

**ORDINANCE NO. 4061**

**AN ORDINANCE TO AMEND CHAPTER 99, ARTICLE II and III, SECTIONS 99-9, “PUBLIC HEARING ON PRELIMINARY PLAT APPROVAL OR DISAPPROVAL” 99-17 “STREET LAYOUT”, AND CHAPTER 115, ARTICLE IV, §115-25 “HEIGHT, AREA AND BULK REQUIREMENTS” OF THE CODE OF SUSSEX COUNTY REGARDING DESIGN CRITERIA FOR ALL SUBDIVISIONS.**

**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, Section 99-9C of the Code of Sussex County underwent a substantial revision in 2024, yet it has been determined that further improvements to these requirements are necessary; and**

**WHEREAS, Sussex County Council commissioned a Land Use Reform Working Group that developed multiple recommendations for improvements to the Sussex County Code regarding housing and land use and one of the recommendations included an update to the requirements of Section 99-9C as reflected in this Ordinance; and**

**WHEREAS, this Ordinance has been drafted to improve Section 99-9C in the Code of Sussex County as recommended by the Land Use Reform Working Group; and**

**WHEREAS, Sussex County Council has determined that it is appropriate to require the “superior design” criteria currently applicable to cluster subdivisions to apply to all major subdivisions in Sussex County; 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 II, §99-9 “Public hearing on preliminary plat approval or disapproval” is hereby amended by deleting the language in brackets and by inserting the italicized and underlined language in Subsection 99-9.C thereof as follows:**

**§ 99-9 Public hearing on preliminary plat approval or disapproval.**

...

C. In addition to the other provisions contained within this article, an Applicant for approval of a preliminary plat shall demonstrate how the preliminary plan is consistent with the Code of Sussex County and the Comprehensive Land Use Plan and that the following criteria are satisfied and the manner in which each one is satisfied [provide that the following criteria are incorporated and addressed in the plat and the manner in which each one is incorporated and addressed] through the design of the preliminary plat:

(1) That the proposed subdivision is integrated into existing terrain and surrounding landscape.

(2) That all resources and resource buffers are protected in accordance with Chapters 99 and 115 herein [and that floodplains are minimally used].

(3) [That natural and historic features are preserved and forest fragmentation and vegetation and soil removal is minimized. In addition, a forest assessment shall be conducted with a forest assessment report provided with the preliminary plat. If woodlands or mature forests that contain high habitat value are found, these areas shall be conserved to the maximum extent possible.] That the cultural landscape, including scenic views and cultural and historic features, are identified and protected as appropriate on the preliminary plat.

[(4) That open space and scenic views are preserved.]

[(5)4] That the supply of potable water to future residents of the proposed subdivision is safe and adequate for their use.

[(6)5] That the means and method of sewage disposal are adequately addressed for the proposed subdivision.

(6) That all lots shall be configured to be contained completely outside of all wetlands and that [That] the proposed subdivision will not pollute surface water or groundwater.

[(8)7] That the anticipated method of minimization of erosion and sedimentation are adequately identified and that the proposed subdivision complies with the requirements of Chapter 90 of the Code of Sussex County.

[(9)8] That changes to the groundwater levels will be minimized and that groundwater recharge is maximized as a result of the proposed subdivision and that the methods of both are adequately identified. In addition, that there will not be increased rates of runoff or

increased risk of flooding onto adjoining properties from the design and construction of the proposed subdivision, and the anticipated methods used to achieve these criteria are adequately identified.

**(10)9** That area property values will not be adversely affected.

**(11)** That any active farmland and tree farming adjacent to the proposed subdivision is adequately preserved through the design and construction of the proposed subdivision.]

(10) That objectionable features, including but not limited to, utility infrastructure, parking areas, loading zones and outdoor storage areas are screened from view within the proposed subdivision and from the view of neighboring properties and roadways.

**(12)11** That the Applicant has notified the local school district where the proposed subdivision will be located.

**(13)12** That public buildings and community facilities will not be adversely affected by the proposed subdivision.

**(14)13** That the subdivision is either within an established Transportation Improvement District or the subdivision endeavors to maintain the current Delaware Department of Transportation Level of Service on all adjacent roads and intersections after the subdivision is completed and in no event will allow the Level of Service to degrade below a Level of Service D. A segment analysis of the adjacent roads and intersections may be submitted in cases where the subdivision does not warrant a Traffic Impact Study.

**(15)14** That the proposed subdivision will be compatible with other area land uses.

**(16)15** That there will be safe and efficient vehicular and pedestrian movement within the site and to and from adjacent developed properties with interconnectivity where appropriate in compliance with Section 99-17D. Sidewalks shall be required at least on one side of each street, subject to Planning and Zoning Commission approval.

