

ORDINANCE NO. 2764

AN ORDINANCE TO AMEND CHAPTER 115, ARTICLE XXV, SECTION 115-194.3 OF THE CODE OF SUSSEX COUNTY REGARDING THE COASTAL AREA, AS AMENDED

WHEREAS, pursuant to the provisions of Title 9, Chapter 68 and 69, Delaware Code, the Sussex County government has the power and the authority to regulate the use of land and to adopt a Comprehensive Plan; and

WHEREAS, pursuant to Chapter 115 of the Code of Sussex County, as amended, the Sussex County government has undertaken to regulate the use of land; and

WHEREAS, the Sussex County Council adopted a Sussex County Comprehensive Plan Update on September 2, 2002, which established an “Environmentally Sensitive Developing Area” with “special environmental design and protection requirements”; and

WHEREAS, Sussex County Council adopted a Sussex County Comprehensive Plan that was certified by the Governor on March 19, 2019, and this Plan expanded what was formerly identified as the “Environmentally Sensitive Developing Area” and renamed that Area as the Coastal Area in the Future Land Use Map contained therein; and

WHEREAS, it is the intent of the Sussex County Council to balance the need to protect land equity with the need to reasonably protect the County’s environment and to protect and enhance the water quality of the County’s “Inland Bays”; and

WHEREAS, Goal 4.6 and Strategy 4.6.2 of the Sussex County Comprehensive Plan states that Sussex County should “Recognize the importance of the Inland Bays” and “Recognize the Inland Bays, their tributaries and other waterbodies as valuable open space areas of ecological importance”; and

WHEREAS, Goal 4.3 of the Sussex County Comprehensive Plan states that Sussex County should “Identify and designate future development areas in a manner that protects the County’s natural and cultural resources from the adverse impacts of development as outlined in the Conservation” Element of the Plan; and

WHEREAS, Goal 4.3 of the Sussex County Comprehensive Plan includes Objective 4.3.2 which states that Sussex County should “Promote new development that incorporates preserved usable open space and mitigates for the protection or replacement of environmental resources in subdivision design” and Strategy 4.3.2.3 and 4.3.2.4 which state that Sussex County should “Strengthen County development regulations to ensure that open space dedicated by developers contains contiguous open space” and “Revisit County Code to determine if modifications are needed to open space requirements to promote less fragmentation of open space”; and

WHEREAS, it has been determined that in order to promote and protect the health, safety, convenience, orderly growth and welfare of the inhabitants of Sussex County, and to assist in the proper development of land.

NOW, THEREFORE, THE COUNTY OF SUSSEX ORDAINS:

Section 1. The Code of Sussex County, Chapter 115, Article xxv §115-194.3 “Coastal Area” is hereby amended by deleting the language in brackets and adding the italicized and underlined language:

§ 115-194.3. Coastal Area.

A. Delineation of the zoning district.

(1) The Coastal Area shall include all lands designated as the "Coastal Area" in the adopted Sussex County Comprehensive Plan dated March 19, 2019, or as subsequently amended.

(2) Where the boundary of the 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 Coastal Area on contiguous property shall not exceed 600 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] A description of how 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 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] the Coastal Area, 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 3/4 of an acre. The applicant has the option of clustering the lots to a minimum lot size of 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 subsection, 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.

(5) Residential developments utilizing the cluster option of Subsection C.3 above within the AR-1 and AR-2 Residential Zoning Districts shall comply with the requirements set forth in §115-25F of the Sussex County Zoning Code.

D. Exemptions from the 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.]

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2764 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 2ND DAY OF FEBRUARY 2021.

—

ROBIN A. GRIFFITH
CLERK OF THE COUNCIL