

ORDINANCE NO. 3062

AN ORDINANCE TO AMEND CHAPTER 99, ARTICLES I, III & IV, SECTIONS 99-5 “DEFINITIONS”, 99-21, “PUBLIC SITES AND OPEN SPACES”, §99-23 “PRELIMINARY PLAT REQUIREMENTS” AND CHAPTER 115, ARTICLES I & XXVIII, SECTION 115-4 “DEFINITIONS AND WORD USAGE” AND §115-220 “PRELIMINARY SITE PLAN REQUIREMENTS” OF THE CODE OF SUSSEX COUNTY REGARDING OPEN SPACE.

WHEREAS, Pursuant to the provisions of Title 9, Chapters 68 and 69 of the Delaware Code, the Sussex County Government has the power and authority to regulate the use of land; and

WHEREAS, Pursuant to Chapters 99 and 115 of the Code of Sussex County, the Sussex County Government has undertaken to regulate the use of land; and

WHEREAS, there are currently inconsistencies and ambiguities within the definition of “Open Space” in Chapters 99 and 115 of the Code of Sussex County including the inclusion of recreational facilities in open space calculations while excluding building footprints from the calculation; and

WHEREAS, the 2019 Sussex County Comprehensive Plan and its Future Land Use Element contemplates the revision of the Subdivision Code through amendments such as this, including Objective 4.3.2 (“Promote new development that incorporates usable open space and mitigates for the protection or replacement of environmental resources in subdivision design”), Strategy 4.3.2.3 (“Strengthen County development regulations to ensure that open space dedicated by developers contains contiguous open space”) and Strategy 4.3.2.4 (“Revisit County Code to determine if modifications are needed to open space requirements to promote less fragmentation of open space”); and

WHEREAS, this ordinance has been drafted to address the current ambiguities in the Code of Sussex County as well as the directives of the 2019 Sussex County Comprehensive Plan; and

WHEREAS, it has been determined that this Ordinance promotes and protects the health, safety, convenience, orderly growth and welfare of the inhabitants of Sussex County.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. The Code of Sussex County, Chapter 99, Article I, §99-5 “Definitions” is hereby amended by deleting the language in brackets and by inserting the italicized and underlined language as follows:

§ 99-5 Definitions.

For the purpose of this chapter, certain terms and words are hereby defined:

OPEN SPACE

Those land areas within all major residential subdivisions, residential planned communities or developments which have a purpose to provide active and/or passive recreational opportunities, maintain land in a predominantly undeveloped or natural and undisturbed state, including lands used for agricultural purposes, promote conservation, protect wildlife or serve as a buffer between residential and nonresidential areas and/or commercial and noncommercial areas.

(1) The following uses are permitted and the land area devoted to said uses will be included in the calculation of open space:

(a) [Recreational facilities, including swimming pools, game courts, p]Play areas not including playgrounds, tot lots or other structures, walking paths, bike paths and multimodal paths that are not located on state road rights-of-way[, provided that impervious cover does not exceed 15% of calculated open space area].

(b) Ponds [which have a demonstrated recreational value].

(c) Perimeter buffers, perimeter buffer protection areas, resource buffers_and forested areas.

(d) Areas protected by perpetual conservation easements.

(e) Areas providing scenic vistas, areas providing wildlife corridors.

[(f) Sidewalks not located within street rights-of-way.]

[(g)] Areas designated as "safe zones" under the Source Water Protection Ordinance contained in Chapter 89.

[(h) Spray irrigation areas, not including areas occupied by rapid infiltration basins.]

[(i)g] [Tidal and nontidal wetlands]Resources.

[(j)h] Stormwater management facility area.

(2) The following uses are not permitted and the land area devoted to said uses will not be included in the calculation of open space:

(a) Land area included within designated lot lines.

(b) Building footprints.

(c) Predominantly impervious surfaces such as street rights-of-way, sidewalks within street rights-of-way, parking and/or loading areas.