(16) No lots shall have direct access to any state-maintained roads and the proposed subdivision shall conform to the requirements of Sections 99-17 and 99-18 regarding street layout and street design.

(17) That lots are located on the environmentally suitable portions of the tract, specifically those portions of the tract least encumbered by sensitive environmental features, including but not limited to wetlands, mature woodlands, waterways and other water bodies.

(18) That the following sequence and process was followed in the site design of the preliminary plan:

(a) Lands that should be preserved are identified first. First, areas worthy of preservation should be mapped, including wetlands, wooded areas, waterways, other water bodies, and natural drainage areas. Then, other features that are important should be mapped, such as tree lines, scenic views, historic buildings, and prime farmland. The areas with the fewest important natural, scenic and historic features should be considered the "potential development area."

(b) Developable lands should be identified second. The most appropriate locations for development should be chosen to minimize the impact to the most important features mapped in (18)(a).

(c) Roads and trails should be identified third. After the developable areas are determined, a road system should be designed to serve those homes. A trail system that links homes to destinations outside of the tract should be designed.

(d) Lot lines should be located fourth. The last step is to configure lot lines and make necessary adjustments to satisfy the various reviewing agencies' comments.

Section 2. The Code of Sussex County, Chapter 99, Article III, §99-17 "Street Layout" is hereby amended by deleting the language in brackets and by inserting the italicized and underlined language in as follows:

§ 99-17 Street layout.

...

D. Proposed collector streets in the subdivision shall provide for the interconnectivity with [and continuation of existing, planned, or platted streets on] adjacent tracts unless such continuation shall be prevented by preservation easement, topography or other physical condition or unless such extension is found by the Commission to be unnecessary for the coordination of development between the subdivision and such adjacent tracts. When deemed advisable, the Commission may restrict access to proposed collector streets from abutting properties.

E. [Where the Commission deems it desirable or necessary to provide access to adjacent tracts not presently subdivided, proposed collector streets in the subdivision shall be extended to the boundary lines with such adjacent tracts, and temporary turnarounds shall be provided within the subdivision at the ends of such streets, by means of temporary easements or otherwise.] Where interconnectivity is required to adjacent tracts that are not presently subdivided, proposed collector streets in the subdivision shall be extended to the boundary lines with such adjacent tracts. Where there is not currently interconnectivity designed or constructed on the adjacent tract(s) such interconnectivity shall be designed and shown to the property boundary or boundaries on the Final Site Plan. The Final Site Plan shall

also include a Temporary Construction Easement for the benefit of the adjacent tract to be used to facilitate the completion of the fully constructed interconnectivity. Permanent signage shall be installed at the point of interconnectivity stating that this is the location of future interconnectivity with the adjacent tract. Where there is currently interconnectivity designed or constructed on the adjacent tract(s), then the interconnectivity shall be fully engineered and constructed within the subdivision and on the adjacent tract(s) unless the Commission determines that such construction within the adjacent tract is not possible for legal or engineering reasons. Whenever possible, such interconnectivity shall be designed at a perpendicular alignment to the property boundary. No buildings, structures or stormwater management features shall be located within the areas of interconnectivity.

Section 3. The Code of Sussex County, Chapter 115, Article IV, §115-25 “Height, Area and Bulk Requirements” is hereby amended by deleting the language in brackets as follows:

§ 115-25      Height, area and bulk requirements.

...

**[E.    Design requirements for cluster development.**

- (1)    All development shall be in accordance with the latest amendment to the community design standards.
- (2)    Housing types in the low-density area, as shown on the Sussex County Comprehensive Plan, are limited to single-family detached dwellings and manufactured homes where permitted by ordinance.
- (3)    The perimeter buffer and perimeter buffer protection area as required by § 99-21.A.
- (4)    No lots shall have direct access to any state-maintained roads.
- (5)    All lots shall be configured to be contained completely outside of all wetlands.
- (6)    Any development using the option in Subsection B(2) shall have central water and wastewater systems operated and maintained by companies authorized by the State of Delaware to perform such services. Wastewater collection and treatment systems must be designed in accordance with the requirements of Sussex County ordinances and conform to the requirements for a central sewer system as defined in § 115-194A of the Sussex County Zoning Ordinance.

**F.    Review procedures for cluster development.**

- (1)    The developer shall submit an application for a cluster development in accordance with Chapter 99, Subdivision of Land, of the Sussex County Code and which shall include, at a minimum, a sketch plan showing the location and uses of all

open spaces, the extent of existing wooded areas and wetlands and the location of any historical or cultural resources. The Director of Planning and Zoning may waive this requirement when the proposed development does not contain significant natural features or resources.

