

**ORDINANCE NO. 2791**

**AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY, CHAPTER 115, ARTICLE IV BY AMENDING SECTION 115-25 TO REPLACE THE REFERENCE TO THE “ENVIRONMENTALLY SENSITIVE DEVELOPING AREA” WITH “COASTAL AREA” AND TO DELETE REDUNDANT LANGUAGE REGARDING BONUS DENSITY**

WHEREAS, Sussex County Council has adopted the 2018 Comprehensive Development 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 was previously updated to eliminate all references to the Environmentally Sensitive Developing Area since that Area no longer exists in the Plan through Ordinance No. 2656, but omitted two remaining references to the Environmentally Sensitive Developing Area; and

WHEREAS, this Amendment inserts “Coastal Area” where the “Environmentally Sensitive Developing Area” was previously referenced in Section 115-25(B)(3) of the Sussex County Zoning Code; and

WHEREAS, this Amendment deletes subsection F(3)(d) of Section 115-25, since that subsection is redundant to subsection B(3) of Section 115-25 regarding “bonus density”, and relocates the last three sentences of subsection F(3)(d) to subsection B(3) of Section 115-25.

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

**Section 1. The Code of Sussex County, Chapter 115, Article IV, §115-25 “Height, Area and Bulk Requirements”, subsections B(3) and F(3)(d) 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:

...

- (3) The number of dwelling units permitted shall be determined by dividing the gross area by 21,780 square feet. When a cluster development lies within a Town Center, a Developing Area, or [an Environmentally Sensitive Developing] *the 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 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. *The Sussex County Council prior to the signing of a contract to purchase, shall approve all such land or conservation easement purchases which utilize monies paid to the County under the terms of this act. All such approvals by the Council shall be by a four-fifths majority vote. It is understood that the County shall control all monies and the Sussex County Land Trust will act as a recommending body and partner at the discretion of the County Council.*

F. Review procedures for cluster development.

...

(3) ...

[(d) The 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 proposed development complies with § 115-25B(2), and does not exceed four dwelling units per gross acre, and the developer has proffered to Sussex County for the purpose of creating open space for preservation and/or active and/or passive recreation areas the development fee required by § 115-25B(3). The Sussex County Council prior to the signing of a contract to purchase, shall approve all such land or conservation easement purchases which utilize monies paid to the County under the terms of this act. All such approvals by the Council shall be by a four-fifths majority vote. It is understood that the County shall control all monies and the Sussex County Land Trust will act as a recommending body and partner at the discretion of the County Council.]

## **Section 2. Effective Date.**

This ordinance shall take effect upon adoption by Sussex County Council.

## **SUMMARY.**

This Ordinance corrects the reference to “Coastal Area” in Section 115-25B(3) of the Sussex County Zoning Code. In addition, Section 115-25F(3)(d) required a similar update in terminology. However, Section 115-25F(3)(d) also created uncertainty about whether any cluster subdivision can only occur in the “Town Center, Developing Area or an Environmentally Sensitive Developing Area [now Coastal Area]” when that is not the case. Section 115-25F(3)(d) only provided the requirements for “Bonus Density”, yet the subsection fell under Section 115-25F “Review procedures for cluster development”, which applies to all cluster subdivisions. In addition, Section 115-25F(3)(d) is itself redundant, since the ability to acquire “Bonus Density” is already clearly established in Section 115-25B(3) with nearly identical language. The three sentences added to the end of Section 115-25B(3) by this Ordinance are moved *verbatim* from Section 115-25F(3)(d), which is deleted by this Ordinance.

**I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY  
OF ORDINANCE NO. 2791 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE  
27TH DAY OF JULY 2021.**

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