(d) Utility facilities, including but not limited to, any building, plant, equipment for treatment or pumping, lagoons and rapid infiltration basins, for sewer, water, gas, and/or electric utilities.

(f) Clubhouses, community buildings, recreational facilities, including swimming pools, game courts, tot lots and playgrounds, pavilions, community patios, sidewalks and other impervious recreational or community facilities.

(g) Medians, boulevards, parking islands or areas between the pavement or curb and sidewalk within a right of way unless these areas are planted with trees no further than thirty feet from one another that have a minimum height of six feet above ground when planted and will obtain a minimum height of ten feet when fully grown.

(3) Any reference in this chapter to "open space" shall be subject to and governed by this definition.

Section 2. The Code of Sussex County, Chapter 99, Article III, §99-21 "Public Sites and Open Spaces" is hereby amended by deleting the language in brackets and by inserting the italicized and underlined language as follows:

§ 99-21 Public sites and open spaces.

A. Where the proposed subdivision includes lands proposed for use as parks, playgrounds, playfields, public landings or school sites in the Comprehensive Plan, the subdivider shall indicate the location of such lands on the subdivision plat and shall reserve the right of purchase of such lands by the appropriate jurisdiction for the time period specified herein. If the reserved lands are not purchased by the appropriate jurisdiction within the specified time limit, the subdivider shall be free to market such lands for an alternate purpose as specified on the approved subdivision plat.

B. Park, playground and playfield areas may be required to be reserved for a period of two years from the date of recording the subdivision, and school sites shall be reserved for four years from such date.

C. Where deemed essential by the Commission upon consideration of the type of development proposed in the subdivision, the subdivider may be required to dedicate other areas or sites of a character, extent or location suitable to meet the needs of such

development. In lieu of dedication, such additional areas may be reserved for the common use of all property owners in the proposed subdivision through deed restrictions or agreements approved by the Commission, which restrictions or agreements may include a right of enforcement by the County Council.

D. For residential subdivisions and other residential land development, the following table shall [serve as a guide for determining] establish the minimum percentage of the total site which shall be set aside for park and open space uses; in achieving the minimum percentage of open space, isolated areas of open space that are not directly connected to contiguous open space and that are smaller than 10,000 square feet in size shall not be counted:

Gross Density (dwelling units per acre)	Minimum Percentage of Open Space
2 to 5	10
6 to 10	15
Over 10	25 or more

....

Section 3. The Code of Sussex County, Chapter 99, Article IV, §99-23 “Preliminary Plat Requirements” is hereby amended by deleting the language in brackets and by inserting the italicized and underlined language as follows:

§ 99-23 Information to be shown.

The preliminary plat shall be drawn in a clear and legible manner and shall show the following information:

S. [The designation of all areas proposed as open space.] The locations, dimensions and purposes of all open space areas. The legend or plot notes must show a breakdown of acreages, both gross and net, of open space, the percentage of impervious cover area, the percentage of open space to total gross acreage and the total acreage of proposed streets, roads, parking lots, alleys and ways used for vehicle access and multimodal paths located within state rights-of-way.

Section 4. The Code of Sussex County, Chapter 155, Article I, §115-4 “Definitions and Word usage” is hereby amended by deleting the language in brackets and by inserting the italicized and underlined language as follows:

§ 115-4 Definitions and word usage.

...

B.

General definitions. For the purpose of this chapter, certain terms and words are hereby defined as follows:

...

OPEN SPACE

Those land areas within all major residential subdivisions, residential planned communities or developments which have a purpose to provide active and/or passive recreational opportunities, maintain land in a predominantly undeveloped or natural state, including lands used for agricultural purposes, promote conservation, protect wildlife or serve as a buffer between residential and nonresidential areas and/or commercial and noncommercial areas.