(2) The information submitted shall include a plan for the management of all open space.

(3) The Planning and Zoning Commission shall determine that the following requirements are met before approving any preliminary plan and such application shall be reviewed on an expedited basis.

(a) The cluster development sketch plan and the preliminary plan of the cluster subdivision provides for a total environment and design which are superior, in the reasonable judgment of the Planning Commission, to that which would be allowed under the regulations for the standard option. For the purposes of this subsection a proposed cluster subdivision which provides for a total environment and design which are superior to that allowed under the standard option subdivision is one which, in the reasonable judgment of the Planning Commission meets all of the following criteria:

[1] Homes shall be clustered on the environmentally suitable portions of the tract, specifically those portions of the tract least encumbered by sensitive environmental features, including but not limited to wetlands, mature woodlands, waterways and other water bodies. This does not inhibit the development of wooded parcels.

[2] (Reserved)

[3] Required open space shall comply with the following criteria:

[a] All required open space must meet the official definition of acceptable open space contained in § 115-4.

[b] Required open space must be designed to be beneficial to the residents or users of the open space. It shall not be constituted of fragmented lands with little open space value. Accordingly, 30% of all required open space shall be located on one contiguous tract of land, except that such open space may be separated by water bodies and a maximum of one street.

[c] If one of the following physical conditions exists adjacent to the proposed cluster development tract, at least 30% of all required open space must be adjacent to:

[i] An existing or officially planned public park, land preserved by easement, or land preserved as open space and in municipal, County, state, or federal ownership.

[ii] Existing wetlands, waterways, wildlife corridors, or other ecology-sensitive land.

[iii] Existing farmland and/or woodlands.

[iv] If more than one of these physical features exist on adjacent properties, then one of these features will be identified and utilized to satisfy this requirement.

[v] If the open space is proposed to be dedicated to a municipality, a County, state, or federal agency or a homeowners' association, an agreement shall be provided, in advance, stipulating that such entity agrees in advance to accept that dedication and maintain that land for public recreation or as a nature preserve.

[vi] Open space in a cluster development shall include a pedestrian trail system accessible to residents. This trail system shall connect to an adjacent trail, adjacent neighborhood, adjacent commercial area, or adjacent public open space, if any such areas exist adjacent to the proposed cluster development. Construction materials for the proposed trail shall be identified, and a typical construction detail for the proposed trail shall be shown. Trail construction materials shall be pervious in nature.

[4] The preliminary plan shall comply with the requirements of § 115-193.

[5] Stormwater management shall be designed to promote groundwater recharge and protect groundwater quality. Natural drainage flows shall be maintained to the greatest extent possible. Drainage from rooftops shall be directed to vegetated areas or allow green technology. Stormwater detention and retention facilities should be designed to resemble natural ponds as referenced by DNREC in the National Resource Conservation Service's (NRCS) Pond Code 378, Visual Resource Design.

[6] Removal of healthy mature trees shall be limited.

[7] Scenic views that can be seen from within the tract should be preserved to the greatest extent possible.

[8] The applicant for a cluster development shall illustrate that the following sequence and process was followed in the site design of the cluster project:

[a] Identify lands that should be preserved. First, areas worthy of preservation should be mapped, including wetlands, wooded areas, waterways, other water bodies, and natural drainage areas. Then, other features that are important should be mapped, such as tree lines, scenic views, historic buildings, and prime farmland. The areas with the fewest important natural, scenic and historic features should be considered the "potential development area."

[b] Identify developable areas. Next, the most appropriate locations for development should be chosen to minimize the impact to the most important features mapped in the first step.

[c] Locate roads and trails. After the developable areas are determined, a road system should be designed to serve those homes. A trail system that links homes to destinations outside of the tract should be designed.

[d] Locate lot lines. The last step is to configure lot lines and make necessary adjustments to satisfy the various reviewing agencies' comments.

[9] Sidewalks shall be required at least on one side of each street, subject to Planning and Zoning Commission approval.

(b) The cluster development plan will preserve the natural environment and any historic or archeological resources.

(c) All of the items in Ordinance Number 1152 (see § 99-9C) have been addressed and approval of the cluster option for the proposed development will not have an adverse effect on any of the items to be considered.

#### Section 4. Effective Date.

This ordinance shall become effective upon adoption. Provided, however, that it shall not apply to any subdivision or residential planned community district applications that have been submitted to the Office of Planning & Zoning with the appropriate application fee fully paid.

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 4061 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 9<sup>TH</sup> DAY OF JUNE 2026.



Tracy N. Torbert  
Clerk of the Council