECTIONS PERTAINING TO VEHICLES AND TRAILERS AND PROHIBITED ACCUMULATIONS.

WHEREAS, on February 10, 2020, the Delaware legislature passed and the Governor signed into law, Title 9, Chapter 72 of the Delaware Code, entitled, “Sussex County Property Maintenance”, which provides a mechanism by which the Sussex County Council is authorized to promulgate Sussex County Code provisions, including the procedures for appeals from a violation decision;

WHEREAS, through the adoption of Ordinance 2738 which amends Sussex County Code Chapter 80, the Sussex County Council created violation, enforcement, penalties and appeals procedures with due process protections for violations of the Chapter 80 (“Property Maintenance Code”); and

WHEREAS, through the adoption of Ordinance 2740 which amends Chapter 115, Article XXV (“Supplementary Regulations”), § 115-191 and its subsections pertaining to vehicles and trailers and prohibited accumulations, the violation, enforcement, penalties and appeals procedures with due process protections for violations set forth in Chapter 80 govern violations under § 115-191 and its subsections; and

WHEREAS, Title 9, Chapter 72 (now Chapter 71) mandates that the Sussex County Council appoint an administrative tribunal “for the purpose of hearing violations of any ordinance, rule, or regulation enacted pursuant to this Chapter”: and

WHEREAS, the Sussex County Council has determined that the Board of Adjustments and Appeals is the proper administrative tribunal to hear these matters; and

WHEREAS, the Sussex County Council deems it necessary to amend Chapter 52 to grant the Board of Adjustment and Appeal the authority to hear appeals from the Constable’s decision on such violations.

NOW THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. Chapter 52, § 52-30, “Board of Adjustments and Appeals”, of the Sussex County Code is hereby amended by inserting the underlined language and deleting the bracketed and italicized language as follows:

C. Quorum; personal interest

(1) Three members of the Board shall constitute a quorum. In varying an application of any provision of this code or in modifying an order of the

Building Office or affirming or denying a decision of the Constable under §80-4F, affirmative votes of the majority present, but no less than three affirmative votes, shall be required.

- E. Procedure. Except as otherwise provided in § 80-4FG. pertaining to appeals from Constable's decisions. /T/the Board shall establish rules and regulations for its own procedure not inconsistent with the provisions of this [c]Code. The Board shall meet as necessary, as determined by the Chairman. In any event, the Board shall meet within 15 days after notice of appeal has been received or may meet on a date agreeable to the Board and the appellant. The Board shall also review any proposed changes in this Code and make recommendations to the County Council.

Section 2. Chapter 52, § 52-31, "Appeals", of the Sussex County Code is hereby amended by inserting the underlined language as follows:

§ 52-31 Appeals.

- A. Appeals from decision of Building Official. Whenever the Building Official shall reject or refuse to approve the mode or manner of construction proposed to be followed or materials to be used in the erection or alteration of a building or structure or when it is claimed that the provisions of this Code do not apply or that an equally good or more desirable form of construction can be employed in any specific case or whether it is claimed that the true intent and meaning of this Code or any of the regulations thereunder have been misconstrued or wrongly interpreted, the owner of such building or structure or his duly authorized agent may appeal from the decision of the Building Official to the Board of Adjustments and Appeals. Notice of appeal shall be in writing and filed within 90 days after the decision is rendered by the Building Official. A fee of \$600 shall accompany such notice of appeal. [Amended 6-27-2006 by Ord. No. 1855]
- B. Shorter appeal period for unsafe structure. In case of a building or structure which, in the opinion of the Building Official, is unsafe or dangerous, the Building Official may, in his order, limit the time for such appeal to a shorter period. Appeals hereunder shall be on forms provided by the Building Official.
- E. Procedure. The Board shall establish rules and regulations for its own procedure not inconsistent with the provisions of this code. The Board shall meet as necessary, as determined by the Chairman. In any event, the Board shall meet within 15 days after notice of appeal has been received or may meet on a date agreeable to the Board and the appellant. The Board shall also review any proposed changes in this code and make recommendations to the County Council.

- C. Appeals from decisions of Constable. As set forth in Chapter 80, § 80-4FG., “Administrative appeal,” the Board of Adjustments and Appeals shall have the authority to hear appeals from Constable decisions that a violation has occurred under Chapter 80 and Chapter 115, §191 and its subsections. Section 80-4FG. shall govern the appeal procedure. In accordance with § 80-F4G.(2), all appeals shall be filed within ~~ten twenty~~ (120) days of the Constable’s written decision.

Section 3. Chapter 52, § 52-32, “Variances and modifications”, of the Sussex County Code is hereby amended by inserting the underlined language as follows:

§ 52-32 Variances and modifications.

- C. The Board of Adjustments and Appeals, when so appealed to and after a hearing, may vary the application of any provision of this code to any particular case when, in its opinion, the enforcement thereof would do manifest injustice and would be contrary to the spirit and purpose of this [c]Code or public interest or when, in its opinion, the interpretation of the Building Official or the Constable, as the case may be, should be modified or reversed.
- B. A decision of the Board of Adjustments and Appeals to vary the application of any provision of this code or to modify an order of the Building Official or Constable, as the case may be, shall specify in what manner such variation or modification is made, the conditions upon which it is made and the reasons therefor.

Section 4. Chapter 52, § 52-33., “Decisions of Board of Adjustments and Appeals”, of the Sussex County Code is hereby amended by inserting the underlined language therein as follows:

§ 52-33 Decisions of Board of Adjustments and Appeals.

Every decision of the Board of Adjustments and Appeals shall be final, subject, however, to such remedy as any aggrieved party might have at law or in equity. It shall be in writing and shall indicate the vote upon the decision. Every decision shall be promptly filed in the office of the Building Official or the Constable, as the case may be, and shall be open to public inspection. A certified copy shall be sent by mail or otherwise to the appellant, and a copy shall be kept publicly posted in the office of the Building Official or Constable, as the case may be, for two weeks after ~~filing for appeals from the Building Official’s decisions~~ the Board of Adjustments and Appeals issues it’s decision.

Section 5. Effective Date. This Ordinance shall become effective upon its adoption.

Synopsis

Pursuant to 9 *Del. C.* § 7201, this Ordinance amends Chapter 52, Article I. of the Sussex County Code by granting the Board of Adjustments and Appeals the authority to hear appeals from Constable decisions for violations under Chapter 80 and Chapter 115, § 115-191 and its subsections, and the procedures therefor as set forth in § 80-4~~EG~~.

Deleted text is italicized and in brackets. All new text is underlined.

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2737 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 22ND DAY OF SEPTEMBER 2020.

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ROBIN A. GRIFFITH  
CLERK OF THE COUNCIL