(1) The following uses are permitted and the land area devoted to said uses will be included in the calculation of open space:

(a) **[Recreational facilities, including swimming pools, game courts, p]**Play areas *not including playgrounds, tot lots or other structures*, walking paths, bike paths and multimodal paths that are not located on state road rights-of-way**[, provided that impervious cover does not exceed 15% of calculated open space area].**

(b) Ponds **[which have a demonstrated recreational value].**

(c) Perimeter buffers, perimeter buffer protection areas, resource buffers_and forested areas.

(d) Areas protected by perpetual conservation easements.

(e) Areas providing scenic vistas, areas providing wildlife corridors.

[(f) Sidewalks not located within street rights-of-way.]

[(g)] Areas designated as "safe zones" under the Source Water Protection Ordinance contained in Chapter 89.

[(h) Spray irrigation areas, not including areas occupied by rapid infiltration basins.]

[(i)g] [Tidal and nontidal wetlands]Resources.

(~~j~~h) Stormwater management facility area.

(2) The following uses are not permitted and the land area devoted to said uses will not be included in the calculation of open space:

(a) Land area included within designated lot lines.

(b) With the exception of Moderately Priced Housing Units and Affordably Priced Rental Units under Chapter 72 herein or projects that will be truly "affordable" as part of an official HUD, DSHA, USDA or other similarly recognized housing program, land area included within an area within 40 feet from the front, 10 feet from the side and 10 feet from the rear of any multifamily or townhouse dwelling.

(~~b~~c) Building footprints.

(~~c~~d) Predominantly impervious surfaces such as street rights-of-way, sidewalks within street rights-of-way, parking and/or loading areas.

(~~d~~e) Utility facilities, including but not limited to, any building, plant, equipment for treatment or pumping, lagoons and rapid infiltration basins, for sewer, water, gas, and/or electric utilities.

(f) Clubhouses, community buildings, recreational facilities, including swimming pools, game courts, tot lots and playgrounds, pavilions, community patio, sidewalks and other impervious recreational or community facilities.

(g) Medians, boulevards, parking islands or areas between the pavement or curb and sidewalk within a right of way unless these areas are planted with trees no further than thirty feet from one another that have a minimum height of six feet above ground when planted and will obtain a minimum height of ten feet when fully grown.

(3) For residential subdivisions and other residential land development (with the exception of Moderately Priced Housing Units and Affordably Priced Rental Units under Chapter 72 herein or projects that will be truly "affordable" as part of an official HUD, DSHA, USDA or other similarly recognized housing program), the following table shall establish the minimum percentage of the total site which shall be set aside for park and open space uses; in achieving the minimum percentage of open space, isolated areas of open space that are not directly

connected to contiguous open space and that are smaller than 10,000 square feet in size shall not be counted:

Gross Density

(dwelling units per acre)

2 to 5

6 to 10

Over 10

Minimum Percentage of Open Space

10

15

25 or more

(~~3~~4) Any reference in this chapter to "open space" shall be subject to and governed by this definition.

Section 5. The Code of Sussex County, Chapter 115, Article XXVIII, §115-220 "Preliminary Site Plan Requirements" is hereby amended by deleting the language in brackets and by inserting the italicized and underlined language as follows:

§ 115-220 Preliminary site plan requirements.

A. The preliminary site plan shall show the North point, scale and date.

B. The preliminary site plan shall show the following:

...

(15) [~~The designation of all areas proposed as open space.~~] *The locations, dimensions and purposes of all open space areas. The legend or plot notes must show a breakdown of acreages, both gross and net, of open space, the percentage of impervious cover area, the percentage of open space to total gross acreage and the total acreage of proposed streets, roads, parking lots, alleys and ways used for vehicle access and multimodal paths located within state rights-of-way.*

Section 6. Effective Date.

This ordinance shall become effective six months from the date of adoption.

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 3062 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 10TH DAY OF DECEMBER 2024.



Tracy N. Torbert
Clerk of the Council